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Presidential Documents

Title 3—

The President

Proclamation 5993 of June 19, 1989

National Lighthouse Day, 1989

By the President of the United States of America

A Proclamation

Lighthouses, the buildings whose solitary beacons have helped guide countless ships through the perils of fog and darkness, are a cherished part of our Nation's heritage. These impressive structures have long symbolized safety, vigilance, and faithfulness. Often isolated and repeatedly tested by the ravages of storm and sea, lighthouses are also monuments to the courage and determination of the people who built them and the keepers who have maintained them.

Lighthouses claim an honored place in the maritime history of the United States. They have served as navigational aids indicating landfall, marking dangerous reefs, and identifying harbor entrances. Today, approximately 750 lighthouses remain in the United States, standing along the Atlantic, Pacific, and Gulf Coasts and throughout the Great Lakes. More than half of them are still used for navigation.

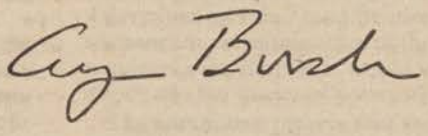
On August 7, 1989, we commemorate the 200th anniversary of the signing of the Lighthouse Act by our Nation's first President, George Washington. The Lighthouse Act established the Federal Government's role in the support, maintenance, and repair of these unique structures and commissioned the first Federal lighthouse.

By the end of this year, the United States Coast Guard will have completed the automation of all lighthouses it currently operates, bringing an end to the proud and colorful era of manned lighthouses. In cooperation with affected communities and concerned organizations, the Coast Guard is working to preserve the remaining structures and to educate the public on the role of lighthouses in our history and culture. These groups have succeeded in having more than 200 lighthouses listed on the National Register of Historic Places.

In recognition of the historic value of our Nation's lighthouses and the ongoing efforts to preserve them so that they might be opened to and enjoyed by the public, the Congress, by Public Law 100–622, has designated August 7, 1989, as "National Lighthouse Day" and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim August 7, 1989, as National Lighthouse Day. I call upon the people of the United States to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth 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.



[FR Doc. 89-14967
Filed 6-20-89; 4:46 pm]

Rules and Regulations

Federal Register
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Thursday, June 22, 1989

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 922

[Docket No. FV-89-059]

Apricots Grown in Designated Counties in Washington; Temporary Suspension of Grade Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule suspends, for the 1989 season only, the minimum grade requirement (Washington No. 1) currently in effect for fresh shipments of apricots grown in Washington. Handlers would be able to ship more fruit in fresh market channels, taking into consideration the abnormal growing conditions experienced by the Washington apricot industry this season. This action also would improve returns to producers.

DATES: The grade requirements specified in § 922.321 are suspended for the period June 19, 1989, through March 31, 1990. This interim rule is effective June 19, 1989, through March 31, 1990. Comments which are received by July 24, 1989, will be considered prior to issuance of a final rule.

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

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Marketing Order No. 922, both as amended [7 CFR Part 922], regulating the handling of apricots grown in designated counties in Washington. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the Act.

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

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

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

There are approximately 62 handlers of Washington apricots subject to regulation under the Washington apricot marketing order. In addition, there are approximately 190 apricot producers in Washington. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. A majority of these handlers and producers may be classified as small entities.

Minimum grade, maturity, color, and size requirements for Washington apricots regulated under this marketing order are specified in § 922.321 *Apricot Regulation 21* [7 CFR 922.321]. Section 922.321 provides that no handler shall handle any container of apricots unless such apricots grade not less than Washington No. 1, except for shipments subject to exemption under the regulation. In addition, the section provides that the Moorpark variety in open containers must be generally well matured. Also, that section provides that, with the exception of exempt shipments, apricots shipped must be reasonably uniform in color, and be at least 1⅝ inches in diameter, except for the Blenheim, Blenril, and Tilton varieties which must be at least 1¼ inches in diameter.

This rule amends paragraph (a)(1) of § 922.321 by temporarily suspending the minimum grade requirements for fresh shipments of apricots for the 1989 season only. The grade requirements currently specified in § 922.321 will resume April 1, 1990, for the 1990 and future seasons. The resumption of the grade requirements for the 1990 and future season shipments is based upon the grade and quality characteristics of Washington apricots during normal shipping seasons.

This action only suspends the grade requirements specified in § 922.321. Thus, the color and minimum size requirements for all varieties and the maturity requirements for the Moorpark variety would remain unchanged.

The Washington Apricot Marketing Committee (committee), which locally administers this marketing order, met May 24, 1989, and unanimously recommended this action. The committee has requested that this action be made effective by June 19, since the 1989 season apricot harvest is expected to begin at that time.

The committee meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Washington apricots which have been issued on a continuing basis. Committee meetings are open to the public and interested persons may express their views at these meetings. The U.S. Department of Agriculture (Department) reviews committee recommendations and information submitted by the committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

The committee reports that the 1989 season apricot crop was severely damaged by a freeze last winter and by

recent hail storms. The committee estimates that only 1,100 tons of apricots will be shipped fresh during the 1989 season, even with the grade requirements suspended as requested. This amount is less than 25 percent of last season's fresh shipments of 4,405 tons. The committee estimates that only 700 tons of the available 1989 crop will meet the Washington No. 1 grade, since much of the fruit is misshapen and scarred from the hail.

This action will enable handlers to ship a larger portion of their crop to the fresh market this season, taking into account the abnormal growing and crop conditions, than they would be allowed if the minimum grade requirement were not suspended. This action would also improve returns to producers.

Suspension of the grade requirements for Washington apricots is intended to increase fresh shipments to meet consumer needs and improve returns to producers. It is the Department's view that the impact of this action upon producers and handlers would be beneficial because it will enable handlers to provide apricots consistent with 1989 season growing conditions.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other available information, it is found that the rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that, upon good cause, it is impracticable, unnecessary and contrary to the public interest to give notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action suspends the current grade requirements for Washington apricots; (2) Washington apricot handlers are aware of this action which was unanimously recommended by the committee at a public meeting and they need no additional time to comply with this action; (3) shipment of the 1989 season Washington apricot crop is expected to begin on or about June 19, 1989, and this action should apply to the entire season's shipments; and (4) the rule provides a 30-day comment period, and any comments received will be considered prior to issuance of a final rule.

List of Subjects in 7 CFR Part 922

Marketing agreements and orders, Washington, apricots.

For the reasons set forth in the preamble, 7 CFR Part 922 is amended as follows:

Note: These revisions will not appear in the Code of Federal Regulations.

PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

1. The authority citation for 7 CFR Part 922 continues to read as follows:

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

2. The provisions of § 922.321 are amended by revising paragraph (a)(1) to read as follows:

§ 922.321 Apricot Regulation 21.

(a) * * *

(1) *Minimum grade and maturity requirements.* Such apricots that grade not less than Washington No. 1 and are at least reasonably uniform in color: *Provided,* That the grade requirement shall not apply to apricots handled during the 1989 season; *Provided further,* That such apricots of the Moorpark variety in open containers shall be generally well matured; and

* * * * *

Dated: June 19, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–14808 Filed 6–21–89; 8:45 am]

BILLING CODE 3410–02–M

Food Safety and Inspection Service

9 CFR Part 327

[Docket No. 88–023C]

Imported Canadian Products: Provision for "Streamlined" Inspection Procedures; Exemption From Official Mark of Inspection; Correction

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Interim rule with request for comments; correction.

SUMMARY: This document serves to correct an omission in the interim rule published (54 FR 273), on January 5, 1989, by the Food Safety and Inspection Service, which amended the Federal meat and poultry products inspection regulations to provide "streamlined" inspection procedures for the reinspection of Canadian meat and poultry products and to exempt all meat and poultry products imported from Canada from the requirement that such product or containers of product be marked with the official mark of inspection.

FOR FURTHER INFORMATION CONTACT: Patricia Stolfa, Deputy Administrator, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–3473.

SUPPLEMENTARY INFORMATION: On January 5, 1989, the Food Safety and Inspection Service published an interim rule (54 FR 273) which amended the Federal meat and poultry products inspection regulations by providing "streamlined" inspection procedures for the reinspection of Canadian meat and poultry products and by exempting all meat and poultry products imported from Canada from the requirement that such product or containers of product be marked with the official mark of inspection. These actions were a result of the United States-Canada Free-Trade Agreement and the United States-Canada Free-Trade Agreement Implementation Act of 1988, Pub. L. 100–449. Subsequent to publication of this interim rule, it was found that a portion of the interim rule had been inadvertently omitted: The words "adulterated or misbranded and to be" had been dropped from the first sentence of § 327.10(b) of the interim rule as published. This document serves to correct the omission and the affected paragraph (b) is reprinted below in its entirety.

Done as Washington, DC, on June 12, 1989.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

PART 327—[AMENDED]

The following correction is made in Docket No. 88–023I, Imported Canadian Product: Provision for "Streamlined" Inspection Procedures; Exemption from Official Mark of Inspection published in the **Federal Register** on January 5, 1989 (54 FR 273).

1. Section 327.10(b) at 54 FR 275, column 1, is correctly revised to read as follows:

§ 327.10 Samples; inspection of consignments; refusal of entry; marking.

* * * * *

(b) Except for product imported from Canada, the outside containers of all products offered for importation from any foreign country and accompanied with a foreign inspection certificate as required by this part, which, upon

reinspection by import inspectors, are found not to be adulterated or misbranded and to be otherwise eligible for entry into the United States under this part, or the products themselves if not in containers, shall be marked with the official inspection legend prescribed in § 327.26 of this subchapter. Such inspection legend shall be placed upon the containers only after completion of official import inspection and product acceptance. Except for Canadian product, all other products so marked, in compliance with this part, shall be admitted into the United States, insofar as such admittance is regulated under the Act.

* * * * *

[FR Doc. 89-14846 Filed 6-21-89; 8:45 am]

BILLING CODE 3410-DM-M

FEDERAL TRADE COMMISSION

16 CFR Parts 13 and 15

Elimination of Prohibited Trade Practices, Affirmative Corrective Actions, and Advisory Opinions From the CFR

AGENCY: Federal Trade Commission.

ACTION: Removal of miscellaneous provisions from the CFR.

SUMMARY: Title 16 of the Code of Federal Regulations ("CFR") includes a list of prohibited trade practices and affirmative corrective actions in Part 13, and the text of advisory opinions issued between 1965 and 1974 in Part 15. The Commission is not required to publish these materials in the CFR, and more complete versions of these materials are publicly available elsewhere. Because there is little, if any, public benefit to justify the ongoing cost of publication, the Commission has determined to delete these two parts.

EFFECTIVE DATE: June 22, 1989.

FOR FURTHER INFORMATION CONTACT: Phillip S. Priesman, Attorney, Office of the General Counsel, Federal Trade Commission, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580 (202) 326-2484.

SUPPLEMENTARY INFORMATION: Part 13 of Title 16 of the CFR is a codified listing of prohibited trade practices and affirmative corrective actions. The text of each Commission order concerning prohibited trade practices and affirmative corrective actions is published in the **Federal Register** when it is issued. At present, the **Federal Register** notices accompanying these items identify the particular practice or conduct involved, and list the corresponding numerical citation provided for that practice in Part 13. The lists found in Part 13 can be used as an index to Commission decisions. Each Commission order published in the **Federal Register**, however, is also published by the Commission in a publicly-available set of volumes entitled "Federal Trade Commission Decisions." Each of these volumes includes an index to the decisions and orders contained therein. In addition, the Commission's Public Reference Room provides public access to all of the agency's decisions and orders. Thus, Part 13 of Title 16 of the CFR is being deleted as unnecessary.

Part 15 of Title 16 of the CFR contains the text of advisory opinions issued from November, 1965, to June, 1974. Opinions issued since June of 1974 have not been codified in the CFR, but are published in "Federal Trade Commission Decisions." Many of the opinions found in Part 15 address situations that are of little or no current interest, and others are too general to be useful to the public. Thus, Part 15 of Title 16 of the CFR is being eliminated.

List of Subjects in 16 CFR Parts 13 and 15

Trade practices, Administrative practice and procedure.

PARTS 13 and 15—[REMOVED]

In view of the foregoing considerations, the Commission removes Parts 13 and 15 of Title 16 of the Code of Federal Regulations.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 89-14678 Filed 6-21-89; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 635

RIN 2125-AC16

Contract Procedures—Advertising for Bids; Noncollusion Affidavit/ Declaration Requirement

AGENCY: Federal Highway Administration (FHWA) DOT.

ACTION: Final rule.

SUMMARY: The Federal Highway Administration (FHWA) is revising its regulation on contract procedures regarding advertising for bids. The revised regulation requires the State highway agencies (SHA's) to include noncollusion provisions in the advertised specifications which permit all bidders on a Federal-aid highway project to submit an unsworn noncollusion declaration, under penalty of perjury under the laws of the United States, as an alternative to the sworn noncollusion affidavit requirement of the existing regulation. This revision responds to a need for flexibility in the construction contract bidding process where time constraints often dictate that documents be executed and dispatched during other than normal business hours.

EFFECTIVE DATE: June 22, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. William A. Weseman, Chief, Construction and Maintenance Division, (202) 366-0392, or Mr. Wilbert Baccus, Office of Chief Counsel, (202) 366-0780, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The requirement for the submission of a statement of noncollusion is necessary to protect the integrity of the Federal-aid highway program. The authority to issue and implement regulations necessary to carry out the statutory requirement of the program, 23 U.S.C. 112(c), has been delegated by the Secretary of Transportation to the Federal Highway Administrator.

The submission of a sworn noncollusion affidavit by the low bidder on a Federal-aid highway project had been a requirement of the FHWA for many years. However, as a result of widespread antitrust bid-rigging activities discovered in the 1970's, the Department of Transportation and the Department of Justice developed an affidavit in 1983 to be submitted by all bidders on Federal-aid airport and highway projects. The affidavit was designed to be a helpful tool in prosecuting cases involving construction contract bid-rigging. A notice of proposed rulemaking was published in the **Federal Register** on March 27, 1985, at 50 FR 12037 under Docket No. 85-17, in which the FHWA requested comments regarding the proposed regulatory revision to require submission of a sworn noncollusion affidavit from all bidders on Federal-aid highway projects.

A final rule was published in the **Federal Register** on August 1, 1986, at 51 FR 27532, which amended § 635.107(i) of Title 23, Code of Federal Regulations, to read as follows:

(i) The State highway agency shall include a statement substantially as follows in the advertised specifications:

Each bidder shall file a sworn statement executed by, or on behalf of the person, firm, association, or corporation submitting the bid, certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action, in restraint of free competitive bidding in connection with the submitted bid. This sworn statement shall be in the form of an affidavit executed and sworn to by the bidder before a person who is authorized by the laws of the State to administer oaths. The required form for the affidavit will be provided by the State to each prospective bidder. Failure to submit the sworn statement as part of the bid approval package will make the bid nonresponsive and not eligible for award consideration.

After publication of the final rule, the sworn affidavit requirement was challenged by several SHA's. Those SHA's had permitted bidders on Federal-aid highway contracts to submit, under penalty of perjury, an unsworn statement and contended that such a statement was permissible under 28 U.S.C. 1746, "Unsworn declaration under penalty of perjury." Section 1746 reads as follows:

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, * * *

The FHWA in consultation with the Department of Justice has concluded that 28 U.S.C. 1746 applies to the FHWA statute, 23 U.S.C. 112(c), and the implementing regulation regarding noncollusion affidavits 23 CFR 635.107(i), which is being revised by this final rule.

This regulation, therefore, requires SHA's to include revised noncollusion provisions in the specifications in order to ensure that all bidders on a Federal-aid project are allowed to submit an unsworn noncollusion declaration, under penalty of perjury, as an alternative to the sworn affidavit requirement of the existing regulation. The required forms for the sworn affidavit and the unsworn declaration must be provided by the SHA's to each prospective bidder.

The reasoning favoring the alternate procedure is that an affidavit must be subscribed to under oath. This requires that the person signing the affidavit must be taken before someone legally authorized to administer oaths (usually a notary public). That can be inconvenient, since it may be necessary for the document to be executed during other than normal business hours. Certainly, the need for such flexibility is apparent in the construction contract bidding process where time constraints often dictate that documents be executed and dispatched during other than normal business hours.

The revision to the regulation, therefore, allows all bidders on Federal-aid highway construction projects to submit an unsworn declaration under penalty of perjury laws of the United States as an acceptable alternative to the sworn affidavit requirement of the 23 U.S.C. 112c and the current regulation 23 CFR 635.107(i).

The original purpose of sworn affidavits was to subject a false affiant to a charge of perjury. However, any person in any declaration, certificate, verification or statement under penalty of perjury as permitted under section 1746 of Title 28, United States Code, who willfully subscribes as true any material or information which he/she does not believe to be true, is guilty of perjury. Therefore, there seems to be little distinction between a sworn affidavit under the FHWA statute (23 U.S.C. 112(c)) and an unsworn declaration executed in accordance with the requirements of 28 U.S.C. 1746. The FHWA believes that the alternative provided to bidders regarding the use of unsworn declarations in lieu of sworn affidavits will not weaken the integrity of the Federal-aid highway program.

Regulatory Impact

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant regulation under the regulatory policies and procedures of the Department of Transportation. Since the revisions are being issued for the purpose of providing increased flexibility to the SHA's and bidders to comply with an existing regulatory requirement, public comment is impractical and unnecessary. The revisions are minor administrative adjustments and require no change in FHWA procedures concerning contract procedures and advertising for bids. Therefore, the FHWA finds good cause to make the revisions final without notice and opportunity for comment and without a 30-day delay in effective date under the Administrative Procedure Act (5 U.S.C. 553). Notice and opportunity for comment are not required under the regulatory policies and procedures of the Department of Transportation because it is not anticipated that such action could result in the receipt of useful information because of the ministerial nature of this rulemaking action. It is anticipated that the economic impact of this rulemaking will be minimal. Therefore, a full regulatory evaluation is not required. For this reason and under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

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

The regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the reporting or recordkeeping provisions that are included in this regulation are being submitted for approval to the OMB.

In consideration of the foregoing, the FHWA hereby amends Part 635, Subpart A of Chapter 1 of Title 23, Code of Federal Regulations, by revising § 635.107(i) to read as set forth below.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

List of Subjects in 23 CFR Part 635

Bidding procedures, Government contracts, Grants programs—Transportation, Highways and roads.

Issued on: June 13, 1989.

R.D. Morgan,

Executive Director.

The FHWA hereby amends Part 635, Subpart A of Chapter 1 of Title 23, Code of Federal Regulations, as follows:

PART 635—CONSTRUCTION AND MAINTENANCE

1. The Authority citation for Part 635 continues to read as follows:

Authority: 23 U.S.C. 112, 113, 114, 117, 128, and 315; 31 U.S.C. 6506; 42 U.S.C. 3334, 4601 *et seq*; 49 CFR 1.48(b).

Subpart A—Contract Procedures [Amended]

2. Section 635.107(i) is revised to read as follows:

§ 635.107 Advertising for bids.

* * * * *

(i)(1) The State highway agency shall include a noncollusion provision substantially as follows in the advertised specifications:

Each bidder shall file a sworn or unsworn statement executed by, or on behalf of the person, firm, association, or corporation submitting the bid certifying that such person, firm, association, or corporation has not either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action, in restraint of free competitive bidding in connection with the submitted bid. Failure to submit the sworn or unsworn statement as part of the bid proposal package will make the bid nonresponsive and not eligible for award consideration.

(2) The required forms for the sworn affidavit and the unsworn declaration will be provided by the State to each prospective bidder.

(3) The sworn statement shall be in the form of an affidavit executed and sworn to by the bidder before a person who is authorized by the laws of the State to administer oaths.

(4) As an alternative, the unsworn statement shall be in the form of a declaration executed under penalty of perjury under the laws of the United States.

[FR Doc. 89-14709 Filed 6-21-89; 8:45 am]
BILLING CODE 4910-22-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 725

Release of Official Information for Litigation

AGENCY: Department of the Navy, DOD.

ACTION: Interim rule.

SUMMARY: This regulation assigns responsibilities to Department of the Navy (DON) personnel in responding to requests from members of the public for official DON information (testimonial, documentary, or otherwise) in connection with litigation. It does not apply to requests unrelated to litigation or pursuant to the Freedom of Information Act, 5 U.S.C. 552, or the Privacy Act, 5 U.S.C. 552a. The publication of this DON instruction will assist members of the public in submitting such requests. It implements Department of Defense Directive 5405.2 of July 23, 1985, codified in 32 CFR Part 97, regarding the release of official information in connection with litigation. It restates the requirements contained in Secretary of the Navy Instruction 5820.8 of August 11, 1987, and is intended to conform to that instruction in all respects.

EFFECTIVE DATE: Interim rule effective June 22, 1989. Consideration will be given only to comments received on or before July 24, 1989.

ADDRESSES: To help ensure that your comments are considered, send an original and three copies to CDR R.F. Walsh, JAGC, USN, (Program Officer for Litigation Requests), Offices of the Judge Advocate General, General Litigation Division, 200 Stovall Street, Alexandria, VA 22332-2400. Comments may be inspected at Room 9N17 of Hoffman Building II, 200 Stovall Street, Alexandria, VA 22332-2400 between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Commander R.F. Walsh, JAGC, USN, (Program Officer for Litigation Requests), Office of the Judge Advocate General, General Litigation Division 200 Stovall Street, Alexandria, VA 22332-2400. Telephone: (202) 325-9870.

SUPPLEMENTARY INFORMATION: This regulation establishes policy, assigns responsibilities, and prescribes procedures for responding to requests for the release of official DON information, including testimony by DON personnel as witnesses, in connection with actual or contemplated litigation. In addition to providing an orderly means for obtaining information needed in litigation to members of the public, its provisions also protect the interests of the United States, including the safeguarding of classified and privileged information. This regulation ensures that responses to litigation requests are provided in a manner that does not prevent the accomplishment of the mission of the command or activity affected. It sets forth the proper content of a request received from a member of the public for release of official DON information in connection with litigation and indicates the factors to be considered in deciding whether to authorize the release of official DON information or the testimony of DON concerning official information. It is not a "major rule" as defined by Executive Order 12291. Therefore, no regulatory impact analysis has been prepared. The DON certificates that this regulation will not have an impact on a significant number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Therefore, no regulatory flexibility analysis has been prepared. The regulation has no collection of information requirements and does not require the approval of OMB under 44 U.S.C. 3501 *et seq*. This regulation is not subject to the relevant provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347), and does not contain reporting or record-keeping requirements under the criteria of the Paperwork Reduction Act of 1980 (Pub. L. 96-511). Prior notice and other public procedures were unnecessary because the rule merely imposes technical requirements in which the public is not particularly interested or involved. There is good cause to make this rule effective upon publication of this interim rule in the **Federal Register**. We will consider comments received within 30 days after publication of this interim rule in the **Federal Register**, including a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

List of Subjects in 32 CFR Part 725

Courts, Government employees.

For the reasons set out in the preamble, Title 32, Chapter VI, Subchapter C, of the Code of Federal Regulations is amended by adding Part 725 to read as follows:

PART 725—RELEASE OF OFFICIAL INFORMATION IN LITIGATION AND TESTIMONY BY DEPARTMENT OF THE NAVY PERSONNEL AS WITNESSES

Sec.

Authority: 5 U.S.C. 301, 10 U.S.C. 5013, 31 U.S.C. 9701, 32 CFR Part 97.

§ 725.1 Purpose.

This instruction implements 32 CFR Part 97 regarding the release of official Department of the Navy (DON) information and provision of testimony by DON personnel for litigation purposes, and prescribes conduct of DON personnel in response to a litigation request or demand. It restates

the information contained in Secretary of the Navy Instruction 5820.8 of August 11, 1987, and is intended to conform in all respects with the requirements of that instruction.

§ 725.2 Policy.

(a) It is DON policy that official factual information, both testimonial and documentary, should be made reasonably available for use in federal courts, state courts, foreign courts, and other governmental proceedings unless that information is classified, privileged, or otherwise protected from public disclosure.

(b) DON personnel, as defined in § 725.4(b), shall not provide such official information, testimony, or documents, submit to interview, or permit a view or visit, however, without the authorization required by this instruction.

(c) DON personnel shall not provide, with or without compensation, opinion or expert testimony concerning official DON or Department of Defense (DOD) information, subjects, personnel, or activities, except on behalf of the United States or a party represented by the Department of Justice, or with the written special authorization required by this instruction.

(d) Paragraphs (b) and (c) of this section constitute a regulatory general order, applicable to all DON personnel individually, and need no further implementation. A violation of those provisions is punishable under the Uniform Code of Military Justice for military personnel and is the basis for appropriate administrative procedures with respect to civilian employees. All DON personnel, military and civilian, present and former, are subject to prosecution under 18 U.S.C. 201–207 for certain violations of this instruction.

(e) Upon a showing by a requester of exceptional need or unique circumstances, and that the anticipated testimony will not be adverse to the interests of the DON, DOD, or the United States, the General Counsel of the Navy, the Judge Advocate General of the Navy, or their respective delegates may, in their sole discretion, and pursuant to the guidance contained in this instruction, grant such written special authorization for DON personnel to appear and testify as expert or opinion witnesses at no expense to the United States.

§ 725.3 Authority to act.

(a) The General Counsel of the Navy, the Judge Advocate General of the Navy, and their respective delegates (hereafter "determining authorities") described in §§ 725.8 and 725.9, shall respond to litigation requests or demands for official DON information or testimony by DON personnel as witnesses.

(b) If required by the scope of their respective delegations, determining authorities' responses may include: consultation and coordination with the Department of Justice or the appropriate United States Attorney as required; referral of matters proprietary to another DOD component to that component; determination whether official information originated by the Navy may be released in litigation; and determination whether DOD personnel assigned to or affiliated with the Navy may be interviewed, contacted, or used as witnesses concerning official DOD information or as expert or opinion witnesses. Following coordination with the appropriate commander, responses may further include whether installations, facilities, ships, or aircraft may be visited or inspected; what, if any, conditions will be imposed upon any release, interview, contact, testimony, visit, or inspection; what, if any, fees shall be charged or waived for access under the fee assessment considerations set forth in § 725.10; and what, if any, claims of privilege, pursuant to this instruction, may be invoked before any tribunal.

(c) The DOD General Counsel may notify DOD components that his or her office will assume primary responsibility for coordinating all litigation requests or demands for official DOD information or testimony of DOD personnel in litigation involving terrorism, espionage, nuclear weapons, and intelligence sources or means. Accordingly, determining authorities who receive requests pertaining to such litigation shall notify the DON Associate General Counsel (Litigation) or the Deputy Assistants Judge Advocate General for International Law or General Litigation, who shall consult and coordinate with DOD General Counsel prior to any response to such requests.

§ 725.4 Definitions.

(a) *Request or demand (legal process).* Subpoena, order, or other request by a Federal, state, or foreign court of competent jurisdiction, by any administrative agency thereof, or by any party or other person (subject to the exceptions stated in § 725.5) for production, disclosure, or release of official DOD information or for the appearance, deposition, or testimony of DON personnel as witnesses.

(b) *DON personnel.* Active duty and former military personnel of the naval service including retirees; personnel of other DOD components serving with a DON component; Naval Academy midshipmen; present and former civilian employees of the DON including non-appropriated fund activity employees; non-U.S. nationals performing services overseas for the DON under provisions of status of forces agreements; and other specific individuals or entities hired through contractual agreements by or on behalf of DON, or performing services under such agreements for DON (e.g., consultants, contractors and their employees and personnel).

(c) *Litigation.* All pretrial, trial, and post-trial stages of all existing or reasonably anticipated judicial or administrative actions, hearings, investigations, or similar proceedings before civilian courts, commissions, boards (including the Armed Services Board of Contract Appeals), or other tribunals, foreign and domestic. This term includes responses to discovery requests, depositions, and other pretrial proceedings, as well as responses to formal or informal requests by attorneys or others in situations involving, or reasonably anticipated to involve, litigation.

(d) *Official information.* All information of any kind, however stored, in the custody and control of the DOD and its components (including the DON); or relating to information in the custody and control of DOD or its components; or acquired by DOD personnel or its component personnel as part of their official duties or because of their official status within DOD or its components, while such personnel were employed by or on behalf of the DOD or on active duty with the United States Armed Forces. The determination of whether "official information" (as opposed to non-DOD information), in whole or part, is sought rests with the determining authority rather than the requester. The requester must still comply with the requirements of § 725.6 to support the contention that only non-DOD information is at issue.

(e) *Factual and expert or opinion testimony.* DON policy favors disclosure of factual information if disclosure does not violate the criteria stated in § 725.7 and is not classified, privileged, or otherwise subject to withholding under statute, executive order, or regulation. The distinction between factual matters, and expert or opinion matters (where DON policy favors non-disclosure), is not always clear and involves the exercise of discretion. The following considerations pertain:

(1) DON personnel may merely be percipient witnesses to an incident, in which event their testimony would be purely factual. On the other hand, they

may be involved with the matter only through an after-the-event investigation (e.g., investigation under the Manual of the Judge Advocate General), and asking them to identify conclusions in their report would likewise constitute factual matters to which they might testify. In contrast, asking them to adopt or reaffirm their findings of fact, opinions, and recommendations, or asking them to form or express any other opinion, particularly one based upon matters submitted by counsel or going to the ultimate issue of causation or liability, would clearly constitute precluded testimony under the foregoing policy.

(2) DON personnel, by virtue of their training, often form opinions because they are required to do so in the course of their duties. If their opinions are formed prior to, or contemporaneously with, the matter in issue, and are routinely required of them in the course of the proper performance of their professional duties, they essentially constitute factual matters (i.e., the opinion they previously held). Opinions formed after the event in question, however, generally constitute the sort of opinion or expert testimony which this instruction is intended to restrict severely.

(3) Characterization of expected testimony by a requester as fact, opinion, or expert is not binding on the determining authority. When there is doubt as to whether or not expert or opinion (as opposed to factual) testimony is being sought, advice may be obtained informally from, or the request forwarded to, the Deputy Assistant Judge Advocate General (General Litigation) or the Associate General Counsel (Litigation) for resolution.

(f) *Determining authority.* The cognizant DON or DOD official designated to grant or deny a litigation request. In all cases in which the United States is, or might reasonably become, a party, or in which expert testimony is requested, the Judge Advocate General or the General Counsel of the Navy, depending on the subject matter of the request, will act as determining authority. In all other cases, the responsibility to act as determining authority has been delegated to certain commands and activities. Further guidance on the essential contents of a request and indicating where members of the public should forward litigation requests is contained in §§ 725.8 and 725.9.

§ 725.5 Applicability.

(a) *Applicable situations.* This instruction applies to the following personnel and situations:

(1) To all present and former civilian and military personnel of the DON whether employed by, or assigned to, DON, temporarily or permanently. Categories of personnel affected are defined more fully in § 725.4(b).

(2) This instruction applies only to situations involving existing or reasonably anticipated litigation, as defined in § 725.4(c), when DOD or DON information or witnesses are sought, whether or not the United States, the DOD, or its components are parties thereto. It does not apply to formal or informal requests for information in other situations.

(3) This instruction provides guidance for the operation of the DON and for present and former DON personnel in responding to litigation requests. It is not intended, does not, and may not be relied upon, to create any right or benefit, substantive or procedural, enforceable at law or equity against the United States, DOD, or DON.

(4) This instruction is not intended to infringe upon or displace the responsibilities committed to the Department of Justice in conducting litigation on behalf of the United States.

(5) This instruction does not supersede or modify existing laws, DOD or DON regulations, directives, or instructions governing testimony of DON personnel or release of official DOD or DON information during grand jury proceedings.

(6) This instruction does not control release of official information in response to requests unrelated to litigation or under the Freedom of Information Act (FOIA), 5 U.S.C. 552, or the Privacy Act, 5 U.S.C. 552a. It does not preclude treating any written request for DON records not in the nature of legal process as a request under the FOIA or Privacy Act. DON activities are encouraged to process requests for records under the FOIA or Privacy Act if they are invoked by the requester either explicitly or by fair implication as provided in 32 CFR 701.3(d) and 701.103(i).

(b) *Exceptions and exclusions.* This instruction does not apply to release of official information or testimony by DON personnel in the following situations:

(1) Before courts-martial convened by any DOD component, or in administrative proceedings conducted by, or on behalf of, such a DOD component;

(2) Under administrative proceedings conducted by, or on behalf of, the Equal Employment Opportunity Commission, the Merit Systems Protection Board, the Federal Labor Relations Authority, the Federal Services Impasse Panel, or under a negotiated grievance procedure under a collective bargaining agreement to which the Government is a party;

(3) In response to requests by Federal Government counsel, or counsel representing the interests of the Federal Government, in litigation conducted, in whole or in part, on behalf of the United States (e.g., Medical Care Recovery Act claims, affirmative claims, or subpoenas issued by, or concurred in by, Government counsel when the United States is a party);

(4) As part of the assistance required by the Defense Industrial Personnel Security Clearance Program under DOD Directive 5220.6;

(5) Release of copies of Manual of the Judge Advocate General (JAGMAN) investigations, to the next of kin (or their representatives) of deceased or incompetent Naval personnel;

(6) Release of information by DON personnel to counsel retained on their behalf for purposes of litigation, unless that information is classified, privileged, or otherwise protected from disclosure (In the latter event, compliance with 32 CFR Part 97 and this instruction is required);

(7) Cases involving garnishment orders for child support and/or alimony. The release of official information in these cases is governed by 5 CFR Part 581 and Secretary of the Navy Instruction 7200.16;

(8) Pursuant to release of information to federal, state, and local prosecuting and law enforcement authorities, in conjunction with an investigation conducted by a DOD component or DON criminal investigative organization.

(9) This instruction does not preclude official comment on matters in litigation in appropriate cases.

§ 725.6 Contents of a proper request or demand.

(a) *Written (i.e., routine) requests.* If official information, through testimony or otherwise, is sought, a detailed request must be submitted in writing to the appropriate determining authority far enough in advance to allow prompt and thorough evaluation of the request and avoidance of adverse effects on the mission of the command or activity which must respond. A request that is deficient in providing necessary information may be returned to the requester by the determining authority,

with an explanation of the deficiencies and a statement that no further action will be taken until they are corrected. If the circumstances so indicate, the determining authority should provide an information copy to the court issuing legal process as well. Litigation requests must provide the information—as applicable to the case under consideration—as follows:

(1) A statement as to whether the United States is, or is reasonably anticipated to become, a party to the matter;

(2) The caption of the case, including names of the parties, docket number, court, and date the action commenced;

(3) Name, address, and telephone number of all counsel to the parties, or to other persons likely to become parties;

(4) A brief summary of the facts of the case and the present posture of the case;

(5) A description, in as much detail as possible, of the documents, information, or testimony sought;

(6) A statement of whether factual, opinion, or expert testimony is sought;

(7) If expert or opinion testimony is sought, an explanation of why exceptional need or unique circumstances exist justifying such testimony, including why such testimony is not reasonably available from any other source;

(8) A statement of the relevance of the matters sought to the proceedings at issue;

(9) The name, address, and telephone number of the person, from whom the documents, information, or testimony is sought (if applicable);

(10) The date(s) on which the documents, information, or testimony sought must be produced; the requested location of production; and the estimated length of time that attendance of the DON personnel will be required (if applicable);

(11) A statement of the requester's willingness to pay in advance, in accordance with § 725.10, all reasonable expenses and costs of searching for and producing documents, information, or personnel, including travel expenses and accommodations (if applicable);

(12) A statement of understanding that the search and production will be at no expense to the Government;

(13) In cases in which deposition testimony is sought, a statement of whether later deposition testimony or attendance at trial is anticipated and requested;

(14) Agreement to notify the determining authority at least 10 days in advance of all interviews, depositions, or testimony. Additional time for notification may be required where the witness is located overseas;

(15) Agreement to conduct the deposition at the location of the witness, unless the witness and his commanding officer or cognizant superior, as applicable, stipulate otherwise;

(16) In the case of former DON personnel, a brief description of the length and nature of their duties while in DON employment, and a statement of whether such duties involved, directly or indirectly, the information or matters as to which the person will testify;

(17) An agreement to provide free of charge to any witness a signed copy of any written statement he or she may make in writing, or, in the case of an oral deposition, a copy of that deposition transcript (if taken by a stenographer) or a video tape copy if taken solely by video tape, if not prohibited by applicable rules of court;

(18) An agreement that if the local rules of procedure controlling the litigation so provide, the witness will be given an opportunity to read, sign, and correct the deposition at no cost to the witness or the Government; and

(19) A statement of understanding that the United States reserves the right to have a representative present at any interview or deposition.

(b) *Oral (i.e., emergency) requests.* Written requests allowing reasonable lead time for evaluation and processing are normally required. However, in emergency situations where response time is severely limited and a written request is impractical, the following procedures should be followed:

(1) The determining authority has discretion to waive the requirement of a written request and expedite a response in the event of a bona fide emergency under conditions which could not be anticipated in the course of proper pretrial planning and discovery. Oral (i.e., emergency requests) and subsequent determinations should be reserved for instances where factual matters are sought and insistence on compliance with the requirements of a proper written request would result in the effective denial of the request and cause an injustice in the outcome of the litigation for which the information is sought. No requester has a right to make an oral request and receive a determination, however. Whether to permit such an exceptional procedure is a decision within the sole discretion of the determining authority, unless overruled by the General Counsel or the Judge Advocate General, as appropriate.

(2) If the determining authority concludes that the request, or any portion of it, meets the foregoing criteria, the requester must agree to the applicable conditions set forth in paragraph (a) of this section and § 725.7(c). The determining authority will then orally advise the requester of the approval and seek written confirmation of the oral request. The determination authority will make a written record of the disposition of the oral request, including the grant or denial, the circumstances requiring the procedure, and the conditions to which the requester agreed.

(3) This emergency procedure should not be utilized where the requester refuses to agree to the appropriate conditions set forth in §§ 725.6(a) and 725.7(c) or indicates unwillingness to abide by the limits of the oral grant, partial grant, or denial.

(c) *Visits and views.* A request to visit a DON activity, ship, or unit, or to view materials or spaces located there, will be forwarded to the appropriate determining authority for resolution. Action taken by that authority will be coordinated with the commanding officer of the activity, ship, or unit affected, or with his or her staff judge advocate (if applicable). The authority of the commanding officer of any activity, ship, or unit at issue, over the personnel or property of that activity, ship, or unit is not limited by this instruction. Visits and views involving DON units and activities in connection with litigation requests should not be accompanied by interviews of personnel unless separately requeted and granted. The military mission of the unit shall normally take precedence over any visit or view. The commanding officer may independently prescribe reasonable conditions as to time, place, and circumstances to protect against compromise of classified or privileged material, intrusion into restricted spaces, and unauthorized photography.

(d) *Requests for interviews.* No witness may be required by legal process to submit to interview. DON personnel may voluntarily consent to be interviewed on official matters, with the permission of the appropriate determining authority. In deciding whether to agree to an interview, DON personnel should be advised that if a request for an interview is refused, the requester may seek to compel testimony at a deposition or at trial.

(e) *Requests for Privacy Act protected information.* In addition to complying with the requirements of this instruction, litigation requests for official DON records contained in a "system of records" must satisfy the requirements for release imposed by the Privacy Act, 5 U.S.C. 552a. See 32 CFR 701.100 through 701.120. Normally, this is

accomplished by producing: (1) The written consent of the subject of the record, (2) a court order or subpoena from a court of competent jurisdiction signed by a state or Federal judge directing disclosure of the information, or (3) as indicated in 32 CFR 701.105, a demonstration of the applicability of some other Privacy Act exemption authorizing release of official DON records containing personal information to third parties. When records contained in a "system of records" are released, disclosure accounting requirements contained in 32 CFR 701.105(c) (Secretary of the Navy Instruction 5211.5C) must be complied with.

(f) *Service of process.* 10 U.S.C. 7861 provides that the Secretary of the Navy has custody and charge of all books, records, papers and property of the DON. Under 32 CFR 257.5(c), the Navy's sole delegate for service of process is the General Counsel of the Navy, whose address for this purpose is Office of the General Counsel, Department of the Navy, Washington, DC 20350–1000. To be effective for judicial enforcement purposes, all legal process for official DON documents must be served upon the General Counsel, who will in most cases refer the matter to the proper delegate for action. Process for DON documents directly served on a subordinate officer within any DON activity or command, not also properly served on the General Counsel, is insufficient to constitute an enforceable legal demand but shall be processed and acted upon by DON activities and determining authorities as a litigation request by counsel.

§ 725.7 Considerations in responding to a request.

(a) *General considerations.* In deciding whether to authorize release of official information and the testimony of DON personnel concerning official information (hereafter referred to as "the disclosure"), under a request satisfying the requirements of § 725.6, the determining authority shall consider the following factors:

(1) The DON policy regarding disclosure set forth in § 725.2 of this instruction;

(2) Whether the request or demand is unduly burdensome or otherwise inappropriate under applicable court rules;

(3) Whether disclosure, including release *in camera* (i.e., to the judge or court alone), is appropriate under procedural rules governing the case or matter in which the request or demand arose;

(4) Whether disclosure would violate or conflict with a statute, executive order, regulation, directive, instruction or notice. In this regard it is noted that this instruction is not intended to place unreasonable restraints upon the post-employment conduct of former military members and civilian employees of DON. Accordingly, requests for expert or opinion testimony by such personnel will normally be granted unless that testimony would constitute a violation of statute (e.g., 18 U.S.C. 201 *et seq.*), regulation (e.g., DOD Directive 5500.7 and Secretary of the Navy Instruction 5370.2H (Standards of Conduct)), or disclose properly classified or privileged information;

(5) Whether disclosure, in the absence of a court order or written consent would violate the Privacy Act, as explained previously in § 725.6(e);

(6) Whether disclosure, including release *in camera*, is appropriate or necessary under relevant substantive law concerning privilege (e.g., attorney-client, attorney work-product, deliberative process, or, in the case of civilian personnel, physician-patient);

(7) Whether disclosure, except when *in camera* and necessary to assert a claim of privilege, would reveal information properly classified pursuant to DOD Directive 5200.1–R (Information Security Program Regulation), unclassified technical data withheld from public release pursuant to DOD Directive 5230.25, privileged Naval Aviation Safety Program information (such as mishap investigation report witness statements), matters exempt from disclosure under the Privacy Act, or other matters exempt from unrestricted disclosure. Any consideration of release of classified information for litigation purposes, within the scope of this instruction, must be coordinated within the Office of the Chief of Naval Operations (OP–09N) in accordance with OPNAVINST 5510.1G.

(8) Whether disclosure would unduly interfere with ongoing law enforcement proceedings, violate an individual's constitutional rights, reveal the identity of an intelligence source, informant, or source of confidential information, conflict with United States obligations under international agreement, or would otherwise be inappropriate under the circumstances; and

(9) Whether attendance of the requested witness at deposition or trial will unduly interfere with the military mission of the command.

(b) *Considerations pertaining to medical records of civilian employees.* With respect to requests for medical and other records of civilian employees, production of medical certificates or other such records is controlled by the Federal Personnel Manual, Chapters 294 and Chapter 339.1–4. Records of civilian employees, other than medical records, may be produced upon receipt of a court order and a request complying with § 725.6, provided no classified or for-official-use-only information, such as loyalty or security records, are involved. Disclosure of records relating to compensation benefits administered by the Office of Workers' Compensation Programs of the Department of Labor are governed by Secretary of the Navy Instruction 5211.5C (Privacy Act implementation) and Secretary of the Navy Instruction 5720.42D (Freedom of Information Act implementation), as appropriate. The provisions of § 725.7(e) pertain to the release of original or copies of records in response to a court order, subpoena or litigation request.

(c) *Contents of responses to litigation requests.* (1) The determination letter should respond solely to the specific disclosures requested, stating a specific determination on each particular request. A denial of a request, in whole or part, should fully inform the requester—and ultimately a court if the denial is challenged—of the reasons underlying the determination.

(2) Whenever a litigation request, or compliance with a court order or subpoena duces tecum, is denied, a copy of the denial letter and all associated documents will be promptly forwarded to the appropriate Deputy Assistant Judge Advocate General (General Litigation) or to the Associate General Counsel (Litigation), as appropriate. Telephonic notification is particularly appropriate where a judicial challenge or contempt action is anticipated.

(3) The determination letter should state, or adopt by reference, conditions set forth in § 725.6(a) (11) through (19). Reiterating, it should advise the requester of the following conditions, as appropriate:

(i) All costs will be borne and advanced by the parties; no cost to the Government or the witness may result from the grant of disclosure;

(ii) The determination is solely as to the matters stated; no other determination is expressed or implied. No determination as to expert, opinion, or policy matters has been made if none has been requested or implicated;

(iii) Any deposition shall be at the witness's location unless otherwise agreed to by the witness and his or her commanding officer (if applicable);

(iv) The grant is for a single deposition or interview only; subsequent depositions are not encompassed or authorized and normally will not be granted. Permission for subsequent trial

testimony must be separately requested and determined;

(v) The determining authority shall be informed at least 10 working days prior to any interview, deposition, or testimony, and may appoint counsel therefor. No such deposition or interview may be conducted in the absence of that counsel unless an express waiver of this requirement has been obtained from the determining authority; and

(vi) Other counsel of record will be provided a copy of the determination so they may apply to participate or broaden the request. Failure to so apply within the stated 10 working day period shall constitute waiver of that right.

(vii) If the authority to whom the matter is referred determines that compliance with a court order or subpoena duces tecum is indicated, it will be effected by transmitting certified copies of records to the clerk of the court from which process issued. If, because of unusual circumstances, an original record must be produced by a DON custodian, the original will be retained in the custody of the person producing it, and copies should be placed in evidence.

§ 725.8 Responsibilities of DON personnel.

(a) *Matters proprietary to the DON.* If a litigation request or demand for official DOD information or for testimony concerning such information is presented, the individual to whom the request or demand is made will immediately notify the cognizant DON official, as indicated in this section, who will determine availability and respond to the request or demand.

(b) *Matters proprietary to another DOD component.* If a DON activity receives a litigation request or demand for official information originated by another DOD component or for personnel presently or formerly assigned to another DOD component, the DON activity will forward appropriate portions of the request or demand to the DOD component originating the information, to the components where the personnel are assigned, or to the components where the personnel were formerly assigned, for action under 32 CFR Part 97. The forwarding DON activity will also notify the requester and court (if appropriate), or other authority, of its transfer of the request or demand.

(c) *Litigation matters to which the United States is, or might reasonably become, a party and requests for expert or opinion testimony.* Such requests shall be forwarded for a determination to the Judge Advocate General or the General Counsel of the Navy according to their respective areas of cognizance as discussed in § 725.9 and, in more detail, in Secretary of the Navy Instruction 5820.8.

(d) *Litigation matters to which the United States is not, and is reasonably not expected to become a party.* (1) With respect to matters within the purview of the Judge Advocate General, such requests shall be forwarded to and determined by the Navy or Marine Corps officer exercising general court-martial jurisdiction in whose chain of command the prospective witness or requested documents lie. Further guidance in identifying the proper determining authorities can be found at § 725.9 and in Secretary of the Navy Instruction 5820.8.

(2) As to matters within the cognizance of the General Counsel, those requests involving issues of Navy policy shall be forwarded for determination to the Associate General Counsel (Litigation). All other requests shall be forwarded for determination to the respective counsel for Naval Sea Systems Command, Naval Air Systems Command, Naval Supply Systems Command, Military Sealift Command, Naval Facilities Engineering Command, Space and Naval Warfare Command, Office of the Navy Comptroller, Commandant of the Marine Corps, Office of the Chief of Naval Research, or Civilian Personnel Programs Division (OP–14L), Office of the Chief of Naval Operations, depending upon who has cognizance over the information or personnel as issue. Further guidance with respect to proper determining authorities can be found at § 725.9 and in Secretary of the Navy Instruction 5820.8.

3. The foregoing guidance shall not prevent a determining authority from referring requests or demands to another determining authority better suited under the circumstances to determine the matter and respond, but the requester shall be notified of the referral. Further, each determining authority specified in this paragraph may delegate his or her decisional authority to a principal staff member, staff judge advocate, or legal advisor.

(e) *Requirement for prompt determination.* A determination to grant or deny should be made expeditiously to provide the requester and the court with the information requested or with a statement of the reasons for denial. The decisioned period, absent exceptional or particularly difficult circumstances, should not exceed 10 workings days from receipt of a request complying with the requirements of § 725.6. The requester (and if circumstances so indicate, the court) should also be informed promptly of the referral of any portion of the request to another determining authority within DOD for determination.

(f) *Scope of disclosure.* DON personnel shall not produce, disclose, release, comment upon, or testify concerning any official DOD information in response to a litigation request or demand without prior written approval of an appropriate DON official. If a request has been made, and granted, in whole or in part under 32 CFR Part 97 and this instruction, DON personnel may only produce, disclose, release, comment upon, or testify concerning these matters specified in the request and properly approved by the determining authority designated.

(g) *Action pending determination.* If, after DON personnel have received a litigation request and submitted it to the appropriate determining authority, a response is required before a determination by the responsible official has been received, the Deputy Assistant Judge Advocate General or Associate General Counsel (Litigation) who has cognizance over the matter shall be notified. That official, as necessary, will furnish the requester, the court, or other authority with a copy of this regulation or Secretary of the Navy Instruction 5820.8, inform the requester, the court, or other authority that the request or demand is beig reviewed, and seek a stay pending a final determination.

(h) *Reponse to court order pending determination.* If a court of competent jurisdiction or other appropriate authority declines to stay the effect of the request or demand in response to action taken under paragraph (g) of this section, or if such court or other authority orders that the request or demand must be complied with, notwithstanding the final decision of the appropriate DON official, the DON personnel upon whom the request or demand was made will, if time permits, notify the determining authority of such ruling or order. That authority will notify the Deputy Assistant Judge Advocate General or the Associate General Counsel (Litigation) having cognizance over the matter. After due consultation and coordination with the Department of Justice, as required by the Manual of the Judge Advocate General, that official will determine whether the individual is required to comply with the request or demand and will notify the requester, the court, or other authority accordingly.

§ 725.9 Proper forwarding of a request.

As indicated in § 725.8(c), in all cases in which the United States is, or might reasonably become, a party, or in which

expert or opinion testimony is requested, the Judge Advocate General or the General Counsel of the Navy will act as determining authority on litigation requests. In all other cases, the responsibility to act as determining authority has been delegated to certain subordinate commands and activities. Requests by members of the public for official DON information should be sent directly to the naval command or activity which holds the documents desired or all which the witness is employed or assigned for duty. The guidance contained in 32 CFR 701.31 regarding proper addresses for Freedom of Information Act requests for specific categories of records and information applies equally to litigation requests and should be consulted. The following guidelines also apply in ascertaining the proper addressee of a litigation request. If in doubt, however, requests may be forwarded to either the Associate General Counsel (Litigation) or the Deputy Assistant Judge Advocate General (General Litigation) depending on the subject matter and their respective areas of cognizance in providing legal advice to the DON.

(a) General counsel. Has cognizance over matters related to the employment and records of present and former DON civilian employees, litigation involving asbestos exposure, and business and commercial law aspects of DON operations including, but not limited to:

(1) Acquisition, custody, management, transportation, taxation, and disposition of real and personal property and the procurement of services for DON;

(2) Operations of the Military Sealift Command, Office of the Comptroller of the Navy, and the Naval Data Automation Command;

(3) All matters in the fields of patents, inventions, trademarks, copyrights, royalty payments, and similar matters;

(4) Procurement aspects of foreign military sales and matters related to the Arms Exports Control Act; and

(5) DON litigation before the Armed Services Board of Contract Appeals.

(b) Requests dealing with subjects under the cognizance of the General Counsel, or known to be within the purview of the commands listed in paragraph (b)(3) of this section, should be forwarded directly for determination to counsel in accordance with the following guidelines:

(1) In all requests involving issues of Navy policy, cases in which the United States or DON is a party, or if expert or opinion testimony is desired (or if in doubt about the proper addressee):

Office of the General Counsel, Department of the Navy, Litigation Office, Washington, DC 20360–5110.

(2) For matters involving asbestos litigation:

Office of Counsel, Navy Sea Systems Command Headquarters, Federal Litigation Section (Code OOLE), Washington, DC 20362–5101.

(3) When the request does not involve issues of Navy policy it should be forwarded directly for determination to one of the following commands having cognizance over the subject matter of the request:

Office of Counsel, Navy Air Systems Command Headquarters, Department of the Navy, Washington, DC 20362–5101.

Office of Counsel, Navy Air Systems Command Headquarters, Department of the Navy, Washington, DC 20361–0002.

Office of Counsel, Navy Supply Systems Command Headquarters, Department of the Navy, Washington, DC 20361–5000.

Office of Counsel, NAVFAC, Navy Facilities Engineering Command, 200 Stovall Street, Alexandria ,VA 22332–2300.

Office of Counsel, Space and Naval Warfare Systems Command, Washington, DC 20363–5100.

Office of Counsel, Naval Comptroller, Department of the Navy, Washington, DC 20350–1100.

Office of Counsel, Navy Research, Chief of Naval Research, Ballston Center Tower #1, 800 North Quincy Street, Arlington, VA 22217–5000.

Office of Counsel, Civilian Personnel Programs Division (OP–14L), Office of the Chief of Naval Operations, Department of the Navy, Washington, DC 20350–2000.

Commandant of the Marine Corps, Office of Counsel, Headquarters Marine Corps, Washington, DC 20380–0001.

Office of Counsel, Military Sealift Command, Department of the Navy, Washington Navy Yard, Bldg. 210, Washington, DC 20398–5100.

(4) For matters involving the Armed Forces Board of Contract Appeals, requests shall be forwarded for determination to the respective counsel set forth in paragraph (b)(3) of this section, except where the determination may involve the assertion of the deliberative process privilege before that Board. In that event, the matter shall be forwarded for determination to the Associate General Counsel (Litigation).

(c) Judge advocate general. Is responsible for providing legal advice in all matters related to the operations and administration of military shipboard and shore commands and present and former active-duty DON personnel and their records. Requests dealing with the following subjects or known to be within the purview of the following commands should be forwarded directly for determination to the following addresses:

(1) In all cases in which the United States or DON is a party or if expert or opinion testimony is desired (or if in doubt about the proper addressee):

Judge Advocate General, Department of the Navy, General Litigation Division, 200 Stovall St., Alexandria, VA 22332–2400.

(2) For medical, service, or pay records of former Navy and Marine Corps personnel:

Director, National Personnel Records Center, National Archives and Records Administration, 9700 Page Blvd., St. Louis, MO 63132.

The National Personnel Records Center will respond directly to such requests, including court orders and subpoenas duces tecum.

(3) For pay records of active-duty, reserve, or retired Navy members:

Commanding Officer, Navy Finance Center, Code OL, 1240 East 9th St., Cleveland, OH 44199–2055.

(4) For copies of reports of investigation conducted in accordance with the Manual of the Judge Advocate General (JAGMAN investigation reports):

Judge Advocate General, Investigation Division, Department of the Navy, 200 Stovall St., Alexandria, VA 22332–2400.

(5) The majority of Navy and Marine Corps Commanders in the United States and overseas have been designated as determining authorities. A complete listing of these authorities and their official addresses is contained in Secretary of the Navy Instruction 5820.8 and can be obtained by writing to the Judge Advocate General at the address indicated in paragraph (c)(1) of this section. Some determining authorities frequently called on to determine litigation requests include:

Chief of Naval Operations (OP–00J), Department of the Navy, Washington, DC 20350–2000.

Vice Chief of Naval Operations (OP–09BL), Navy Department, Washington, DC 20370–5000.

Commandant of the Marine Corps (Code JAR), Headquarters Marine Corps, Washington, DC 20380–0001.

Commander, Naval Medical Command (MEDCOM 00D3), Washington, DC 20372.

Commander, Naval Military Personnel Command (06), Washington, DC 20370–5000.

Commander, Naval Investigative Service Command, Washington, DC 20388–5000.

Commander in Chief, U.S. Atlantic Fleet, Norfolk, VA 23511.

Commander in Chief, U.S. Pacific Fleet, Pearl Harbor, HI 96860.

Commander, Naval Air Force, U.S. Atlantic Fleet, Norfolk, VA 23511.

Commander, Naval Air Force, U.S. Pacific Fleet, Naval Air Station, North Island, San Diego, CA 92135.

Commander, Naval Surface Force, U.S. Atlantic Fleet, Norfolk, VA 23511.

Commander, Naval Surface Force, U.S. Pacific Fleet, Naval Amphibious Base, Coronado, San Diego, CA 92155.

Commander, Submarine Force, U.S. Atlantic Fleet, Norfolk, VA 23511.

Commander, Submarine Force, U.S. Pacific Fleet, Pearl Harbor, HI 96860.

Commander, Naval Reserve Force, New Orleans, LA 70146.

Commanding General, Fleet Marine Force, Atlantic/Europe, Norfolk, VA 23511.

Commanding General, Fleet Marine Force, Pacific, Camp H.M. Smith, HI 96861.

§ 725.10 Fees.

The determining authority shall charge reasonable fees and expenses to parties seeking official DOD and DON information under this instruction. The following guidelines are prescribed for fee assessment:

(a) *Documents.* A complete list of applicable charges is established at 32 CFR 288.10. Fees shall be charged unless waived in accordance with paragraph (f) of this section.

(b) *Factual matters*—(1) *Deposition and testimony.* The requester shall pay to the witness the fee and expenses prescribed for attendance by the applicable rule of court. If no such fee is prescribed, the applicable Federal rule shall apply. No additional fee will be prescribed for the time spent while testifying or in attendance to do so.

(2) *Interviews.* The requester shall pay a fee calculated upon the total hourly pay of the witness (including all pay, allowances, and benefits) plus a three percent administrative surcharge as prescribed by 31 U.S.C. 9701.

(3) *Views and visits.* The requester shall pay a fee calculated to reimburse the command for any expense or effort incurred as a result of the view or visit. Such fees and expenses normally shall include the cost of escort personnel and special preparations (if any). Costs shall be calculated upon the full hourly pay of the personnel necessarily involved (including all pay, allowances, and benefits) plus a three percent administrative surcharge as prescribed by 31 U.S.C. 9701 and DOD Instruction 7230.7.

(4) *Travel.* Travel expenses of factual witnesses shall be fully reimbursed but shall not be assessed in an amount exceeding the applicable rule of court, or the Federal rule if there is no local rule. Joint Federal Travel Regulations and Navy Travel Instructions pertaining to entitlements of DON personnel summoned as witnesses should be consulted for guidance in ascertaining whether fees are payable by the United States and, if applicable, to which appropriation costs of travel should be charged.

(c) *Expert, opinion, and policy matters.* When a request is granted to permit DON personnel to testify in whole or in part as to expert, opinion, or policy matters, the requester shall pay to the Government a fee calculated to fully reimburse the cost of providing the witness. Fees and expenses shall include: (1) Costs of the time expended by DON employees to process and respond to the request or demand; (2) costs of attorney time expended in reviewing the request or demand and any information located in connection with the request or demand; (3) expenses generated by materials and equipment used to search for, produce, and copy the responsive information; and (4) costs of travel by the witness and attendance at trial. All costs for personnel shall be calculated on the hourly rate described in paragraph (b)(2) of this section, and shall include such hourly fee for each hour (or portion) of the normal work day when the witness is in travel, in attendance, or testifying.

(d) *Payment.* Fees for documents shall be paid directly to the DON. Witness fees for testimony shall be paid to the witness, who shall endorse the check "pay to the United States," and surrender it to his or her supervisor. It shall be deposited thereafter in the General Fund. Witnesses are expected to utilize a travel claim to obtain proper reimbursement from the Navy if applicable travel regulations allow use of government funds. In all other cases, the private party requesting a DON witness shall forward in advance necessary round trip tickets and all requisite travel and per diem funds and the DON witness shall be provided with permissive no-cost orders covering the period in which testimony will be provided.

(e) *Matters in which the United States is a party.* Fees or expenses, other than those permitted by the Federal Rules of Civil or Criminal Procedure and related case law, shall not be charged in matters to which the United States is a party.

(f) *Waiver.* A waiver of any fees in connection with a litigation request may be granted by the determining authority at his or her discretion provided that waiver is in the interest of the United States. Fee waivers shall not be routinely granted, nor shall they be granted under circumstances which might create the appearance that DON favors one private litigant over another.

Sandra M. Kay,

Alternate Federal Register Liaison Officer.

June, 19, 1989.

[FR Doc. 89-14835 Filed 6-21-89; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09-89-15]

Special Local Regulations; Tug Across the Detroit River, Detroit, MI

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the Tug Across the Detroit River. This event will be held on the Detroit River on 27 June 1989 from 11:30 a.m. e.d.s.t. until 12:30 p.m. The regulations are needed to provide for safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations become effective from 11:30 a.m. (local time) until 12:30 p.m. on 27 June 1989.

FOR FURTHER INFORMATION CONTACT: MST1 Scott E. Befus, Office of Search and Rescue, Ninth Coast Guard District, 1240 E. 9th St., Cleveland, OH 44199, (216) 522-4420.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable.

This has been an annual event for many years and no negative comments concerning it have been received. This event is included in the proposed rulemaking for permanent regulations of Great Lakes Annual Marine Events. See Federal Register of 7 April 1989 [54 FR 14100]. Those permanent regulations, however, will not be effective until after this event takes place, so this final rule is necessary.

Drafting Information

The drafters of this regulation are MST1 Scott E. Befus, project office, Office of Search and Rescue and LCDR C. V. Mosebach, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Tug Across The Detroit River will be conducted on the Detroit River on 27 June 1989. This event will have a rope extended from the U.S. shoreline to the Canadian shoreline which may pose hazards to navigation in the area. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (Commander, U.S. Coast Guard Group Detroit, MI).

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Because of the short duration of these regulations, their economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary.

Since the impact of these regulations is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

Federalism

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

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 33—[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. Part 100 is amended to add a temporary § 100.35–0915 to read as follows:

§ 100.35–0915 Tug across the Detroit River, Detroit, MI.

(a) *Regulated area.* That portion of the Detroit River bounded on the south by the International Boundary, on the west by 083 degrees 03 minutes west, on the east by 083 degrees 02 minutes west, and on the north by the U.S. shoreline.

(b) *Special local regulations.* (1) The above area will be closed to all vessel navigation or anchorage from 11:30 a.m. (local time) until 12:30 p.m. on 27 June 1989.

(2) Vessels under 65 feet shall begin clearing the shipping channels at 12:30 p.m. (local) or when the Tug of War ends, whichever comes first.

(3) The Coast Guard will patrol the regatta area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander." Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum, and in a manner which will not endanger participants in the event or any other craft. The rules contained in the above two sentences shall not apply to participants in the event or vessels of the patrol operating in the performance of their assigned duties.

(4) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regatta area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(5) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(6) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(7) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(c) This section is effective from 11:30 a.m. (local time) until 12:30 p.m. on 27 June 1989.

Dated: June 9, 1989.

D. H. Ramsden,

Capt, U.S. Coast Guard Acting Commander, Ninth Coast Guard District.

[FR Doc. 89–14747 Filed 6–21–89; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD1–89–023]

Temporary Drawbridge Operation Regulations; Kennebec River, ME

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: At the request of the Maine Department of Transportation (Maine DOT), the Coast Guard is issuing temporary regulations governing the Carlton drawbridge over Kennebec River, at mile 14.0, between Bath and Woolwich, Maine, to extend the closure period for the evening rush hour 45 minutes and to limit the openings for recreational vessels between 6 a.m. and 6 p.m. to twice a day at 10 a.m. and 2 p.m. for 60 days commencing 1 June through 30 July 1989. The temporary regulation is being made to examine the effect on vehicular and marine traffic during the above period. This action should accommodate the needs of vehicular traffic, while providing for the reasonable needs of navigation.

EFFECTIVE DATE: This temporary regulation is effective 1 June 1989 through July 30, 1989.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, First Coast Guard District, (212) 668–7170.

SUPPLEMENTARY INFORMATION: On May 10, 1989, the Coast Guard published a proposed temporary rule (54 FR 20149; May 10, 1989) concerning this amendment. The Commander, First Coast Guard District, also published the proposal as a Public Notice 1–687 dated May 9, 1989. In each notice, interested persons were given until May 25, 1989 to submit comments.

Drafting Information

The drafters of these regulations are Waverly W. Gregory, Jr., Project Officer, and Lieutenant Robert E. Korroch, Project Attorney.

Discussion of Comments

Three responses, two favoring and one opposing the proposed regulations, were received to the public notice. One respondent favoring the proposed regulations indicated that a Maine DOT phase 1 report stated the 1988 annual average daily traffic crossing the Carlton bridge between Bath and Woolwich and the Davey bridge in nearby Wiscaset, Maine, was 20,900 and 14,900, respectively, and steadily increasing. The respondent appreciated the need to accommodate navigational traffic, however, the bottleneck at the Carlton bridge has reached epidemic proportions. The other respondent indicated that the proposed regulation would appear to nicely balance the interests of both water and highway transportation. The one opposing respondent, as charter boat captain, stated that he did not think that the

small amount of marine traffic at the bridge is a significant cause of the traffic problems, and that the marine traffic moves quickly through the bridge whenever it is opened, and it is the lift mechanism itself that causes the delays. He also requested that a public hearing be held.

Economic Assessment and Certification

These proposed temporary regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this temporary regulation is expected to be so minimal that a full regulatory evaluation is unnecessary. The intent of this temporary regulation is to collect information to assess how the regulations would accommodate vehicular traffic to and from Bath Iron Works and local parks in the summer when tourist traffic is at its peak. The draw will continue to open on signal for inbound commercial fishing vessels. Since the economic impact of this proposal is expected to be minimal the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism Implication Assessment

This action has been analyzed under the principles and criteria in Executive Order 12612, and it has been determined that this proposed rule does not have sufficient federalism implications to warrant preparation of a Federalism assessment.

List of Subjects in 33 CFR Part 117

Bridges.

Temporary Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.525(a) is revised for the period of June 1, 1989 through July 30, 1989:

§ 117.525 Kennebec River.

(a) The draw of the Carlton highway-railroad bridge, mile 14.0 between Bath and Woolwich shall open as follows:

(1) On signal as soon as possible at all times for vessels owned or operated by the United States Government, State and local vessels used for public safety, vessels in distress, and inbound loaded commercial fishing vessels.

(2) Year-round the draw need not open from 6:30 a.m. to 7:30 a.m. and from 3:45 p.m. to 5:30 p.m., Monday to Friday excluding holidays except for vessels noted in paragraph (a)(1) of this section.

(3) From 1 June through 30 September: (i) On signal at all times for commercial vessels except as noted in paragraph (a)(2) of this section; (ii) For recreational vessels on signal except that from 6 a.m. to 6 p.m. openings only at 10 a.m. and 2 p.m.

(4) From 15 April through 30 May and 1 October through 15 November open on signal: (i) From 3 a.m. to 7 p.m., except as noted in paragraph (a)(2) of this section; (ii) From 7 p.m. to 3 a.m. if four hours notice is given.

(5) From 15 February through 14 April and 16 November through 15 December at all times on signal, if at least 4 hours notice is given.

(6) From 16 December through 14 February open on signal, except as noted in paragraph (a)(2) of this section, if 24 hours notice is given.

* * * * *

Dated: June 13, 1989.

R.I. Rybacki,

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

[FR Doc. 89-14745 Filed 6-21-89; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[CGD7 89-21]

Security Zone; Port Canaveral Harbor, Cape Canaveral, FL; Correction

AGENCY: Coast Guard, DOT.

ACTION: Final rule; correction.

SUMMARY: The Coast Guard is clarifying the zone described in the final rule which appeared in the **Federal Register** on October 3, 1988 [53 FR 38718].

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander H. Henderson, Tel: (904) 791–2648, between 7:30 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The Coast Guard published the final rule on October 3, 1988 [53 FR 38718] which established a security zone at Cape Canaveral, Florida. The final rule improperly described the security zone which is clarified by this notice.

The following clarification is made in CGD7 87–38, the Regulations implementing the security zone at Cape Canaveral, Florida published in the **Federal Register** on October 3, 1988 [53 FR 38718].

1. On page 38718, third column, paragraph (a) of § 165.705 is correctly added to read as follows:

§ 165.705 Port Canaveral Harbor, Cape Canaveral, Florida.

(a) Security Zone A—East (Trident) Basin, Port Canaveral Harbor, at Cape Canaveral Air Force Station, Brevard County, Florida. All waters of the East Basin north of latitude 28°24'36"N.

* * * * *

Dated: May 2, 1989.

R. J. O'pezio,

Captain, U.S. Coast Guard, Captain of the Port, Jacksonville, Florida.

[FR Doc. 89-14746 Filed 6-21-89; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 144, 260, 264, and 270

[FRL-3606-3]

Hazardous Waste Miscellaneous Units; Standards Applicable to Owners and Operators; Correction

AGENCY: Environmental Protection Agency.

ACTION: Final rule; correction.

SUMMARY: This notice corrects the preamble discussion of a final rule under the Resource Conservation and Recovery Act (RCRA) that appeared in the **Federal Register** of Thursday, December 10, 1987, 52 FR 46946; and that discussed distance requirements for open burning/open detonation facilities.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline at (800) 424–9346 (toll free) or (202) 382–3000 in Washington, DC, or Chester J. Oszman, Jr., Office of Solid Waste (OS–343), U.S. Environmental Protection Agency, Washington, DC 20460, (202) 382–4500.

SUPPLEMENTARY INFORMATION: On December 10, 1987 (52 FR 46946–46965), EPA promulgated a new set of standards applicable to miscellaneous waste management units. The final rule was effective on January 11, 1989. Today, EPA is correcting one portion of the accompanying preamble by clarifying

the minimum safe distance requirements for open burning/open detonation facilities subject to the December 10 final rule.

In the preamble to the final rule on 40 CFR Part 264, Subpart X permitting requirements for miscellaneous units, the Agency stated on page 46952, third column, first paragraph, that the appropriate applicable portions of 40 CFR Part 265, Subpart P, including the minimum safe distance requirements, would be incorporated into the final RCRA permits granted to open burning/open detonation facilities covered by Subpart X. However, the basis for development of the tables in Subpart P of Part 265 is disposal of military explosives (Department of Defense's Army regulation AR-385-65 Ammunition and Explosive Safety Standard, Chapter 5). These tables do not necessarily apply to the open burning or open detonation of commercial explosives at Subpart X facilities. A permit may be issued with shorter distance provisions (e.g., based on the American Table of Distances for Commercial Explosives) as long as the Part 264 Subpart X environmental performance standards for protection of human health and the environment are met.

List of Subjects

40 CFR Part 144

Administrative practice and procedures, Hazardous materials, Waste treatment and disposal.

40 CFR Part 260

Administrative practice and procedures, Confidential business information, Hazardous materials, Waste treatment and disposal.

40 CFR Part 264

Hazardous materials, Packaging and containers, Reporting requirements, Security measures, Surety bonds, Waste treatment and disposal.

40 CFR Part 270

Administrative practice and procedures, Reporting and recordkeeping requirements, Hazardous materials, Waste treatment and disposal, Water supply, Confidential business information.

Robert L. Duprey,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

Dated: June 12, 1989.

[FR Doc. 89-14826 Filed 6-21-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MM Docket No. 88-526; RM-6122; FCC 89-128]

Radio Broadcasting Services; Modification of FM and TV Authorizations To Specify a New Community of License

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action adopts a procedure whereby an FM or television licensee or permittee may request modification of its authorization to a mutually exclusive allotment in a different community of license during the course of a rule making proceeding to amend the FM or television table of allotments, without risking loss of its existing authorization to competing applicants. The current procedure discourages changes in communities of license, even though a change may be beneficial to the community and to the licensee. This action will permit beneficial changes, resulting in a fairer, more equitable, and more efficient distribution of services.

EFFECTIVE DATE: July 31, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Michael Ruger, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, MM Docket No. 88-526, adopted April 26, 1989, and released June 15, 1989. The full text of this Commission decision is available for inspection during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

1. The Commission amended § 1.420 of its Rules to establish a new procedure whereby FM and television licensees and permittees may request modification of their authorizations to a mutually exclusive allotment in a different community of license during the course of a rule making proceeding to amend the FM or television tables of allotments, §§ 73.202(b) and 73.606(b) of the Rules, respectively. The Commission will approve a modification so long as adoption of the proposed allotment plan would result in a net service benefit for the communities involved as compared to the existing state of allotments for the communities involved.

2. This proceeding was commenced in response to a petition for rule making filed by Christian Voice of Central Ohio ("petitioner"), an FM licensee. Petitioner proposed that the Commission amend its rules to permit FM licensees to upgrade facilities on higher class adjacent or co-channel frequencies, without entertaining competing expressions of interest or competing applications for the amended allotment, even if the upgrade would require modification of the licensee's community of license. In response to the petition, the Commission issued a Notice of Proposed Rule Making, 53 FR 50045 (Dec. 13, 1988), proposing to amend § 1.420 of the Commission's rules to provide a procedure whereby a licensee or permittee may petition the Commission for an amendment to the FM or television tables, and modification of its license accordingly, without placing its existing authorization at risk.

3. Comments filed in response to the Notice were predominantly favorable. Commenters noted that the present policy deters beneficial upgrades that would require a change in the community of license, and that the new procedure would enhance a licensee's flexibility in choosing and modifying facilities. Others noted that the proposal is consistent with earlier Commission actions to modify policies that frustrate the advancement of proposals that would serve the public interest, such as the *Report and Order* in MM Docket No. 85-313, *Modification of FM Broadcast Licenses to Higher Class Co-Channel or Adjacent Channels*, 51 FR 20290 (June 4, 1986). While one party suggested that the proposal might be contrary to the requirements of *Ashbacker Radio Corp. v. U.S.*, 326 U.S. 327 (1945), a number of commenters and reply commenters refuted that view. One commenter supported application of the proposal to intraband commercial/noncommercial channel exchanges, but another disapproved, fearing that intraband swaps could lead to loss of noncommercial service in some areas. Several commenters argued that the procedure could be abused by a licensee seeking to abandon its original community of license in order to serve a larger market without offering any tangible benefits to the new community. One commenter claimed the procedure is unnecessary for the television service, as a television station cannot obtain a

higher classification of service through a change in community of license. Another commenter expressed concern that a television licensee might use the procedure to move its station so as to circumvent syndicated exclusivity rules, a possibility considered unlikely by several reply commenters.

4. Several parties supported the tentative conclusion that the proposed procedure should be used only if an allotment to the new community would further the Commission's allotment priorities and policies as expressed in *Revision of FM Assignment Policies and Procedures*, 47 FR 26624 (June 21, 1982) and *Sixth Report and Order*, 17 FR 3905, 3912 (May 2, 1952). A number of commenters opposed the application of the allotment priorities to this procedure, claiming that a strict application of the priorities could prevent a change in community of license even though strong public interest benefits favored the change. Several commenters suggested a flexible application of the FM allotment criteria to acknowledge that many FM stations serve a larger geographic area than their communities of license, and to permit consideration of the many marketplace factors that may enter into a licensee's decision to change its community of license. Several commenters claimed that the television allotment priorities are outdated and do not account for the existence of alternative video delivery services such as cable television. Suggested alternatives to use of the allotment criteria for television stations included a mutual exclusivity requirement, and a showing of significant public interest benefits.

5. Among the alternative proposals advanced, several commenters suggested that, instead of applying the existing allotment priorities, the Commission require a station seeking to change its community of license to maintain some degree of service to its former community of license. Another suggested that the proposed rule state that the procedure will only be used to further section 307(b) of the Communications Act. A third proposal suggested a procedure that would allow the Commission to change a licensee's community of license and modify its license in a rule making proceeding if, after the licensee's request was placed on public notice, no bona fide expressions of interest in the new community of license were received. One commenter proposed that the Commission specify that the procedure would be available to licensees seeking to reassign to their allotted communities channels assigned elsewhere pursuant to the Commission's former "15-mile" rule.

6. After careful review of the comments, we are convinced that the Commission's current procedures for modification of FM and television authorizations to specify a new community of license should be amended. The present procedure discourages changes to the tables of allotments that would result in a better overall arrangement of allotments. Many licensees and permittees may be deterred from seeking improvements to technical facilities that would require a modification of its community of license, as they would be at risk of losing their authorizations in a comparative hearing. The procedure adopted herein is limited to situations in which the new allotment would be mutually exclusive with the existing allotment and will not apply to nonadjacent channel upgrades. The suggested alternative procedure is rejected, as it is similar to a procedure we determined in *Modification of FM Broadcast Licenses to Higher Class Co-Channel or Adjacent Channels* to be wasteful of Commission, petitioner, and commenter resources.

7. This amendment is not precluded by the *Ashbacker* doctrine. The Court of Appeals has noted in *Reuters Ltd.* v. *FCC*, 781 F.2d 946, 951 (D.C. Cir. 1986), that *Ashbacker* applies only to parties whose applications have been declared mutually exclusive, and not to prospective applicants. A party seeking to amend the tables of allotments is a prospective applicant until its application is submitted and accepted pursuant to Commission rules. Also, while as a general matter policy considerations may favor permitting the filing of competing applications, in this instance the public interest favors a different approach. Changing our rules will remove a disincentive to changes in communities of license. Potential applicants will not be deprived of opportunities for comparative consideration, as they are already effectively precluded from applying for these allotments due to mutual exclusivity with the existing allotments.

8. In order to amend an allotment using this procedure, we will compare the proposed allotment plan to the existing state of allotments for the communities involved. If adoption of the proposed allotment plan would result in a net service benefit for the communities involved (that is, if the plan would result in a preferential arrangement of allotments), we will adopt the proposal. The best way to ensure a preferential arrangement of allotments is to apply the relevant FM or television allotment priorities and policies. Continued use of the allotment criteria is consistent with the public interest and lends certainty to the process by retaining a body of precedent upon which a petition for change of the community of license can be analyzed. This will permit evaluation of all conflicting proposals, regardless of whether they involve a change in community of license, using the same priorities and policies. Commission policy is to apply the criteria in a flexible manner where circumstances warrant. We decline to take into account the degree of service a licensee will maintain to its original community of license as a factor in making our decision. Were we to do so, we would have to ensure that the coverage was provided to the original community in perpetuity, lest the licensee avoid one of the terms of its promise that allowed the move. On the other hand, we should not preclude a change in community of license that would result in a preferential arrangement of allotments solely because the licensee will no longer serve its original community of license.

9. There may be situations in which a licensee may try to increase its total population served by moving from a rural community to a suburban community. We do not believe that such a move necessarily constitutes abuse of process so long as the new community of license is preferable to the original community under our allotment criteria, although the result may be removal of some service from communities on the fringe of an urban area. The application of the allotment priorities and policies, in conjunction with the Commission's minimum distance separation requirements and the present intensive use of spectrum in urban areas, will act as a barrier to the clustering of stations in major metropolitan areas. We will, however, carefully monitor these situations, and will address the issue if necessary.

10. A licensee might want to use the rule in one of three circumstances. First, a licensee might propose a change in its community of license, but no change in its transmitter site or, for an FM station, its channel class. Second, a licensee might propose to change its transmitter site and community of license. Third, applicable only to the FM service, a licensee might propose to change its community of license and channel class, and possibly its transmitter site as well. However, in no case will we allow a broadcaster to use this procedure if the effect would be to deprive a community of its only local transmission service. In the first case, the question of whether

the amended allotment would result in a preferred distribution of facilities under our allotment criteria will serve as a threshold test of the acceptability of the proposal. In the second and third situations, the preclusive effect of the allotment changes and it is possible that other changes mutually exclusive with the existing station could be advanced in the proceeding. Therefore, we will decide the proposal on a case by case basis, based on whether or not the proposed changes, taken as a whole, would advance our allotment priorities. We will be particularly hesitant to deprive an area of an existing first or second reception service.

11. We believe that it is unnecessary to include language in the new rule stating that the procedure will only be used to further section 307(b) priorities, as the rule merely reflects procedures for amending the tables of allotments in certain circumstances, and the substantive standards for allotments have been established by the Commission in policy statements and various Report and Orders. We will continue to apply those substantive standards in all proceedings pursuant to this rule. We will not specify that this procedure will be available to licensees seeking to return to their allotted communities channels assigned elsewhere pursuant to the Commission's former "15-mile" rule. The procedure we now adopt is limited to situations in which a licensee files a rule making petition and an associated request for modification of license simultaneously. The television table of allotments has not been modified to conform its provisions to the actual usage of channels under the "10-mile" and "15-mile" rules by licensees. Licensees seeking to modify their assignments to specify the allotted community listed in the tables may request to do so by filing an application for a modification of license, and we will grant the request where appropriate.

12. This procedure will be applicable to exchanges of intraband (that is, UHF–UHF or VHF–VHF) noncommercial and commercial channels, but not to interband channel exchanges. The Commission's Rules currently permit intraband exchanges, and the procedure should apply to exchanges consistent with our rules. The possibility of abuse of the new rule is minimal, because adherence to the allotment criteria will ensure that any exchange involving a change in the community of license will be made in the public interest and not solely in the financial interests of the participants. Furthermore, use of this procedure may allow either or both stations to offer upgraded service previously prohibited due to a mutually exclusive allotment.

13. We believe that the public may benefit from application of this procedure to the television service as well as to the FM service. A television licensee may, through a change in its community of license, be able to move its transmitter in order to improve service to the surrounding area in a manner consistent with our allotment priorities. As for the concern that this procedure could allow a television station to circumvent the Commission's programming exclusivity rules, we note that the incentives for moving a station in order to avoid these rules are not clear. A licensee that changes its community of license to escape programming exclusivity rules may lose its protection with respect to other licensees in its original community of license, thereby significantly diminishing the value of its programming. If a licensee moves to a suburban community to avoid the scope of the exclusivity rules, the amended allotment would not have been approved had it not resulted in a preferential arrangement of allotments under the allotment criteria.

14. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 604, a final regulatory flexibility analysis has been prepared. It is available for public viewing as part of the full text of this decision, which may be obtained from the Commission or its copy contractor.

15. The Rule contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements and will not increase or decrease burden hours imposed on the public.

Ordering Clause

Accordingly, *It is ordered,* That, under the authority contained in sections 1, 2, 4 (i) and (j), 303(r), 316, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154 (i), (j), 303(r), 316, 403, Part 1 of the Commission's Rules and Regulations is amended, effective July 31, 1989, as shown at the end of this document.

List of Subjects in 47 CFR Part 1

Radio, Television.

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

PART 1—[AMENDED]

16. The authority citation for Part 1 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154 and 303.

Section 1.420 is amended by adding new paragraph (i) as follows:

§ 1.420 Additional procedures in proceedings for amendment of the FM, television or air-ground table of assignments.

* * * * *

(i) In the course of the rule making proceeding to amend § 73.202(b) or § 73.606(b), the Commission may modify the license or permit of an FM or television broadcast station to specify a new community of license where the amended allotment would be mutually exclusive with the licensee's or permittee's present assignment.

Federal Communications Commission.

William Caton,

Acting Secretary.

[FR Doc. 89-14713 Filed 6-21-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 32

[DA 89-503]

Accounting Requirements for Telephone Companies

AGENCY: Federal Communications Commission.

ACTION: Revision of Annual Report Form M.

SUMMARY: The Chief, Common Carrier Bureau, has revised the Federal Communications Commission's Annual Report Form M (Form M) to reflect the changes in the Commission's accounting requirements for telephone companies adopted in Part 32 of its rules (47 CFR Part 32), which made the present Form M obsolete. The revisions are effective for the 1988 Annual Report Form M.

EFFECTIVE DATE: May 12, 1989.

FOR FURTHER INFORMATION CONTACT: Virginia Brockington, Ken Ackerman or John T. Curry, Accounting Systems Branch, Accounting and Audits Division, Common Carrier Bureau (202) 634-1861.

SUPPLEMENTARY INFORMATION: This is a summary of the Chief, Common Carrier Bureau, Memorandum Opinion and Order, DA 89-503, adopted April 27, 1989, and released May 12, 1989. The full text of this Order is available for inspection and copying during normal business hours in the Accounting and Audits Division, Room 812, 2000 L Street NW., Washington, DC. The complete

text may also be purchased from the Commission's copy contractor.

Summary of Memorandum Opinion and Order

On September 9, 1988, the Chief, Common Carrier Bureau, released an Order Inviting Comments (OIC) [1] proposing revisions of the Form M. The revisions were proposed because recent changes in the Commission's accounting requirements for telephone companies had made the existing Form M obsolete, and a significant volume of information contained therein, while still necessary for regulatory purposes, could not be accommodated in the automated reporting and management information system (ARMIS) the Commission had adopted in CC Docket 86–182, the docket which created certain automated reporting requirements for telephone companies.

This Order establishes the new Form M based on comments received in response to the proposal in the OIC. It eliminates 22 of the old Form M schedules, and the information contained on these schedules that is still needed for regulatory purposes has been condensed into six new replacement schedules. The schedules the Order eliminates from the Form M Report are Schedules 3, Board of Directors; 4, Principal General Officers; 10, Balance Sheet; 11, Income and Retained Earnings Statement; 12A, Analysis of Telephone Plant Accounts; 13A, Analysis of Telephone Plant Acquired; 15A, Analysis of Amortization Reserve; 15B, Bases of Annual Amortization Charges; 17, Investments; 20, Notes Receivable; 21, Accounts Receivable; 25, Capital Stock and Funded Debt Issued or Assumed During the Year; 27, Matured Long-term Debt; 31, Retained Earnings Reserved; 32, Dividends Declared; 33, Analysis of Entries in Other Capital and Retained Earnings Accounts; 34, Operating Revenues; 35, Operating Expenses; 36C, Federal Income Taxes; 57A, Overseas Telephone and Related Services; 60A, Relief and Pensions; and 60B, Pensions Paid.

Information on the board of directors and general officers are combined on a single schedule. Investments in affiliates are to be reported on two schedules. The other replacement schedules pertain to long-term debt, captital stock, and pension cost. Also, the Order does not include in the revised Form M highly detailed jurisdictional depreciation data that was proposed in the OIC, thus greatly reducing the volume of depreciation data originally proposed.

[1] Not published in the Federal Register.

The revised Form M contains three entirely new schedules dealing with capital leases, cash flows and asset sale transactions with affiliates. The balance sheet and income and retained earnings data will be reported on ARMIS Form 43–02, a paper copy of which carriers will be allowed to file as a part of the Form M.

The schedules' numbering system is changed to avoid any lingering confusion between old and new Form M schedules using the same number. In renumbering the schedules, alphabetical prefixes are used to designate the orientation of the schedules. For example, the prefix A is used for corporate and general information, B for balance sheet oriented schedules, I for income statement oriented schedules, and S for statistical schedules. The establishment of unique carrier code spaces will permit use of the same ARMIS study area codes prescribed for operating companies that were recently established in CC Docket 86–182 and thereby set the stage for future incorporation of additional schedules into ARMIS.

Ordering Clauses

Accordingly, *It is ordered,* pursuant to sections 4(i), 4(j), 201–205, 215, 219, and 220 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 201–205, 215, 219, and 220, that the revised Form M schedules Are Adopted.

It is further ordered, That subject carriers shall file a revised Form M within 60 days from release of this Memorandum Opinion and Order.

Gerald Brock,

Chief, Common Carrier Bureau.

[FR Doc. 89–14712 Filed 6–21–89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86–29; RM–4941 and RM–5399]

Radio Broadcasting Services; Greenup, KY and Athens, OH; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration; correction.

SUMMARY: This action corrects the correction to the Final Rule/ Reconsideration in MM Docket No. 87–29, 54 FR 23483, published June 1, 1989 [FR Doc. 89–12965]. The amendatory language for § 73.202 should be corrected to read as follows:

§ 73.202 [Corrected]

§ 73.202(b), the Table of FM Allotments is amended, under Ohio by removing Channel 288A and adding Channel 289B1 at Athens; and under Kentucky by removing Channel 289B1 and adding Channel 288A at Greenup.

EFFECTIVE DATE: June 12, 1989.

FOR FURTHER INFORMATION CONTACT: J. Bertron Withers, Jr., Mass Media Bureau, (202) 632–7792.

Federal Communications Commission.

Bradley P. Holmes,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–14714 Filed 6–21–89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 201, 204, 208, 215, 216, 219, 225, 226, 232, 233, 234, 247, and 252

[Defense Acquisition Circular (DAC) 88–8]

Federal Acquisition Regulation Supplement; Regulatory and Miscellaneous Amendments

AGENCY: Department of Defense (DoD).

ACTION: Final rules.

SUMMARY: Defense Acquisition Circular (DAC) 88–8 amends the DoD FAR Supplement (DFARS) with respect to Restriction on Procurement from Toshiba Corporation and Kongsberg Vapenfabrikk (Cancellation of Interim Rule); Procurement Integrity; Small Business Competitiveness Demonstration Program; Small Business Participation in Dredging; Military Interdepartmental Purchase Requests (MIPR); English Translation of Contracts; Small Disadvantaged Businesses (SDBs), Historically Black Colleges and Universities (HBCUs), and Minority Institutions (MIs); Fixed-Price Contracts With Award Fees; Restrictions on the Acquisition of Values and Machine Tools from Foreign Sources; Canadian Commercial Corporation Endorsement; Progress Payments; Submission of Claims by Contractors; Returnable Gas Cylinders; Property Administration; and DD Form 1707, Information to Offerors or Quoters. This DAC also contains editorial corrections and a correction to DAC #88–7.

EFFECTIVE DATE: August 12, 1989, unless otherwise noted in the Supplementary Information.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, Defense Acquisition

Regulatory Council, ODASD(P)/DARS, OASD(P&L), c/o OUSD(A) (M&RS), Room 3D139, The Pentagon, Washington, DC 20301–3062, telephone (202) 697–7266.

SUPPLEMENTARY INFORMATION:

A. Background

The DoD FAR Supplement is codified in Chapter 2, Title 48 of the Code of Federal Regulations.

The October 1, 1987, revision of the CFR is the most recent edition of that title. It reflects amendments to the 1986 edition of the DoD FAR Supplement made by Defense Acquisition Circulars 86–1 through 86–5. Amendments made by DACs 86–6 through 86–16 were published in the **Federal Register** at 53 FR 38171, September 29, 1988, and will be included in the October 1, 1988 revision of the CFR.

B. Public Comments

DAC 88–8, Items I, IV, V, VI, VII, VIII, X, XII, XIV, and XV

Public comments are not solicited with respect to these revisions since such revisions do not alter the substantive meaning of any coverage in the DFARS having a significant impact on contractors or offerors, or do not have a significant effect beyond agency internal operating procedures.

DAC 88–8, Item II

A proposed rule with request for comments was published in the **Federal Register** on March 27, 1989 (54 FR 12566), and comments were considered in the development of this final rule.

DAC 88–8, Item III

An interim rule with request for comments was published in the **Federal Register** on January 27, 1989 (54 FR 4246), and comments were considered in the development of this final rule.

DAC 88–8, Item IX

An interim rule with request for comments was published in the **Federal Register** on February 21, 1989 (54 FR 7425). Comments were considered in the development of this final rule.

DAC 88–8, Item XI

An interim rule with request for comments was published in the **Federal Register** on September 14, 1988, and comments were considered in the development of this final rule.

DAC 88–8, Item XIII

A proposed rule with request for comments was published in the **Federal Register** on October 3, 1988 (53 FR 38753). No public comments were received.

DAC 88–8, Items XVI and XVII

Comments are not solicited with respect to these items because they provide editorial corrections.

C. Regulatory Flexibility Act

DAC 88–8, Items I, IV, V, VI, VII, VIII, X, XII, XIV and XV

These final rules do not constitute a significant revision within the meaning of Pub. L. 98–577 and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately to the Executive Secretary, DAR Council, address as shown above, and cite DAR Case 89–610D in correspondence.

DAC 88–8, Item II

This final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the revisions are internal to DoD. A Regulatory Flexibility Analysis has therefore not been performed. A proposed rule with request for comments was published in the **Federal Register** on March 27, 1989 (54 FR 12566). No comments were received which addressed the Regulatory Flexibility Act Statement.

DAC 88–8, Item III

As stated in the joint policy directive (53 FR 52889), the Office of Federal Procurement Policy and the Small Business Administration will prepare the appropriate regulatory flexibility analysis upon completion of the first quarterly review under the Program.

DAC 88–8, Item IX

This final rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 et seq., because this coverage restricts acquisition of valves and machine tools not manufactured in the United States or Canada. An Initial Regulatory Flexibility Analysis was not performed. No comments were received regarding the Regulatory Flexibility Statement.

DAC 88–8, Item XI

The Regulatory Flexibility Act, 5 U.S.C. 601 et seq., applies to this final rule. No comments were received regarding the Regulatory Flexibility Statement. A Final Regulatory Flexibility Analysis has been prepared and submitted to the Chief Counsel for Advocacy of the Small Business Administration.

DAC 88–8, Item XIII

This final rule is not a significant revision within the meaning of Pub. L. 98–577 in that it will not have a significant cost or administrative impact on contractors or offerors. The clause is already prescribed for use, when applicable, to contracts awarded using small purchase procedures. This rule only makes the clause available for use in all contracts. No comments were received regarding the Regulatory Flexibility Statement.

DAC 88–8, Items XVI and XVII

The Regulatory Flexibility Act does not apply to these items because they provide editorial changes.

D. Paperwork Reduction Act

DAC 88–8, Items I, II, and IV through XVII

The Paperwork Reduction Act does not apply because these rules do not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

DAC 88–8, Item III

The necessary approvals are being obtained by the Office of Federal Procurement Policy and the Small Business Administration.

List of Subjects in 48 CFR Parts 201, 204, 208, 215, 216, 219, 225, 226, 232, 233, 234, 247, and 252

Government procurement.

Charles W. Lloyd

Executive Secretary, Defense Acquisition Regulatory Council.

[Defense Acquisition Circular No. 88–8]

June 12, 1989.

Unless otherwise specified, all DoD FAR Supplement and other directive material contained in this Defense Acquisition Circular is effective August 12, 1989.

Defense Acquisition Circular (DAC) 88–8 amends the DoD Federal Acquisition Regulation Supplement (DFARS) 1988 edition and prescribes procedures to be followed. The following is a summary of the amendments and procedures.

Item I—Restriction on Procurement from Toshiba Corporation and Kongsberg Vapenfabrikk (Cancellation of Interim Rule) (Information Item)

Coverage on the Restriction on Procurement from Toshiba Corporation and from Kongsberg Vapenfabrikk was

published in the Federal Register as an interim rule on March 21, 1988 (53 FR 9118) and corrected on March 30, 1988 (53 FR 10250). That coverage was canceled because the coverage now appears in the Federal Acquisition Regulation (FAC 84-46, 54 FR 19812). A notice of cancellation was published in the Federal Register on May 23, 1989 (54 FR 22282). This item removes the interim rule from the DFARS.

Item II—Procurement Integrity (Final Rule)

Section 6 of the Office of Federal Procurement Policy (OFPP) Act Amendments of 1988 amended the OFPP Act by adding Section 27, Procurement Integrity. Section 27 contains prohibitions involving: (a) Conduct by offerors, contractors and Government procurement officials; (b) unauthorized disclosure of proprietary or source selection information; and (c) restrictions on Government officials and employees after they leave Government service. DFARS Parts 201, 203, and 208 were revised on May 16, 1989 to provide coverage implementing recent revisions to the Federal Acquisition Regulation regarding Procurement Integrity. The final rule was published in the Federal Register on May 16, 1989 (54 FR 21067), and corrected on May 23, 1989 (54 FR 22282). This final rule, making an editorial correction to 201.401, is effective July 16, 1989.

Item III—Small Business Competitiveness Demonstration Program (Final Rule)

DFARS Parts 204, 219, and 252 are revised to further implement FAR Subpart 19.10 and the December 22, 1988 Joint Office of Federal Procurement Policy (OFPP) and Small Business Administration (SBA) interim policy directive and test plan implemening Title VII of the "Business Opportunity Development Reform Act of 1988", Pub. L. 100-656 (53 FR 52889). An interim rule with request for comments was published in the Federal Register on January 27, 1989 (54 FR 4246), and corrected on February 3, 1989 (54 FR 5484) and February 17, 1989 (54 7191).

Item IV—Small Business Participation in Dredging (Final Rule)

DFARS 204 and 219 are revised to highlight a requirement placed on the Department of the Army by Section 722 of Pub. L. 100-656, Business Opportunity Development Reform Act of 1988, to expand small business participation in dredging.

Item V—Military Interdepartmental Purchase Requests (MIPR) (Final Rule)

The procedures of DFARS 208.70 for coordinated acquisitions have been changed to: (1) Require the MIPR to list used or reconditioned material, former Government surplus property and residual inventory anticipated to be used on the contract and the basis for determining such items acceptable for use; and (2) clarify procedures for the withdrawal of excess funds. Editorial changes also have been made.

Item VI—English Translation of Contracts (Final Rule)

The clause at 252.213-7000, Inconsistency Between English Version and Translation of Contracts, is deleted. The coverage will be transferred to the FAR in FAC 84-50.

Item VII—Small Disadvantaged Businesses (SDBs), Historically Black Colleges and Universities (HBCUs), and Minority Institutions (MIs) (Final Rule)

DFARS Parts 219, 226, and 234 are revised to further implement Section 1207 of Pub. L. 99-661 and Section 806 of Pub. L. 100-180. These statutes require DoD to establish a goal to award 5% of contract dollars to Small Disadvantaged Businesses (SDBs), Historically Black Colleges and Universities (HBCU's), and Minority Institutions (MIs) during fiscal years 1987-89. Section 844 of Pub. L. 100-456 extended the 5% goal through 1990. These changes are intended to facilitate DoD's efforts to accomplish the 5% goal.

Item VIII—Fixed-Price Contracts With Award Fees (Final Rule)

DFARS 216.403-70 is revised to provide for award fees as incentives in fixed price contracting.

Item IX—Restrictions on the Acquisition of Valves and Machine Tools from Foreign Sources (Final Rule)

Coverage with respect to restrictions on the acquisition of valves and machine tools from foreign sources was published in DAC #88-4 as an interim rule with request for comments in the Federal Register on February 21, 1989 (54 FR 7425). This DAC finalizes the coverage published in the interim rule, with only a minor editorial change.

Item X—Canadian Commercial Corporation Endorsement (Final Rule)

DFARS 225.7104(a)(2)(ii) is revised to clarify that failure to provide an endorsement by the Canadian Commercial Corporation on an offer by a Canadian firm is a minor irregularity that can be corrected after submission of offers but prior to contract award. This revision implements a GAO recommendation.

Item XI—Progress Payments (Final Rule)

DFARS Part 232 is revised to change progress payment rates on defense contracts to the levels currently provided in the FAR. Coverage was published in DAC #88-2 as an interim rule in the Federal Register on September 14, 1988 (53 FR 35511), with an effective date of October 1, 1988. As a result of public comments, this rule finalizes the interim rule and adds two sentences at 232.501-1(a), allowing the contracting officer, where appropriate, to utilize both the old rate and the new rate for different line items in the same contract.

Item XII—Submission of Claims by Contractors (Final Rule)

DFARS 233.204 is added to make contracting officers aware that they should obtain information on claims previously filed by contractors with other contracting officers before settling the current claim. This coverage is added to implement a DoDIG recommendation.

Item XIII—Returnable Gas Cylinders (Final Rule)

DFARS 247.305-70 is added to prescribe the use of DFARS 252.247-7201 (formerly 252.213-7001), Returnable Gas Cylinders. Revisions have been made to the redesignated clause.

Item XIV—Property Administration (Final Rule)

DFARS Supplement No. 3, S3-603(a), is revised to increase from 10 to 30 the number of days in which property administrators have to prepare and submit to the Defense Logistics Agency DD Form 1662, DoD Property in the Custody of contractors. Additionally, the revision permits electronic preparation of the report in lieu of manual preparation.

DD Form 1662 has been revised to add the Commercial and Government Entity (CAGE) Code, to eliminate two blocks recording additions and deletions of agency-peculiar (military) property, and to make conforming modifications in the instructions contained on the back of the form.

Note: DD Forms are not published in the Federal Register or the Code of Federal Regulations. A list containing DD Form numbers and titles follows section 253.204-70.

Note: DAR Supplement No. 3 is not codified in the Code of Federal Regulations, and it is not part of the subscription to the DoD FAR Supplement. It must be purchased

separately from the Government Printing Office.

Item XV—DD Form 1707, Information to Offerors or Quoters (Final Rule)

DD Form 1707, Information to Offerors or Quoters, is revised to eliminate inconsistencies with the FAR as changed by FAC 84–5, dated December 20, 1984.

Item XVI—Editorial Corrections

(a) The title to DFARS 201.601 is revised to conform to the title in the FAR.

(b) DFARS 215.613(j) is revised to change the reference "15.1002" to read "215.1002."

Item XVII—Correction to DAC #88–7

In the instructions for replacement pages, under the heading "Remove the following pages:", "252.208–5 through 252.208–7" is changed to read "252–208–5 through 252–208–8".

Adoption of Amendments

Therefore, the DOD FAR Supplement is amended as set forth below:

1. The authority for 48 CFR Parts 201, 204, 208, 215, 216, 219, 225, 226, 232, 233, 234, 247, and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DOD Directive 5000.35, and DOD FAR Supplement 201.301.

PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. The final rule published on May 16, 1989 (54 FR 21067) and corrected on May 23, 1989 (54 22282) is corrected as follows:

201.403 [Corrected]

3. Section 201.403 is corrected by adding at the beginning of paragraph (b)(6) the word "Section".

201.601 [Amended]

4. Section 201.601 is amended by changing the title to read "General." in lieu of "Responsibility of Each Contracting Activity."

PART 204—ADMINISTRATIVE MATTERS

5. The interim rule published on January 27, 1989 (54 FR 4246) and corrected on February 3, 1989 (54 FR 5484) is adopted as final with the following changes:

204.671–5 [Amended]

6. Section 204.671–5 is amended by adding in parentheses after the title in paragraph (e) the words "(For Army, see also AFARS Part 19.10.)".

204.675–1 [Amended]

7. Section 204.675–1 is amended by adding in the second sentence between the word "groups" and the comma the words in parentheses "(for Army, includes dredging)".

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

208.7000 [Amended]

8. Section 208.7000 is amended by substituting in the first sentence the word "subpart" in lieu of the word "Part".

208.7001 [Amended]

9. Section 208.7001 is amended by substituting in the introductory paragraph the word "subpart" in lieu of the word "Part"; by substituting in the definition "Acceptance of MIPR" the word "Acquiring" in lieu of the word "Contracting"; by adding between the definitions "Acceptance of MIPR" and "Coordinated acquisition" the definition reading: " 'Acquiring Department' means the Department, Agency, or the General Services Administration which is assigned the responsibility for satisfying a purchase request."; by removing the definition entitled "Contracting department"; and by substituting in the definition "Reimbursable acquisition (Category I Method of Funding)" the word "Acquiring" in lieu of the word "Contracting".

208.7002 [Amended]

10. Section 208.7002 is amended by substituting in the introductory paragraph the word "Acquiring" in lieu of the word "Contracting".

208.7003–1 [Removed and reserved]

11. Section 208.7003–1 is removed and Reserved.

208.7003–3 [Amended]

12. Section 208.7003–3 is amended by substituting in the last sentence the word "Acquiring" in lieu of the word "Contracting".

208.7003–4 [Amended]

13. Section 208.7003–4 is amended by substituting in the first and second sentences the word "Acquiring" in lieu of the word "Contracting" in both places.

208.7003–5 [Amended]

14. Section 208.7003–5 is amended by substituting in the first sentence the word "Acquiring" in lieu of the word "Contracting"; and by substituting in the second sentence the word "Acquiring" in lieu of the word "Contracting" in both places.

208.7003–6 [Amended]

15. Section 208.7003–6 is amended by substituting in the second sentence the word "Acquiring" in lieu of the word "Contracting".

208.7005–1 [Amended]

16. Section 208.7005–1 is amended by substituting the word "Acquiring" in lieu of the word "Contracting".

208.7006–1 [Amended]

17. Section 208.7006–1 is amended by substituting in the first, second, and third sentences of paragraph (a) the word "Acquiring" in lieu of the word "Contracting".

208.7006–2 [Amended]

18. Section 208.7006–2 is amended by substituting in paragraph (b) the word "Acquiring" in lieu of the word "Procuring"; by adding a sentence at the end of paragraph (b) to read: "Blanket agreements may be used for this purpose."; and by substituting in the first sentence of paragraph (f) the word "Acquiring" in lieu of the word "Procuring".

208.7006–3 [Amended]

19. Section 208.7006–3 is amended by substituting in the first sentence of paragraph (b) the words "an Acquiring" in lieu of the words "a Contracting"; by substituting in paragraphs (b)(1)(i), (b)(1)(ii), and (b)(2) the word "Acquiring" in lieu of the word "Contracting"; by substituting in the first sentence of paragraph (c) the words "an Acquiring" in lieu of the words "a Contracting"; by substituting in paragraph (c)(2) the word "Acquiring" in lieu of the word "Contracting"; and by substituting in the last sentence of paragraph (d) the word "Acquiring" in lieu of the word "Procuring".

208.7006–4 [Amended]

20. Section 208.7006–4 is amended by substituting in the fourth sentence of paragraph (a) the word "Acquiring" in lieu of the word "Procuring"; and by substituting in the last sentence of paragraph (b) the word "Acquiring" in lieu of the word "Procuring".

208.7006–5 [Amended]

21. Section 208.7006–5 is amended by designating the existing paragraph as paragraph (a); by substituting in the first and second sentences of the redesignated paragraph (a) the word "Acquiring" in lieu of the word "Procuring"; and by adding paragraph (b), to read: "The Requiring Department shall furnish to the Acquiring Department a list of all persons who have had access to proprietary or source

selection information (see FAR 3.104–9(f))."

22. Section 208.7006–8 is added to read as follows:

208.7006–8 Acquiring used or reconditioned material, former Government surplus property, and residual inventory.

When used or reconditioned material, former Government Surplus Property and residual inventory is expected to be acceptable for use on a contract, the following information is to be provided by the Requiring Department in the MIPR: (a) a list of any supplies that need not be new; and (b) the basis for determining the acceptability of such supplies, which is to include an analysis of the factors at FAR 10.010(b). If the items are not acceptable for use on a contract, the Requiring Office shall note such a determination on the MIPR.

208.7007–1 [Amended]

23. Section 208.7007–1 is amended by substituting in the last sentence the word "Acquiring" in lieu of the word "Contracting".

208.7007–2 [Amended]

24. Section 208.7007–2 is amended by substituting in the introductory paragraph the word "Acquiring" in lieu of the word "Contracting" in both places; by substituting in paragraph (a) the word "Acquiring" in lieu of the word "Contracting"; by substituting in paragraph (b) the word "Acquiring" in lieu of the word "Contracting" in both places; and by substituting in paragraph (e) the word "Acquiring" in lieu of the word "Contracting".

208.7007–3 [Amended]

25. Section 208.7007–3 is amended by substituting in the first and second sentences the word "Acquiring" in lieu of the word "Contracting".

208.7008–1 [Amended]

26. Section 208.7008–1 is amended by substituting in the second sentence of paragraph (b)(2) the words "an Acquiring" in lieu of the words "a Contracting"; by substituting in the first sentence of paragraph (d) the word "Acquiring" in lieu of the word "Contracting"; by substituting in the last sentence of paragraph (e) the word "Acquiring" in lieu of the word "Contracting"; by substituting in the last sentence of paragraph (f)(1) the word "Acquiring" in lieu of the word "Contracting"; and by adding paragraph (i) to read: "The Requiring Activity shall include the name and telephone number of an individual who is thoroughly familiar with the MIPR, its attachments, and technical requirements.

208.7008–2 [Amended]

27. Section 208.7008–2 is amended by substituting in the second, third, fourth, and last sentences of paragraph (a) the word "Acquiring" in lieu of the word "Contracting"; and by substituting in the last sentence of paragraph (b) the word "Acquiring" in lieu of the word "Contracting".

208.7008–3 [Amended]

28. Section 208.7008–3 is amended by substituting in the first and second sentences the word "Acquiring" in lieu of the word "Contracting".

208.7008–4 [Amended]

29. Section 208.7008–4 is amended by substituting in the first and second sentences the word "Acquiring" in lieu of the word "Contracting".

208.7008–5 [Amended]

30. Section 208.7008–5 is amended by substituting in the second sentence of paragraph (a) the word "Acquiring" in lieu of the word "Contracting".

208.7008–6 [Amended]

31. Section 208.7008–6 is amended by substituting in the first and last sentences the word "Acquiring" in lieu of the word "Contracting".

208.7009 [Amended]

32. Section 208.7009 is amended by substituting in the first, third, and last sentences the word "Acquiring" in lieu of the word "Contracting".

208.7009–1 [Amended]

33. Section 208.7009–1 is amended by substituting in the first and second sentences the word "Acquiring" in lieu of the word "Contracting".

208.7009–2 [Amended]

34. Section 208.7009–2 is amended by substituting the word "Acquiring" in lieu of the word "Contracting".

208.7009–3 [Amended]

35. Section 208.7009–3 is amended by substituting in paragraphs (a)(4) and (a)(5) the word "Acquiring" in lieu of the word "Contracting".

36. Section 208.7009–4 is amended by substituting in the first and last sentences of paragraph (a) the word "Acquiring" in lieu of the word "Contracting"; by substituting at the end of the first sentence of paragraph (a) the word "the excess funds" in lieu of the words "such excess funds by MIPR amendment"; and by revising paragraph (b) to read as follows:

208.7009–4 Withdrawal of funds.

* * * * *

(b) When the Acquiring Department has accepted a MIPR for direct citation acquisition, and when all awards have been placed to satisfy the total MIPR requirement, any unused funds remaining on the MIPR become excess to the Acquiring Department. The Acquiring Department is to immediately notify the Requiring Department by submittal of a MIPR Amendment (DD Form 448–2) that these excess funds are available for recapture. This amendment is authorization for the Requiring Department to withdraw the funds. The Acquiring Department is prohibited from further use of such excess funds.

208.7010–3 [Amended]

37. Section 208.7010–3 is amended by substituting in the last sentence the word "Acquiring" in lieu of the word "Contracting".

208.7011 [Amended]

38. Section 208.7011 is amended by substituting in the reference after the title the words "(See 204.202.)" in lieu of the words "(See 204.201(c)(3).)"

208.7012 [Amended]

39. Section 208.7012 is amended by substituting in the first and second sentences of paragraph (a) the word "Acquiring" in lieu of the word "Contracting"; by substituting in the first and second sentences of paragraph (b) the word "Acquiring" in lieu of the word "Contracting"; and by substituting in paragraphs (c), (c)(1), and (c)(2) the word "Acquiring" in lieu of the word "Contracting".

208.7013 [Amended]

40. Section 208.7013 is amended by substituting in the first and second sentences the word "Acquiring" in lieu of the word "Contracting".

208.7015 [Amended]

41. Section 208.7015 is amended by substituting the word "Acquiring" in lieu of the word "Contracting".

208.7016 [Amended]

42. Section 208.7016 is amended by substituting in the first and second sentences of paragraph (a) the word "Acquiring" in lieu of the word "Contracting"; and by substituting in paragraph (b) the word "Acquiring" in lieu of the word "Contracting".

208.7017 [Amended]

43. Section 208.7017 is amended by substituting in the first sentence the word "Acquiring" in lieu of the word "Contracting".

PART 215—[AMENDED]

215.613 [Amended]

44. Section 215.613 is amended by changing the reference in paragraph (j) to read "215.1002" in lieu of "15.1002."

PART 216—TYPES OF CONTRACTS

45. Section 216.403–70 is added to read as follows:

216.403–70 Fixed-price contracts with award fees.

For the use of award fee provisions in fixed-price contracts, see 216.404–2(S–70).

PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

46. Section 219.201 is amended by adding paragraph (b)(5) to read as follows:

219.201 General policy.

* * * * *

(b) * * *

(5) Departmental Directors of Small and Disadvantaged Business Utilization shall establish a program to conduct reviews at a minimum of six subordinate activities per year and forward the results of such reviews to the activity for development of a plan to overcome noted deficiencies.

* * * * *

47. Section 219.202–1 is amended by adding paragraph (S–70) (11) to read as follows:

219.202–1 Encouraging small business participation in acquisitions.

* * * * *

(S–70) * * *

(11) where appropriate, hold quarterly briefings for SDBs and/or HBCUs/MIs on planned acquisitions and engage in other outreach activity such as providing information about specific programs, services and supply class items and minimizing use of sources sought synopsis to locate SDBs and HBCUs/MIs.

48. Section 219.705–6 is added to read as follows:

219.705–6 Postaward responsibilities of the contracting officer.

Upon receipt of a notice submitted in accordance with FAR 19.706(a)(5), the contracting officer shall take action necessary to enforce the terms of the contract. Such action shall include, as appropriate, issuance of cure or show cause notices, or initiation of default proceedings.

49. Section 219.708 is amended by adding in the first sentence of paragraph (c)(1) between the word "negotiation" and the comma and the word "the" the words "except as provided in (c)(2) below"; by adding a comma in the first sentence of paragraph (c)(1) after the word "Institutions"; and by adding paragraph (c)(2) to read as follows:

219.708 Solicitation provisions and contract clauses.

* * * * *

(c)(2) For negotiated procurement of $10 million or more, the contracting officer may use an award fee provision, in lieu of the incentive provision required by (c)(1) above, in order to motivate and reward a contractor for exceeding established SDB, HBCU and MI subcontracting goals. Use of an award fee provision permits the contracting officer to consider the quality and amount of contractor effort put forth to meet these goals. The award fee rating plan included in the contract shall specify those factors against which the contractor's performance will be evaluated. When an award fee provision is included in a cost-reimbursement contract, total fee shall not exceed the limitations set forth in FAR 15.903(d), and the clauses at 252.219–7009 and FAR 52.219–10 shall not be used.

50. Section 219.803 is amended by redesignating paragraphs (c)(1) and (2) as paragraph (c)(S–70) (i) and (ii) and by adding paragraph (c) (S–71) to read as follows:

219.803 Selecting acquisitions for the 8(a) Program.

* * * * *

(c) (S–71) Contracting activities should respond to SBA requests for contract support within 30 calendar days after receipt. To the maximum practical extent, 8(a) concerns should be provided an opportunity to give a technical presentation to appropriate personnel within the contracting activity before a decision not to use 8(a) contracting procedures is made on the request.

51. The interim rule published on January 27, 1989 (54 FR 4246) and corrected on February 3, 1989 (54 FR 5484) and February 17, 1989 (54 7191) is adopted as final with the following changes:

219.1005 [Amended]

52. Section 219.1005 is amended by adding paragraph (S–70) to read: "Army activities, see Army Supplement for additional requirements related to Dredging (SIC 1629, FPDS V216–Z216)."

219.1070–2 [Amended]

53. Section 219.1070–2 is amended by adding at the beginning of paragraph (a) the words "Notwithstanding FAR 13.105, 19.5 or 19.8," and changing the capital "A" in the first word to lower-case.

PART 225—FOREIGN ACQUISITION

54. The interim rule published on February 21, 1989 (54 FR 7425) is adopted as final without change.

225.7104 [Amended]

55. Section 225.7104 is amended by changing in paragraph (a)(2)(ii) the semi-colon to a period after the word "directly" and by revising the remainder of the sentence to read: "The Canadian Commercial Corporation endorsement must be received by the contracting officer prior to contract award."

PART 226—OTHER SOCIOECONOMIC PROGRAMS

226.7004 [Amended]

56. Section 226.7004 is amended by substituting in the first sentence of paragraph (a) the words "research, studies, or services" in lieu of the words "research or studies".

PART 232—CONTRACT FINANCING

57. The interim rule published on September 14, 1988 (53 FR 35511), is adopted as final with the following change:

232.501–1 [Amended]

58. Section 232.501–1 is amended by adding text in paragraph (a) between the second and third sentences, to read: "If a contract is funded with FY 87 and other fiscal year appropriations, the contracting officer may either (1) apply the progress payment rate applicable to FY 87 appropriations to all line items in the contract, or (2) apply the rate applicable to FY 87 appropriations to only those line items funded with FY 87 appropriations and apply the higher rate to all other line items. However, if multiple progress payment rates are used in a single contract, the requirements of FAR 32.502–4(d) must be met."

PART 233—PROTESTS, DISPUTES, AND APPEALS

59. Section 233.204 is added to read as follows:

233.204 Policy

When appropriate, the contracting officer should obtain information on claims previously filed by the contractor with other contracting officers before settling the current claim.

PART 234—MAJOR SYSTEM ACQUISITION

234.005–70 [Amended]

60. Section 234.005–70 is amended by adding a sentence before the last

sentence to read: "See also 219.705-2(d) for special requirements related to evaluation of small disadvantaged business participation."

PART 247—TRANSPORTATION

61. Section 247.305-70 is added to read as follows:

247.305-70 Returnable gas cylinders

The contracting officer shall insert the clause at 252.247-7201, Returnable Gas Cylinders, in a solicitation and contract whenever the contract involves the purchase of gas in contractor-furnished returnable cylinders and the contractor retains title to the cylinders. The contracting officer may modify the 30-day time period specified in the clause to comply with customary commercial practice.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.213-7000 [Removed]

62. Section 252.213-7000 is removed.

252.247-7201 [Redesignated from 252.213-7001 and Amended]

63. Section 252.213-7001 is redesignated as 252.247-7201 and the redesignated section is amended by changing in the introductory paragraph the reference "at 213.505-2(S-73)(1)(xxxiii)" to read "in 247.305-70"; by changing the date of the clause to "JUN 1989" in lieu of the date "OCT 1966"; by removing the asterisk after the word "days" in the first sentence of paragraph (a) of the clause; by removing the footnote at the end of paragraph (a) of the clause; and the previous section 252.213-7001 is removed.

64. The interim rule published on January 27, 1989 (54 FR 4246) and corrected on February 3, 1989 (54 FR 5484) and February 17, 1989 (54 7191) is adopted as final without change.

[FR Doc. 89-14710 Filed 6-21-89; 8:45 am]
BILLING CODE 3810-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1053

Technical Amendment to the CFR

AGENCY: Interstate Commerce Commission.

ACTION: Technical amendment.

SUMMARY: Due to recent legislative amendments it is necessary to correct the statutory citation at 49 CFR 1053.1. This notice sets forth the correct statutory citation.

EFFECTIVE DATE: June 22, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen Gass (202) 275-6796.

SUPPLEMENTARY INFORMATION:

List of Subjects in 49 CFR Part 1053

Motor carriers.

PART 1053—CONTRACTS FOR TRANSPORTATION OF PROPERTY

1. The authority citation for Part 1053 continues to read as follows:

Authority: 5 U.S.C. 553, 559 and 49 U.S.C. 10321, 10764.

§ 1053.1 [Amended]

2. § 1053.1 the statutory citation is revised to read as follows: 49 U.S.C. 10102(15).

Noreta R. McGee,

Secretary.

[FR Doc. 89-14813 Filed 6-21-89; 8:45 am]
BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 54, No. 119
Thursday, June 22, 1989

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1230

[No. LS-89-104]

Pork Promotion and Research

AGENCY: Agricultural Marketing Service.

ACTION: Proposed rule.

SUMMARY: Pursuant to the Pork Promotion, Research, and Consumer Information Act of 1985 and the Order issued thereunder, this proposed rule would decrease the amount of the assessment per pound due on imported pork and pork products to reflect a decrease in the 1988 seven market average price for domestic barrows and gilts and to bring the equivalent market value of the live animals from which such imported pork and pork products were derived in line with the market values of domestic procine animals.

DATE: Comments must be received by July 24, 1989.

ADDRESSES: Send two copies of comments to Ralph L. Tapp, Chief; Marketing Programs and Procurement Branch; Livestock and Seed Division; Agricultural Marketing Service, USDA, Room 2610-S; P.O. Box 96456, Washington, DC 20090-6456. Comments will be available for public inspection during regular business hours at the above office in Room 2610 South Building; 14th and Independence Avenue, SW.; Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ralph Tapp, Chief, Marketing Programs and Procurement Branch (202) 447-2650.

SUPPLEMENTARY INFORMATION: This action was reviewed under USDA procedures established to implement Executive Order No. 12291 and departmental Regulation 1512-1 and is hereby classified as a nonmajor rule under the criteria contained therein.

This action also was reviewed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.). The effect of the Order upon small entities was discussed in the September 5, 1986, issue of the **Federal Register** (51 FR 31898), and it was determined that the Order would not have a significant effect upon a substantial number of small entities. Many importers may be classified as small entities. This proposed rule would decrease the amount of assessments on all imported pork and pork products subject to assessment by three-to five-hundredths of a cent per pound, or as expressed in cents per kilogram, seven-to eleven-hundredths of a cent per kilogram. Adjusting the rate of assessments on imported pork and pork products will result in an estimated reduction in assessments of $375,000 over a 12-month period. Accordingly, the Administrator of the Agricultural Marketing Service (AMS) has determined that this action will not have a significant economic impact on a substantial number of small entities.

The Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801-4819) approved December 23, 1985, authorized the establishment of a national pork promotion, research, and consumer information program. The program is funded by an assessment rate of 0.25 percent of the market value of all porcine animals marketed in the United States and an equivalent amount of assessment on imported porcine animals, pork, and pork products. The final Order establishing a port promotion, research, and consumer information program was published in the September 5, 1986, issue of the **Federal Register** (51 FR 31898; as correct in 51 FR 36383) and assessments began on November 1, 1986.

The Order requires importers of porcine animals to pay the U.S. Customs Service (USCS), upon importation, the assessment of 0.25 percent of the animal's declared value and importers of pork and pork products to pay to the USCS, upon importation, the assessment of 0.25 percent of the market value of the live porcine animals from which such pork and pork products were produced. This proposed rule would decrease the assessment on all imported pork and pork products subject to assessment as published in the **Federal Register** on April 20, 1989, and effective on May 19, 1989 (54 FR 15913). In accordance with that final rule, the assessment on imported pork and pork products is to be expressed in cents per pound and per kilogram for each type of such pork or pork products. This decrease is consistent with the decrease in the annual average price of domestic barrows and gilts at the seven markets for calendar year 1988 as reported by the USDA, AMS, Livestock and Grain Market News Branch (LGMN). This decrease in assessments will make the equivalent market value of the live porcine animal from which the imported pork and pork products were derived reflect the recent decrease in the market value of domestic porcine animals, thereby promoting comparability between importer and domestic assessments. This proposed rule would not change the current assessment rate of 0.25 percent of the market value.

The methodology for determining the per-pound amounts for imported pork and pork products was described in the supplementary information accompanying the Order and published in the September 5, 1986, **Federal Register** at 51 FR 31901. The weight of imported pork and pork products is converted to a carcass weight equivalent by utilizing conversion factors which are published in the USDA Statistical Bulletin No. 616, "Conversion Factors and Weights and Measures." These conversion factors take into account the removal of bone, weight lost in cooking or other processing, and the nonpork components of pork products. Secondly, the carcass weight equivalent is converted to a live animal equivalent weight by dividing the carcass weight equivalent by 70 percent, which is the average dressing percentage of porcine animals in the United States. Thirdly, the equivalent value of the live porcine animal is determined by multiplying the live animal equivalent weight by an annual average seven market price for barrows and gilts as reported by the USDA, AMS, LGMN Branch. This average price is published on a yearly basis during the month of January in the LGMN Branch's publication "Livestock, Meat, and Wool Weekly Summary and Statistics." Finally, the equivalent value is multiplied by the applicable assessment rate of 0.25 percent due on imported pork or pork products. The end result is expressed in an amount per pound for each type of pork or pork product. In addition as stated in the final rule published in the April 20, 1989, issue of the **Federal Register** of 54 FR 15913, to

determine the amount per kilogram for pork and pork products subject to assessment under the Act and Order, the cent-per-pound assessments are multiplied by a metric conversion factor of 2.2046 and carried to the sixth decimal.

The formula in the preamble for the Order at 51 FR 31901 contemplated that it would be necessary to recalculate the equivalent live animal value of imported pork and pork products to reflect changes in the annual average price of domestic barrows and gilts to maintain equity of assessments between domestic porcine animals and imported pork and pork products.

In 1988, the average annual seven market price declined to $43.25, a decrease of about 15 percent of the 1987 per hundredweight price of $51.04, which results in a decrease in assessments for all Harmonized Tariff Systems (HTS) numbers listed in the table in § 1230.110 of an amount equal to three-hundredths to five-hundredths of a cent per pound, or as expressed in cents per kilogram, seven- to eleven-hundredths of a cent per kilogram. Based on Department of Commerce, Bureau of Census, data on the volume of imported pork and pork products for 1988, the proposed decreases in the assessment amounts would result in an estimated $375,000 reduction in assessments over a 12-month period.

List of Subjects in 7 CFR Part 1230

Administrative practive and procedure, Advertising, Agricultural research, Marketing agreement, Meat and meat products, Pork and pork products.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 1230 is amended as set forth below:

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR Part 1230 continues to read as follows:

Authority: 7 U.S.C. 4801–4819.

2. Amend Subpart B—Rules and Regulations by revising § 1230.110 to read as follows:

§ 1230.110 Assessments on imported pork and pork products.

The following HTS categories of imported live porcine animals are subject to assessment at the rate specified.

Live porcine animals	Assessment
0103.10.00004	0.25 percent Customs Entered Value.
0103.91.00006	0.25 percent Customs Entered Value.
0103.92.00005	0.25 percent Customs Entered Value.

The following HTS categories of imported pork and pork products are subject to assessment at the rates specified.

Pork and pork products	Assessment	
	Cents/lb	Cents/kg
0203.11.00002	.15	.330690
0203.12.10009	.15	.330690
0203.12.90002	.15	.330690
0203.19.20000	.18	.396828
0203.19.40006	.15	.330690
0203.21.00000	.15	.330690
0203.22.10007	.15	.330690
0203.22.90000	.15	.330690
0203.90.20008	.18	.396828
0203.29.40004	.15	.330690
0206.30.00006	.15	.330690
0206.41.00003	.15	.330690
0206.49.00005	.15	.330690
0210.11.00003	.15	.330690
0210.12.00208	.15	.330690
0201.12.00404	.15	.330690
0201.19.00005	.18	.396828
1601.00.20007	.22	.485012
1602.41.20203	.23	.507058
1602.41.20409	.23	.507058
1602.41.90002	.15	.330690
1602.42.20202	.23	.507058
1602.42.20408	.23	.507058
1602.42.40002	.15	.330690
1602.49.20009	.22	.485012
1602.49.40005	.18	.396828

Done at Washington, DC, on June 19, 1989.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 89–14809 Filed 6–21–89; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 103

[Order No. 1353–89]

Powers and Duties of Service Officers; Availability of Service Records

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the fee schedule of the Immigration and Naturalization Service. This change will add fees for two new forms created as a result of the Immigration Marriage Fraud Amendments of 1986 (IMFA). These forms are the Joint Petition to Remove the Conditional Basis of Alien's Permanent Resident Status (Form I–751) and the Application for Waiver of Requirement to File Joint Petition for Removal of Conditions (Form I–752). The proposed charges reflect the estimated cost of providing the benefits and services to the public, taking into account public policy and other pertinent facts.

DATE: Written comments must be submitted on or before July 24, 1989.

ADDRESS: Please submit comments in duplicate to the Director, Office of Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Room 2011, Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT:

Charles S. Thomason, Systems Accountant, Finance Branch, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633–4705.

Michael L. Shaul, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633–3946.

SUPPLEMENTARY INFORMATION: On November 10, 1986 Pub. L. 99–639, the Immigration Marriage Fraud Amendments of 1986 (IMFA) was enacted. Among other things, IMFA created a conditional basis of lawful permanent residence for most aliens who immigrate to the United States based upon a marriage to a citizen or resident of the United States. IMFA also created a requirement whereby an alien in such conditional status must file a petition (jointly with his or her spouse) to remove the conditional basis of the residence, or (in certain situations) an application for waiver of the requirement.

On January 27, 1988 the Immigration and Naturalization Service ("the Service") published proposed regulations for implementation of IMFA at 53 FR 2426. Because the mandatory review process had not been completed when those proposed regulations were drafted, they did not set forth the fees required for filing of either the Joint Petition to Remove the Conditional Basis of Alien's Permanent Resident Status (Form I–751) or the Application for Waiver of Requirement to File Joint Petition for Removal of Conditions (Form I–752). Since that process has now been completed, the Service now proposes regulations setting forth fees for the filing of these two forms.

In proposing the fees the Service has complied with 31 U.S.C. 9701 and OMB

Circular A–25, which require that a benefit or service provided to or for any person by a Federal agency be self-sustaining to the fullest extent possible. The charges are fair and equitable, and take into consideration the direct and indirect costs to the Government, the value to the recipient, the public policy or interest served, and other pertinent facts. The services provided to the public by the Service have been examined for applicability of user charges and the costs which should be recovered in order to be fair and equitable to the taxpayers and the recipients. The following proposed fees are based upon the principles set forth in the law and the circular:

1. A fee of $35.00 for filing Form I–751, Joint Petition to Remove the Conditional Basis of Alien's Permanent Resident Status.

2. A fee of $65.00 for filing Form I–752, Application for Waiver of Requirement to File Joint Petition for Removal of Conditions.

This rule is not a major rule for the purposes of E.O. 12291 (46 FR 13193, 3 CFR 1981 Comp., p. 127). As required by the Regulatory Flexibility Act, it is hereby certified that the rule will not have a significant impact on small business entities.

This rule contains information collection requirements which have been cleared by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. The Office of Management and Budget control numbers for these collections are contained in 8 CFR 299.5

List of Subjects in 8 CFR Part 103

Administrative practice and procedures, Archives and records, Authority delegation, Fees, Forms.

Accordingly, Chapter I of Title 8, Code of Federal Regulations, is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for Part 103 is revised to read as follows:

Authority: 5 U.S.C. 522(a); 8 U.S.C. 1101, 1103, 1201, 1301–1305, 1351, 1443, 1454, 1455; 28 U.S.C. 1746; 7 U.S.C. 2243; 31 U.S.C. 9701; E.O. 12356; 3 CFR 1982 Comp., p 166; OMB Circular A–25.

2. In § 103.7, paragraph (b)(1) is amended by adding in numerical sequence the following:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

Form I–751, For filing joint petition for removal of conditional basis of residence on Form I–751 under section 216 of the Act—$35.00.

Form I–752, For filing application for waiver of requirement to file joint petition for removal of conditional basis of residency under section 216 of the Act—$65.00.

* * * * *

Dated: June 6, 1989.

Dick Thornburgh,

Attorney General.

[FR Doc. 89–14178 Filed 6–21–89; 8:45 am]

BILLING CODE 4410–10–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3606–2]

Approval and Promulgation of Implementation Plans, State of California; Fresno County Air Pollution Control District and South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: EPA is proposing to approve Rules 102, 111, 609, 613, 613.1, 613.2, 613.3, 613.4, and 614 as revisions to the California State Implementation Plan (SIP) for the Fresno County Air Pollution Control District (APCD), and Rule 209 for the South Coast Air Quality Management District (AQMD). The California Air Resources Board submitted these rules for incorporation into the SIP on June 4, 1986.

DATE: Comments must be received by July 24, 1989.

ADDRESSES: Written comments should be addressed to the EPA Region 9, Air Programs Branch (address below). Copies of the rules are available for public inspection during normal business hours at the EPA Region 9 office and at the following locations: California Air Resources Board, Stationary Source Division, Criteria Pollutants Branch, Industrial Section, 1025 "P" Street, Room 210, Sacramento, CA 95814; Fresno County Air Pollution Control District, 1221 Fulton Mall, Fresno, CA 93775; South Coast Air Quality Management District, 9150 Flair Drive, El Monte, CA 91731.

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, A–2–3, State Implementation Plan Section, Air Programs Branch, Air and Toxics Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974–7635.

SUPPLEMENTARY INFORMATION:

Background

On June 4, 1986, the California Air Resources Board submitted to EPA revisions to the California SIP for the Fresno County APCD and the South Coast AQMD. These revisions included Fresno County Rules 102, 111, 609, 613, 613.1, 613.2, 613.3, 613.4, and 614, and South Coast Rule 209.

On April 10, 1989 [54 FR 14224] EPA announced the availability of these SIP revisions for review along with revisions for one other county in California and took final action to approve them. In that notice, EPA advised the public that it was deferring the effective date of its approval for 60 days. EPA announced that if, within 30 days of the publication of the approval notice, EPA received notice that someone wished to submit adverse or critical comments, EPA would withdraw the approval and begin a new rulemaking by proposing the action and establishing a 30-day public comment period.

On May 8, 1989 two comment letters were received by EPA from Mark Abramowitz, and Jan Chatten-Brown, President, Coalition for Clean Air, on behalf of Citizens For A Better Environment, Clean Air Now and Group Against Smog Pollution, which objected to EPA's April 10, 1989 approval.

All commenters stated that the proposed revisions are in violation of the Clean Air Act, EPA regulations, and various court orders.

Discussion

Fresno County Rule 102, *Definitions*, consists of a recodification and Rule 111, *Arrests and Notices to Appear*, adds "Environmental Health Analyst" to list of employees of the Fresno County Department of Health. Rules 609, 613, 613.1, 613.2, 613.3, 613.4, and 614 concern air pollution control contingency plans required by 40 CFR 51.152, "Contingency plans", under Subpart H, "Prevention of Air pollution Emergency Episodes." The Fresno County rules listed above require control measures for stationary sources and traffic abatement plans during emergency episodes. The contingency plans are federally approvable once they are approved by the Air Pollution Control Officer. These rules are

generally equivalent to the existing federal requirements and meet, in part, the requirements of 40 CFR 51.152. Therefore, EPA is proposing to approve these rules under Section 110 of the Clean Air Act.

South Coast Rule 209, *Transfer and Voiding of Permits*, has added language indicating that incorporations by an individual owner, or by a partnership composed of individuals, shall not constitute a transfer or change of ownership. The rule strengthens the existing SIP and is being proposed for approval under section 110 of the Clean Air Act.

Proposed Action

EPA's review of these new and revised rules finds them consistent with the Clean Air Act, 40 CFR Part 51, and EPA policy. In accordance with the procedure described above, EPA proposes to approve Fresno County Rules 102, 111, 609, 613, 613.1, 613.2, 613.3, 613.4, and 611, and South Coast Rule 209. Interested persons are invited to submit comments on this proposed approval. EPA will consider all comments received within thirty days of the publication of this notice.

Regulatory Process

Elsewhere in today's **Federal Register**, EPA is taking final action County APCD Rules 102, 111, 609, 613, 613.1, 613.2, 613.3, 613.4, and 614 and South Coast AQMD Rule 209. Other rules addressed in the April 10, 1989 notice remain approved.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

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

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen oxide, Ozone, Particulate matter, and Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Date: June 14, 1989.

Daniel W. McGovern,

Regional Administrator.

[FR Doc. 89–14827 Filed 6–21–89; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

41 CFR Part 50–201

General Regulations Under the Walsh-Healey Public Contracts Act

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Proposed rule.

SUMMARY: The Department of Labor proposes to amend the Walsh-Healey Public Contracts Act (PCA) regulations to provide an alternative regular dealer definition for those "information systems integrator" firms that contract to provide fully operational information processing ("ADP") systems to the Federal Government. This alternative definition is being proposed in order to relieve potential contractors in this industry from having to maintain stock in a manner that is inconsistent with industry practices, to alleviate related Federal procurement problems, and to encourage more competition for Federal contracts.

DATE: Comments must be received on or before July 24, 1989.

ADDRESS: Address comments to Paula V. Smith, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Nancy M. Flynn, Deputy Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone: (202) 532–8305. (This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Walsh-Healey Public Contracts Act (PCA) provides labor standards for employees working on Federal Government contracts over $10,000 for the manufacturing or furnishing of materials, supplies, articles, or equipment. Section 1(a) of PCA provides that contracts subject to the Act may only be awarded to a manufacturer of, or a regular dealer in, the materials, supplies, articles, or equipment to be manufactured or used in the performance of the contract. "Regular dealer" is defined in 41 CFR 50–201.101(a)(2) as "a person who owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment of the general character described by the contract are brought, kept in stock, and sold to the public in the usual course of business." As provided in 41 CFR 50–206.53(b)(2), the stock maintained by a regular dealer must be "a true inventory from which sales are made."

In addition to the exemptions from the eligibility requirements which have been granted for certain types of contracts (*see* 41 CFR 50–201.604), special alternate qualifications have been prescribed for regular dealers in particular products in recognition of commercial practices in those industries. These special qualifications are set forth in 41 CFR 50–201.101(a)(2)(i) through (xi). Characteristic of these alternative qualifications is the absence of a requirement that the dealer physically maintain a stock.

As the sophistication and uses of information processing technology have expanded, numerous Federal agencies have found it necessary and desirable to acquire fully operations systems, as opposed to procuring individual components. Information systems integrators typically do not maintain a stock of systems components and frequently do not manufacture such components. Rather, they possess specialized skills and expertise in selecting the most suitable system components from a variety of sources to satisfy a buyer's designated mission objectives. The systems integrator also has the ability to make commercially available systems compatible with one another, by making modificaitons to hardware, software, or related equipment. Thus, systems integrators do not simply select or order a complete, integrated system meeting customer specifications, but assemble components from multiple sources to meet the buyer's functional specifications and deliver fully operational information processing systems, assuming the risks for ensuring the viability of the entire system.

Information furnished by contracting agencies and representatives from the industry indicates that information systems integrators can play a crucial role in the economic and efficient acquisition of information processing resources by Federal agencies, and that uncertainty as to their eligibility under PCA could endanger agencies' operational capabilities that are heavily dependent upon the performance of advanced technology computer systems. Accordingly, the Department of Labor, pursuant to section 4 of the Walsh-Healey PCA (41 U.S.C. 38), proposes to amend 41 CFR 50–201.101 to provide an

alternative regular dealer definition for information systems integrators.

The proposed information systems integrator definition is based in part on terms presently codified in the Federal Information Resources Management Regulations (FIRMR), issued by the General Services Administration (GSA), which are in the process of being revised to implement certain portions of the Paperwork Reduction Reauthorization Act of 1986 (see 53 FR 32085; August 23, 1988). GSA has proposed, among other changes, to revise FIRMR Part 201–2 (41 CFR 201–2) to establish a definition for ADP entitled "Federal information processing resources." This proposed new term adopts the definition of ADP equipment contained in the Brooks Act (40 U.S.C. 759(a)(2)). In implementing the final regulatory definition of systems integrator, the Department will give full consideration to final revisions to FIRMR Part 201–2 adopted by GSA in its rulemaking.

Executive Order 12291

This rule is not a "major rule" under Executive Order 12291 on Federal Regulations 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) significant adverse effects on competition, employment, investment productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Regulatory Flexibility Act

This rule, if promulgated, will have no "significant economic impact on a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act, Pub. L. 96–354, 91 Stat. 1164 (5 U.S.C. 605(b)). The Secretary of Labor has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. This conclusion is based on the fact that the revised rule would primarily impact larger entities, and would mostly involve procurements that are not commonly awarded to small businesses in significant amounts. For the contracts that may be awarded to small businesses, the revised rule would impose no additional recordkeeping requirements or cause any additional costs to be incurred in order to comply. Accordingly, no regulatory flexibility analysis is required. However, the proposed definition analysis is required. However, the proposed definition would relieve potential contractors in this industry, both large and small, from having to maintain stock in a manner that is inconsistent with industry practices.

Paperwork Reduction Act

This rule is not subject to section 3504(h) of the Paperwork Reduction Act, 44 U.S.C. 3504(h), since it does not involve the collection of information from the public.

This document was prepared under the direction and control of Paula V. Smith, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 41 CFR Part 50–201

Administrative practice and procedures, Child labor, Government contracts, Government procurement, Minimum wages, Penalties, Reporting and recordkeeping requirements, Wages.

Signed at Washington, DC, this 14th day of June, 1989.

Elizabeth Dole,

Secretary of Labor.

John R. Fraser,

Acting Assistant Secretary for Employment Standards.

Paula V. Smith,

Administrator, Wage and Hour Division.

PART 50–201—GENERAL REGULATIONS

41 CFR Part 50–201 is proposed to be amended as follows:

1. The authority citation for Part 50–201 continues to read as follows:

Authority: Sec. 4, 49 Stat. 2038; 41 U.S.C. 38. Interpret or apply sec. 6, 49 Stat. 2038, as amended; 41 U.S.C. 40.

2. In § 50–201.101, paragraph (a) is proposed to be amended by adding a new paragraph (a)(2)(xii) to read as follows:

§ 50–201.101 Manufacturer or regular dealer.

(a) Definitions. * * *

(2) * * *

(xii)(A) An "information systems integrator" is a person or firm that owns, operates or maintains an established business which is engaged in contracting to provide fully operational information processing systems, comprised of "information processing resources" as defined in 41 CFR 201–2.001, that meet the buyer's designated information processing functional ADP system specifications, as defined in 41 CFR 201–2.001. An "information systems integrator" may qualify as a regular dealer under contracts where, pursuant to contract requirements: (*1*) The government agency solicits to acquire a fully operational information processing system which meets functional ADP system specifications and mission objectives delineated by the solicitation and/or the contract, as opposed to a solicitation and/or contract describing only the specific make and model of the equipment required; (*2*) the contractor assumes the risks for designing, delivering, implementing, and testing (and, where required by the contract, maintaining) a fully operational information processing system that meets the buyer's designated functional specifications; and (*3*) the contractor is responsible to the buyer for correcting any system deficiencies or component failures regardless of the manufacturer of the component or components involved.

(B) An "information systems integrator" will, in accordance with the contract, perform substantially all of the following functions:

(*1*) Analyze the buyer's requirements and needs;

(*2*) Assess currently-available technological offerings and indentify/evaluate alternative system designs;

(*3*) Determine the composition of the system;

(*4*) Select and deliver the information processing resources;

(*5*) Customize, modify, or configure components (hardware, software, and supporting equipment) if necessary to satisfy inter-connectibility/compatibility requirements and the buyer's specialized information processing needs;

(*6*) Assemble, install, test, implement, and render operational the final information processing system.

* * * * *

[FR Doc. 89–14671 Filed 6–21–89; 8:45 am]

BILLING CODE 4510–27–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 336

RIN 3067–AB47

Predesignation of Nonindustrial Facilities (NIF) for National Security Emergency Use

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This rulemaking proposes to add a new Part 336 in Title 44 Code of Federal Regulations, Predesignation of

Nonindustrial Facilities for National Security Emergency Use, Chapter 1, Federal Emergency Management Agency, Subchapter E Preparedness. New Part 336 responds to Executive Order 12656 of November 18, 1988, which provides that the Director, FEMA, assists the National Security Council in the implementation of national security emergency preparedness policy and which delegates to the Director the responsibility for coordinating and supporting the initiation, development, and implementation of national security emergency preparedness programs and plans among the Federal departments and agencies. This part establishes guidance for Federal departments and agencies to determine which nonindustrial facilities meet essential Federal Government requirements during a national security emergency.

The Director, FEMA, is to provide policy guidance for use by Federal departments and agencies in their mobilization plans and programs. The Director is also to proivide the President with a periodic assessment of Federal, State, and local capabilities to respond to national security emergencies.

DATE: Comments are requested and should be submitted in writing to the address listed below no later than August 21, 1989.

ADDRESS: Submit written comments, in duplicate, on the proposed guidance, to the Rules Docket Clerk, Federal Emergency Management Agency, Room 840, 500 C Street, SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Henry Hyatt, Senior Planning Officer, Office of Mobilization Preparedness, Federal Emergency Management Agency, Room 618, 500 C Street, SW., Washington, DC 20472, Telephone (202) 646-3360.

SUPPLEMENTARY INFORMATION:

Regulatory Analysis

This proposed guidance is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. It will not have an annual effect on the economy of $100 million or more; will not result in a major increase in costs or prices to consumers, individual industries, Federal, State or local agencies, or geographic regions; and will not have a significant adverse impact on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

Regulatory Flexibility Certification

This part applies to Federal government agencies. In accordance with the Regulatory Flexibility Act of 1980, it is hereby certified that this proposed rule will not have a significant impact on a substantive number of small entities.

Paper Work Reduction Act

This rule does not contain information requirements that are subject to the Paper Work Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and OMB implementing regulations 5 CFR 1320.

List of Subjects in 44 CFR Part 336

National preparedness, Intergovernmental relations.

For the reasons set out in the preamble, Title 44, Chapter I, Subchapter E is proposed to be amended by adding a new Part 336 as follows:

PART 336—PREDESIGNATION OF NONINDUSTRIAL FACILITIES (NIF) FOR NATIONAL SECURITY EMERGENCY USE

Sec.

Authority: National Security Act of 1947, as amended, 50 U.S.C. 404; Defense Production Act of 1950, as amended, 50 U.S.C. App. 2061 *et seq*; E.O. 12148 of July 20, 1979, 3 CFR 1979 Comp., p. 412; E.O. 10480 of August 14, 1953, 3 CFR 1949-53 Comp., p. 962; and E.O. 12656 of November 18, 1988, 53 FR 47491.

§ 336.1 Purpose.

This part establishes policy and procedural guidance to assist the Federal departments and agencies in the development of plans for the predesignation and assignment of nonindustrial facilities to ensure that emergency requirements can be met in time of a national security emergency.

§ 336.2 Applicability and scope.

This part is applicable to all Federal departments and agencies and provides procedural guidance for carrying out the NIF program. The NIF program is a mechanism to ensure the ability to mobilize the essential nonindustrial facilities for Department of Defense (DOD)/essential civilian needs in the event of a national security emergency in the shortest period of time.

§ 336.3 Reference.

Department of Defense Directive 4165.6, Real Property Acquisition Management and Disposal, dated September 1, 1987, may be obtained from Headquarters, U.S. Forces Command, Fort McPherson, Georgia 30330-6000, Attn: FCEN-CDP.

§ 336.4 Definitions.

(a) *Agency.* Agency refers to all of the Federal departments and agencies and the State and local entities participating in the NIF program to predesignate nonindustrial facilities.

(b) *National security emergency.* A national security emergency is any occurrence, including natural disaster, military attack, technological emergency, or other emergency, that seriously degrades or seriously threatens the national security of the United States.

(c) *Nonindustrial facility.* Nonindustrial Facility refers to a unit of real property not used or suitable for research, development, production, or maintenance of materials, munitions equipment, supplies, goods, or other products; and nonindustrial facilities include hotels, motels, educational institutions, office buildings, and other real estate (excluding farms, churches or other places of worship, or private dwelling houses).

(d) *Predesignation*—(1) *Approval.* Approval means that a conflict of user requirements either does not exist or has been successfully resolved and the requestor can proceed with the arrangements for predesignation of the nonindustrial facility.

(2) *Denial.* Denial means that conflict of user requirements exist or a conflict between two or more requestors exist and the conflict has not been resolved by negotiation.

(3) *Assigned.* Assigned means the NIF predesignation has been granted to the requesting organization.

§ 336.5 Background.

(a) The purpose of the NIF program is to improve the Nation's ability to mobilize nonindustrial facilities for DOD and/or essential civilian needs in times of national security emergencies.

(b) Availability of adequate nonindustrial facilities can be crucial to responding decisively and effectively to emergency situations. In planning for a mobilization surge, military commanders have found housing and training facilities are not adequate to meet the demand of mission requirements. To meet these requirements, access to other facilities (nonindustrial) has been sought to

supplement military installations. These nonindustrial facilities would accommodate the overflow from these military installations until the installation would have adequate facilities.

(c) Executive Order 12656 directs Federal Departments and agencies to prepare national plans and programs such as NIF, to ensure an appropriate state of readiness to respond to a national security emergency. The civil departments and agencies at the Federal, State and local levels may require additional facilities for maintaining operations during emergency situations. NIF is principally a Department of DOD program. However, the NIF Program permits the predesignation of those facilities for essential civilian use. Departments and agencies may request designation of facilities for use as housing, distribution centers or other purposes, as appropriate.

(d) In the development of the plans for use of these facilities, including privately-owned facilities, different requirements of a national mobilization must be considered. Such emergency conditions could create a conflicting requirement for the same facility by Government entities. To prevent this conflict, FEMA is to coordinate the NIF requests by DoD components and other Federal, State and local emergency users. This ensures that a conflict between civilian and military requirements can be avoided. Therefore, a predesignation of nonindustrial facilities for use in emergency situations is necessary.

§ 336.6 NIF program.

The NIF program is essentially designed to:

(a) Ensure that existing nonindustrial facilities are available for national defense needs in the event of a mobilization;

(b) Ensure military uses are consistent with national civil preparedness plans;

(c) Reduce DoD and civil agency requirements for new construction during periods of mobilization; and

(d) Provide facilities in a minimum period of time.

§ 336.7 Responsibilities.

(a) *Federal departments and agencies.* The heads of Federal departments and agencies are responsible for:

(1) Meeting their emergency preparedness requirements by developing programs for the selection and predesignation of nonindustrial facilities;

(2) Assess essential emergency requirements and plans for the use of alternative resources (nonindustrial facilities), to meet essential demands during and following national security emergencies;

(3) Filling out an application requesting facility clearances and submit to the FEMA Regional Director in the area where the facility is located (Copies of the applications and instructions may be obtained by writing Office of Mobilization Preparedness, Federal Emergency Management Agency, Room 622, 500 C Street, SW., Washington, DC 20472, Attn: NIF program).

(4) Designing preparedness measures to permit a rapid and effective transition from routine to emergency operations; and

(5) Making the necessary arrangements with the owners and operators of predesignated nonindustrial facilities.

(b) *The Federal Emergency Management Agency (FEMA).* The Director of the Federal Emergency Management Agency or designee, shall, for all appropriate emergency preparedness and response activities and functions:

(1) Convey national security emergency preparedness policies of the National Security Council and provide planning guidance and assistance to the Federal departments and agencies;

(2) Coordinate emergency planning, programs and national security emergency preparedness activities of the Federal Government;

(3) Provide procedures and guidance for coordinating the predesignation of nonindustrial facilities by identifying conflicting requests for, and resolving the conflicts;

(4) Advise and assist State and local governments and, as appropriate, private organizations in attaining the capability to provide an effective response to emergencies. Seek clearance with appropriate State authorities on facility selection for Federal use in their States. The FEMA Regional Directors are responsible for the area in which the facility is located and shall seek clearance with the appropriate State authorities; and

(5) Coordinate arrangements between Federal departments and agencies; and State authorities on facility designation.

§ 336.8 State emergency planning considerations.

(a) State emergency planning agencies have a crucial role to play in achieving a coordinated program to predesignate nonindustrial facilities to meet emergency requirements. Many states have the legal authority to requisition property for emergency needs and may find it necessary to pre-empt other planned emergency uses of a facility.

(b) It is essential that precise plans are developed for the conditions under which each facility is to be used in order to provide efficient and effective means to accommodate civilian and military requirements in accessing nonindustrial facilities in the event of disaster relocation, conventional mobilization, or nuclear conflict contingency.

§ 336.9 Reporting.

The Director of FEMA is required to submit a periodic report to the President on the Federal Government's capability to respond to national security emergencies. An evaluation of the programs of Federal departments and agencies to predesignate nonindustrial facilities will be included in this report.

Julius W. Becton, Jr.,

Director, Federal Emergency Management Agency.

Note: This appendix will not appear in the CFR.

Appendix I.—Instructions for Preparing and Reporting Predesignated Nonindustrial Facilities

a. *Purpose.* This instruction provides preparation guidance for Federal departments and agencies to report to the Federal Emergency Management Agency (FEMA) for purposes of coordinating the Nonindustrial Facilities (NIF) program.

b. *Applicability and scope.* The provisions of this instruction are applicable to all Federal departments and agencies and covers the preparation instructions for reporting predesignated nonindustrial facilities on DD Form 26–2. It outlines the point of contact in the FEMA regions where the facilities are located for forms and information.

c. *FEMA Regional Offices.* 1. The FEMA Regional Directors are responsible for carrying out the following:

A. Acting as a clearinghouse for all NIF requests and coordinating requests with the appropriate State agency.

B. Notifying the NIF requestor of receipt of request and the date the request was forwarded to State agency.

C. Acting as a liaison between the NIF and the State agency, ensuring prompt resolution of the request.

D. Notifying the NIF requestor of State agency decision concerning the request.

E. Maintaining current records indicating predesignated NIF's in the region.

F. Submitting an annual report to the Assistant Associate Director for Mobilization Preparedness to the

following address: National Preparedness Directorate, Office of Mobilization Preparedness, 500 C Street, SW., Room 622, Washington, DC 20472.

2. The addresses for the regional office contracts for FEMA Regions 1 through 10 are as follows:

FEMA Region I, Chief, Emergency Management and National Preparedness, Programs Division, J.W. McCormack Post Office and Courthouse Building, Room 442, Boston, MA 02109.

FEMA Region II, Chief, Emergency Management and National Preparedness Division, 26 Federal Plaza, Room 1338, New York, NY 10278.

FEMA Region III, Chief, Emergency Management and National Preparedness, Liberty Square Building (Second Floor), 105 South Seventh Street, Philadelphia, PA 19106.

FEMA Region IV, Chief, Emergency Management and National Preparedness Division, 1371 Peachtree Street, NE, Suite 700, Atlanta, GA 30309.

FEMA Region V, Chief, Emergency Management and National Preparedness Division, 175 West Jackson Blvd., 4th Floor, Chicago, IL 60604–2698.

FEMA Region VI, Chief, Emergency Management and National Preparedness Division, Federal Regional Center, 800 N. Loop 288, Denton, TX 76201–3698.

FEMA Region VII, Chief, Emergency Management and National Preparedness Division, 911 Walnut Street, Room 200, Kansas City, MO 64106.

FEMA Region VIII, Chief, Emergency Management and National Preparedness Division, Denver Federal Center, Building 710, Box 25267, Denver, CO 80225–0267.

FEMA Region IX, Chief, Emergency Management and National Preparedness Division, Building 105, Presidio of San Francisco, CA 94129.

FEMA Region X, Chief, Emergency Management and National Preparedness Division, 130 228th Street, Southwest, Federal Regional Center, Bothell, WA 98021–9796.

d. *Procedures.* 1. DoD NIF requests come from U.S. Army Forces Command (FORSCOM) at Fort McPherson, Georgia. Any requests received from DoD and not routed in this manner, should be returned to FORSCOM for DoD coordination prior to any action being taken by FEMA.

2. The requesting Department or Agency files a DD Form 26–2 (attachment A) with the FEMA Regional Director for the area in which the facility is located.

3. Before a region forwards a NIF request to the appropriate State agency, a search of regional records must be made. If the region has no record of a predesignation of the property requested, it should forward the request. If its records show a NIF has already been predesignated, the request should be sent back to the applicant informing them of the existing predesignation.

4. Regional offices should inform the applicant within 10 days of both the receipt and date the request was forwarded.

5. Attachment B contains step-by-step instructions for preparation of NIF requests.

e. *Application review.* 1. The NIF application review process should be completed within 60 days after receipt of the initial department or agency request.

2. The Regional Director will search the FEMA regional record and query the emergency coordinator of the State in which the facility is located concerning intended use or need of the facility by State or local entities.

3. If FEMA regional records show a NIF has already been predesignated, the request should be returned to the applicant informing them of the existing predesignation of the facility in question.

4. Upon notification from the State emergency coordinator, the Regional Director should notify the NIF applicant of the facility assignment or denial.

BILLING CODE 6718-01-M

Attachment A

1. AGENCY NUMBER	MOBILIZATION REQUIREMENTS OF THE DEPARTMENT OF DEFENSE NON-INDUSTRIAL FACILITY ALLOCATION	REPORT CONTROL SYMBOL
2. DEPARTMENT	ACTIVITY AND COMMAND WITH MAIL ADDRESS	
3. NAME AND ADDRESS OF FACILITY		
4. TYPE OF FACILITY AND PRESENT USAGE		
5.	CIVIL DEFENSE SHELTER DESIGNATION	
6. FACILITY INCLUDES DESIGNATED SHELTER AREA (S) ☐ YES ☐ NO	8. RATED CAPACITY _____ SPACES	
6. CAPACITY		
7. PROPOSED USAGE AND JUSTIFICATION S A M P L E		
8. DATE	TYPED NAME, GRADE, ORGANIZATION OF REQUESTING OFFICIAL	SIGNATURE OF REQUESTING OFFICIAL
9. DATE	RECOMMEND APPROVAL (Signature, ARLR)	10. APPROVED (Signature, PRLR)
11. DATE TO OEP	12. SUSPENSE DATE	13. ALLOCATED (Signature, title & date) / 14. ALLOCATION NO.

DD FORM 1 DEC 64 26-2 REPLACES EDITION OF 1 JUN 52, WHICH IS OBSOLETE.

BILLING CODE 6718-01-C

Attachment B—Instructions for Preparation of DD 26–2, Nonindustrial Facility Allocation

1. *General.* NIF requests should be made using DD Form 26–2, illustrated in attachment A. NIF requests from FEMA and other Federal agencies (i.e., disaster relocation, etc.) should be made using this form.

2. *Item-By-Item Instructions For DD 26–2.*

a. *Item 1: Agency Number.* (Not applicable).

b. *Item 2: Department.* (FEMA or other Federal agency's name). *Activity And Command With Mailing Address.* FEMA or other Federal Agency's division, branch, section, street address, city, State, and Zip Code).

c. *Item 3: Name and Address of Facility.* (Example: name and address of hotel).

d. *Item 4: Type of Facility and Present Usage.* (Example: hotel, with 52 sleeping rooms).

e. *Item 5: Civil Defense Shelter Designation.* (a) Facility Includes Designated Shelter Area(s) Yes No (b) Rated Capacity _____ Spaces. (Number of rooms available).

f. *Item 6: Capacity.* (Total number of rooms available of facility).

g. *Item 7: Proposed Usage and Justification.* Describe the facility's characteristics and the requesting agency's emergency requirement on the application form. Essential physical data, such as space accommodations, utilities, capacities, and special features, may be best obtained by interviewing owners and managers of facilities for which there is a firm emergency requirement. Specify emergency use on the application form.

(i) Written questionnaires to facility owners or managers should not be used.

(ii) Rental terms of nature of the agency requirement for the facility should not be used or discussed with the facility owners or managers, and no commitment should be made before final approval and specific parent agency authorization.

h. *Item 8: Date.* (Month-Day-Year of initial agency request). *Typed Name, Grade, Organization of Requesting Official. Signature of Requesting Official.* (Self-explanatory).

[FR Doc. 89–14669 Filed 6–21–89; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL MARITIME COMMISSION

46 CFR Part 572

[Docket No. 88–26]

Agreements by Ocean Common Carriers and Other Persons Subject to the Shipping Act of 1984

AGENCY: Federal Maritime Commission.

ACTION: Withdrawal of proposed rule

SUMMARY: The Proposed Rule in this proceeding would amend the definitions of "Conference agreement" and "Joint service/consortium agreement" in the Federal Maritime Commission's rules governing the filing of agreements under the Shipping Act of 1984. After further consideration of the issues underlying the definition of these terms, the Federal Maritime Commission has determined to withdraw the Proposed Rule and to discontinue this proceeding, without prejudice to instituting a further proceeding to address these issues at a later date.

DATE: This action is effective upon publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Austin L. Schmitt, Director, Bureau of Trade Monitoring, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5787. Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5740.

SUPPLEMENTARY INFORMATION: The Federal Maritime Commission ("Commission") initiated this proceeding by notice published in the **Federal Register** of December 6, 1988 (53 FR 49210) ("Proposed Rule"). The Proposed Rule would amend the definitions of "Conference agreement" and "Joint service/consortium agreement" in 46 CFR Part 572, the Commission's rules governing the filing of agreements under the Shipping Act of 1984 ("1984 Act" or Act"), 46 U.S.C. app. 1701, *et seq.*

The proposed revised definition of "Conference agreement" was intended to codify the Commission's policy concerning what constitutes a conference agreement requiring the mandatory provisions prescribed for ocean common carrier conference agreements under section 5(b) of the Act, 46 U.S.C. app. 1704(b).[1] In addition, the Proposed Rule would make other clarifying revisions to the "Conference agreement" definition, and revise the definition of "Joint service/consortium agreement" in 46 CFR 572.104(n) (Joint service and consortium agreements are statutorily excluded from the definition of "conference" in section 3(7) of the Act).

Comments on the Proposed Rule were filed by (1) the Florida-Bahamas Shipowners and Operators Association Agreement; (2) the Asia North America Eastbound Rate Agreement, the South Europe/U.S.A. Freight Conference and the U.S. Atlantic and Gulf/Australia-New Zealand Conference; and (3) the U.S. Atlantic-North Europe Conference, the North Europe-U.S. Atlantic Conference, the North Europe-U.S. Gulf Freight Association, and the Gulf-European Freight Association.[2]

As noted on the Proposed Rule's Supplementary Information, in interpreting and applying the definitions of "conference" in section 3(7) of the 1984 Act[3] and "Conference agreement" in 46 CFR 572.104(f),[4] the Commission's policy has been not to require mandatory provisions in the case of strictly voluntary arrangements. This policy has been based on the 1984 Act's legislative history and the purposes of the mandatory provisions requirements of section 5(b) of the 1984 Act. However, further examination of this matter has led the Commission to the conclusion

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[1] Section 5(b) in its entirety requires each conference agreement to:

(1) State its purpose;

(2) Provide reasonable and equal terms and conditions for admission and readmission to conference membership for any ocean common carrier willing to serve the particular trade or route;

(3) Permit any member to withdraw from conference membership upon reasonable notice without penalty;

(4) At the request of any member, require an independent neutral body to police fully the obligations of the conference and its members;

(5) Prohibit the conference from engaging in conduct prohibited by section 10(c)(1) or (3) of the Act;

(6) Provide for a consultation process designed to promote—

(A) Commercial resolution of disputes, and

(B) Cooperation with shippers in preventing and eliminating malpractices;

(7) Establish procedures for promptly and fairly considering shippers' requests and complaints; and

(8) Provide that any member of the conference may take independent action on any rate or service item required to be filed in a tariff under section 8 (a) of the Act upon not more than 10 calendar days' notice to the conference and that the conference will include the new rate or service item in its tariff for use by that member, effective no later than 10 calendar days after receipt of the notice, and by any other member that notifies the conference that it elects to adopt the independent rate or service item on or after its effective date, in lieu of the existing conference tariff provision for that rate or service item.

[2] Because the discontinuance of this proceeding renders moot the comments filed on the Proposed Rule, they will not be further addressed here.

[3] Section 3(7) of the Act, 46 U.S.C. app. 1702(7), defines a "conference" as:

"An association of ocean common carriers permitted, pursuant to an approved or effective agreement, to engage in concerted activity and to utilize a common tariff; but the term does not include a joint service, consortium, pooling, sailing or transshipment agreement."

[4] The Commission's rules at 46 CFR 572.104(f) currently define "Conference agreement" as:

"An agreement between or among two or more ocean common carriers or between or among two or more marine terminal operators for the conduct or facilitation of ocean common carriage and which provides for: (1) The fixing of and adherence to uniform rates, charges, practices and conditions of service relating to the receipt, carriage handling and/or delivery of passengers or cargo for all members; (2) the conduct of the collective administrative affairs of the group; and (3) may include the filing of a common tariff in the name of the group and in which all the members participate, or in the event of multiple tariffs, each member must participate in at least one such tariff. The term does not include consortium, joint service, pooling, sailing or transshipment agreements."

that the proposed rule may be inadequate to codify this policy in a manner that encompasses all instances properly subject to the Act's mandatory provisions, and that a different approach would require further review and analysis of the underlying issues. Therefore, the Commission has determined to withdraw the Proposed Rule and discontinue this proceeding at this time. This action is being taken without prejudice to instituting a further rulemaking proceeding to address these definitions at a later date. In the meantime, the Commission intends to continue to apply its existing policy of not requiring mandatory provisions for strictly voluntary agreements.

Therefore, it is ordered, That the Proposed Rule is withdrawn and this proceeding is discontinued.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 89-14731 Filed 6-21-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-130, RM-6668]

Radio Broadcasting Services; Medical Lake, WA and Sandpoint, ID

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Larry and Sheryl Roberts, d/b/a/ Roberts Broadcasting, permittee of Station KAAR(FM), Channel 237A, Medical Lake, Washington, proposing the substitution of Channel 237C2 for Channel 237A at Medical Lake and the modification of its construction permit to specify the higher class co-channel. The proposal also requires the substitution of Channel 278A for Channel 237A at Sandpoint, Idaho and modification of the license of Station KPND(FM) in order to accomplish the co-channel upgrade at Medical Lake. The site restriction proposed for Channel 237C2 at Medical Lake is 14.8 kilometers (9.2 miles) northwest of the city, at coordinates 47-41-30 and 117-46-00. In addition, since the communities are located within 320 kilometers of the U.S.-Canadian border, the proposal requires concurrence of the Canadian government. Medical Lake could receive its first wide coverage area FM service.

DATES: Comments must be filed on or before August 7, 1989, and reply comments on or before August 22, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Clifford M. Harrington, Esquire, Fisher, Wayland, Cooper and Leader, 1255 23rd Street NW., Suite 800, Washington, DC 20037 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-130, adopted May 23, 1989, and released June 16, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

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

[FR Doc. 89-14716 Filed 6-21-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-120, RM-6701]

Radio Broadcasting Services; Cuba, Northwye and Waynesville, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by CTC Communications, Inc., proposing the allotment of Channel 271A to Northwye, MO, as that community's first FM broadcast service. The coordinates for Channel 271A at Northwye are 37-58-30 and 91-45-48. To accommodate the channel at Northwye, two channel substitutions would be necessary. Channel 297A must be substituted for Channel 271A at Cuba, Missouri. An application for Channel 271A at Cuba has been filed by Lake Broadcasting, Inc. at coordinates 38-03-49 and 91-24-37 (881230MC). Channel 274A must be substituted for Channel 272A, Station KJPW-FM, at Waynesville, Missouri, at coordinates 37-49-09 and 92-09-06.

DATES: Comments must be filed on or before August 7, 1989, and reply comments on or before August 22, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Martin R. Leader, Ann K. Ford, John J. McVeigh, Fisher, Wayland, Cooper and Leader, 1255—23rd Street, NW., Suite 800, Washington, DC 20037-1125.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-120, adopted May 15, 1989, and released June 16, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

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

[FR Doc. 89-14717 Filed 6-21-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket Nos. 89-133—89-281, Inclusive]

Radio Broadcasting Services; Various Locations in the United States and Its Territories

AGENCY: Federal Communications Commission.

ACTION: Proposed rules.

SUMMARY: This document is a combined notice of proposed rule making requesting comments. The FCC proposes to amend regulations on radio broadcast service at 149 locations nationwide. The proposals are made on the Commission's own motion. Concurrently, the Commission proposes to change the class of 149 separate stations from Class A to Class C3.

DATES: Comments must be filed on or before August 7, 1989, and reply comments on or before August 22, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner for the proposal on which they comment at the address listed below.

FOR FURTHER INFORMATION CONTACT: Allocations Branch, Mass Media Bureau, at (202) 634-6530, as follows: (1) Nancy Joyner for those stations in Alabama, Alaska, Arizona, Arkansas, California, Colorado, and Indiana; (2) Nancy Walls for those stations in Connecticut, Delaware, the District of Columbia, Florida, Georgia, Guam, Hawaii, Idaho, Illinois and Kentucky; (3) Kathleen Scheuerle for those stations in Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, and Montana; (4) Leslie Shapiro for those stations in Iowa, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, Samoa, South Carolina and South Dakota; and (5) Patricia Rawlings for those stations in Louisiana, Tennessee, Texas, Utah, Vermont, Virginia, Virgin Islands, Washington, West Virginia, Wisconsin and Wyoming.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's combined Notice of Proposed Rule Making in the listed dockets, adopted May 31, 1989, and released June 16, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037. Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

In comments, interested parties should only reference the docket number for the proposal on which they comment. The following separate proposals are under consideration:

	Channel and status	Call sign	Location, coordinates, and licensee	Address
1.	MM Docket No. 89-133: 221 LIC	KSBS-FM	Pago Pago, AS, 14-17-41, 170-39-44	Samoa Technologies, P.O. Box 793, Pago Pago, AS 96799.
2.	MM Docket No. 89-134: 221 CP	KRBZ	Tusayan, AZ, 35-57-45, 112-04-45	Tusayan Broadcasting Company, Inc., P.O. Box 3085, Grand Canyon, AZ 86023.
3.	MM Docket No. 89-135: 221 LIC	KBLJ	La Junta, CO, 37-59-15, 103-34-2	La Junta Broadcasters, Inc., P.O. Box 485, La Junta, CO 81050.
4.	MM Docket No. 89-136: 221 LIC	WMMK	Destin, FL 30-23-8, 86-24-52	Gulfcoast Broadcasting, Inc., P.O. Box 817, Destin, FL 32541.
5.	MM Docket No. 89-137: 221 LIC	KOWO-FM	Waseca, MN, 44-02-45, 93-23-08	Waseca Communications, Inc., 22 North State, P.O. Box 505, Waseca, MN 56093.
6.	MM Docket No. 89-138: 221 LIC	KRRB	Dickinson, ND, 46-55-24, 102-43-35	Roughrider Broadcasting Co., 129 Third Ave., East, Dickinson, ND 58601.
7.	MM Docket No. 89-139: 221 LIC	KATK-FM	Carlsbad, NM, 32-27-2, 104-12-47	Radio Carlsbad, Inc., P.O. Box 70, Carlsbad, NM 88220.
8.	MM Docket No. 89-140: 221 LIC	KWJY	Woodward, OK, 36-24-2, 99-25-44	Dwaine T. Martin, P.O. Box 1600, Woodward, OK 73802.
9.	MM Docket No. 89-141: 221 LIC	KWVR-FM	Enterprise, OR, 45-19-1, 117-13-14	Wallowa Valley Radio Broadcasting Corp., 107 SW 1st Street, Enterprise, OR 97828.
10.	MM Docket No. 89-142: 224 LIC	KORT-FM	Grangeville, ID, 45-53-5, 116-06-30	4-K Radio, Inc., P.O. Box 936, Lewiston, ID 83501.
11.	MM Docket No. 89-143: 224 LIC	KYZZ	Wolf Point, MT, 48-11-9, 105-40-8	Wolf Point Broadcasting Co., Inc., 324 Main Street, Wolf Point, MT 59201.
12.	MM Docket No. 89-144: 224 LIC	KBRB-FM	Ainsworth, NE, 42-33-16, 99-49-52	KBRB Broadcasting Co., 122 East 2nd Street, Ainsworth, NE 69210.
13.	MM Docket No. 89-145: 224 LIC	KLBN	Albion, NE, 41-40-45, 98-00-43	Emanuel W. Skala, Box 122, Albion, NE 68620.
14.	MM Docket No. 89-146: 224 LIC	KMXQ	Socorro, NM, 34-02-43, 106-54-21	H & HSB Corporation, 2285 Schoernersville Rd., Bethlehem, PA 18017.
15.	MM Docket No. 89-147: 224 LIC	KQAY FM	Tucumcari, NM, 35-10-15, 103-42-25	Sagebrush Communciations, Inc., P.O. Box 668, Tucumcari, NM 88401.
16.	MM Docket No. 89-148: 224 LIC	KBXS	Ely, NV, 39-14-46, 114-55-39	KBXS Broadcasting, Inc., 484 Aultman St., Ely, NV 89301.
17.	MM Docket No. 89-149: 224 LIC	KPAH	Tonopah, NV, 38-04-22, 117-13-16	Roughrider Broadcasting, Inc., 3950 S. Eastern #180, Las Vegas, NV 89109.

	Channel and status	Call sign	Location, coordinates, and licensee	Address
18.	MM Docket No. 89-150: 224 LIC	KWNA-FM	Winnemucca, NV, 41-00-40, 117-45-59	Sheen Broadcasting Co., P.O. Box 591, Winnemucca, NV 89445.
19.	MM Docket No. 89-151: 224 LIC	KKBS	Guymon, OK, 36-42-43, 101-45-59	Panhandle Communications, Inc., 3125 Norcrest, Oklahoma City, OK 73121.
20.	MM Docket No. 89-152: 224 CP	KKRS	Burns, OR, 43-34-22, 119-07-50	Christine E. Paul, 20389 Barnard Ave., Walnut, CA 91789.
21.	MM Docket No. 89-153: 224 LIC	KGFX-FM	Pierre, SD, 44-22-15, 100-24-17	Robert E. Ingstad, Jr., 214 W. Pleasant Dr., Pierre, SD 10225.
22.	MM Docket No. 89-154: 224 LIC	KIQZ	Rawlins, WY, 41-46-16, 107-14-15	Elk Mountain Broadcasting, 415 West Buffalo, Rawlins, WY 82301.
23.	MM Docket No. 89-155: 228 CP	KDCZ	Delta Junction, AK, 64-03-42, 145-41-15	Delta Communications, Inc., P.O. Box 507, Delta Junction, AK 99737
24.	MM Docket No. 89-156: 228 LIC	KXAZ	Page, AZ, 36-46-42, 111-25-46	Stephan G. Paranto, Temp. Custodian, 91 N. 8th Avenue, Page, AZ 86040.
25.	MM Docket No. 89-157: 228 LIC	KVWM-FM	Show Low, AZ, 34-13-14, 110-01-49	Dorothy Litchfield Woodworth, Box 970, Show Low, AZ 85901.
26.	MM Docket No. 89-158: 228 LIC	KALQ-FM	Alamosa, CO, 37-28-20, 105-51-13	Community Broadcasting Company, P.O. Box 179, Alamosa, CO 81101.
27.	MM Docket No. 89-159: 228 NEW	850712U7	Port St. Joe, FL, 29-49-9, 85-15-34	Maryann Wetmore-Kodish, H. Scott Wetmore, 5121 Ehrlich Rd., Suite 101A, Tampa, FL 33624.
28.	MM Docket No. 89-160: 228 LIC	KPOA	Lahaina, HI, 20-50-43, 156-54-4	KPOA Radio, A Hawaii Ltd. Partnership, P.O. Box 10712, Lahaina, Maui, HI 96761.
29.	MM Docket No. 89-161: 228 LIC	WZRK	Hancock, MI, 47-06-5, 88-35-26	Cooper Country Enterprises, Inc., 326 Quincy St., Hancock, MI 49930.
30.	MM Docket No. 89-162: 228 LIC	KLAN	Glasgow, MT, 48-05-42, 106-37-8	H-Z Corporation, 504 Second Ave., South, Glasgow, MT 59230.
31.	MM Docket No. 89-163: 228 LIC	KWMG	Columbus, NE, 41-27-14, 97-24-20	Columbus Broadcasting Systems, Inc., 1418 25th Street, Columbus, NE 68601.
32.	MM Docket No. 89-164: 228 LIC	KBUY-FM	Ruidoso, NM, 33-23-12, 105-40-14	Walton Stations-New Mexico, Inc., P.O. Box 39, Ruidoso, NM 88345.
33.	MM Docket No. 89-165: 228 LIC	KQIK-FM	Lakeview, OR, 42-12-18, 120-19-39	KQIK, Ltd., HC 64 Box 46, Lakeview, OR 97630.
34.	MM Docket No. 89-166: 228 LIC	KROO	Breckenridge, TX, 32-45-31, 98-56-0	Breckenridge Broadcasting Company, Route 3, Box 14, Breckenridge, TX 76024.
35.	MM Docket No. 89-167: 232 LIC	KBUX	Quartzsite, AZ, 33-40-58, 114-13-59	Buck Burdette, P.O. Box 1, Quartzsite, AZ 85346.
36.	MM Docket No. 89-168: 232 LIC	KCRE-FM	Crescent City, CA, 41-45-34, 124-09-49	Ber-Tec Broadcasting, Inc., P.O. Box 1066, Crescent City, CA 95531.
37.	MM Docket No. 89-169: 232 LIC	KVIB	Makawao, HI, 20-50-48, 156-19-35	Encantada Broadcasting Corporation, 2000 Randolph Rd., S.E., Albuquerque, NM 87106.
38.	MM Docket No. 89-170: 232 LIC	KADQ-FM	Rexburg, ID, 43-48-56, 111-45-28	Ted W. Austin, Jr., Route 1, Box 215-6, St. Anthony, ID 83445.
39.	MM Docket No. 89-171: 232 LIC	KYEE	Alamogordo, NM, 32-56-42, 105-56-47	New West Broadcasting Company, 1065 South Main Street, Las Cruces, NM 88005.
40.	MM Docket No. 89-172: 232 LIC	KRTN-FM	Raton, NM, 36-53-8, 104-26-33	Raton Broadcasting Company, 1128 State St., Raton, NM 87740.
41.	MM Docket No. 89-173: 232 LIC	KYXX	Ozona, TX, 30-42-39, 101-07-34	The Foster Broadcasters, Inc., City Hall Plaza West, San Angelo, TX 76903.
42.	MM Docket No. 89-174: 237 LIC	KLRZ	Red Oak, IA, 41-01-0, 95-12-46	Montgomery County Broadcasting Co., Inc., P.O. Box 465, Red Oak, IA 51566.
43.	MM Docket No. 89-175: 237 LIC	KLER-FM	Orofino, ID, 46-28-45, 116-14-15	4-K Radio, Inc., P.O. Box 936, Lewiston, ID 83501.
44.	MM Docket No. 89-176: 237 CP	KECH-FM	Sun Valley, ID 43-39-42, 114-24-7	Ketchum Radio, Inc., P.O. Box 2158, Ketchum, ID 83340.
45.	MM Docket No. 89-177: 237 LIC	KKAN-FM	Phillipsburg, KS, 39-47-32, 99-19-55	Walter C. Seidel, P.O. Box 307, Phillipsburg, KS 67661.
46.	MM Docket No. 89-178: 237 LIC	KQKI-FM	Bayou Vista, LA, 29-39-28, 91-17-41	Teche Broadcasting Corporation, P.O. Box 847, Morgan City, LA 70380.
47.	MM Docket No. 89-179: 237 LIC	KKBC-FM	Baker, OR, 44-47-18, 117-48-35	Grande Radio, Inc., 2510 East Cove Ave., La Grande, OR 97850.
48.	MM Docket No. 89-180: 237 LIC	KURY-FM	Brookings, OR, 42-04-32, 124-18-52	KURY Radio, Inc., Radio Station KURY, Brookings, OR 97415.
49.	MM Docket No. 89-181: 237 LIC	KLXS-FM	Pierre, SD, 44-22-15, 100-24-17	Sorenson Broadcasting, 604 N. Kiwanis, Sioux Falls, SD 57104.
50.	MM Docket No. 89-182: 237 LIC	KMRE-	Dumas, TX, 35-51-51, 101-55-45	Dumas Broadcasters, Inc., 408 N. Dumas Avenue, Dumas, TX 79029.
51.	MM Docket No. 89-183: 237 LIC	KGHO-FM	Hoquiam, WA 46-55-53, 123-44-2	Trinity Broadcasting Network, P.O. Box C-11949, Santa Ana, CA 92711.
52.	MM Docket No. 89-184: 240 CP	KINQ-FM	Fairbanks, AK, 64-51-49, 145-45-6	The Greater Alaska Elec. Radio Co., Inc., 4600 Dale Road, Fairbanks, AK. 99701.
53.	MM Docket No. 89-185: 240 CP	KKMX-FM	Hayden, CO, 40-31-15, 107-17-46	Radio Colorado Northwest, P.O Box QQ, Hayden, CO 81639

	Channel and status	Call sign	Location, coordinates, and licensee	Address
54.	MM Docket No. 89-186: 240 LIC	KBMG	Hamilton, MT, 46-13-46, 114-24-1	Benedict Communications Limited Partnership, 3805 Timberlane, Missoula, MT 59802.
55.	MM Docket No. 89-187: 240 LIC	KLVM	Lewistown, MT, 47-04-13, 109-24-26	Prunedale Educational Association, 8145 Prunedale North Rd., Prunedale, CA 93907.
56.	MM Docket No. 89-188: 240 CP	KHWY	Santa Rosa, NM, 34-57-50, 104-44-56	Don R. Davis, 3611 Altamonte Ave., N.E., Albuquerque, NM 87110.
57.	MM Docket No. 89-189: 240 LIC	KXIT-FM	Dalhart, TX, 36-05-45, 102-30-38	Dalhart Broadcasters, P.O. Box 1350, Dalhart, TX 79022.
58.	MM Docket No. 89-190: 240 CP	KDIU	Dimmit, TX, 34-35-11, 102-18-35	Collins Communications Company, P.O. Box 608, Dimmit, TX 79027.
59.	MM Docket No. 89-191: 240 LIC	KYXS-FM	Mineral Wells, TX, 32-48-42, 98-06-11	Jerry Snyder and Associates, Inc., Rt. 1, Radio Road, Mineral Wells, TX 76067.
60.	MM Docket No. 89-192: 244 LIC	KWCL-FM	Oak Grove, LA, 32-51-33, 91-21-26	Baker Broadcasting Co., 304 Cherry Lane, Mountain Home, AR 12653.
61.	MM Docket No. 89-193: 244 LIC	KGVW-FM	Belgrade, MT, 45-41-36, 110-58-54	Christian Enterprises, Inc., 100 N 24th St. W. Ste. B, Billings, MT 59102.
62.	MM Docket No. 89-194: 244 CP	KDRF	Deer Lodge, MT, 46-24-26, 112-43-8	Deer Lodge Broadcasting, Inc., P.O. Box 811, Deer Lodge, MT 59722.
63.	MM Docket No. 89-195: 244 LIC	KWDG	Idabel, OK, 33-52-54, 94-49-10	Idabel Broadcasting Company, P.O. Box 418, Idabel, OK 74745.
64.	MM Docket No. 89-196: 244 LIC	KXOX-FM	Sweetwater, TX, 32-29-16, 100-23-31	Stein Broadcasting Co., Inc., 1801 Hoyt Street, Sweetwater, TX 79556.
65.	MM Docket No. 89-197: 244 CP	KOPI	Moab, UT, 38-35-7, 109-33-44	Barkdale and Associates, 3210 North Brookside Drive, Provo, UT 84604.
66.	MM Docket No. 89-198: 249 LIC	KSPN-FM	Aspen, CO, 39-13-33, 106-50-0	Broadcasting Company of Palm Beach, Inc., 7301 South Dixie Highway, West Palm Beach, FL 33480-2153.
67.	MM Docket No. 89-199: 249 LIC	KGLM FM	Anaconda, MT, 46-06-7, 112-56-59	Howard M. Neckles, P.O. Box 772, Deer Lodge, MT 59772.
68.	MM Docket No. 89-200: 249 LIC	KSWW	Raymond, WA, 46-41-44, 123-46-16	Pacific Broadcasting Co., P.O. Box 628, Raymond, WA 98577.
69	MM Docket No. 89-201: 250 CP	KTBA	Tuba City, AZ, 36-07-54, 111-14-59	Western Indian Ministries, Inc., P.O. Box F, Window Rock, AZ 86515.
70.	MM Docket No. 89-202: 250 CP	KPOD-FM	Crescent North, CA, 41-45-35, 124-11-28	Let's Talk Radio, Inc., 825 Mason Hall, P.O. Box 1915, Crescent City, CA 95531.
71	MM Docket No. 89-203: 250 CP	KUDO	Milton-Freewater, OR, 45-54-13, 118-32-49	Nanette Markunas, P.O. Box 2576, Montauk, NY 11954.
72.	MM Docket No. 89-204: 251 CP	WMLB	Glen Arbor, MI, 44-49-2, 85-59-39	Michael E. Bradford, 1873 Crouch Road, Jackson, MI 49201.
73.	MM Docket No. 89-205: 252 LIC	KGUC-FM	Gunnison, CO, 38-31-22, 106-54-28	Gunnison Broadcasting Co., 113 East Georgia, Gunnison, CO 81230.
74.	MM Docket No. 89-206: 252 CP	WCMZ-FM	Sault Ste. Marie, MI, 46-29-10, 84-13-49	Central Michigan University, 3965 E. Broomfield Road, Mt. Pleasant, MI 48859.
75.	MM Docket No. 89-207: 252 LIC	KDBM-FM	Dillon, MT, 45-14-22, 112-40-3	Southwestern Broadcasting, Inc., 212 E. Bannock, Dillon, MT 59725.
76.	MM Docket No. 89-208: 252 CP	KIDD-FM	Bend, OR, 44-04-40, 121-19-49	KITSAP Communications Corp., P.O. Box 9010, Portland, OR 97207.
77.	MM Docket No. 89-209: 252 LIC	KFYZ-FM	Bonham, TX, 33-33-26, 96-13-13	Bonham Broadcasting Company, 903 E. Sam Rayburn Dr., Bonham, TX 75418.
78.	MM Docket No. 89-210: 252 LIC	KKHQ	Odem, TX, 27-53-31, 97-30-11	CAPI Spanish Broadcasting Inc., P.O. Box 637, Odem, TX 78370.
79.	MM Docket No. 89-211: 252 LIC	KPTX	Pecos, TX, 31-26-9, 103-30-14	PARDAY, Inc., 316 S. Cedar Street, Pecos, TX 79772.
80.	MM Docket No. 89-212: 252 LIC	KRDF-FM	Spearman, TX, 36-12-31, 101-09-31	Spearhead Broadcasting, Inc., 4545 Mingo, Tulsa, OK 74145.
81.	MM Docket No. 89-213: 252 LIC	KARB	Price, UT, 39-36-36, 110-48-52	Eastern Utah Broadcasting Company, P.O. Box AC, Price, UT 84501.
82.	MM Docket No. 89-214: 252 LIC	KERM	Torrington, WY, 41-59-41, 104-12-5	KATH Broadcasting, Inc., P.O. Box 670, Torrington, WY 82240.
83.	MM Docket No. 89-215: 253 CP	KCBZ	Clarksville, TX, 33-36-47, 95-01-3	Radio Station KCAR, Inc., 228 West Main Street, Clarksville, TX 75426.
84.	MM Docket No. 89-216: 257 CP	KVFC	Silverton, CO, 37-48-18, 107-38-3	San Juan Christian Broadcasting, 501 Riverside, Dolores, CO 81323.
85.	MM Docket No. 89-217: 257 LIC	WIGM-FM	Medford, WI, 45-07-55, 90-19-54	WIGM, Inc., P.O. Box 59, Medford, WI 54451.
86.	MM Docket No. 89-218: 259 CP	WWIS	Black River Falls, WI, 44-18-4, 90-54-22	WWIS Radio, Inc., P.O. Box 277, Black River Falls, WI 54615.
87.	MM Docket No. 89-219: 261 CP	KYKD	Bethel, AK, 60-48-20, 161-47-14	Arctic Broadcasting Association, P.O. Box 773527, Eagle River, AK 99577.
88.	MM Docket No. 89-220: 261 LIC	KWHQ-FM	Kenai, AK, 60-30-49, 151-11-19	KSRM, Inc., H.C. 2 Box 852, Soldotna, AK 99669.
89.	MM Docket No. 89-221: 261 LIC	KMXT	Kodiak, AK, 57-47-41, 152-23-28	Kodiak Public Broadcasting Corp., P.O. Box 484, Kodiak, AK 99615.
90.	MM Docket No. 89-222: 261 LIC	KMMR	Malta, MT, 48-15-17, 107-49-18	Malta Broadcasting Corp., P.O. Box 1073, Malta, MT 59538.

	Channel and status	Call sign	Location, coordinates, and licensee	Address
91.	MM Docket No. 89-223: 261 LIC	KZOQ	Missoula, MT, 46-52-56, 113-59-08	Spectrum Communications Corp., 2300 Regent Street, Missoula, MT 59801.
92.	MM Docket No. 89-224: 261 LIC	KATQ-FM	Plentywood, MT, 48-47-06, 104-32-0	Radio International-KATQ, Inc., 112 Third Ave., East, Plentywood, MT 59254.
93.	MM Docket No. 89-225: 261 CP	KDOT	Kimball, NE, 41-15-9, 103-39-49	James E. George, 6 White Surf Dr., Columbus, NE 68601.
94.	MM Docket No. 89-226: 261 LIC	KWRL	La Grande, OR, 45-20-54, 118-07-4	Grande Ronde Broadcasting, Inc., 105 Fir Street, La Grande, OR 97850.
95.	MM Docket No. 89-227: 262 LIC	KICY-FM	Nome, AK, 64-30-4, 165-24-39	Arctic Broadcasting Assoc., P.O. Box 820, Nome, AK 99762.
96.	MM Docket No. 89-228: 264 CP	KRJT-FM	Bowie, TX, 33-38-43, 97-49-8	Bowie-Nocona Broadcasting Co. Inc., Box 1080, Bowie, TX 76230.
97.	MM Docket No. 89-229: 265 LIC	KAKN	Naknek, AK, 58-44-33, 156-58-39	Bay Broadcasting Company, Inc., P.O. Box 111, Naknek, AK 99633.
98.	MM Docket No. 89-230: 265 LIC	KFSK	Petersburg, AK, 56-48-55, 132-57-12	Narrows Broadcasting Corp., P.O. Box 149, Petersburg, AK 99833.
99.	MM Docket No. 89-231: 265 LIC	KJCO	Yuma, CO, 40-00-32, 102-45-34	CEN-TEN Productions, Inc., Box 189, Yuma, CO 80759.
100.	MM Docket No. 89-232: 265 LIC	KXPO-FM	Grafton, ND, 48-23-53, 97-26-56	KGPC Company, 45 W. 6th, Grafton, ND 58237.
101.	MM Docket No. 89-233: 265 LIC	KOVC-FM	Valley City, ND, 46-54-24, 97-58-20	Ingstad Broadcasting, Inc., 232-3rd St., N.E., Valley City, ND 58072.
102.	MM Docket No. 89-234: 265 LIC	KFNC	Sulphur, OK, 34-32-57, 96-58-34	Murray County Broadcasting, Inc., 155 Broad Street, Milford, CT 06460.
103.	MM Docket No. 89-235: 265 LIC	KIXC-FM	Quanah, TX, 34-18-58, 99-44-49	Donald G. Navarro, Interim Trustee, 4027 W. Lovers Lane, Dallas, TX 75209.
104.	MM Docket No. 89-236: 266 CP	KSRL	Sutherlin, OR, 43-21-59, 123-18-56	Sutherlin Radio Limited Partnership, P.O. Box 574, Sutherlin, OR 97479.
105.	MM Docket No. 89-237: 269 LIC	KPEN-FM	Soldatna, AK, 60-30-40, 151-16-12	Peninsula Communications Incorp., Mi 1.8 Diamond Rd., Homer, AK 99603.
106.	MM Docket No. 89-238: 269 LIC	KSTK	Wrangell, AK, 56-27-14, 132-22-54	Wrangell Radio Group, P.O. Box 282, Wrangell, AK 99929.
107.	MM Docket No. 89-239: 269 LIC	KTNY	Libby, MT, 48-22-14, 115-32-19	Lincoln County Broadcasters, Inc., Cedar & S. Main, Box 730, Libby, MT 59923.
108.	MM Docket No. 89-240: 269 CP	KELY-FM	Ely, NV, 39-15-62, 114-53-35	Reed Communications, Inc., 807 Avenue F, Ely, NV 89301.
109.	MM Docket No. 89-241: 269 LIC	KACA	Prosser, WA, 46-12-5, 119-45-42	Cormac C. Thompson, Inc., P.O. Box 591, Prosser, WA 99350.
110.	MM Docket No. 89-242: 270 CP	KAQU	Huntington, TX	Huntington Broadcasting Corporation, Route 3, Box 515, Huntington, TX 75949.
111.	MM Docket No. 89-243: 271 NEW	880505ML	Basile, LA, 30-28-52, 92-35-5	Nezpique Communications, Ltd., 430 S. Fifth Street, Eunice, LA 70535.
112.	MM Docket No. 89-244: 272 LIC	KHNS	Haines, AK, 59-13-6, 135-25-29	Lynn Canal Broadcasting, Box 0, Twr Rd. & Thrtr Rd., Haines, AK 99827.
113.	MM Docket No. 89-245: 272 CP	WAAH	Houghton, MI, 47-06-13, 88-34-4	WAAH Acquisition Partnership, 5820 Hamilton Rd. #210, Columbus, GA 31904.
114.	MM Docket No. 89-246: 272 LIC	WTKI-FM	Gulfport, MS, 30-22-28, 89-04-45	Holt Communications Corporation, 1 Tower Park, Rt. 9, Box 34, Winchester, VA 22601.
115.	MM Docket No. 89-247: 272 CP	KRNY	Kearney, NE, 40-42-35, 99-05-55	Polly A. Hays, Rt. 2, P.O. Box 339D, Kearney, NE 68847.
116.	MM Docket No. 89-248: 272 LIC	KWDQ	Woodward, OK, 36-24-2, 99-35-44	H. Grant Irwin, Jr., 2315 Downs Ave., Suite 200, Woodward, OK 73801.
117.	MM Docket No. 89-249: 276 LIC	KRWA-FM	Waldron, AR, 34-51-44, 94-04-26	Good News Broadcasting Corporation, Highway 71, Waldron, AR 72958.
118.	MM Docket No. 89-250: 276 LIC	KNDY-FM	Marysville, KS, 39-52-12, 96-44-45	Dierking Communications, Inc., 610 N. 12th Street, Marysville, KS 66508.
119.	MM Docket No. 89-251: 276 LIC	WGDN-FM	Gladwin, MI, 43-57-3, 84-30-34	Apple Broadcasting Company, Inc., 3601 W. Woods Rd., Gladwin, MI 48624.
120.	MM Docket No. 89-252: 276 CP	KKEI	Imperial, NE, 40-32-30, 101-42-30	Kathy J. Kautz, 4521 25th Street, Columbus, NE 68601.
121.	MM Docket No. 89-253: 276 LIC	KOFM	Enid, OK, 36-26-14, 97-55-15	Enid Quality Broadcasting Corp., P.O. Box 5736, Enid, OK 73702.
122.	MM Docket No. 89-254: 276 LIC	KRUN-FM	Ballinger, TX, 31-43-31, 99-57-42	Central West Broadcasting Co., U.S. Highway 67, Ballinger, TX 76821.
123.	MM Docket No. 89-255: 280 LIC	KSUA	College, AK, 64-51-32, 147-49-41	Student Media, Inc., P.O. Box 83831, Fairbanks, AK 99708.
124.	MM Docket No. 89-256: 280 LIC	KJFP	Yakutat, AK, 59-33-20, 139-44-32	Lakeside Broadcasting, Inc., Box 388, Yakutat, AK 99689.

	Channel and status	Call sign	Location, coordinates, and licensee	Address
125.	MM Docket No. 89-257: 280 LIC	KNEI-FM	Waukon, IA, 43-17-32, 91-27-35	David H. Hogendorn, P.O. Box 151, Waukon, IA 52172.
126.	MM Docket No. 89-258: 280 LIC	KNLV-FM	Ord, NE, 41-34-16, 98-55-29	KNLV, Inc., 205 S. 16th, Ord, NE 68862.
127.	MM Docket No. 89-259: 280 LIC	KVEZ	Smithfield, UT, 41-48-44, 111-47-31	Ronald Christner et. at., 1946 Metairie Road, Metairie, LA 70005.
128.	MM Docket No. 89-260: 280 LIC	KVXO	Spokane, WA, 47-41-52, 117-31-7	Pacific Metrocom Northwest, Inc., 205 Palmetto Ave., #307, Merritt Island, FL 32953.
129.	MM Docket No. 89-261: 282 LIC	KTOO	Juneau, AK, 58-18-4, 134-25-21	Capital Community Broadcasting, 224 Fourth Street, Juneau, AK 99801.
130.	MM Docket No. 89-262: 285 CP	KDOA	Tulia, TX, 34-25-45, 101-45-32	Dominion Communications, Inc., 230 W. 55th St., New York, NY 10020.
131.	MM Docket No. 89-263: 288 LIC	KWYD-FM	Security, CO, 38-44-40, 104-51-41	KWYD-FM Radio Partners, P.O. Box 5668, Colorado Springs, CO 80931.
132.	MM Docket No. 89-264: 288 LIC	KELR-FM	Chariton, IA, 41-00-50, 93-17-23	Dwaine F. Meyer, 810 Main Street, Pella, IA 50219.
133.	MM Docket No. 89-265: 288 LIC	KMAV-FM	Mayville, ND, 47-29-45, 97-21-3	KMAV Radio, Inc., P.O. Box 36 (Hwy 200 W), Mayville, ND 58257.
134.	MM Docket No. 89-266: 292 LIC	KSUP-FM	Juneau, AK, 58-18-6, 134-26-29	KINY Associates, 1107 W. 8th Street, Juneau, AK 99801.
135.	MM Docket No. 89-267: 292 LIC	KRQS	Pagosa Springs, CO, 37-11-32, 107-05-55	ROD-MAR, Inc., Receiver, 702 S. Tenth Street, Pagosa Springs, CO 81147.
136.	MM Docket No. 89-268: 292 LIC	KRJB	Ada, MN, 47-18-41, 96-31-13	R & J Broadcasting, West Main Street, Ada, MN 56510.
137.	MM Docket No. 89-269: 292 LIC	WMFG-FM	Hibbing, MN, 47-24-30, 92-57-4	DNS Broadcasting, Inc., P.O. Box 829, Hibbing, MN 55746.
138.	MM Docket No. 89-270: 292 CP	WNMX	Newberry, SC, 34-19-38, 81-32-42	Professional Radio, Inc., 2022 Forrest Street, Newberry, SC 29108.
139.	MM Docket No. 89-271: 292 LIC	KTQN	Belton, TX, 31-03-46, 97-31-54	Heart of Texas Communications, Ltd., P.O. Box 240, Belton, TX 76513.
140.	MM Docket No. 89-272: 292 LIC	KPAN-FM	Hereford, TX, 34-47-33, 102-25-45	KPAN Broadcasters, Drawers 1757, Hereford, TX 79045.
141.	MM Docket No. 89-273: 292 LIC	KLEN	Cheyenne, WY, 41-08-8, 104-48-12	Blue Sky Broadcasting, Inc., 1416 Bradley Avenue, Cheyenne, WY 82001.
142.	MM Docket No. 89-274: 292 LIC	KOTB	Evanston, WY, 41-21-11, 110-54-28	Evanston Broadcasting, Co., Inc., P.O. Box 190, Evanston, WY 82930.
143.	MM Docket No. 89-275: 296 LIC	KCID-FM	Caldwell, ID, 43-39-51, 116-38-10	Twin Cities Broadcasting Co., 921 Cleveland Blvd., Caldwell, ID 83605.
144.	MM Docket No. 89-276: 296 LIC	KWLV	Many, LA, 31-36-36, 93-23-58	WLV-TV, Incorporated, 595 San Antonio Ave., Many, LA 71449.
145.	MM Docket No. 89-277: 296 LIC	KKDQ	Fosston, MN, 47-33-44, 95-43-30	North Country Radio, Inc., P.O. Box 218, Thief River Falls, MN 56701.
146.	MM Docket No. 89-278: 296 LIC	KLSM-FM	Louisville, MS, 33-07-20, 89-01-5	Winston Broadcasting, Inc., Hwy 15 Bypass, Drawer 30, Louisville, MS 39339.
147.	MM Docket No. 89-279: 296 LIC	KSTA-FM	Coleman, TX, 31-51-16, 99-25-36	Long Broadcasters, Inc., 2203 E. 13th, Odessa, TX 79761.
148.	MM Docket No. 89-280: 296 LIC	KWKQ	Graham, TX, 33-07-37, 98-35-35	KSWA, Inc., P.O. Box 1050, Graham, TX 76046.
149.	MM Docket No. 89-281: 300 CP	KBTB	Bethel, AK, 60-47-6, 161-47-54	Bethel Communications, Inc., 22105-23rd Drive, S.E., Bothell, WA 98021.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Karl Kensinger,

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

[FR Doc. 89-14715 Filed 6-21-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 215 and 219

Department of Defense Federal Acquisition Regulation Supplement; Contracting With Small Disadvantaged Business Concerns, Historically Black Colleges and Universities, and Minority Institutions

AGENCY: Department of Defense (DoD).

ACTION: DFARS Implementation of section 1207 of Pub. L. 99-661 and section 806 of Pub. L. 100-180; Proposed rule with request for comment; correction.

SUMMARY: This document corrects a proposed rule on DFARS implementation of certain laws with respect to contracting with small disadvantaged business concerns, historically black colleges and universities, and minority institutions, which was published May 23, 1989 (54 FR 22337). This action is necessary to add text which was omitted.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD(P)/DARS, c/o OUSD(A) (M&RS), Room 3D139, The Pentagon, Washington, DC 20301-3062.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Accordingly, 48 CFR Part 215 and 219 are corrected as follows:

PART 215—[CORRECTED]

1. On page 22337, the amendatory language is corrected by adding immediately after the authority line, PART 215—CONTRACTING BY NEGOTIATION, and by adding a paragraph, to read as follows:

Section 215.605 is added to read as follows:

215.605 Evaluation factors.

(a) For major systems acquisitions and other complex or sensitive acquisitions involving formal or alternative source selection procedures, see 219.705-2(d).

2. On page 22338, the amendatory language is corrected by adding between the existing paragraphs 4. and 5., a paragraph to read as follows:

Section 219.705-2 is added to read as follows:

PART 219—[CORRECTED]

219.705-2 Determining the need for a subcontracting plan.

(d) for major systems acquisitions and other complex or sensitive acquisitions involving formal or alternative source selection procedures, the extent to which offerors specifically identify, and commit to, SDB participation in performance of the contract (whether as joint venture, teaming arrangement, or traditional subcontracting arrangement) shall be an evaluation factor for source selection.

[FR Doc. 89-14711 Filed 6-21-89; 8:45 am]

BILLING CODE 3810-01-M

Notices

Federal Register
Vol. 54, No. 119
Thursday, June 22, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atomspheric Administration.

Title: Fisheries Obligation Guarantee Program.

Form Number: NOAA Form 88-1; OMB—0648-0012.

Type of Request: Request for extension of OMB approval of a currently cleared collection.

Burden: 1,510 respondents; 12,080 reporting hours; average hours per response—8 hours.

Needs and Uses: Commercial fishermen may apply to obtain guaranteed financing under the Fisheries obligation Guarantee program. The information on the application is used to determine eligibility, and subsequent reports are used to monitor program participation.

Affected Public: Individual or households, business or other for profit, small businesses or organizations.

Frequency: On occasion, annual.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Russell Scarato, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Russell Scarato, OMB Desk Officer. Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 15, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-14788 Filed 6-21-89; 8:45 am]

BILLING CODE 3510-CW-M

Bureau of Export Administration

[Docket No. 90530-9130]

Foreign Availability Assessments: Initiation of an Assessment on Prepreg Production Equipment

AGENCY: Office of Foreign Availability, Bureau of Export Administration, Commerce.

ACTION: Notice of initiation of an assessment.

SUMMARY: Pursuant to the receipt of an allegation of foreign availability, the Office of Foreign Availability is initiating an assessment to investigate the foreign availability of prepreg production equipment and is seeking public comments on the foreign availability of prepreg production equipment.

DATE: The period for submission of information will close July 24, 1989.

ADDRESSES: Submit information relating to the allegation of foreign availability to: Dr. Irwin M. Pikus, Office of Foreign Availability, Bureau of Export Administration, U.S. Department of Commerce, Room SB701, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

The public record concerning this notice will be maintained in the Bureau of Export Administration's Freedom of Information Record Inspection Facility, Room 4886, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Lisa Gimelli Hilliard, Office of Foreign Availability, Department of Commerce, Washington, DC 20230, Telephone: (202) 377-8074.

SUPPLEMENTARY INFORMATION: Under sections 5 (f) and (h) of the Export Administration Act of 1979, as amended, the Office of Foreign Availability (OFA) assesses claims of foreign availability. Part 791 of the Export Administration Regulations (EAR) establishes the procedures and criteria for initiating and reviewing claims of foreign availability on items controlled for national security purposes.

Pursuant to sections 5(f) (3) and (9) of the EAA, as amended by the Omnibus Trade and Competitiveness Act of 1988, OFA is publishing this notice:

On April 18, 1989, OFA accepted for filing an allegation of foreign availability for prepreg production equipment. This item is controlled for national security reasons under Export Control Commodity Number (ECCN) 1357A(e): Specially designed or adapted equipment for special fibre surface treatment or for producing prepregs and preforms covered by item ECCN 1763A(c).

After determining that we had received a completed company submission claiming foreign availability for prepreg equipment and that it was supported by reasonable evidence addressing the established criteria, the Office of Foreign Availability initiated an assessment on April 18, 1989. Consistent with the requirements of the EAA, the Department intends to publish in the **Federal Register** the results of the assessment by August 18, 1989.

To assist the Department in assessing the claim, the Office of Foreign Availability will receive any information regarding the foreign availability of prepreg production equipment. A person wishing to submit relevant information relating to this claim may submit it to the Office of Foreign Availability of the Department of Commerce.

Such relevant information may include, but is not limited to: foreign manufacturers' catalogues, brochures, or operations or maintenance manuals, articles from reputable trade publications, photographs, and depositions based upon eyewitness accounts. Supplement No. 1 to Part 791 provides additional examples of evidence that would be helpful to the investigation.

The Office of Foreign Availability will carefully and fully consider all information received. The Office will use information received to supplement other information to evaluate the claim of foreign availability.

The Department will also accept comments or information accompanied by a request that part or all of the material be treated confidentially because of its proprietary nature or for any other reason. The information for which confidential treatment is

requested should be submitted to the Bureau of Export Administration (BXA) separate from any non-confidential information submitted. The top of each page should be marked with the term "Confidential Information". The Bureau of Export Administration will either accept the submission in confidence, or if the submission fails to meet the standards for confidential treatment, will return it. A non-confidential summary must accompany such submissions of confidential information. The summary will be made available for public inspection.

Information accepted by the Bureau of Export Administration as privileged under section (b) (3) or (4) of the Freedom of Information Act (5 U.S.C. 552(b) (3) and (4)) will be kept confidential and will not be available for public inspection, except as authorized by law.

Communications between agencies of the United States Government and foreign governments will not be made available for public inspection.

All other information relating to the notice will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires written comments. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying.

The public record of information received on the allegation for foreign availability will be maintained in the Bureau of Export Administration's Freedom of Information Records Inspection Facility, Room 4886, Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copies in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations.

Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration, Freedom of Information Officer, at the above address or by calling (202) 377–2593.

Because of the strict statutory time limitations in which Commerce must make its determination, the period for submission of relevant information will close 30 days from the date of publication. The Department will consider all information received before the close of the comment period in developing the assessment. Information received after the end of the period will be considered if possible, but its consideration cannot be assured. Accordingly, the Department encourages persons who wish to provide information related to this allegation of foreign availability to do so at the earliest possible time to permit the Department the fullest consideration of the information.

Dated: June 19, 1989.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 89–14834 Filed 6–21–89; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[A–580–501]

Photo Albums and Filler Pages From the Republic of Korea; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by petitioners, the Department of Commerce has conducted an administrative review of the antidumping duty order on photo albums and filler pages from the Republic of Korea. The review covers twenty-four manufacturers/exporters and five third-country resellers of this merchandise to the United States and the period July 16, 1985, through November 30, 1986. The review indicates the existence of dumping margins during this period.

As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the calculated differences between United States price and foreign market value. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: June 22, 1989.

FOR FURTHER INFORMATION CONTACT: Michael Rill or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2923.

SUPPLEMENTARY INFORMATION:

Background

On December 16, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 51273) an antidumping duty order on photo albums and filler pages from Korea. Petitioners SPM Manufacturing Co. and the Holson Company, four exporters and an importer requested in accordance with § 353.53a(a) of the Commerce Regulations (19 CFR 353.53a(a) (1988)) that we conduct an administrative review. On January 20, 1987, we published a notice of initiation of antidumping duty administrative review (52 FR 2123). On September 21, 1987, we published another notice of initiation of antidumping duty administrative review (52 FR 35466) covering additional firms. On April 3, 1989, the Department published the final results of its first antidumping duty administrative review, covering nineteen firms (54 FR 13399). The Department is now publishing the preliminary results with respect to the second group of firms in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by this review are shipments of photo albums and photo album filler pages from the Republic of Korea. During the review period, such merchandise was classifiable under item 256.60, 256.87, 256.90 or 774.55 of the Tariff Schedules of the United States. This merchandise is currently classifiable under HTS item 3920, 3921, 3926.90, 4819.50, 4820.50, 4820.90 or 4823.90. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The U.S. Customs Service has informed the Department of entries of unfinished photo album filler pages from Korea and has inquired whether this merchandise is within the scope of the order. Unfinished filler pages include, but may not be limited to, plastic tubular sheet or other plastic sheets containing pockets or formed into tubes and requiring only cutting, punching or other minor processing. We request interested parties to submit comments and supporting documentation on the issue of whether unfinished photo album filler pages from Korea are within the scope of the antidumping duty order on photo

albums and filler pages from Korea. Comments should be submitted not later than 30 days from the date of publication of this notice. We will make a determination outside the confines of this administrative review.

The review covers twenty-four manufacturers/exporters and five third-country resellers of photo albums and filler pages from the Republic of Korea and the period July 16, 1985 through November 30, 1986.

One manufacturer/exporter with shipments during the period, Dong In, responded adequately to our request for information. Only certain Dong In resales and sales to a reseller are covered by this review. With respect to the resales, Dong In's supplier did not respond to our questionnaire. With respect to Dong In's sales to a reseller, the reseller did not respond to our questionnaire. Therefore, we used the best information available for those sales. Other Dong In sales and resales were covered by the previous final results of antidumping duty administrative review covering this period (54 FR 13399, April 3, 1989). Twenty-four firms, including four third-country exporters, did not respond to our questionnaire; one firm is out of business; and one firm could not be located. Therefore, the Department used the best information available for these firms, which was the rate for all firms published in the antidumping duty order (50 FR 51273, December 16, 1985). One firm, Bowon, had no shipments of merchandise covered by the order during the period. This firm is not known to have been a manufacturer or exporter of merchandise covered by the order during or prior to the review period and will be regarded as a new exporter for any shipments after the review period. Another firm, Costco, resold to the United States merchandise that was previously imported into the United States by another firm and later purchased in, and exported from, the United States by Costco. We determined that no drawback of antidumping duties deposited when the merchandise first entered the United States was claimed for this merchandise. Therefore, we preliminarily determine not to assess additional antidumping duties on this merchandise exported by Costco.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margins exist for the period July 1, 1985 through November 30, 1986:

Manufacturer/exporter/third-country reseller	Margin (percent)
Ace Trading	64.81
Ahjun	64.81
Bowon*	(*)
Chungwoo	64.81
Costco	**64.81
Daechun Silup	64.81
Daejin/Dong In	64.81
Deho	64.81
Dong In/Zhinham	64.81
Eun Jeong Trading	64.81
G.I. Corp	64.81
Gyeongjin	64.81
Hankook Trading	64.81
Hansang	64.81
Honey Stationery	64.81
J & C International	64.81
Korea Trading Int'l	64.81
Lee Tung	64.81
Metro Ind	64.81
Nam Doo Trading	64.81
Scandecor	64.81
Seoul General Stationery	64.81
Sinhan Trading	64.81
Sooter Studios	64.81
Sung Ill	64.81
Sungshim	64.81
Tradepower	64.81
Universal	64.81

*No shipments during the period. Not a known manufacturer or exporter.

**All shipments during the period were reimports not to be assessed additional antidumping duties.

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. Prehearing briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of any written or oral comments.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required. For any shipments from the remaining known manufacturers, exporters, and third-country resellers not covered by this review, the cash deposit will continue to be at the rates for each of those firms published in the final results of the latest administrative review covering the firm (54 FR 13399, April 3, 1989), or the antidumping duty order (50 FR 51273, December 16, 1985) if a review covering the firm has not been conducted.

For any future entries of this merchandise from a new exporter, whose first shipments occurred after November 30, 1986 and who is unrelated to any reviewed firm or any previously reviewed firm, a cash deposit of 8.37 percent shall be required. This rate, which is the highest rate for firms that provided an adequate verifiable response regarding shipments during this period, was published in the first final results of antidumping duty administrative review covering this period (54 FR 13399, April 3, 1989).

These deposit requirements are effective for all shipments of Korean photo albums and filler pages entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

The Department has received information indicating that shipments of photo albums and filler pages from certain third countries may be merchandise of Korean origin for antidumping duty order. In order to determine whether such merchandise is subject to antidumping duties, the Department requested the Customs Service to extend liquidation of entries of photo albums and filler pages exported from, or purported to be merchandise of, Taiwan, Singapore or Malaysia, and entries of photo albums and filler pages exported from Hong Kong but purported to be merchandise of another country. This extension of liquidation will remain in effect until we determine whether such merchandise is subject to the order.

In an effort to identify entries of Korean merchandise, we requested information from certain firms in Taiwan, Singapore, Malaysia, and Hong Kong. In the final results of the previous administrative review, we determined to suspend liquidation of, and to collect cash deposits of estimated antidumping duties for, all entries of photo albums and filler pages exported, or purported to be manufactured, by certain firms that did not respond or provided inadequate information. Additional firms listed below have not responded or have failed to provide adequate information. Unless we receive adequate and timely information, we will regard all photo albums and filler pages exported, or purported to be manufactured, by those firms as products of Korea and will instruct the Customs Service to begin collecting cash deposits of estimated antidumping

duties on all photo albums and filler pages exported, or purported to be manufactured, by those firms. This deposit requirement is effective on the date of publication of the final results of this administrative review. Cash deposits of 64.81 percent will be required for the following firms:

Taiwan
B & P Ind.
Burt & Co.
Four Star Int'l Trading
Golden Ship
Linphant
Sovereign Enterprise
Tribrain

Hong Kong
Blossom Co.
Blossom Industrial Co.
Cowley Distributors
Great China Ind.
Hip Sing
Jetmax
Lauender
Preneba
Perfect Ind.
The Sincere Ind.
Tat Sang
Wing Shing Vinyl
Wiseman Plastic

Singapore
Accord Mfg.
Asahi Tsubo
Cornerfree
Peng Mfr.
Sin Chong
Tai On Loong
Terry Trading

Malaysia
Bungaraya Ind.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a (1988)).

Date: June 15, 1989.

[FR Doc. 89-14789 Filed 6-21-89; 8:45 am]
BILLING CODE 3510-DS-M

[C-557-804]

Preliminary Negative Countervailing Duty Determination: Certain Steel Wire Nails From Malaysia

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that no benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Malaysia of certain steel wire nails ("the subject merchandise"), as described in the "Scope of Investigation" section of this notice. If this investigation proceeds normally, we will make our final determination on or before August 29, 1989.

EFFECTIVE DATE: June 22, 1989.

FOR FURTHER INFORMATION CONTACT: Vincent Kane or Carole Showers, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-2815 or 377-3217.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based on our investigation, we preliminarily determine that no benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Malaysia of the subject merchandise.

Case History

Since the publication of the Notice of Initiation in the **Federal Register** (54 FR 15534, April 18, 1989), the following events have occurred. On April 21, 1989, we presented a questionnaire to the Government of Malaysia in Washington, DC, concerning petitioners' allegations. On May 30, 1989, we received responses from the Government of Malaysia and South Engineers Sdn. Bhd.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS sub-headings. The HTS sub-headings are provided for convenience and Customs purposes. The written description remains dispositive.

The products covered by this investigation are certain steel wire nails from Malaysia. These nails are: Steel wire nails of one-piece construction as currently provided for in HTS items 7317.00.5505, 7317.00.5510, 7317.00.5520, 7317.00.5530, 7317.00.5540, 7317.00.5550, 7317.00.5560, 7317.00.5570, 7317.00.5580, 7317.00.5590, and 7317.00.6560; steel wire nails of two-piece construction, as currently provided for in HTS item 7317.00.7500; and steel wire nails with lead heads, as currently provided for in HTS item 7317.00.7500.

Analysis of Programs

Consistent with our practice in preliminary determinations, when a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no presuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses, however, are subject to verification. If the response cannot be supported at verification, and the program is otherwise conuntervailable, the program will be considered a bounty or grant in the final determination.

For purposes of this preliminary determination, the period for which we are measuring bounties or grants ("the review period") is calendar year 1988, which corresponds to the fiscal year of the respondent company. Based upon our analysis of the petition and the responses to our questionnaires, we preliminarily determine the following:

I. Programs Preliminarily Determined Not To Be Used

We preliminarily determine that manufacturers, producers, or exporters in Malaysia of the subject merchandise did not receive benefits during the review period for exports of the subject merchandise to the United States under the following programs:

A. Export Tax Incentives

1. *Abatement of Taxable Income Based on the Ratio of Export Sales to Total Sales and an Abatement of Five Percent of the Value of Indigenous Materials Used in Exports.* The Investment Incentives Act of 1968 provided for an abatement of taxable income based on the ratio of export sales to total sales. This law was repealed effective January 1, 1986, and replaced by the Promotion of Investments Act of 1986. Among other incentives, the new law provides for an abatement of adjusted income for exports. The amount of adjusted income to be abated is: (1) A rate equivalent to 50 percent of the ratio of export sales to total sales; and (2) five percent of the value of indigenous Malaysian materials used in the manufacture of exported products. This program is not available to companies still participating in programs under the repealed Investment Incentives Act of 1968, including pioneer status, or to companies granted pioneer status or an investment tax allowance

under the Promotion of Investments Act of 1986.

2. *Allowance of a Percentage of Net Taxable Income Based on the F.O.B. Value of Export Sales.* Section 29 of the Investment Incentives Act of 1968, as amended in 1984, allows for a flat deduction of five percent of export revenues (based on f.o.b. value) from taxable income. This program has been superseded by section 39 of the Promotion of Investment Act of 1986. However, we are including this program in our investigation to determine whether companies received residual benefits during the review period from unused tax deuctions carried forward from years prior to 1986. This program is not available to companies still participating in other programs under the repealed Investment Incentives Act of 1968, including pioneer status, or to companies granted pioneer status or an investment tax allowance under the Promotion of Investments Act of 1986.

3. *Allowance of Taxable Income of Five Percent of the F.O.B. Value of Export Sales for Trading Companies Exporting Malaysian-made Products.* Section 39 of the Promotion of Investments Act of 1986 provides for an allowance of taxable income in the amount of five percent of the f.o.b. value of export revenues for trading companies and agricultural companies exporting Malaysian-made products. This program is not available to companies still participating in programs under the repealed Investment Incentives Act of 1968, including pioneer status, or to companies granted pioneer status or an investment tax allowance under the Promotion of Investments Act of 1986.

South Engineers claimed the allowance of taxable income of five percent of the f.o.b. value of export sales on its tax return filed during the review period. According to the response, the Malaysian Department of Inland Revenue rejected the claim because South Engineers is not a trading company. Consequently, the firm was precluded from using this program.

4. *Double Deduction for Export Credit Insurance Payments.* The Income Tax Act of 1967, as amended, provides for a deduction to be taken on a company's tax return for the cost of export credit insurance. The deduction on the tax return is in addition to the deduction taken in a company's financial statement, in effect providing a double deduction for this export-related expense.

5. *Double Deduction for Export Promotion Expenses.* Section 41 of the Promotion of Investments Act of 1986 allows companies to deduct expenses related to the promotion of exports twice, once on the financial statement and again on the income tax return.

6. *Industrial Building Allowance.* Sections 63–66 of the Income Tax Act of 1967, as amended, allow an income tax deduction for a percentage of the value of constructed or purchased buildings used in manufacturing. In 1984, this allowance was extended to include buildings used as warehouses to store finished goods ready for export or imported inputs to be incorporated into exported goods.

B. Other Export Incentives

1. *Export Credit Refinancing.* The Bank Negara Malaysia, the central bank of Malaysia, provides pre- and post-shipment financing of exports through commercial banks for periods of up to 120 and 180 days, respectively.

2. *Export Insurance Program.* Export credit insurance is provided by Malaysian Export Credit Insurance Bhd. (MECIB) at premium rates allegedly inadequate to cover long-term operating costs and losses. Established under the Malaysian Companies Act of 1965, MECIB is jointly owned by the Government of Malaysia and by commercial banks and insurance companies. MECIB provides insurance to cover commercial and political risks only.

C. Other Tax Incentives

1. *Pioneer Status Under the Investment Incentives Act of 1968.* Pioneer status under this Act, as amended, is available to companies producing a product (1) with favorable prospects for further development, including development for export, or (2) currently being produced in insufficient quantities to meet the development needs of Malaysia, including export. Benefits granted under pioneer status include exemptions on the portion of income derived from sales of the pioneer product from the following: (1) The 40 percent corporate income tax; (2) the five percent development tax; (3) the three percent excess profits tax; and (4) the 40 percent dividend tax. Pioneer status benefits are available for a period of up to five years and may be extended for up to an additional three years.

2. *Pioneer Status Under the Promotion of Investments Act of 1986.* As stated above, the Promotion of Investments Act of 1986 replaced the Investment Incentives Act of 1968. The primary changes in the pioneer status program under the new law are as follows: (1) The initial grant of pioneer status is five years for all companies, regardless of their level of investment; (2) the product must be on the "promoted product" or "promoted activities" list; (3) specific one-year extensions for location, priority products, and Malaysian content have been eliminated; (4) extensions are now granted for five years if the product is on the "promoted product" list for extensions and the company meets certain investment, employment, or development criteria; and (5) pioneer status may also be provided to non-corporate entities such as cooperative societies, associations, etc. This program is not available to companies granted pioneer status under the Investment Incentives Act of 1968.

3. *Investment Tax Allowance.* The Promotion of Investments Act of 1986 provides for an investment tax allowance in the amount of 15 to 100 percent of qualifying capital expenditures. Qualifying capital expenditures are those made to purchase capital goods used in the production of products which are included on the promoted products list. This program is not available to companies granted pioneer status under the Investment Incentives Act of 1968 or under the Promotion of Investments Act of 1986.

4. *Double Deduction for Operational Expenses.* Manufacturing companies may take a double deduction for income tax purposes for specific training related expenses approved by the government. The goal of this program is to encourage manpower development for the manufacturing sector including the development of skills required to manufacture new products and work with new technologies.

5. *Abatement of Five Percent of Adjusted Income.* Manufacturing companies located in designated "promoted industrial areas" are eligible to receive an abatement for income tax purposes in the amount of five percent of adjusted income. The abatement is given for a period of not less than five years.

6. *Reinvestment Allowance.* The Income Tax Act of 1967, as amended in 1979, provides for a reinvestment allowance of 40 percent for capital expenditures on a factory, plant or machinery for any approved expansion project. This program is not available to companies granted pioneer status under the Investment Incentives Act of 1968 or under the Promotion of Investments Act of 1986.

Petitioner included this program in its petition and we included it in our initiation in this investigation. Department practice requires that we not initiate on programs previously found not to be countervailable, unless changes in the program or its

administration justify further investigation. In *Certain Textile Mill Products and Apparel from Malaysia* (48 FR 9852, March 12, 1985) (Textiles), we determined that the reinvestment allowance was not a a bounty or grant. We have received no new information justifying a change in the *Textiles* determination. Therefore, we are rescinding the investigation as it relates to the reinvestment allowance.

D. Medium- and Long-term Government Financing

Medium- and long-term financing is provided by the following institutions:

- the Industrial Development Bank of Malaysia (IDBM)
- the Development Bank of Malaysia (DBM)
- the Borneo Development Corporation (BDC)
- the Sabah Development Bank (SDB)

IDBM, which is wholly owned by the Government of Malaysia, provides financing primarily to the shipping industry, whereas the main objective of DBM is to promote businesses owned by Bumiputras (native Malaysians not of Chinese or Indian descent). BDC was established to promote industrial development in the Sabah and Sarawak states; each state has a 50 percent ownership in the bank. SDB, wholly owned by the State of Sabah, was established to promote economic development in that state.

Verification

In accordance with section 776(b) of the Act, we will verify the information used in making our final determination.

Public Comment

In accordance with § 355.38, of the Commerce Regulations published in the **Federal Register** on December 27, 1989 (to be codified at 19 CFR 355.38), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination on August 11, 1989, at 2:00 p.m., at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Assistant Secretary for Import Administration, Room B–099, at the above address within ten days of the publication of this notice in the **Federal Register**.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In accordance with 19 CFR 355.38 (c) and (d), case briefs and rebuttal briefs must be submitted to the Assistant Secretary in ten copies of the business proprietary version and seven copies of the nonproprietary version by August 4, 1989, and August 9, 1989, respectively. Oral presentations will be limited to issues raised in the briefs. In accordance with 19 CFR 355.38, written views will be considered if received not less than 30 days before the final determination is due or, if a hearing is held, within seven days after the hearing transcript is available.

This determination is published pursuant to section 703(f) of the Act [19 U.S.C. 1671b(f)].

June 14, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89–14790 Filed 6–21–89; 8:45 am]

BILLING CODE 3510–DS–M

The College of William and Mary et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 88–264. *Applicant:* The College of William and Mary in Virginia, Williamsburg, VA 23185. *Instrument:* Atomic Hydrogen Source/RF Generator, model SLEVIN. *Manufacturer:* Leisk Engineering Ltd., United Kingdom. *Intended Use:* See notice at 53 FR 37018, September 23, 1988. *Reasons for This Decision:* The foreign article provides an intense beam of hydrogen atoms.

Docket Number: 88–269. *Applicant:* The Pennsylvania State University, University Park, PA 16802. *Instrument:* Two (2) Crystal Growth Pulling Heads. *Manufacturer:* Crystalox Ltd., United Kingdom. *Intended Use:* See notice at 54 FR 4876, January 31, 1989. *Reasons for This Decision:* The foreign article provides precise automated rotation and translation modes of operation under vacuum.

Docket Number: 89–036. *Applicant:* University of Miami, Coral Gables, FL 33124. *Instrument:* Digital Controllers. *Manufacturer:* GDS Instruments Ltd., United Kingdom. *Intended Use:* See notice at 54 FR 4876, January 31, 1989. *Reasons for This Decision:* The foreign instrument provides precise regulation and measurement of liquid pressure (0–2000 kPa) and liquid volume change.

Docket Number: 89–037. *Applicant:* University of California, Lawrence Livermore National Laboratory, Livermore, CA 94550. *Instrument:* Universal Streak Camera, Model C–2830 with Accessories. *Manufacturer:* Hamamatsu Photonics, Japan. *Intended Use:* See notice at 54 FR 4876, January 31, 1989. *Reasons for This Decision:* The foreign instrument provides a temporal resolution of 2ps.

Docket Number: 89–038. *Applicant:* University of Nevada, Reno, NV 89512. *Instrument:* Time Domain Electromagnetic Ground Conductivity Meter, Model Protem I and II. *Manufacturer:* Geonics Ltd., Canada. *Intended Use:* See notice at 54 FR 4876, January 31, 1989. *Reasons for This Decision:* The foreign instrument provides high resolution shallow depth measurements of the subsurface.

Docket Number: 89–040. *Applicant:* Department of the Interior, U.S. Geological Survey, Menlo Park, CA 94025. *Instrument:* Mass Spectrometer, Model MAT 261. *Manufacturer:* Finnigan MAT, West Germany. *Intended Use:* See notice at 54 FR 4876, January 31, 1989. *Reasons for This Decision:* The foreign instrument provides a multicollector system capable of precise automated measurement of isotopic ratios of Ca, Rb, Sr, Sm, Nd, Pb, and U in both static and dynamic modes.

Docket Number: 89–041. *Applicant:* Franklin and Marshall College, Lancaster, PA 17604–3003. *Instrument:* Thermal Demagnetizer, Model MMTDI. *Manufacturer:* Magnetic Measurements, United Kingdom. *Intended Use:* See notice at 54 FR 4876, January 31, 1989. *Reasons for This Decision:* The foreign article is an ancillary device capable of providing a uniform degaussed magnetic field for the purpose of paleointensity experiments.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The capability of each of the foreign instruments described above is pertinent to each applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89–14791 Filed 6–21–89; 8:45 am]

BILLING CODE 3510–DS–M

The Johns Hopkins University et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 89–002. *Applicant:* The Johns Hopkins University, Baltimore, MD 21218. *Instrument:* Rapid Kinetics Instrument, Model SFM 3/PC. *Manufacturer:* Biologic Co., France. *Intended Use:* See notice at 53 FR 46106, November 16, 1988. *Reasons for This Decision:* The foreign instrument provides three independently movable syringes with programmable mixing ratios and multiple quench capability. *Advice Submitted By:* The National Institutes of Health, February 8, 1989.

Docket Number: 89–003. *Applicant:* The Catholic University of America, Washington, DC 20064. *Instrument:* Monochromator, Model 2000 with Accessories. *Manufacturer:* SOPRA, France. *Intended Use:* See notice at 53 FR 46106, November 16, 1988. *Reasons for This Decision:* The foreign instrument provides a 2.0 meter focal length for a resolution of 0.025 cm^{-1}. *Advice Submitted By:* The National Institutes of Health, February 8, 1989.

Docket Number: 89–005. *Applicant:* Florida Department of Business Regulation, Tallahassee, FL 32399–1039. *Instrument:* GC/Mass Spectrometer/DS, Model MAT 90. *Manufacturer:* Finnigan MAT, West Germany. *Intended Use:* See notice at 53 FR 46106, November 16, 1988. *Reasons for This Decision:* The foreign instrument provides: (1) Resolution to 50,000, (2) mass range to 17,500, (3) scan rates to 0.1 second per decade and (4) FAB capability. *Advice Submitted By:* The National Institutes of Health, February 8, 1989.

Docket Number: 89–007. *Applicant:* State University of New York at Albany, Albany, NY 12222. *Instrument:* Cryo-Stop-Flow Spectrofluorimeter, Model SF–41. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Intended Use:* See notice at 53 FR 46106, November 16, 1988. *Reasons for This Decision:* The foreign instrument provides rapid fluorescence measurement with (1) controlled temperature to −100.0 ° C and (2) anaerobic and high pressure handling capabilities. *Advice Submitted By:* The National Institutes of Health, February 8, 1989.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The National Institutes of Health advises that (1) The capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) if knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89–14792 Filed 6–21–89; 8:45 am]

BILLING CODE 3510–DS–M

Decision of Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 89–022. *Applicant:* U.S. Department of Commerce, National Institute of Science and Technology, Gaithersburg, MD 20899. *Instrument:* Time-of-Flight Secondary Ion Mass Spectrometer. *Manufacturer:* Kratos Analytical, United Kingdom. *Intended Use:* See notice at 54 FR 3636, January 24, 1989.

Comments: None received. *Decision:* Approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as it is intended to be used, could have been made available to the applicant without excessive delay within the meaning of § 301.5(d)(4) of the regulations at the time the foreign article was ordered (September 30, 1988).

Reasons: Section 301.5(d)(4), of the regulations provides as follows:

Excessive delivery time. Duty-free entry of the instrument shall be considered justified without regard to whether there is being manufactured in the United States an instrument of equivalent scientific value for the intended purposes if excessive delivery time for the domestic instrument would seriously impair the accomplishment of the applicant's intended purposes. * * * In determining whether the differences in delivery times cited by the applicant justifies duty-free entry on the basis of excessive delivery time, the Director shall take into account (A) the normal commercial practice applicable to the production of the general category of instrument involved; (B) the efforts made by the applicant to secure delivery of the instruments (both foreign and domestic) in the shortest possible time; and (C) such other factors as the Director finds relevant under the circumstances of a particular case.

In response to a request for proposal issued by the applicant on August 16, 1988, a domestic manufacturer quoted an instrument with a 12 month delivery schedule. The foreign manufacturer quoted delivery within 90 to 120 days. At the time of order, the foreign article was a standard catalog instrument, several of which had already been constructed, tested, and delivered. The instrument proposed by the domestic manufacturer was to be an adaptation of a related type of instrument, requiring extensive modification to accommodate the applicant's needs. The applicant identified important research commitments (requiring usable data by the end of FY 1989 in September, 1989) that would have been adversely affected by a delivery later than that quoted by the foreign supplier.

The National Institutes of Health in its memorandum dated February 8, 1989, advised that obtaining an instrument with guaranteed performance specifications with a 3 to 4 month delivery was a pertinent consideration.

Accordingly, we find that the domestic manufacturer's inability to deliver a comparable instrument within the time required by the applicant's project requirements amounts to "excessive delivery" within the meaning of § 301.5(d)(4). A delay of up to 8 months would have seriously impaired the accomplishment of the applicant's purposes.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89–14793 Filed 6–21–89; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council will meet on June 28–29, 1989, at the Colonial Hilton Inn, Routes 128/95, Wakefield, MA. The Council will meet on June 28 at 10 a.m., and will adjourn at approximately 5 p.m.

The meeting will reconvene on June 29 at 9 a.m., and will adjourn when the agenda items have been completed.

On the first day, discussions will include reports from the Groundfish, Scallop, and Large Pelagics Oversight Committees. There also will be updates on lobster, and surf clams/ocean quahogs, as well as reports on government support programs, and the Council's conservation engineering program. On the second day, discussions will include the Magnuson Fishery Conservation and Management Act reauthorization, the National Marine Fisheries Service's marine mammal exemption program, and Committee reports on habitat, herring, enforcement, and user fees. Also on the second day will be a discussion and a final vote on the Atlantic States Marine Fisheries Commission's Bluefish Plan, and an overview of the Canadian enforcement system.

For more information contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906; telephone: (617) 231–0422.

Date: June 16, 1989.

David S. Crestin,

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

[FR Doc. 89–14832 Filed 6–21–89; 8:45 am]

BILLING CODE 3510–22–M

North Pacific Fishery Management Council; Addition of Meeting Agenda Item

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

An item has been added to the agenda which was previously published in the **Federal Register** (54 FR 23680) for the North Pacific Fishery Management Council's public meeting in Anchorage, AK, on June 20–23, 1989. In addition, the council will consider an emergency action to provide for additional Pacific cod total allowable catch in the Western Gulf of Alaska.

For more information contact Steve Davis, Deputy Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809.

Date: June 16, 1989.

David S. Crestin,

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

[FR Doc. 89–14833 Filed 6–21–89; 8:45 am]

BILLING CODE 3510–22–M

COPYRIGHT ROYALTY TRIBUNAL

[CRT Docket No. 89–5–CRA]

Adjustment of Cable Royalty Rates

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice.

SUMMARY: The Tribunal has received a petition from the National Cable Television Association (NCTA) requesting the Tribunal to eliminate the syndicated exclusivity surcharge on the cable royalty rates paid by cable systems, and to reduce both the basic and 3.75% rates paid by cable systems. NCTA has petitioned the Tribunal in response to action taken by the FCC reinstituting its syndicated exclusivity blackout rules. The Tribunal is requesting comment on NCTA's petition. The Tribunal has decided to set the period for commenting on NCTA's petition at the same time as the period for commenting on the previously noticed CATA petition.

DATE: Comments on both NCTA's and CATA's petition are due August 1, 1989.

ADDRESS: An original and five copies of the comment should be addressed to: Chairman, Copyright Royalty Tribunal, 1111 20th Street, NW., Suite 450, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Robert Cassler, General Counsel, Copyright Royalty Tribunal, 11111 20th Street, NW., Suite 450, Washington, DC 20036, (202) 653–5175.

SUPPLEMENTARY INFORMATION: On June 15, 1989, the National Cable Television Association, Inc. (NCTA), a trade association which represents cable television owners and operators in the United States, filed a petition with the Copyright Royalty Tribunal. The petition asks the Tribunal to initiate a cable royalty rate adjustment proceeding to: Eliminate the syndicated exclusivity surcharge which some cable operators pay in addition to their basic royalty rate, reduce the basic rate paid by cable systems grossing more than $292,000 per half year, and reduce the 3.75% rate which those same cable systems pay for distant television signals newly-permitted to be imported after June 24, 1981.

The reason for eliminating the syndicated exclusivity surcharge given by NCTA is the since the Tribunal instituted the syndicated exclusivity surcharges to adjust for the loss of blackout protection for copyright owners tha occurred when the FCC deleted its syndicated program exclusivity protection rules, there is no longer any need for the surcharge now that the FCC has reinstituted those rules.

The reason for reducing the basic rate given by NCTA is that the new blackout rules are more extensive than the old ones. They apply with equal effect to systems lying within the second fifty television markets as well as to systems lying within the first fifty television markets, and they apply with equal effect to those systems lying outside of the top 100 television markets as well as to those systems lying within the top 100 television markets.

The reason given for reducing the 3.75% rate is that at the time the Tribunal adopted that rate it was for signals that were not subject to syndicated exclusivity blackout requests. Now that they will be subject to those requests, NCTA argues that a downward adjustment in the rate is warranted.

NCTA has also asked the Tribunal to establish a bifurcated proceeding. The first part of the proceeding would be a consideration of the elimination of the syndicated exclusivity surcharge, which NCTA believes would be relative simpler to elevate. The second part of the proceeding would be the consideration of the reduction of the basic and 3.75% rates, which NCTA believes would involve a more complex proceeding. NCTA's stated concern is to resolve the issue of the syndicated exclusivity surcharge before January 1, 1990 when the FCC rules become operational.

Prior to receiving NCTA's petition, the Tribunal received a petition from Community Antenna Television Association (CATA) which requested elimination of the syndicate exclusivity surcharge. The Tribunal published notice of CATA's petition in the **Federal Register** on June 9, 1989. 54 FR 24733. In that notice the Tribunal asked for comments on the petition and on nine questions which the Tribunal posed. Comments on CATA's petition were due July 24, 1989.

NCTA has requested that the Tribunal extend the deadline for comments on the CATA petition to August 1, 1989, and that the comments due on that date address not only the CATA petition, but the NCTA petition as well.

The Tribunal agrees with NCTA's procedural requests. The comment period for both the CATA petition and the NCTA petition will be August 1, 1989. Commenters may file one comment, but they should indicate clearly which petition they are addressing.

Concerning NCTA's petition, the Tribunal seeks comments on the same nine questions posed in the notice concerning CATA's petition. See, 54 FR

24734 (June 9, 1989). In addition, the Tribunal poses these additional questions:

1. Should NCTA's petition be consolidated with CATA's petition?

2. Should NCTA's request for a bifurcated proceding be granted?

3. Would a bifurcated proceeding pose any difficulty concerning the Tribunal's statutory requirement to complete its proceedings within one year of commencement?

4. Could the Tribunal have two "clocks" running in a bifurcated proceeding with regard to the one-year statutory deadline, one clock for the syndicated exclusivity surcharge, and the other for the basic and 3.74% rate?

Copies of CATA's petition, NCTA petition, and the Tribunal's Federal Register notice of June 9, 1989 are on file with the Tribunal and are available from the Tribunal upon request.

Edward W. Ray,

Chairman.

Dated: June 16, 1989.

[FR Doc. 89-14718 Filed 6-21-89; 8:45 am]

BILLING CODE 1410-09-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: NROTC Applicant Questionnaire, Naval Reserve Officers Training Corps Scholarship Program; NAVCRUIT 1131/6; OMB CONTROL No. 0703-0028

Type of Request: Reinstatement

Average Burden Hours/Minutes per Response: .33 hours

Frequency of Response: Situation

Number of Respondents: 1 response per respondent

Annual Burden Hours: 13,300

Annual Responses: 40,000

Needs and Uses: An assessment of an Individual's basic eligibility for the NROTC Scholarship Program is necessary for the initial screening of prospective applicants. In order to pre-screen applicants it is necessary to have information concerning date of birth, citizenship, high school graduation date, etc. Address and phone number are needed to contact those individuals who are eligible and to inform those who are not. Information is provided to the individual who wishes to apply for for Four-Year NROTC Scholarship Program. The information gathered is used by Headquarters, Navy Recruiting Command to determine basic eligibility. Without this information, this could not be accomplished.

Affected Public: Individuals (potential applicants for NROTC scholarships)

Frequency: Annually

Respondent's Obligation: Required to assess eligibility

OMB Desk Officer: Dr. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DE 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 16, 1989.

[FR Doc. 89-14749 Filed 6-21-89; 8:45 am]

BILLING CODE 3810-01-M

Membership of the Performance Review Board, Office of the Inspector General

AGENCY: Office of the Inspector General, Department of Defense, (OIG, DOD).

ACTION: Notice of membership to the Performance Review Board.

SUMMARY: This notice announces the appointment of the members of the Performance Review Board (PRB) for the OIG, DOD as required by 5 U.S.C. 4314(c)(4). The PRB provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance and performance awards to the Inspector General.

EFFECTIVE DATE: July 1, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Dona Seracino, Chief, Management-Employee Relations and Development Division, Personnel and Security Directorate, Office of the Assistant Inspector General for Administration and Information Management, OIG, DOD, 400 Army Navy Drive, Arlington, VA, (202) 693-0257.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the appointed members of the PRB for the OIG, DOD are identified in the enclosures. They will serve a one year renewable term effective July 1, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 16, 1989.

1989 Performance Review Board, Office of the Inspector General, Department of Defense

Derek J. Vander Schaaf—Deputy Inspector General, OIG, DOD.

Nancy L. Butler—Director, Financial, Manpower & Security Assistance Programs, OAIG-AUD, DOD.

David A. Brickman—Director, Acquisition Support Programs, OAIG-AUD, DOD.

Stephen A. Whitlock—Assistant Inspector General for Special Programs, OIG, DOD.

Terry L. Brendlinger—Director, Contract Audit Programs, OAIG-AUD, DOD.

Katherine A. Brittin—Deputy Assistant Inspector General For Inspections, OAIG-INS, DOD.

Donald Mancuso—Assistant Inspector General for Investigations, OIG, DOD.

Nicholas T. Lutsch—Assistant Inspector General for Administration and Information Management, OIG, DOD.

Morris B. Silverstein—Assistant Inspector General For Criminal Investigations Policy & Oversight, OIG, DOD.

Paul A. Adams—Inspector General, Department of Housing and Urban Development.

Rosslyn S. Kleeman—Director, Federal Workforce, Future Issues, General Accounting Office.

Howard C. Robbins, Jr.—Associate Administrator for Management, National Aeronautics and Space Administration.

John C. Layton—Inspector General, Department of Energy.

[FR Doc. 89-14806 Filed 6-21-89; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

AGENCY: Defense Intelligence Agency Advisory Board.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Pub. L. 92-463, as amended by section 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of the DIA Advisory Board has been scheduled as follows:

DATES: 12-13 September 1989, 9:00 a.m. to 5:00 p.m. each day.

ADDRESS: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John E. Hatlelid, USAF, Executive Secretary, DIA Advisory Board, Washington, DC 20340 (202/373–4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA on related scientific and technical intelligence matters.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 16, 1989.

[FR Doc. 89–14807 Filed 6–21–89; 8:45 am]

BILLING CODE 3810–01–M

Department of the Navy

Finding of No Significant Impact for Proposed Operation of the Navy Electromagnetic Pulse Radiation Environment Simulator for Ships

Pursuant to the Council on Environmental Quality regulations (40 CFR Parts 1500–1508) implementing the procedural provisions of the National Environmental Policy Act (NEPA), the Department of the Navy gives notice that an Environmental Assessment (EA) has been prepared and that an Environmental Impact Statement is not being prepared for the proposed operation of the Navy Electromagnetic Pulse Radiation Environment Simulator for Ships (EMPRESS II) in an underway station-keeping configuration in the Atlantic Ocean (Virginia Capes Operating Area).

EMPRESS II is an Electromagnetic Pulse (EMP) simulator for testing U.S. Navy ships to assure that their ability to carry out their assigned missions will not be compromised as a result of exposure to EMP. EMP is a brief intense burst of electromagnetic energy of the kind that would be generated by a nuclear explosion. EMP from a high-altitude detonation is able to penetrate unprotected ships and upset or damage critical electronic systems from great distances. EMPRESS II only simulates the EMP output of a nuclear detonation, the other phenomena, i.e., blast energy, heat, and ionizing radiation, are not simulated by the test facility.

EMPRESS II is a transportable, barge-mounted, ocean-capable EMP simulator that is an essential element in identifying electronic systems that are vulnerable to EMP and in validating those systems for which EMP protection has been provided.

EMPRESS II has been operating periodically at a single-point moor at Latitude 36°28'00"N, Longitude 75°32'30"W following the completion of a Final Environmental Impact Statement (EIS) in April 1988 and a Record of Decision (ROD) issued on 27 May 1988.

The proposed action addressed in this EA is to operate EMPRESS II in both a single-point moor and an underway station-keeping configuration which is accomplished by towing the EMPRESS II vessel on a prescribed course wtihin the confines of a designated area while the ship under test maintains distance and aspect by maneuvering. Operating periods are anticipated to require up to approximately 10 hours a day for no more than 60 days a year during the months of June, July, and August.

From an operational viewpoint, the underway station-keeping configuration is clearly more desirable for testing than the single-point moor method of testing. The forward motion associated with the station-keeping configuration decreases the influence that wind and water forces may have on the ship allowing the ship's officers to more precisely maintain the ship in a position relative to the EMPRESS II vessel. This method of testing would provide for greater stability of both the EMPRESS II facility and the ship under test. It would allow operations in heavier sea states and permit more precise positioning of the ship under test, thus, a greater percentage of the pulses would result in usable data. This in turn would extend the intervals between EMPRESS II facility system refurbishment and reduce the cost of ship testing.

The operating area is rectangular in shape and is located in international waters approximately 20 nautical miles off the coast of North Carolina within warning area 72A. It lies in a region called the Virginia Capes Operating Area (VACAPES OPAREA). The proposed EMPRESS II operating area is specified by the latitude and longitude of its four corners:

Latitude	Longitude	VACAPES OPAREA Designation
36°30'00" N	75°30'00" W	Surface area.
36°30'00" N	75°00'00" W	21A, 21B.
36°15'00" N	75°30'00" W	
36°15'00" N	75°00'00" W	

This area is 15 nautical miles by 25 nautical miles and is located approximately 5 nautical miles farther from the North Carolina coastline than the current site.

During the EMPRESS II testing operations, a surface exclusion zone, two nautical miles in radius, will be established to ensure that electronic equipment aboard surface craft that are not a part of the EMPRESS II testing will not be subjected to potentially damaging EMP levels. This exclusion zone would move with the EMPRESS II as the operations are conducted along a prescribed course within the area. The surface exclusion zone equates to an area of 12.6 square nautical miles of water that will be restricted from general use during operations. The Fleet Area Control and Surveillance Facility (FACSFAC) maintains control of the surface waters in the proposed operating area.

In order to insure that damage will not occur to aviation electronics, an aircraft exclusion zone will be established from the surface to an altitude of 6000 feet over a two nautical mile radius area. However, administration of the air exclusion zone necessitates the restriction would apply over the full extent of the proposed operating area. Above 6000 feet, the energy from EMPRESS II would be too small to affect aviation electronics. The aircraft exclusion zone equates to a region 15 nautical miles by 25 nautical miles that will be restricted from general aviation use during operations.

FACSFAC maintains advisory control of the airspace in the proposed operating area.

Notification of the EMPRESS II testing schedule will be published in advance, as required by law. Procedural measures will preclude EMPRESS II operations should surface vessels or aircraft inadvertently enter the zones. Much of the area in and around that to be used for EMPRESS II operations has historically been restricted for military use and other potential users are aware of and respect the operational restrictions when imposed.

The following alternatives to the proposed action have been evaluated and rejected: (1) *No Action*—No action would result in the continuation of EMPRESS II operations at the single-point moor site as presently approved. Testing would be accomplished with more difficulty and at greater expense of both funds and time requiring more pulses be generated. (2) *Other Sites*—Other VACAPES sites were considered but they failed to meet critical siting

criteria, i.e., they may have: (a) Been prohibitively far from acceptable EMPRESS II berthing sites, Navy ships, and facilities; (b) water depths too deep to allow anchoring or too shallow to allow maneuvering of deep draft ships; (c) high densities of marine biota and therefore more commercial and recreational fishing activity; (d) higher densities of shipping, boating, and aviation in close proximity; (e) obstructions such as oil platforms, or Tactical Aircraft Training System (TACTS) towers, or; (f) been outside of a military use warning or restricted area.

The collective potential environmental impact of the proposed EMPRESS II action is determined to be minor. The potential environmental consequences associated with the proposed action (underway station-keeping and anchored configuration) have been considered with the knowledge gained to date from EMP related literature research, environmental experimentation, EMP simulation experience in general and specific experience gained from operating EMPRESS II at the single-point moor site. In connection with the EMPRESS II environmental assessment process, tests and observations have been conducted on a variety of plankton, shellfish, finfish, turtles, and birds over a 48-month period to determine if EMP has an effect on marine biota. In addition, the Navy distributed a letter, to interested and potentially affected parties on march 15, 1989, delineating the proposed action and soliciting comments, questions, and identification of topics of concern to be addressed in the EA.

Scientific evidence and analyses have indicated that field strengths of 100 kV/m will not affect human health. The limit for exposure to EMP which is generally accepted throughout industry is 100 kV/m. This limit has been adopted by the military services. This field strength would be exceeded only within 50 meters from the center of the EMPRESS II barge when the facility is operating at maximum intensity. EMPRESS II has been designed and is operated such that there will be no human exposure to fields in excess of 100 kV/m.

The testing program addressed the concerns of potential significant short and long-term effects on marine biota while developing a foundational database should mitigation be considered necessary. The elements of this program were designed by the University of Maryland and tempered by considerations provided through a series of Technical Information Exchange Meetings involving Federal and state environmental regulatory agencies. The experiments exposed, for extended periods of time, marine biota to an EMP pulse equivalent to that which would be experienced within 25 meters of the center of the barge. The experiments were intentionally designed to expose the biota to higher field strengths, and for longer periods of time, than they would normally be subjected to by EMPRESS II while in their natural environment.

After four years of testing by independent researchers, in the laboratories and in actual field conditions, no evidence has been found to indicate that EMP adversely affects the environment. That notwithstanding, the Navy implemented an additional field observation program during the summer 1988 operations. This program consisted of two basic elements:

Part 1: Observations of marine biota before, during, and following EMPRESS II operations with documentation of any effects.

Part 2: Monitoring the EMPRESS II generated electromagnetic field ashore.

The field observation program measurements taken at Corolla, Barco, and Currituck, North Carolina indicate that EMPRESS II electromagnetic field levels are sufficiently dissipated over the fifteen miles between the operational site and shore so as not to have an effect on anything on the coast. As a direct consequence of this finding and because the proposed operating area lies farther from the coast, only Part 1 of the program will continue in the future.

The Environmental Assessment for this action indicates that operating EMPRESS II in an underway station-keeping configuration within the confines of the designated operating area will not cause significant impacts on the environment.

The Environmental Assessment prepared by the Navy addressing this action is on file at the point of origin and may be reviewed by contacting: Program Manager, PMS–423, Naval Sea Systems Command, Washington, DC 20362–5101 (Attn: LT James Rose, Code 4232E), telephone (202) 746–1386. Additionally, a limited number of copies are available to fill single-copy requests.

A final decision by the Navy on this Finding of No Significant Impact will occur in 30 days from the **Federal Register** publication date. The public is invited to submit comments on the proposed action to the address given above prior to end of this period.

Date: June 15, 1989.

Thomas J. Peeling,

Special Advisor for Environmental Planning, Deputy Chief of Naval Operations (Logistics).

June 19, 1989.

[FR Doc. 89–14836 Filed 6–21–89; 8:45 am]

BILLING CODE 3810–AE–M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee Panel on Determining the Impact of Directed Energy Weapons on Navy Warfare Mission Areas will meet on July 17–18, 1989. The meeting will be held at the Center for Naval Analyses, 4401 Ford Avenue, Alexandria, Virginia. The meeting will commence at 8:00 a.m. and terminate at 5:00 p.m. on July 17; and commence at 8:30 a.m. and terminate at 3:30 p.m. on July 18, 1989. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefings for the panel members related to the impact of Directed Energy Weapons on Navy warfare mission areas. The agenda will include briefings and discussions on the tactical and strategic directed energy threat, technology assessment and program overviews. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive Order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c) (1) of Title 8, United States Code.

For further information concerning this meeting contact: Commander L. W. Snyder, U.S. Navy, Office of Naval Research, 800 North Quincy Street, Arlington,VA 22217–5000, Telephone Number: (202) 696–4488.

Dated: June 19, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89–14837 Filed 6–21–89; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Qualified Products Identification.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, Office of Federal Acquisition and Regulatory Policy, (202) 523–3847.

SUPPLEMENTARY INFORMATION: a. *Purpose:* Under the Qualified Products Program, an end item, or a component thereof, may be required to be prequalified when any of the following conditions apply:

a. The time required to test the item for conformance to the specification exceeds 30 days (720 hours).

b. The tests would require equipment not commonly available.

c. The items are emergency lifesaving or survival equipment.

The contracting officer uses the information to determine eligibility for award when the clause at 52.209–1 is included in the solicitation. The offeror must insert the item name and test number to prove that the item offered is prequalified. Alternatively, items not yet listed may be considered for award upon the submission of evidence of qualification with the offer.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, *2,700;* responses per respondent, *10;* total annual responses, *27,000;* hours per response, *.17;* and total response burden hours, *4,590.*

Obtaining Copies of Proposals

Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0020, Qualified Products Identification.

Dated: June 16, 1989.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 89–14755 Filed 6–21–89; 8:45 am]

BILLING CODE 6820–JC–M

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision of a currently approved information collection requirement concerning SF 294, Summary Subcontract Report.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, Room 3201, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Victoria Moss, Office of Federal Acquisition and Regulatory Policy, (202) 523–5168.

SUPPLEMENTARY INFORMATION: a. *Purpose*: In accordance with the Small Business Act (15 U.S.C. 631, *et seq.*) contractors receiving a contract for more than $10,000 agree to have small and small disadvantaged business concerns participate in the performance of the contract as far as practicable. Contractors receiving a contract or a modification to a contract expected to exceed $500,000 ($1,000,000 for construction) must submit a subcontracting plan that provides maximum practicable opportunities for small and small disadvantaged business concerns. Specific elements required to be included in the plan are specified in section 8(d) of the Small Business Act and are implemented in FAR 19.7.

In conjunction with these plans, contractors must submit reports of their progress on SF 295, Summary Subcontract Report.

Information submitted on SF 295 is used to assess contractor's compliance with their subcontracting plans.

b. *Annual reporting burden*: The annual reporting burden is estimated as follows: Respondents, *1,542*; responses per respondent, *3.61*; total annual responses, *5,568*; preparation hours per response, *16.21*; and total response burden hours, *90.282*.

c. *Annual recordkeeping burden*: The annual recordkeepiong burden is estimated as follows: Recordkeepers, *1,542*; hours per recordkeeper, *13.6*; and total recordkeeping burden hours, *20,971*.

Obtaining Copies of Proposals

Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0007, SF 295, Summary Subcontract Report.

Dated: June 16, 1989.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 89–14756 Filed 6–21–89; 8:45 am]

BILLING CODE 6820–JC–M

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Certification of Independent Price Determination and Parent Company and Identifying Data.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, Office of Federal Acquisition and Regulatory Policy, (202) 523–3847.

SUPPLEMENTARY INFORMATION: a. *Purpose*: Agencies are required to report under 41 U.S.C. 252(d) and 10 U.S.C. 2305(d) suspected violations of the antitrust laws (e.g. collusive bidding, identical bids, uniform estimating systems, etc.) to the Attorney General. As a first step in assuring the Government contracts are not awarded to firms violating such laws, offerors on Government contracts must complete the certificate of independent price determination. An offer will not be considered for award where the certificate has been deleted or modified. Deletions or modifications of the certificate and suspected false certificates are reported to the Attorney General.

b. *Annual reporting burden*: The annual reporting burden is estimated as follows: Respondents, *64,250*; responses per respondent, *20*; total annual responses, *1,285,000*; hours per response, *.02*; and total response burden hours, *25,700*.

Obtaining Copies of Proposals

Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0018, Certification of Independent Price Determination and Parent Company and Identifying Data.

Dated: June 16, 1989.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 89–14757 Filed 6–21–89; 8:45 am]

BILLING CODE 6820–JC–M

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. John O'Neill, Office of Federal Acquisition and Regualtory Policy, (202) 523–3856.

SUPPLEMENTARY INFORMATION: a. *Purpose:* As a result of the Department of Commerce (DOC) publishing a final rule in the **Federal Register** implementing Pub. L. 98–620 (52 FR 8552, March 18, 1987), a revision to FAR Subpart 27.3 to implement the DOC regulation in the FAR was published in the **Federal Register** as an interim rule on June 12, 1989 (54 FR 25060).

A Government contractor must report all subject inventions to the contracting officer, submit a disclosure of the invention, and identify any publication, or sale, or public use of the invention (52.227–11(c); 52.228–12(c) and 52.227–13(e)(2)). Contractors are required to submit periodic or interim and final reports listing subject inventions (27.303(a)(2); 27.304–1(e)(1)(i) and (ii); 27.304–1(e)(2)(i) and (ii); 52.227–12(f)(7); 52.227–14(e)(3). In order to ensure that subject inventions are reported, the contractor is required to establish and maintain effective procedures for identifying and disclosing subject inventions (52.228–11, Alternate IV; 52.227–12(f)(5); 52.227–13(e)(1). In addition, the contractor must require his employees, by written agreements, to disclose subject inventions (52.227–11(f)(2); 52.227–12(f)(2); 52.227–13(e)(4). The contractor also has an obligation to utilized the subject invention, and agree eto report, upon request, the utilization or efforts to utilize the subject invention (27.302(e); 52.227–11(h); 52.227–12(h).

b. *Annual reporting burden.* The annual reporting burden is estimated as follows: Respondents, *1,200*; responses per respondent, *9.75*; total annual responses, *11,700*; hours per response, *3.9*; and total response burden hours, *45,630*.

Obtaining Copies of Proposals

Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0095, Commerce Patent Regulations.

Dated: June 16, 1989.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 89–14758 Filed 6–21–89; 8:45 am]

BILLING CODE 6820–JC–M

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Statement of Contingent or other Fees (representation and agreement) SF 119.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, Office of Federal Acquisition and Regulatory Policy, (202) 523–3847.

SUPPLEMENTARY INFORMATION: a. *Purpose:* Contractor's arrangements to pay contingent fees for soliciting or obtaining Government contracts have long been considered contrary to public policy because such arrangements may lead to attempted or actual exercise of improper influence. By way of this representation prospective contractors are required to state whether or not they have used such an arrangement to obtain the contract.

The information is used by Government Contracting Officers to determine the appropriateness of awarding a contract to the submitting firm.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, *65,500*; responses per respondent, *20* total annual responses *1,310,000;* hours per response, *.0041*; and total response burden hours, *5,371*.

Obtaining Copies of Proposals

Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0003, Statement of Contingent or other Fees (SF 119).

Dated: June 16, 1989.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 89–14759 Filed 6–21–89; 8:45 am]

BILLING CODE 6820-JC-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CI89–428–000 et al.]

Union Texas Natural Gas Marketing Co. et al.; Applications for Blanket Certificates With Pregranted Abandonment [1]

June 15, 1989.

Take notice that each Applicant listed herein has filed an application pursuant to Section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for a blanket certificate with pregranted abandonment authorization for an unlimited term, all as more fully set forth in the applications which are on file with the Commission and open for public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before July 6, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

Docket No.	Date filed	Applicant
CI89–428–000	5–31–89	Union Texas Natural Gas Marketing Company, 1330 Post Oak Boulevard, 12th Floor, Houston, Texas 77056.
CI89–455–000 [1]	6–8–89	CMEX Energy, Inc., 17101 Preston Road, Suite 240, Dallas, Texas 75248.

[1] Applicant also requests authorization to resell gas purchased from interstate pipelines making sales of surplus gas on an interruptible basis.

[FR Doc. 89–14777 Filed 6–21–89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89–1616–000 et al.]

United Gas Pipe Line Company et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. United Gas Pipe Line Co.

[Docket No. CP89–1616–000]

June 14, 1989.

Take notice that on June 13, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–1616–000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to provide a transportation service for OXY USA, Inc. (OXY), a producer of natural gas, under United's blanket certificate issued in Docket No. CP88–6–000 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.

United proposes to transport, on an interruptible basis, up to 1,030 MMBtu of natural gas equivalent per day for OXY pursuant to a transportation agreement dated January 6, 1989, between United and OXY. United would receive natural gas at various receipt points in Louisiana and redeliver equivalent volumes of gas, less fuel and company used gas, at a delivery point in Louisiana.

United further states that the estimated average daily and annual quantities would be 1,030 MMBtu and 375,950 MMBtu, respectively. Service under § 284.223(a) commenced April 1, 1989, as reported in Docket No. ST89–3778–000, it is stated.

Comment date: July 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Trunkline Gas Co.

[Docket No. CP89–1597–000]

June 15, 1989.

Take notice that on June 9, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–1597–000 a request pursuant to § 157.205 of the Commission's Regulations (18 CFR 157.205) for authorization to transport natural gas on behalf of PSI, Inc. (PSI), a marketer of natural gas, under Trunkline's blanket certificate issued in Docket No. CP86–586–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Trunkline proposes to transport, on an interruptible basis, up to 100,000 dt equivalent of natural gas on a peak day for PSI, 50,000 dt equivalent on an average day and 18,250,000 dt equivalent on an annual basis. It is stated that Trunkline would receive the gas for PSI's account at various designated points on Trunkline's system and would deliver equivalent volumes of gas, less fuel and unaccounted for line loss, to Southern Natural Gas Company in St. Mary Parish, Louisiana. It is asserted that the transportation service would be effected using existing facilities and that no construction of additional facilities would be required. It is explained that the transportation service commenced April 19, 1989, under the self-implementing authorization of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89–3463.

Comment date: July 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Northern Natural Gas Co., a Division of Enron Corporation

[Docket No. CP89–1596–000]

June 15, 1989.

Take notice that on May 17, 1989, Northern Natural Gas Company, a Division of Enron Corporation (Northern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP89–1596–000 a request pursuant to

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

§§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide transportation for Horizon Gas Company (Horizon), a marketer of natural gas, under Northern's blanket certificate issued in Docket No. CP86–435–000 under section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern states that it proposes to transport, on an interruptible basis, up to 1,650 MMBtu equivalent of natural gas per day for Horizon from various receipt points in Texas and to a delivery point in Wyoming. Northern anticipates transporting 1,238 MMBtu equivalent of natural gas on an average day and 602,250 MMBtu equivalent of natural gas on an annual basis. Northern also states that construction of facilities will not be required to provide the proposed service.

Northern states that the transportation of natural gas for Horizon commenced on April 19, 1989, as reported in Docket No. ST89–3461–000, for a 120-day period pursuant to § 284.223(a)(1) of the Commission's Regulations and the blanket certificate issued to Northern in Docket No. CP86–435–000.

Comment date: July 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Transcontinental Gas Pipe Line Corp.

[Docket No. CP89–1592–000]

June 15, 1989.

Take notice that on June 9, 1989, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP89–1592–000 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 perform an interruptible transportation service for PSI, Incl. (PSI) under Transco's blanket certificate issued in Docket No. CP88–328–000, 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.

Transco states that pursuant to a service agreement dated February 1, 1989, it proposes to receive up to 50,000 dt equivalent of natural gas per day or additional volumes if Transco has satisfied any pending requests for service under Rate Schedule IT, from PSI at specified receipt points located in the Matagorda Island Area, Offshore Texas and redeliver the gas at specified redelivery points located in the Brazos Area, Offshore Texas. Transco states that the peak day and average day volumes would be 50,000 dt equivalent of natural gas and that the annual volumes would be 36,500,000 dt equivalent of natural gas. It is stated that on May 1, 1989, Transco initiated a 120-day transportation service for PSI under § 284.223(a) as reported in Docket No. ST 89–3743–000.

Transco further states that no facilities need be constructed to implement the service. Transco states that the service would continue on a month to month basis unless terminated on 30 days written notice. Transco proposes to charge rates and abide by the terms and conditions of its Rate Schedule IT.

Comment date: July 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. K N Energy, Inc.

[Docket No. CP89–1590–000]

June 15, 1989.

Take notice that on June 9, 1989, K N Energy, Inc. (Applicant), P.O. Box 15265, Lakewood, Colorado, 80215, filed in Docket No. CP89–1590–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 205) for authorization to construct and operate five sales taps for delivery of gas to end users under Applicant's blanket certificate issued in Docket No. CP83–140–000, CP83–140–001 and CP83–140–002 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in request which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate five sales taps along its jurisdictional pipeline in the states of Kansas, Nebraska and Wyoming. Applicant states that the gas would be used for irrigation and domestic purposes with maximum daily and annual volumes of 34 Mcf and 1350 Mcf, respectively.

Applicant asserts that the proposed sales taps are not prohibited by any of its existing tariffs and that the additional taps will have no significant impact on Applicant's peak day and annual deliveries.

Comment date: July 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Western Gas Interstate Co.

[Docket No. CP89–1489–000]

June 15, 1989.

Take notice that on May 22, 1989, Western Gas Interstate Company (Western), 9390 Research Blvd., Kaleido I, Austin, Texas 78759, filed in Docket No. CP89–1489–000 an application pursuant to section 7(c) of the Natural Gas Act and § 284.221 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing the transportation of natural gas and pre-granted abandonment authorization to abandon self-implementing transportation services and sales services where its sales customers elect to convert sales entitlements to transportation services, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Western states the authorization requested in this blanket open-access transportation certificate is being filed concurrently with applications to institute two new contract demand firm sales services and a section 4(e) general rate filing. Western requests authorization to provide firm and interruptible transportation services for shippers on a nondiscriminatory basis under proposed Rate Schedules FT–N, FT–S, IT–N and IT–S, respectively. Western requests acceptance and approval of the new proposed Rate Schedules FT–N, FT–S, IT–N and IT–S along with new proposed General Terms and Conditions. Western states that the transportation rate schedules proposed herein incorporate the Commission's open-access provisions and comply with all sections of the Commission's Regulations and requirements set forth in Order Nos. 436/500. Western indicates that the transportation and sales rates proposed under these rate schedules would ultimately be established in Western's concurrently filed section 4(e) rate proceeding. Further, Western states that it would comply with the conditions in paragraph (c) of § 284.221.

Western requests pregranted abandonment authorization for firm sales entitlements that its customers elect to convert to firm transportation services pursuant to the terms of Western's FERC Gas Tariff proposed herein. Also, Western proposes certain changes to the General Terms and Conditions of its tariff establishing scheduling and curtailment priorities for firm and interruptible transportation.

Comment date: July 6, 1989, in accordance with Standard Paragraph F at the end of this notice.

7. Western Gas Interstate Co.

[Docket No. CP89–1488–000]

June 15, 1989.

Take notice that on May 22, 1989, Western Gas Interstate Company

(Western), 9390 Research Blvd., Kaleido I, Austin, Texas 78759, filed in Docket No. CP89–1488–000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for permission and approval to abandon certain sales services authorized under Rate Schedules G–N and G–S and for a certificate of public convenience and necessity authorizing sales of natural gas on a firm contract demand basis under new Rate Schedules CD–N and CD–S, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Western proposes to abandon sales of natural gas to Southern Union Gas Company (Southern) and Gas Company of New Mexico (New Mexico) currently authorized under Rate Schedules G–N and G–S. Western proposes to replace Rate Schedules G–N and G–S by making firm sales of gas for resale in its Northern Division under a new Rate Schedule CD–N and in its Southern Division under Rate Schedule CD–S. Western states that if a blanket certificate is issued as concurrently requested, in Docket No. CP89–1489–000, the current sales services rendered under its Rate Schedules G–N and G–S would jeopardize Western's financial and operational viability. Western states that the rates for service under CD–N and CD–S reflect that purchasers would pay a three part rate consisting of a D–1 demand charge, a D–2 demand charge and a commodity charge.

Comment date: July 6, 1989, in accordance with Standard Paragraph F at the end of the notice.

8. Colorado Interstate Gas Co.

[Docket No. CP89–1622–000]

June 15, 1989.

Take notice that on June 13, 1989, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP89–1622–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of Santa Fe Minerals, a division of Santa Fe International Corporation (Santa Fe Minerals), a producer, under CIG's blanket certificate issued in Docket No. CP89–589, *et al.*, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request of file with the Commission and open to public inspection.

CIG proposes to transport up to 6,000 Mcf per day (plus any additional volumes accepted pursuant to the overrun provisions of CIG's Rate Schedule TI–1, or any effective superseding rate schedule on file with the Commission) for Santa Fe Minerals pursuant to a transportation agreement dated April 3, 1989, between CIG and Santa Fe Minerals. CIG would receive gas from an existing point of receipt on its system in Kansas, and redeliver the subject gas, less fuel gas and lost and unaccounted-for gas, for the account of, Santa Fe Minerals in Kearny County, Kansas.

CIG further states that the estimated average daily and annual quantities would be 3,000 Mcf and 1,095 Mcf, respectively. Service under § 284.233(a) commenced on April 6, 1989, as reported in Docket No. ST89–3126–000, it is stated.

Comment date: July 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. United Gas Pipe Line Co.

[Docket No. CP89–1589–000]

June 16, 1989.

Take notice that on June 8, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–1589–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations for authorization to construct and operate a sales tap on behalf of Entex Inc. for resale to an end-user in the Mississippi Gulf Coast Billing Area, under United's blanket certificate issued in Docket No. CP89–430–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that the new sales tap will enable United to supply an estimated average of 11,000 Mcf/d of natural gas to Extex Inc. for resale to one end-user located in Harrison County, Mississippi.

United further states it would construct and operate the proposed sales tap in compliance with 18 CFR Part 157, Subpart F, and that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other existing customers. It is maintained that Entex Inc. would reimburse United for all associated costs.

Comment date: July 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Northern Natural Gas Co.

[Docket No. CP89–1609–000]

June 16, 1989.

Take notice that on June 12, 1989, Northern Natural Gas Company, Division of Enron Corporation (Northern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP89–1609–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for permission and approval to abandon by reclaim measuring and appurtenant facilities serving 12 end users in the States of Minnesota, Iowa, South Dakota and Texas, under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to abandon the facilities in response to a request from Peoples Natural Gas Company, Division of Utilicorp United, Inc., stating that 12 of their small volume measuring station customers no longer desire natural gas service and wish to have their meters removed.

Comment date: July 31, 1898, in accordance with Standard Paragraph G at the end of this notice.

11. Northwest Pipeline Corp.

[Docket No. CP89–1603–000]

June 16, 1989.

Take notice that on June 12, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta, Way, Salt Lake City, Utah 84108, filed in Docket No CP89–1603–000 a request pursuant to § 157.205 (18 CFR 157.205) of the Commission's Regulations for authorization to transport natural gas on behalf of Northwest Natural Gas Company (Northwest Natural), a local distribution company, under Northwest's blanket certificate issued in Docket No. CP86–578–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest proposes to transport up to 250,000 MMBtu equivalent of natural gas on a peak day for Northwest Natural, 35,000 MMBtu equivalent on an average day and 12,775,00 MMBtu equivalent on an annual basis. It is stated that Northwest would receive the gas for Northwest Natural's account at existing points on Northwest's system in Colorado, Oklahoma, Oregon, Utah, Washington and Wyoming, and that Northwest would deliver equivalent volumes at existing points in Colorado, Idaho, New Mexico, Oklahoma, Utah, Washington and Wyoming. It is explained that the service commenced May 1, 1989, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89–3763.

Comment date: July 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. Southern Natural Gas Co.

[Docket No. CP89–1608–000]

June 16, 1989.

Take notice that on June 12, 1989, Southern Natural Gas Company (Southern) P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP88–1608–000 a request pursuant to §§ 157.205 and 284.223 (18 CFR 157.205 and 284.223) of the Commission's Regulations under the Natural Gas Act for authority to provide interruptible transportation service for Louisiana State Gas Corporation (Louisiana State), an intrastate pipeline, under Southern's blanket transportation certificate which was issued by Commission order on May 5, 1989, in Docket No. CP89–316–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern states that it will receive the gas from various points in, offshore Louisiana and the states of Texas, Louisiana, Mississippi and Alabama for delivery to Atlantic Steel in Fulton and Floyd counties, Georgia.

Southern proposes to transport on an interruptible basis up to 20,000 MMBtu of gas equivalent on a peak day and 10,000 MMBtu on an average day and approximately, 3,650,000 MMBtu of gas annually. Southern states that the transportation service commenced under the 120-day automatic authorization of § 284.223(a) of the Commission's Regulations on April 21, 1989, pursuant to a transportation agreement dated April 3, 1989. Southern notified the Commission of the commencement of the transportation service in Docket No. ST89–3530–000 on March 15, 1989.

Comment date: July 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. Texas Gas Transmission Corp.

[Docket No. CP89–1600–000]

June 16, 1989.

Take notice that on June 12, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89–1600–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide interruptible transportation service for Bishop Pipeline Corporation (Bishop Pipeline) under the blanket certificate issued in Docket No. CP88–686–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Gas requests authorization to transport on a peak day up to 50,000 MMBtu of natural gas for Bishop Pipeline, with an estimated average daily quantity of 10,000 MMBtu. On an annual basis, Bishop Pipeline estimates a volume of 3,650,000 MMBtu. Bishop Pipeline has identified the ultimate recipients of the gas as three hopsital complexes.

Transportation service for Bishop Pipeline commenced April 18, 1989, under the 120-day automatic provisions of section 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–3428.

Comment date: July 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

14. Northern Natural Gas Co. Division of Enron Corp.

[Docket No. CP89–1588–000]

June 16, 1989.

Take notice that on June 8, 1989, Northern Natural Gas Company, Division of Enron Corporation, (Northern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP89–1588–000, a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to operate and maintain one (1) existing delivery point and appurtenant facilities for the various end users in and near Rosemount, Minnesota and one (1) existing delivery point and appurtenant facilities for Clausen Koch Corporaton (Clausen Koch) and a residential trailer park in Haskell County, Kansas to facilitate the delivery of sales gas to Peoples Natural Gas Company (Peoples), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern explains that the two delivery points were initially constructed to facilitate a transportation service that was provided to Peoples under section 311(a) of the Natural Gas Policy Act. Northern further explains that the instant proposal is prompted by Peoples' desire to also receive sales service at these delivery points. Northern estimates that the peak day and annual sales deliveries to Rosemount would be 2,064 and 96,300 Mcf, respectively, while such deliveries to Clausen Koch would be 450 and 114,900 Mcf, respectively. Northern states that the sales volumes delivered to Rosemount and Clausen Koch would be served from the existing firm entitlements of Peoples. Accordingly, Northern does not expect the proposal to have an adverse impact on its total peak day and annual deliveries.

Comment date: July 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

15. Texas Gas Transmission Corp.

[Docket No. CP89–1613–000]

June 16, 1989.

Take notice that on June 13, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Ownesboro, Kentucky 42301, filed in Docket No. CP89–1613–000 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 Baltimore Specialty Steels Corporation (Baltimore Steels), under the blanket certificate issued in Docket No. CP88–686–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Gas states that pursuant to a transportation agreement dated January 30, 1989, under its Rate Schedule IT, it proposes to transport up to 3,000 MMBtu per day equivalent of natural gas for Baltimore Steels. Texas Gas states that it would transport the gas from multiple receipt points as shown in Exhibit "B" of the transportation agreement and would deliver the gas to delivery points in Warren County, Ohio, as shown in Exhibit "C" of the agreement.

Texas Gas advises that service under § 284.223(a) commenced May 1, 1989, as reported in Docket No. ST89–3551–000. Texas Gas further advises that it would transport 2,500 MMBtu on an average day and 912,500 MMBtu annually.

Comment date: July 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

15. Northwest Pipeline Corp.

[Docket No. CP89–1605–000]

June 16, 1989.

Take notice that on June 12, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89–1605–000 a request pursuant to § 157.205 (18 CFR 157.205) of the Commission's Regulations for authorization to transport natural gas on behalf of Koch Hydrocarbon Company (Koch), a producer of natural gas, under Northwest's blanket certificate issued in

Docket No. CP89–578–000, 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.

Northwest proposes to transport on a daily basis up to 11,000 MMBtu equivalent of natural gas on a peak day for Koch, 5,000 MMBtu equivalent on an average day and 1,825,000 MMBtu equivalent on an annual basis. It is stated that Northwest would receive the gas for Koch's account at existing points on Northwest's system in San Juan County, New Mexico, and Mesa County, Colorado, and that Northwest would deliver equivalent volumes at existing points in New Mexico and Colorado. It is explained that the service commenced April 5, 1989, under the automatic authorization provisions of Section 284.223 of the Commission's Regulations, as reported in Docket No. ST89–3764.

Comment date: July 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

17. Texas Eastern Transmission Corporation

[Docket No. CP89–1572–000]

June 16, 1989.

Take notice that on June 6, 1989, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP89–1572–000 a request for declaratory order with respect to Order No. 490 and an application pursuant to section 7(b) of the Natural Gas Act for an order permitting and approving the partial abandonment of its purchase of gas from United Gas Pipe Line Company (United) under United's Rate Schedule PL–N effective November 1, 1988, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Eastern requests that the Commission issue such declaratory order and abandonment authorization as necessary to reflect the contractual reduction of the Maximum Daily Quantity (MDQ) under the service agreement between Texas Eastern and United under United's Rate Schedule PL–N from the currently authorized MDQ of 400,000 Mcf to 300,000 Mcf effective November 1, 1988. Also, in conjunction with such MDQ reduction, Texas Eastern requests that the applicable D–1 billing determinants, used in part to determine the demand charge, be reduced from 400,000 Mcf to 300,000 Mcf, effective retroactive to November 1, 1988, with interest.

Texas Eastern states that United was authorized to sell gas to Texas Eastern pursuant to the Commission's order issued September 30, 1985, in Docket No. CP85–368–000 and that pursuant to such authorization, United and Texas Eastern entered into a service agreement dated October 28, 1985, and a letter agreement, also dated October 28, 1985. Texas Eastern states that under the service agreement, United is authorized to sell gas to Texas Eastern at interconnections between the systems of Texas Eastern and United near Kosciusko, Mississippi; West Monroe, Ouachita Parish, Louisiana; Longview, Gregg County, Texas, and at six secondary delivery points.

Texas Eastern asserts that pursuant to the terms of the service agreement, it is contractually entitled to the reduction in the MDQ that it is requesting. It is indicated that Paragraph b. of Article III of the service agreement provides that either

Comment date: July 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

18. Northwest Pipeline Corp.

[Docket No. CP89–1604–000]

June 16, 1989.

Take notice that on June 12, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89–1604–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Apache Corporation (Apache), a natural gas producer, under its blanket authorization issued in Docket No. CP86–578–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest would perform the proposed interruptible transportation service for Apache, pursuant to an interruptible transportation service agreement dated January 19, 1989. The transportation agreement is effective for a term continuing to March 1, 1991, and month to month thereafter until terminated by either party or thirty days written notice. Northwest proposes to transport no more than 50,000 MMBtu on a peak day; approximately 100 MMBtu on an average day; and on an annual basis approximately 36,500 MMBtu of natural gas for Apache. Northwest proposes to transport the subject gas from any transportation receipt point on its system.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Northwest commenced such self-implementing service on May 8, 1989, as reported in Docket No. ST89–3815–000.

Comment date: July 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

19. Paiute Pipeline Co.

[Docket No. CP89–1598–000]

June 16, 1989.

Take notice that on June 12, 1989, Paiute Pipeline Company (Paiute), P.O. Box 94197, Las Vegas, Nevada 89193–4197, filed in Docket No. CP89–1598–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of IGI Resources, Inc. (IGI), a natural gas marketer, under Paiute's blanket certificate issued in Docket No. CP87–309–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Paiute requests authorization to transport, on an interruptible basis, up to a maximum of 31,700 MMBtu of natural gas per day for IGI from a point of receipt at the Idaho-Nevada order to delivery points located in Douglas, Washoe, Pershing, Carson City, Churchill, Lyon and Humboldt Counties, Nevada. Paiute anticipates transporting, on an average day 5,000 MMBtu and an annual volume of 1,825,000 MMBtu.

Paiute states that the transportation of natural gas for IGI commenced April 16, 1989, as reported in Docket No. ST89–3542–000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Paiute in Docket No. CP87–309–000.

Comment date: July 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

20. Northern Natural Gas Co.

[Docket No. CP89–1595–000]

June 16, 1989.

Take notice that on June 9, 1989, Northern Natural Gas Company, Division of Enron Corp., (Northern) 1400 Smith Street, Houston, Texas 77251, filed in Docket No. CP89–1595–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas under its blanket authorization issued in Docket No. CP86–435–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which

is on file with the Commission and open to public inspection.

Northern proposes to transport natural gas on an interuptible basis for Amax Oil & Gas, Inc. (Amax). Northern explains that the service commenced under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-3231. Northern proposes to transport on a peak day up to 36,825 MMBtu; on an average day up to 27,620 MMBtu; and on an annual basis up to 13,441,125 MMBtu. Northern proposes to receive and deliver the gas at various points in Texas.

Comment date: July 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

21. United Gas Pipe Line Co.

[Docket No. CP89-1618-000]

June 16, 1989.

Take notice that on June 13, 1989, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1618-000 a request pursuant to §§ 157.2054 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform an interruptible transportation service for Kogas, Inc. (Kogas), a marketer, under United's blanket certificate issued in Docket No. CP88-6-000, 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.

United states that pursuant to a transportation service agreement dated October 4, 1988, it proposes to receive up to 200,000 Mcf per day from Kogas at specified points located in Texas, Mississippi, and onshore and offshore Louisiana, and redeliver the gas at specific delivery points located in Mississippi and Louisiana. United states that the peak day and average day volumes would be 206,000 million Btu, and that the annual volumes would be 75,190,000 million Btu. It is stated that on May 10, 1989, United initiated a 120-day transportation service for Kogas under § 284.223(a) as reported in Docket No. ST89-3619-000.

United further states that no facilities need be constructed to implement the service. United states that the primary term of the transportation service would expire one month from the date of first delivery but that the service would continue on a month to month basis until terminated. United proposes to charge rates and abide by the terms and conditions of its Rate Schedule ITS.

Comment date: July 31,1989, in accordance with Standard Paragraph G at the end of this notice.

22. Trunkline Gas Co.

[Docket No. CP89-1611-000]

June 16, 1989.

Take notice that on June 13, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas, 77251, filed in Docket No. CP89-1611-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon an exchange service being provided to Exxon Company, U.S.A. (Exxon), formerly Humble Oil and Refining Company, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline states that by letter dated June 15, 1988, Exxon has given notice of its intent to terminate the exchange service being provided pursuant to an agreement dated October 28, 1968, under Trunkline's Rate Schedule E-1 of its FERC Gas Tariff, Original Volume No 2, on the basis that the service is no longer necessary. Trunkline further states that the service involves the exchange of up to 28,000 Mcf per day of natural gas which is received from Exxon at the tailgate of the Kelsey Plant in Brooks County, Texas, and redelivered to Tennessee Gas Pipeline Company for Exxon's account in Hildalgo County, Texas, and was authorized under the certificate issued in Docket No. CP69-159 on October 14, 1969. Trunkline advises that there would be no abandonment of facilities.

Comment date: July 7, 1989, in accordance with Standard Paragraph F at the end of this notice.

23. Northern Natural Gas Co.; Division of Enron Corp.

[Docket No. CP89-1586-000]

June 16, 1989.

Take notice that on June 7, 1989, Northern Natural Gas Co., Division of Enron Corp., (Northern) 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188 filed in Docket No. CP89-1586-000, a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Vintage Pipeline Systems, Inc. (Vintage), under the authorization issued in Docket No. CP86-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern would perform the proposed interruptible transportation service for Vintage, a marketer of natural gas, pursuant to an interruptible transportation agreement. IT-1 dated May 1, 1989 (transportation agreement number 72266). The term of the transportation agreement is for one year from the date of initial delivery, and month to month thereafter unless terminated upon 30 days prior written notice to the other party. Northern proposes to transport on a peak day up to 5,000 MMBtu; on an average day up to 3,750 MMBtu; and on an annual basis of 1,825,000 MMBtu of natural gas for Vintage. It is stated that unless Northern agrees in writing to a lower rate, Vintage shall pay Northern each month for transportation service at the maximum rates or charges in effect from time to time under Rates Schedule IT-1, or any effective superseding rate schedule on file with the Commission. Northern proposes to receive the subject gas from various existing receipt points on its system for transportation to various existing delivery points on its system. Northern avers that construction of facilities would not be required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's regulations. Northern commenced such self-implementing service on May 31, 1989, as reported in Docket No. ST89-3706-000.

Comment date: July 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

24. Southern Natural Gas Co.

[Docket No. CP89-1607-000]

June 16, 1989.

Take notice that on June 12, 1989, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP89-1607-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for TXG Gas Marketing Company (TXG), a marketer of natural gas, under Southern's blanket certificate issued in Docket No. CP88-316-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern proposes to transport on an interruptible basis up to 100,000 MMBtu of natural gas on a peak day, 3,500 MMBTU on an average day and 1,277,500 MMBtu on an annual basis for TXG. Southern states that it would perform the transportation service for

TXG under Southern's Rate Schedule IT. Southern indicates that it would transport the gas from receipt points in offshore Texas, offshore Louisiana, Texas, Louisiana, Alabama and Mississippi, to various delivery points in Louisiana.

It is explained that the service commenced April 18, 1989, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89–3304. Southern indicates that no new facilities would be necessary to provide the subject service.

Comment date: July 31, 1989, in accordance with Standard Paragraph G at the end of this notice.

25. ANR Pipeline

[Docket No. CP89–1578–000]

June 16, 1989.

Take notice that on June 6, 1989, ANR Pipeline Company, (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89–1578–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service for Northern Natural Gas Company (Northern), all as more fully set forth in the applicable which is on file with the Commission and open to public inspection.

It is stated that pursuant to a transportation service agreement, dated May 22, 1978, between ANR and Northern, ANR agreed to take delivery of up to 350 Mcf of natural gas per day for the account of Northern at the production platform at Ship Shoal Area Block 291, and redeliver the gas to the Patterson Station in St. Mary Parish, Louisiana. It is further stated that this agreement is filed as Rate Schedule X–75 under Original Volume No. 2 of ANR's FERC Gas Traffic. ANR in addition, it is said, by letter by letter agreement dated May 22, 1978, agreed to transport the volumes of gas from the Patterson Station. ANR further states that this agreement is filed as Rate Schedule X–76 under Original Volume No. 2 of ANR's FERC Gas Tariff.

ANR states that by letter dated December 21, 1988, Northern advised ANR that it washed to terminate the service designated as Rate Schedule X–75 at the end of its primary term, effective July 13, 1989. ANR states further that Northern, by letter dated February 23, 1989, notified ANR of its intention to terminate the service designated as Rate Schedule X–76 as well.

Comment date: July 7 1989 in accordance with Standard Paragraph F at the end of the 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 intevention 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. 89–14776 Filed 6–21–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP89–193–000]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

June 16, 1989.

Take notice that ANR Pipeline Company ("ANR") on June 9, 1989 tendered for filing as a part of its Original Volume Nos. 1, 1–A and 2 of its FERC Gas Tariff, certain tariff sheets.

ANR states that the above-referenced tariff sheets are being filed under § 2.104 of the Commission's Regulations to implement partial recovery of $86.8 million of additional buyout buydown costs and to establish a volumetric buyout buydown surcharge applicable to such additional buyout buydown costs. The filing is made pursuant to the litigation exception of Order No. 500. Under the proposed filing, ANR is proposing to absorb twenty five percent of its buyout buydown costs, to recover twenty five percent of such costs through a fixed monthly charge applicable to its Rate Schedules CD–1, MC–1 and SGS–1 sales customers and to recover fifty percent of such costs through a volumetric buyout buydown surcharge of 1.56¢ per dth applicable to each sales and transportation Rate Schedule under Original Volume Nos. 1, 1–A and 2 of ANR's FERC Gas Tariff.

ANR has requested that the Commission accept this filing, to become effective July 10, 1989.

ANR states that copies of the filing were served upon all of its Volume Nos. 1, 1–A and 2 customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commisson, 825 North Capitol Street, NE., Washington, DC 20426 by June 23, 1989 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). 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 application are

on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-14778 Filed 6-21-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA89-1-61-000]

Bayou Interstate Pipeline System; Proposed Change in Rates

June 15, 1989.

Take notice that on June 7, 1989, Bayou Interstate Pipeline System (Bayou) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, (Tariff) Eleventh Revised Sheet No. 4 to be effective August 1, 1989.

Bayou states that the proposed tariff sheet is filed pursuant to the Purchased Gas Cost Adjustment provisions contained in section 15 of Bayou's tariff. A copy of this filing is being mailed to Bayou's jurisdictional customers and interested state regulatory agencies.

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 §§ 385.214 and 385.211. All such motions or protests must be filed on or before July 6, 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. 89-14779 Filed 6-21-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-14-007 TA89-1-45-004 TQ89-1-45-003]

Inter-City Minnesota Pipelines Ltd., Inc.; Compliance Filing

June 16, 1989.

Take notice that on June 12, 1989, Inter-City Minnesota Pipelines Ltd., Inc., 245 Yorkland Boulevard, North York, Ontario, Canada M2J 1R1 ("Inter-City") tendered for filing revised tariff sheets to its FERC Gas tariff:

Original Volume No. 1

Third Substitute First Revised Thirty-First Revised Sheet No. 4

Fourth Substitute First Revised Thirty-First Revised Sheet No. 4

Original Volume No. 2

Second Substitute Sixth Revised Sheet No. 11

Inter-City states the revised tariff sheets are filed in compliance with an Order issued in this proceeding on January 30, 1989. That order required Inter-City to revise its test period adjustments to the extent necessary to reflect only the annualization of charges that occurred during the base period.

Inter-City states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commisson, 825 North Capitol Street, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before June 23, 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. 89-14780 Filed 6-21-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ST89-1708-000 and ST89-1775-000]

Louisiana Intrastate Gas Corp.; Staff Panel

June 15, 1989.

Pursuant to the Commission's orders [1] in the above-captioned dockets, a Staff Panel (Panel) shall be convened to allow opportunity for written comments and for the oral presentation of views, data, and arguments regarding the fair and equitable incremental rate that should be established for service on the Eloi system of Louisiana Intrastate Gas Corporation. The Panel will not be a judicial or evidentiary-type hearing and there will be no cross-examination of persons presenting statements. Members participating on the Panel before whom the presentations are made may ask questions. If time permits, Panel members may also ask such relevant questions as are submitted to them by participants. Other procedural rules relating to the Panel will be announced at the time the proceeding commences.

The Staff Panel will be held on Thursday, June 22, 1989 at 1:30 p.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Any questions regarding these proceedings should be directed to Mary Doyle, at (202) 357-8927. All interested persons and staff may attend the proceeding.

Lois D. Cashell,

Secretary.

[FR Doc. 89-14781 Filed 6-21-89; 8:45 am]

BILLING CODE 6717-01-M

[1] *See* Louisiana Intrastate Gas Corp., 47 FERC ¶ 61,048 (1989), and 47 FERC ¶ 61,336 (1989).

[Docket No. RP89-192-000]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

June 15, 1989.

Take notice that on June 9, 1989, Southern Natural Gas Company (Southern) tendered for filing Fourth Revised Sheet No. 4J and Fifth Revised Sheet No. 4J to Sixth Revised Volume No. 1 of its FERC Gas Tariff, with a proposed effective date of April 1, 1989, and May 1, 1989, respectively.

Southern states that the proposed tariff sheets are being submitted in order to revise the rates applicable to Southern's Rate Schedule IS to reflect Southern's currently effective cost of gas and proposed revision to its volumetric take-or-pay surcharge. Southern further states that the filing is necessitated because in its previous filings to revise its cost of gas and volumetric surcharge, it inadvertently omitted the subject sheet.

Any person desiring to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before June 22, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not 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. 89-14782 Filed 6-21-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-194-000]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

June 16, 1989.

Take notice that on June 13, 1989, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following tariff sheets to its FERC Gas Tariff:

FERC Gas Tariff, Original Volume No. 1

Seventh Revised Sheet No. 1
Seventeenth Revised Sheet No. 10
Seventeenth Revised Sheet No. 10A
First Revised Sheet No. 76A
First Revised Sheet No. 128
First Revised Sheet No. 129
Original Sheet No. 130

FPC Gas Tariff, Original Volume No. 2

Tenth Revised Sheet No. 82
Twenty-Sixth Revised Sheet No. 333
Third Revised Sheet No. 484
Eleventh Revised Sheet No. 547
Seventh Revised Sheet No. 558
Fifth Revised Sheet No. 591
Eleventh Revised Sheet No. 919
Thirteenth Revised Sheet No. 982
Eleventh Revised Sheet No. 1005
Fourth Revised Sheet No. 1085
Fourth Revised Sheet No. 1123
Third Revised Sheet No. 1180

FERC Gas Tariff, Original Volume No. 2-A

Second Revised Sheet No. 10
Second Revised Sheet No. 11
Second Revised Sheet No. 14
Second Revised Sheet No. 60
Second Revised Sheet No. 108
Original Sheet No. 109

FERC Gas Tariff, Original Volume No. 3

Fifth Revised Sheet No. 21
Fifth Revised Sheet No. 22
Third Revised Sheet No. 23

Texas Gas states that these tariff sheets are filed to incorporate a volumetric surcharge designed to recover take-or-pay (TOP) costs to be billed to Texas Gas by ANR Pipeline Company (ANR). ANR's filing was accepted by Federal Energy Regulatory Commission (FERC) Order issued April 28, 1989, in Docket No. RP89-127, to be effective, subject to refund and other certain conditions, on May 1, 1989.

Texas Gas states that on March 31, 1989, ANR filed in the above referenced Docket to initiate the recovery of an additional $160.1 million of TOP buyout and buydown costs and to establish a volumetric surcharge of 2.65¢ per dth on each sale and transportation rate schedule to recover 50 percent of those costs. ANR proposed to absorb 25 percent and direct bill 25 percent to its sales customers.

Copies of the revised tariff sheets are being mailed to Texas Gas's jurisdictional customers and interested state 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 §§ 385.214 and 385.211 of the Commission's Rule and Regulations. All such motions or protests should be filed on or before June 23, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-14783 Filed 6-21-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-138-000 et al.]

United Gas Pipe Line Co.; Compliance Filing

June 15, 1989.

Take notice that on May 30, 1989, United Gas Pipe Line Company (United) submitted for filing certain workpapers with narrative descriptions in response to the Commission's April 20, 1989 Order in this proceeding.

United states that certain workers and supporting narrative descriptions are being submitted under seal and subject to § 388.112 of the Commission's regulations. United states that since the proceeding in Docket No. RP89-138 has been consolidated with Docket Nos. RP88-27 and RP88-264, and since the Protective Order issued in Order No. RP88-27 has been extended to Docket No. RP89-138, United will make this information available to all eligible persons who have executed a non-disclosure certificate pursuant to the Protective Order.

United states that the workpapers and supporting narrative description will be available for review by appointment in United's Houston, Texas or Washington, DC offices.

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 N. Capitol Street, NE., Washington, DC 20426, in such accordance with §§ 285.214 and 385.211 of the Commission's regulations. All such motions of protest should be filed on or before June 28, 1989.

Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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. 89-14784 Filed 6-21-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-147-003]

United Gas Pipe Line Co.; Compliance Filing

June 15, 1989.

Take notice that on June 9, 1989, United Gas Pipe Line Company (United) submitted for filing the following tariff sheets and certain workpapers with narrative descriptions in response to the Commission's May 10, 1989 Letter Order (May 10, 1989 Order) in this proceeding:

Effective May 1, 1989

Substitute Original Sheet No. 4-M
Substitute Original Sheet No. 4-N
Substitute Original Sheet No. 4-O
Substitute Original Sheet No. 4-P
Substitute Original Sheet No. 4-Q
Original Sheet No. 4-Q1
Substitute Original Sheet No. 4-R

United states that the filing is being made without waiver of its right to seek further review of the May 10, 1989 Order, and will be served upon all parties listed on the official service list in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, in accordance with §§ 285.214 and 385.211 of the Commission's regulations. All such protests should be filed on or before June 22, 1989.

Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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. 89-14785 Filed 6-21-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-3-35-000]

West Texas Gas, Inc.; Filing

June 15, 1989.

Take notice that on June 7, 1989, West Texas Gas, Inc. (WTG) filed Fifteenth Revised Sheet No. 3a to its FERC Gas Tariff, Original Volume No. 1, proposed to be effective April 1, 1989. This tariff sheet was filed by WTG in accordance with the Commission's purchased gas adjustment regulations.

Copies of the filing were served upon WTG's customers and interested state commissions.

Any persons 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 §§ 385.21 and 385.214 (1987)). All such motions or protests should be filed on or before June 22, 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 filed 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. 89-14786 Filed 6-21-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-256-002]

West Texas Gas, Inc.; Compliance Filing

June 16, 1989.

Take notice that on June 9, 1989, West Texas Gas, Inc. (WTG) filed Substitute Eleventh Revised Sheet No. 3a to its FERC Gas Tariff, Original Volume No. 1, to be effective October 21, 1988.

WTG states that this filing complies with the Commission's order of October 28, 1988. WTG states that this filing is a revision to its May 18, 1989 filing to put the rates in effect.

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 23, 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. 89-14787 Filed 6-21-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-68016; FRL-3607-4]

Receipt of Uniroyal Chemical Co. Request To Delete Daminozide Product Use

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This Notice announces EPA's receipt of a request from Uniroyal Chemical Company to amend the registration of the B-Nine SP label (EPA Reg. No. 400-110) to delete the tomato transplant use. This Notice is published in accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT:

Robert J. Taylor, Product Manager (PM) 25, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Room 245, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, 703-557-1800.

SUPPLEMENTARY INFORMATION: On June 15, 1989, EPA received a request from Uniroyal Chemical Company, 74 Amity Road, Bethany, Connecticut, 06525, to amend its B-Nine SP registration to delete the tomato transplant use from the subject product label. The active ingredient of B-Nine SP is daminozide. In the Federal Register of May 24, 1989 (54 FR 22558), EPA published its preliminary determination to cancel all food uses of daminozide based on its conclusion that use of daminozide posed an unreasonable increased lifetime cancer risk from dietary exposure. No regulatory action was proposed for the non-food uses of daminozide on ornamentals and bedding plants. The only food use on the B-Nine SP label is the tomato transplant use.

Uniroyal requested the deletion of the tomato transplant use as a result of an agreement it signed with EPA on June 2, 1989. In addition to deleting the tomato transplant use from the B-Nine SP label, Uniroyal agreed, among other things, to immediately cease all sale and distribution of daminozide products bearing food uses on the label and to conduct a recall of these products.

This Notice of receipt of Uniroyal's request to delete the tomato use from the B-Nine SP label is published in accordance with FIFRA section 6(f)(1). EPA intends to approve this registration amendment immediately after the date of publication of this Notice in the Federal Register.

Dated: June 19, 1989.

Franklin D.R. Gee,

Registration Division.

[FR Doc. 89-14884 Filed 6-21-89; 8:45 am]

BILLING CODE 6560-50-M

FARM CREDIT ADMINISTRATION

Financially Related Services; Public Hearing; Extension of Comment Period

AGENCY: Farm Credit Administration.

ACTION: Public hearing; comment period extension.

SUMMARY: On June 14, 1989, the Farm Credit Administration (FCA) held a public hearing concerning the availability and offering of financially related services to Farm Credit borrowers. (54 FR 13948, April 6, 1989) The FCA hereby gives notice that the period to submit comments on this matter is extended.

DATE: The period for receipt of written comments is extended to July 14, 1989.

ADDRESS: All comments should be submitted in writing, in triplicate, to David A. Hill, Secretary, Farm Credit Administration Board, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

FOR FURTHER INFORMATION CONTACT: David A. Hill, Secretary of the Farm Credit Administration Board, Farm Credit Administration, McLean, Virginia 22102-5090, (703) 883-4003, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: Due to the potential impact that the availability of financially related services could have on Farm Credit borrowers, institutions, and other parties, it was determined that a comment period extension to solicit views on the various issues concerning these services would be beneficial in ensuring that all interested parties have an opportunity to comment. Accordingly, the period for submitting comments on financially

related services has been extended until July 14, 1989.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 89-14753 Filed 6-21-89; 8:45 am]

BILLING CODE 6705-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-828-DR]

Amendment to Notice of a Major Disaster Declaration; Texas

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA-828-DR), dated May 19, 1989, and related determinations.

DATED: June 15, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Texas, dated May 19, 1989, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 19, 1989:

The counties of Archer, Clay, Hale, Knox, Marion, Rockwall, Taylor, Titus, and Trinity for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89-14816 Filed 6-21-89; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-828-DR]

Amendment to Notice of a Major Disaster Declaration; Texas

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA-828-DR), dated May 19, 1989, and related determinations.

DATED: June 16, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (292) 646-3614.

Notice

The notice of a major disaster for the State of Texas, dated May 19, 1989, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 19, 1989:

The counties of Sabine and Shelby for Individual Assistance.

Notice is also hereby given that the incident period for this disaster is closed effective June 15, 1989.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89-14817 Filed 6-21-89; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Title: City of Long Beach Terminal Agreement.

Parties: City of Long Beach (City); Hanjin Shipping Company, Ltd. (Hanjin).

Synopsis: The Agreement provides Hanjin a 15-year preferential assignment of approximately 45 acres commonly referred to as the Seventh Street Peninsula to be used for the operation of a marine container terminal. The City intends to deliver possession of the premises for Hanjin's use upon completion of construction of the facility by November 1, 1990.

Title: Georgia Ports Authority Terminal Agreement.

Parties: Georgia Ports Authority; Ocean Star Container Line.

Synopsis: The Agreement amends the Schedule of Rates to reflect a reduction in the consolidation rate per container from $123.76 to $102.00 and provide that all other charges not listed in the Schedule of Rates shall be at 80% of the Port's Terminal Tariff No. 1-F.

By Order of the Federal Maritime Commission.

Dated: June 16, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-14732 Filed 6-21-89; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-007540-051.

Title: United States Atlantic & Gulf/Southeastern Caribbean Conference.

Parties: Puerto Rico Maritime Shipping Authority; Sea-Land Service, Inc.; Shipping Corporation of Trinidad and Tobago Ltd.

Synopsis: The proposed modification would amend the Agreement to prohibit independent action on loyalty contracts.

Agreement No.: 202-010424-018.

Title: United States Atlantic & Gulf Hispaniola Steamship Freight Conference.

Parties: Crowley Caribbean Transport, Inc./CTMT, Inc./Trailer Marine Transport Corporation (As One Party); Puerto Rico Maritime Shipping Authority; Sea-Land Service, Inc.; Shipping Corporation of Trinidad and Tobago Ltd.

Synopsis: The proposed modification would delete the Shipping Corporation of Trinidad and Tobago Ltd., as a party to the Agreement and would also prohibit members from taking independent actions to enter into service or loyalty contracts or to take

independent action with respect to any existing service contract.

Agreement No.: 213-010972-002.

Title: Three Lines' Far East-Atlantic Coast Space Charter and Sailing Agreement.

Parties: Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha; Nippon Liner System, Ltd.; Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The proposed modification deletes Yamashita-Shinnihon Steamship Co., Ltd., as a party to the Agreement. It would also permit the parties to extend the Agreement's term through October 19, 1992, and authorize withdrawal at any time by any party upon giving six months' prior written notice.

By Order of the Federal Maritime Commission.

Dated: June 19, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-14775 Filed 6-21-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

[Docket No. R-0656]

Private Sector Adjustment Factor

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board has approved revisions to the methodology for computing the Private Sector Adjustment Factor ("PSAF"). The PSAF is a computation of imputed costs that takes into account the taxes that would have been paid and the return on capital that would have been provided had the Federal Reserve's priced services been furnished by a private business firm. The revisions will reduce volatility and the need for ad hoc adjustments in the PSAF and will modify certain calculations to conform more closely with commercial bank practices.

EFFECTIVE DATE: June 16, 1989.

FOR FURTHER INFORMATION CONTACT: Clyde H. Farnsworth, Director (202/452-2787) or Paul Bettge, Program Leader (202/452-3174), Division of Federal Reserve Bank Operations; for the hearing impaired *only:* Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION:

Background

The Monetary Control Act of 1980 requires that fee schedules for the Federal Reserve's priced services include an allocation of imputed costs for "taxes that would have been paid and the return on capital that would have been provided had the services been furnished by a private business firm." These imputed costs, referred to as the private sector adjustment factor ("PSAF"), are incorporated into the cost base on which fees for Federal Reserve priced services are established.

The current methodology used to compute capital costs in the PSAF involves three steps. The first step is to detemine the value of Federal Reserve assets that will be used directly in producing priced services during the coming year, including the net effect of assets planned to be acquired or disposed of during the year. The second step is to determine the financing method. Short-term assets are assumed to be financed by short-term liabilities; long-term assets are assumed to be financed by a combination of long-term debt and equity. Third, imputed capital costs are determined by applying short and long-term interest rates and a rate of return on equity derived from a sample of bank holding companies ("BHCs") to the assumed debt and equity values. The consolidated financial data for the BHCs are drawn from the 25 largest BHCs (in terms of asset size), with all factors except the short-term debt rate averaged over three years. Because short-term debt, by definition, matures within one year, only data for the most recent year are used for computing the short-term debt rate. Capital costs, together with imputations for estimated sales taxes, FDIC insurance assessment on clearing accounts (or the clearing portion of mixed reserve/clearing accounts) held with the Federal Reserve to settle transactions, and expenses of the Board of Governors related to priced services, comprise the PSAF.

Discussion

In January the Board requested comment on four proposed revisions to the methodology for computing the PSAF (54 FR 4074, January 27, 1989):

1. Increasing the size of the BHC sample from the 25 largest BHCs to the 50 largest BHCs;

2. Extending the sample period from three years to five years;

3. Ensuring that sufficient capital is imputed to meet the risk-based capital guidelines of 8 percent capital to risk-weighted assets, including in assets a computation of gross cash items in the process of collection; and

4. Calculating the imputed FDIC insurance assessment on the basis of clearing balances plus an esimate of deferred credits calculated on a basis similar to a commercial bank.

The Board received seven public comments in response to the proposals, two from trade associations and five from bank holding companies. The Board has considered the comments and has approved the revisions to the PSAF methodology as proposed with one modification. The Board has approved the inclusion of gross cash items in the process of collection ("CIPC"), rather than net CIPC as proposed, measured on a basis comparable with commercial bank on the pro forma priced services balance sheet. These revisions will become effective with the computation of the PSAF for 1990.

Expansion of Sample Size and Period. The Board has revised the PSAF methodology to extend the sample period to five years and increase the sample size to include the 50 largest bank holding companies each year. The commenters generally endorsed both expanding the sample size of BHCs used in the PSAF calculation from the 25 to the 50 largest privately-owned BHCs in each year and averaging the most recent five years of BHC data to determine the pre-tax return on equity, the long-term debt rate, and the ratio of long-term debt and equity used to compute the PSAF. Two commenters disagreed with the use of a historic five year sample period. As an alternative, one commenter suggested that the Board use projected data, and the other proposed using five years of data but eliminating the highest and lowest years and averaging the three remaining years to minimize disruptions and neutralize the effect those years have on the data. The Board believes that use of historical data is appropriate because it captures the underlying long-term trend of industry rates of return. To measure the long-term results of BHC operations, the Board believes it is necessary to reflect the activities of all years. In addition, because the Monetary Control Act requires that fees be set to recover costs over the long run, the use of historical data in the PSAF computation will, over time, include the results of each year and fees will be established appropriately. The Board believes that only historical data should be used in the computation as it is more objective than the use of projections and allows verification of the Board's computations.

The expansion of the sample size and period should significantly reduce the volatility of the PSAF, as each BHC will have a less dramatic impact upon the overall average. This change should reduce the frequency of ad hoc adjustments. The larger sample size wil

also serve to include a number of regional correspondent banks and will increase the geographical diversity of the group.

Two commenters suggested that the BHC model provides an inappropriate basis for determining the components of the PSAF. Public comment on this issue has been requested on two prior occasions. On both occasions, the Board considered the comments offered and decided that the BHC model was the most appropriate. The Board, however, again considered alternative models upon which to base the PSAF and determined that none offered clear benefits over the BHC model and, in some instances, introduced additional implementation difficulties. The Board continues to believe that the BHC model is appropriate because BHCs offer services most comparable to those offered by the Federal Reserve Banks. The two commenters generally endorse the plan to expand both the sample size and period if the Board continues use of the BHC model.

Two commenters also suggested that the sample for the PSAF be comprised of the 50 largest check processors and BHCs that provide check collection services. Specific data clearly identifying these organizations does not appear to be readily available. Using the largest banks, in terms of domestic correspondent balances, as a proxy for these organizations, the Board has found that there is a great deal of overlap between the two samples. Further, the Board believes the 50 largest BHCs is the appropriate sample because these organizations, as well as the Reserve Banks, provide payments services other than check collection.

Capital Adequacy. The Board has determined that the Federal Reserve will meet the risk-based capital guideline of 8 percent capital to risk-weighted assets and that the Federal Reserve will disclose on its pro forma priced services balance sheet gross CIPC, a basis comparable with a commercial bank. Commenters endorsed the proposal that the Federal Reserve meet the Board's risk-based capital guideline of 8 percent capital to risk-weighted assets for state member banks and BHCs. In meeting this guideline, the Board proposed that the Federal Reserve include in assets a computation of CIPC on a basis comparable to a commercial bank. On this basis, the amount of capital imputed for the 1989 PSAF totaled nearly 22 percent of risk-weighted assets. Had the newly-approved modifications to the PSAF been used for 1989, this percentage would have been nearly 25 percent.

The Board had proposed that net, rather than gross, CIPC should be included on the Federal Reserve's consolidated pro forma priced services balance sheet because the balance sheet is intended to identify priced services assets, and only the net amount of CIPC (float) requires financing. Some commenters suggested that gross CIPC should be reflected on the priced services balance sheet because generally accepted accounting principles require such treatment by the BHCs.

The Board believes that reflecting gross CIPC on the pro forma priced services balance sheet is acceptable, as long as readers of the statements understand that the majority of gross CIPC is offset by deferred credits. The portion of CIPC not offset by deferred credits represents float and, as required by the Monetary Control Act, is valued at the Federal funds rate for recovery and does not affect the PSAF. In determining the amount of CIPC to be shown on the pro forma priced services balance sheet, the same adjustments should be made to gross CIPC as discussed in the FDIC assessment section below. That is, CIPC arising from central bank activities, items that would otherwise be double-counted on a consolidated Federal Reserve balance sheet, and items that have been recorded prior to actual receipt and processing would be excluded from gross CIPC.

In the past, some groups have suggested that the Federal Reserve should impute a level of equity on its pro forma priced services balance sheet sufficient to meet the current equity to total assets ratio including CIPC, stated on a basis similar to that reported by commercial banks. The Federal Reserve imputes equity for priced services by assuming that long-term assets are financed by long-term debt and equity in the proportion of long-term debt and equity of the BHCs in the model. Using the proposed sample size and sample period, this imputation will result in over 70 percent of depreciable priced services assets being financed by equity. Because of the high percentage of depreciable assets that will be financed with equity, the Board believes that the current methodology for imputing equity capital is appropriate and results in a level of equity capital that is sufficient to support priced services operaitons.

FDIC Assessment. The Board has approved a modification, as proposed, to calculate the imputed FDIC assessment on the basis required of a commercial bank. The computation will include applying the required FDIC assessment rate to the projected level of clearing balances held with the Federal Reserve plus a projection of deferred credits. Accordingly, the following deferred credits will be excluded: intra-System deferred credits that would otherwise be double-counted on a consolidated Federal Reserve balance sheet; deferred credits associated with nonpriced items, such as deferred credits to government agencies; and deferred credits associated with providing fixed availability or credit prior to receipt and processing of items. In general, the commenters endorsed the conceptual approach to the calculation of the imputed FDIC insurance assessment.

This change in methodology for computing the FDIC insurance and calculation of a consolidated priced CIPC amount will result in an increase to the PSAF amount to be recovered. One commenter suggested that the Board "phase-in this increase over a three year period to avoid unnecessary volatility in a component of the PSAF and be more consistent with the Board's intention of decreasing overall volatility of the PSAF." The Board believes that, although the percentage increase in this one component of the PSAF will be quite large, the dollar impact of making this change on the overall PSAF will be fairly small, and should not result in significant price changes. Therefore, the Board will not phase-in the modification.

By order of the Board of Governors of the Federal Reserve System, June 16, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-14744 Filed 6-21-89; 8:45 am]

BILLING CODE 6210-01-M

Rules of Organization; Technical Amendments

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Technical amendments.

SUMMARY: The Secretary of the Board has approved technical amendments to the Board's Rules of Organization to reflect organizational changes. The amendments will bring descriptions of the functions of various offices and divisions of the Board up to date.

EFFECTIVE DATE: June 1, 1989.

FOR FURTHER INFORMATION CONTACT: Jennifer J. Johnson, Associate Secretary (202-452-3259), or Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf (202-452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The Board's Rules of Organization is an uncodified regulation issued as required by section (a)(1) of the Freedom of Information Act, 5 U.S.C. 552(a)(1). Copies are available from the Board's Publications Section, Washington, DC 20551, (202) 452–3245.

Rules of Organization

1. Section 3 of the Board's Rules of Organization is amended by revising paragraph (b), redesignating paragraph (r) as paragraph (s), and adding a new paragraph (r), to read as follows:

SECTION 3—Central Organization

* * * * *

(b) *Division of Monetary Affairs*, headed by a director, is responsible for planning and coordinating programs, memoranda, and analyses and presenting decision-making options in areas of monetary and closely related financial policies. Responsibilities are carried out through various staff activities, including preparation of position papers and other documents on monetary policy issues such as open market, discount and reserve requirement policy; performance of secretariat functions for the Federal Open Market Committee, including administration and record preparation and maintenance; coordination of regulatory and statistical issues closely related to monetary policy, including publication and interpretation of a variety of statistical series on money, reserves, and interest rates; and liaison with the trading desk at the Federal Reserve Bank of New York in connection with open market operations and market developments.

* * * * *

(r) *Office of Inspector General* is an independent office that operates under Pub. L. 100–504 and Board charter. It conducts and supervises audits, operations reviews, and investigations relating to the functions of the Board; recommends and provides leadership and coordination for activities that promote economy, efficiency, and effectiveness within the Board's programs and operations; detects and prevents fraud, waste, and abuse in the Board's programs and operations; and keeps the chairman and Congress fully informed about problems and deficiencies relating to the Board's programs and operations and the necessity for, and progress of, corrective actions.

By order of the Board of Governors of the Federal Reserve System, June 16, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89–14767 Filed 6–21–89; 8:45 am]

BILLING CODE 6210–01–M

Barclays PLC, London, England; Proposal To Underwrite and Deal in All Types of Debt Securities to a Limited Extent

Barclays PLC and Barclays Bank PLC both of London, England, and Barclays USA Inc., Wilmington, Delaware (collectively "Barclays"), have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) ("BHC Act") and § 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)), for permission for its subsidiary Barclays de Zoete Webb Government Securities, Inc., New York, New York ("Company"), to underwrite and deal in, to a limited degree, all types of debt securities.

Company is currently authorized to: (1) underwrite and deal in securities that state member banks are authorized to underwrite and deal in under 12 U.S.C. 24 (Seventh) and 335 pursuant to 12 CFR 225.25(b)(16); (2) provide investment or financial advice solely in connection with its bank-eligible underwriting and dealing activity pursuant to 12 CFR 225.25(b)(4); and (3) act as a futures commission merchant pursuant to 12 CFR 225.25(b)(18).

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." The Board has previously determined that underwriting and dealing in debt securities that are not eligible to be underwritten and dealt in by member banks ("ineligible securities") are closely related and proper incidents to banking, subject to certain conditions. *J.P. Morgan & Co. Incorporated, The Chase Manhattan Corporation, Bankers Trust New York Corporation, Citicorp and Security Pacific Corporation*, 75 Federal Reserve Bulletin 192 (1989) ("*Morgan*").

Barclays has proposed to underwrite and deal in ineligible debt securities under limitations that differ from those approved by the Board in its *Morgan* Order. Generally, Barclays proposes that the framework of limitations established by the Board in the *Morgan* Order should not apply to its operations outside the United States. For example, under the terms of its proposal, Barclays, which is a foreign bank as well as a bank holding company, would be permitted to lend to and in support of Company, including lending from its branch office in New York. Barclays has made other commitments as alternatives to those approved in the *Morgan* Order.

Barclays has proposed to underwrite and deal in ineligible debt securities under limitations that differ from those approved by the Board in its *Morgan* Order. Generally, Barclays proposes that the framework of limitations established by the Board in the *Morgan* Order should not apply to its opeations outside the United States. For example, under the terms of its proposal, Barclays, which is a foreign bank as well as a bank holding company, would be permitted to lend to and in support of Company, including lending from its branch office in New York. Barclays ahs made other commitments as alternatives to those approved in the *Morgan* Order.

Barclays has also requested additional authority for Company to underwrite and deal in securities representing interests in, or secured by, obligations originated or sponsored by an affiliate if such security is rated by a nationally-recognized rating agency or is issued or guaranteed by, or represents an interest in a security issued or guaranteed by, a U.S. government agency or a U.S. government-sponsored agency. Barclays' commitments and application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

In publishing the proposal for comment, the Board does not take any position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the BHC Act or the Glass-Steagall Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than July 19, 1989. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why 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.

Board of Governors of the Federal Reserve System, June 16, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-14768 Filed 6-21-89; 8:45 am]

BILLING CODE 6210-01-M

Capital City Bank; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 89-14099) published at page 25345 of the issue for Wednesday, June 14, 1989.

Under the Federal Reserve Bank of San Francisco, the entry for Capital City Bank Profit Sharing Plan is amended to read as follows:

1. *Capital City Bank Employee Stock Option Plan,* Salt Lake City, Utah; to acquire 15.9 percent of the voting shares of Capital Bancorp, Salt Lake City, Utah, and thereby indirectly acquire Capital Bank, Salt Lake City, Utah.

Comments on this application must be received by July 6, 1989.

Board of Governors of the Federal Reserve System, June 16, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-14770 Filed 6-21-89; 8:45 am]

BILLING CODE 6210-01-M

Compagnie Financiere de Suez; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 89-10299) published at page 18597 of the issue for Monday, May 1, 1989.

Under the Federal Reserve Bank of New York, the entry for Compagnie Financiere de Suez is amended to read as follows:

1. *Compagnie Financiere de Suez,* Paris, France, and Banque Indosuez, Paris, France; to engage in a joint venture through Daniel Breen & Company, Houston, Texas, and thereby engage in providing portfolio investment advice pursuant to § 225.25(b)(4) of the Board's Regulation Y.

Comments on this application must be received by July 7, 1989.

Board of Governors of the Federal Reserve System, June 16, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-14771 Filed 6-21-89; 8:45 am]

BILLING CODE 6210-01-M

One American Corp.; Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 14, 1989.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *One American Corp.*, Vacherie, Louisiana; to engage *de novo* through its subsidiary, One American Agency, Inc., Vacherie, Louisiana, in the business of leasing personal or real property or acting as agent, or broker, or advisor in leasing, pursuant to § 225.25(b)(5) of the Board's Regulation Y. These activities will be conducted throughout the State of Louisiana.

Board of Governors of the Federal Reserve System, June 16, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-14772 filed 6-21-89; 8:45 am]

BILLING CODE 6210-01-M

Peoples Heritage Financial Group, Inc.; Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 12, 1989.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Peoples Heritage Financial Group, Inc.*, Portland, Maine; to engage *de novo* through its subsidiaries, Mortgage Capital Corporation, Portland, Maine,

and Mortgage Capital Associates, Inc., Portland, Maine, in mortgage banking and loan brokerage activities involving the coinsurance programs of the United States Department of Housing and Urban Development pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 16, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-14773 filed 6-21-89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 5, 1989.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Roger & Barbara Brandt,* Silvis, Illinois, to acquire 14.58 percent; Jay M. & Judy B. Hanson, Geneseo, Illinois, to acquire 8.51 percent; Priscilla Hanson Middleton & Barry L. Middleton, Orlando, Florida, to acquire 4.86 percent; Max & Ruth Vandiver, Geneseo, Illinois, to acquire 9.12 percent; Lyle D. Wade and Sandra Wade, Prophetstown, Illinois, to acquire 12.88 percent; Lorraine Crandall & Sandra Wade, to acquire 1.46 percent; Lorraine Crandall & Mark Yuskis, to acquire 1.46 percent; Dale A. Dykstra to acquire 1.22 percent; Leon Gibson, to acquire 2.43 percent; Kathleen Hanson, to acquire 2.43 percent; Larry & Connie VenHuizen, to acquire 1.22 percent; Jon Woodburn, to acquire 1.22 percent; and Leland Woodburn, to acquire 2.43 percent of the voting shares of Hillsdale Development Corporation, Davenport, Iowa, and thereby indirectly acquire Old Farmers & Merchants State Bank, Hillsdale, Illinois.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Winston R. Lauder,* Ketchum, Idaho; to acquire between 80 and 100 percent of the voting shares of Idaho State Bank, Glenns Ferry, Idaho.

Board of Governors of the Federal Reserve System, June 16, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-14769 Filed 6-21-89; 8:45 am]

BILLING CODE 6210-01-M

Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 89-14099) published at page 25345 of the issue for Wednesday, June 14, 1989.

Under the Federal Reserve Bank of Chicago, the entry for Roger L. Siegert is amended to read as follows:

1. *Roger L. Siegert,* Plymouth, Wisconsin, and Barbara A. Siegert, Plymouth, Wisconsin, both individually and as Trustee of the Plymouth Veterinary Center Profit Sharing Trust, Plymouth, Wisconsin; to increase their percent of the ownership to 15.63 percent of Eastern Wisconsin Bancshares, Howards Grove, Wisconsin, as a result of a stock redemption, and thereby indirectly acquire State Bank of Howards Grove, Howards Grove, Wisconsin.

Comments on this application must be received by July 6, 1989.

Board of Governors of the Federal Reserve System, June 16, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-14774 Filed 6-21-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Injury Research Grant Review Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control (CDC) announces the following Committee meeting:

Name: Injury Research Grant Review Committee

Time and Date: 8:00 a.m.-5:00 p.m.—July 10-12, 1989

Place: Colony Square Hotel, 188 14th Street, NE., Atlanta, Georgia 30361

Status: Open 8:00 a.m.-9:30 a.m., July 10, 1989; Closed 10:00 a.m., July 10—5:00 p.m. July 12, 1989

Purpose: This Committee is charged with advising the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the scientific merit and technical feasibility of grant applications relating to the support of injury control research and demonstration projects and injury prevention research centers.

Matters to be Discussed: Agenda items for the meeting will include announcements, discussion of review procedures, future meeting dates, and review of grant applications. Beginning at 10:00 a.m., July 10, through 5:00 p.m., July 12, the Committee will conduct its review of grant applications. This portion of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(6), Title 5 U.S. Code, and the Determination of the Acting Director, Centers for Disease Control, pursuant to Pub. L. 92-463.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Thomas Bartenfeld, Acting Grants Manager, Division of Injury Epidemiology and Control, Center for Environmental Health and Injury Control, CDC, 1600 Clifton Road, NE., Mailstop F36, Atlanta, Georgia 30333, telephones: FTS: 236-4690; Commercial: 404/639-4690.

Dated: June 16, 1989.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 89-14763 Filed 6-21-89; 8:45 am]

BILLING CODE 4160-18-M

Injury Research Grant Review Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control (CDC) announces the following Committee meeting:

Name: Injury Research Grant Review Committee

Time and Date: 8:00 a.m.-5:00 p.m.—July 24-25, 1989; 8:00 a.m.-12:00 noon—July 26, 1989.

Place: Colony Square Hotel, 188 14th Street, NE., Atlanta, Georgia 30361

Status: Open 8:00 a.m.-9:30 a.m., July 24, 1989; Closed 10:00 a.m., July 24—12:00 noon, July 26, 1989

Purpose: This Committee is charged with advising the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director,

CDC, regarding the scientific merit and technical feasibility of grant applications relating to the support of injury control research and demonstration projects and injury prevention research centers.

Matters to be Discussed: Agenda items for the meeting will include announcements, discussion of review procedures, future meeting dates, and review of grant applications. Beginning at 10:00 a.m., July 24, through 12:00 noon, July 26, the Committee will conduct its review of grant applications. This portion of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(6), Title 5 U.S. Code, and the Determination of the Acting Director, Centers for Disease Control, pursuant to Pub. L. 92–463.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Thomas Bartenfeld, Acting Grants Manager, Division of Injury Epidemiology and Control, Center for Environmental Health and Injury Control, CDC, 1600 Clifton Road, NE., Mailstop F36, Atlanta, Georgia 30333, telephones: FTS: 236–4690; Commercial: 404/639–4690.

Dated: June 16, 1989.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 89–14764 Filed 6–21–89; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 89N–0206]

Animal Drug Export; Albendazole Suspension

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Norden Laboratories, Inc., has filed an application requesting approval for export of the animal drug albendazole suspension to Canada.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact persons identified below. Any future inquiries concerning the export of animal drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Beverly E. Bartolomeo, Center for Veterinary Medicine (HFV–142), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2855.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments of 1986 (Pub. L. 99–660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Norden Laboratories, Inc., Lincoln, NE 68501, has filed an application requesting approval for export to Canada of the animal drug albendazole suspension. The drug is intended for use as an anthelmintic for sheep. The application was received and filed in the Center for Veterinary Medicine on June 15, 1989, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by July 3, 1989, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99–660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.44).

Dated: June 16, 1989.

Robert C. Livingston,

Deputy Director, Office of New Animal Drug Evaluation Center for Veterinary Medicine.

[FR Doc. 89–14706 Filed 6–21–89; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

Hearing: Reconsideration of Disapproval of Oregon 1915(d) Waiver Amendment Number 60001.01

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on August 8, 1989 in Seattle, Washington to reconsider our decision to disapprove Oregon's 1915(d) waiver amendment, number 60001.01.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk July 7, 1989.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, HCFA Hearing Staff, 300 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 966–4471.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove an Oregon 1915(d) Waiver Amendment Number 60001.01.

Sections 1915(d)(6)(A) and 1116 of the Social Security Act (the Act) and 42 CFR Part 430 govern Department procedures that provide an administrative hearing for reconsideration of a disapproval of a 1915(d) waiver. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish a notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained in 42 CFR 430.76(c).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

Oregon requested an amendment (number 60001.01) to its waiver approved under section 1915(d) of the

Act. This amendment would revise the provider payment policy under the waiver to make Medicaid payment directly to recipients of the services for living costs which are incurred by live-in providers. These costs represent the provider's share of rent and food costs for the household.

The issues in this matter are whether the Medicaid statute permits direct payment to recipients under the waiver and whether costs which represent a live-in provider's share of rent and food costs are excluded as medical assistance under section 1915(d)(1) of the Act because they constitute "room and board."

Section 1915(d)(3) of the Act provides the authority for the Secretary to waive Section 1902(a)(1) of the Act (relating to statewideness), section 1902(a)(10)(B) (relating to comparability), and section 1902(a)(1)(C)(i)(III) (relating to income and resource rules applicable in the community). However, section 1915(d) does not provide the authority to waive sections 1905(a) or 1902(a)(32) of the Act. Section 1905(a) of the Act generally authorizes Medicaid payments only "*for* individuals" (emphasis added). The Medicaid statute permits direct payments to beneficiaries in only a few prescribed instances, not applicable here. It authorizes payments "*to* individuals" (emphasis added) only with respect to certain defined individuals and then only if the payment is for physicians' and dental services and the State includes the policy in its State plan. Consistent with section 1905(a), section 1902(a)(32) also specifically permit direct payments to individuals, but the scope of that subsection is restricted to payments for physicians' and dental services and depends upon certain prescribed requirements being met. Oregon, however, defines a system in which payment would be made to the individual recipients for a service other than physicians or dental services. Thus, HCFA has determined that direct payment under the waiver to recipients for living costs incurred by live-in providers is not consistent with the statute.

Section 1915(d)(1) of the Act provides that Medicaid payment may be made under a home and community-based services waiver for the elderly for "part or all of the cost of home or community-based services (*other than room and board*)" (emphasis added). Oregon, however, proposes to make Medicaid payment for "the provider's share of rent and food costs for the household." HCFA has construed "rent and food" to fall within the statutory language "room and board," which is not covered as medical assistance.

The notice to Oregon announcing an administrative hearing to reconsider the disapproval of its amendment to its approved 1915(d) waiver reads as follows:

Mr. Richard C. Ladd,
Administrator Senior Services Division, Oregon Department of Human Services, 313 Public Service Building, Salem, Oregon 97310.

Dear Mr. Ladd: I am approving your request for reconsideration of the decision to disapprove the amendment (number 60001.01) to your waiver approved under the authority of section 1915(d) of the Social Security Act (the Act). This request was received on May 16, 1989. This amendment would revise the provider payment policy under the 1915(d) waiver to make Medicaid payments directly to recipients of the services for living costs which are incurred by live-in providers.

There are two issues in this matter. They are: (1) Whether the Medicaid statute permits direct payment to recipients under the waiver, and (2) whether costs which represent a live-in provider's share of rent and food are excluded as medical assistance under section 1915(d)(1) of the Act because they constitute "room and board."

I am scheduling a hearing on your request for reconsideration of the disapproval of amendment number 60001.01 to your 1915(d) waiver. The hearing is scheduled to be held on August 8, 1989 at 10 a.m. in Room 301, 2201 Sixth Avenue, Seattle, Washington. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed in 42 CFR Part 430.

I am designating Mr. Stanley Katz as the presiding officer. If these arrangements present any problems, please contract the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 966-4471.

Sincerely,

Louis B. Hays,

Acting Administrator.

(Sections 1915(d)(6)(A) and 1116 of the Social Security Act (42 U.S.C. 1396n(d) and 1316); 42 CFR 430.18)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: June 15, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 89-14825 Filed 6-21-89; 8:45 am]
BILLING CODE 4120-03-M

Health Resources and Services Administration

Program Announcement, Proposed Funding Categories, Proposed Review Criteria and Proposed Funding Preference for Training Grants for Acquired Immunodeficiency Syndrome (AIDS) Regional Education and Training Centers Program

The Health Resources and Services Administration (HRSA), announces that Fiscal Year (FY) 1989 funds are available for training grants to develop AIDS Regional Education and Training Centers (ETCs). These centers will provide training for health care personnel in the care of people with Acquired Immunodeficiency Syndrome (AIDS) and other conditions related to infection with the Human Immunodeficiency Virus (HIV). The goal of the training is to prepare community primary care providers, including health care workers in Federal health facilities, health professional trainees, and faculty, to be able to counsel, diagnose, and manage such patients and to prepare selected trainees to act as instructors in their local areas. The centers will operate in collaboration with health professions schools, community hospitals, health departments, and other organizations involved in the provision of care to people with HIV related conditions. Comments are invited on the proposed funding categories, proposed review criteria and proposed funding preference.

Program Objectives

The purpose of the training grant program is to support the development of AIDS Regional Education and Training Centers (ETCs) for the health provider community. The program objectives for each center are to: (1) Provide multidisciplinary education and training to primary care providers, health professional trainees, and faculty on prevention and treatment of HIV infection and its implications, with particular emphasis on ambulatory care settings; (2) provide guidance in the development of a multidisciplinary approach to the management of HIV infection; (3) select and provide additional training to certain participants to qualify them for extending the training to others in their community; (4) develop multidisciplinary curricula for care of the HIV infected, including culturally relevant materials; (5) provide updates of new and timely information about HIV infection to primary and secondary health care providers; (6) serve as the

support system for area health professionals through regional hotlines, clearinghouses, and referral activities, and (7) provide information on the availability of clinical trial opportunities in order to assist patients to gain access to such trials.

Proposed Funding Categories

Funds were appropriated for these purposes by Pub. L. 100–436. Approximately $3.3 million will be available in Fiscal Year (FY) 1989 for competitive grants.

1. Applications (new or supplemental) will be accepted for the expansion of existing ETCs and/or the development of additional ETCs. For the purpose of this announcement, high incidence is defined as more than 400 new AIDS cases from February 6, 1988 to February 6, 1989 as indicated in the Centers for Disease Control *AIDS Weekly Surveillance Report* dated February 6, 1989. Approximately $1.1 million will be available for this purpose to support an estimated 2 new ETC centers.

2. Supplemental applications from established ETCs will be accepted to enhance efforts to train workers in federally funded comprehensive health care services projects and develop and introduce AIDS curricula in health professions schools. Approximately $2.0 million will be awarded for these activities ($1.3 million for training and $700,000 for curriculum development). These funds are being made available only to existing ETCs because their expertise and community experience make it more efficient for prompt initiation of both of these activities. In addition, providing supplemental funding for the ETCs ongoing activities is the most expedient and cost effective mechanism to achieve the maximum results with the funds available.

3. Supplemental applications from established ETCs will be accepted to conduct specialized training of health professionals regarding alcohol and other drug abuse, with an emphasis on the effects of alcohol and other drug abuse on the prevention and management of the HIV epidemic. In the conduct of this training, the provider should utilize previously developed health professions training materials dealing with the abuse of alcohol and other drugs and HIV infection. Approximately $275,000 will be available for this effort which is to provide funding for 2–3 substantive, coordinated activities. Funds for this effort are made available only to the existing ETCs because of their experience in training primary care providers in the management of HIV patients. They have an established training process which can quickly reach primary care health professionals. In addition, utilization of existing ETCs for this purpose avoids needless and inefficient duplication of effort.

All public and nonprofit private entities are eligible to apply for new grants. Eligible entities may include, but are not limited to, schools in academic health science centers; professional associations; consortia of health care and community organizations, e.g., Area Health Education Centers (AHECS); public or nonprofit private hospitals; and health departments which could develop AIDS education and training programs for health care providers.

Proposed Review Criteria

Applications for new training grants will be reviewed and rated according to the applicant's ability to meet the following proposed review criteria:

1. The degree to which the project plan adequately provides for meeting the project specifications;

2. The potential effectiveness of the project in carrying out the purposes of the grant program;

3. The capability of the applicant to conduct the proposed activities in a cost efficient manner;

4. The soundness of the fiscal plan for assuring effective utilization of grant funds; and

5. The potential of the project to continue on a self-sustaining basis after the period of grant support.

In addition, the following mechanisms may be applied in determining the funding of approved applications.

1. Funding preferences—funding of a specific category or group of approved applications ahead of other categories or groups of applications, such as competing continuations ahead of new projects.

2. Funding priorities—favorable adjustment of review scores when applications meet specified objective critieria.

3. Special considerations—enhancement of priority score by merit reviewers based on the extent to which applicants address special areas of concern.

Proposed Funding Preference

A funding preference will be accorded an applicant proposing a center in a State where no federally funded ETC program office exists. This preference is to foster coordination within a State and to maximize limited Federal financial resources.

Interested persons are invited to comment on the proposed funding categories, proposed review criteria, and proposed funding preference. Normally the comment period would be 60 days but due to the need to implement any changes for the Fiscal Year 1989 award cycle, this comment period has been reduced to 30 days. All comments received on or before July 24, 1989 will be considered before the final funding categories, final review criteria and final funding preference are established. No funds will be allocated or final selections made until a final notice is published stating whether the final funding categories, final review criteria and final funding preference will be applied.

Written comments should be addressed to: Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 4C–25, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Medicine, 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.

The application deadline date is July 21, 1989. Applications shall be considered as meeting the deadline if they are either

1. *Received on* or before the deadline date; or

2. *Postmarked on* or before the deadline date and received in time for submission to the review committee. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be acceptable as proof of timely mailing. Applications received after the deadline will be returned to the applicant.

Requests for technical or programmatic information should be directed to: AIDS Regional Education and Training Centers Program, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 4C–03, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6364.

Training grant application form (PHS 6025–1, approved under OMB number 0915–0060) and additional information regarding business, administrative and fiscal issues related to the awarding of grants under this notice may be requested from: Grants Management Officer (BRT), Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C–22, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6857.

Completed applications should be forwarded to the Grants Management Officer at the above address.

This program is listed at 13.145 in the Catalog of Federal Domestic Assistance and is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR Part 100).

Dated: June 16, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89-14707 Filed 6-21-89; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

National Institute of Environmental Health Sciences; Advisory Council on Hazardous Substances Research and Training Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting to be held at the National Institutes of Health, Building 31A, Conference Room 7, Bethesda, Maryland on July 26 and 27, 1989. The meeting will begin at 9 a.m. on July 26 and end at 11:30 a.m. on July 27.

The Superfund Amendments and Reauthorization Act of 1986 (SARA) established a university-based, basic research and education program and a hazardous waste worker training program within NIEHS. The purpose of the meeting is to provide the Advisory Council on Hazardous Substances Research and Training the opportunity to learn the status of these programs, which were previously described in the **Federal Register** of November 28, 1986 (51 FR 43089-43092), December 19, 1986 (51 FR 45556-45559) (working training program), and March 9, 1987 (52 FR 7218-7223) respectively.

Topics to be discussed during the meeting may include but are not limited to: The role of research in the last two years of the Superfund authorization; professional education and development for persons working in hazardous materials management and public health programs; hazardous waste destruction, detoxification, and biodegradation research and demonstration; the status of basic and applied research programs funded by the Hazardous Substances Trust Fund; and public, private, and academic activities in risk communication.

Attendance is limited only by space available. For further information regarding the meeting, please contact Mr. Daniel C. VanderMeer, Executive Secretary, NIEHS, P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541-3484 or FTS 629-3484. The official government representative for this meeting will be Dr. Anne P. Sassaman.

(Catalog of Federal Domestic Assistance Program No. 13.143, NIEHS Superfund Hazardous Substances Basic Research Program, NIH, and Program No. 13.142, NIEHS Hazardous Waste Worker Health and Safety Training, NIH)

Dated: June 14, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH

[FR Doc. 89-14719 Filed 6-21-89; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D-89-889; FR-2640]

Delegation of Authority

AGENCY: Department of Housing and Urban Development (HUD), Office of the Secretary.

ACTION: Notice of delegation of authority.

SUMMARY: This Notice announces an amendment to the recently-published Delegation of Authority to the Assistant Secretary for Policy Development and Research and the General Deputy Assistant Secretary for Policy Development and Research.

EFFECTIVE DATE: June 13, 1989.

FOR FURTHER INFORMATION CONTACT: Judith V. May, 755-5426.

SUPPLEMENTARY INFORMATION: The Delegation of Authority to the Assistant Secretary and Deputy Assistant Secretary for Policy Development and Research, published December 2, 1988 (53 FR 48730), is amended by substituting in lieu of Item 14, regarding the Home Equity Conversion Mortgage Program, the following language:

14. With respect to the Home Equity Conversion Mortgage Program under section 255 of the National Housing Act, 12 U.S.C. 1715z-20, certain authority is delegated to the Assistant Secretary and General Deputy Assistant Secretary for Policy Development and Research, with other authority reserved to the Secretary or delegated to other officials within the Department. Therefore, the power and authority of the Secretary for the following responsibilities, and only the following responsibilities, under the Home Equity Conversion Mortgage Program is delegated to the Assistant Secretary and General Deputy Assistant Secretary for Policy Development and Research, and to each of them.

a. Provide, or cause to be provided, training for housing counseling agencies who are approved by the Secretary as responsible and able to provide the information to mortgagors required by section 255(f).

b. Make investigations and studies of data, and publish and distribute reports in accordance with section 255(h)(2).

c. Prepare and submit to Congress an interim report, a preliminary evaluation, and annual reports, as provided in section 255(k).

d. Enter into such contracts and agreements as may be necessary or desirable to assist in carrying out the responsibilities delegated above, with the exception of procurement contracts.

This Delegation is effective upon execution and until such time as it may be expressly superseded or terminated.

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

Washington, DC, June 13, 1989.

Jack Kemp,

Secretary.

[FR Doc. 89-14647 Filed 6-21-89; 8:45 am]

BILLING CODE 4210-32-M

Office of Assistant Secretary for Policy Development and Research

[Docket No. D-89-899; FR-2643]

Redelegation of Authority

AGENCY: Department of Housing and Urban Development (HUD), Office of Assistant Secretary for Policy Development and Research.

ACTION: Notice of redelegation of authority.

SUMMARY: This Notice announces a redelegation of certain responsibilities under section 255 of the National Housing Act to officials of the Office of the Assistant Secretary for Policy Development and Research.

EFFECTIVE DATE: June 14, 1989.

FOR FURTHER INFORMATION CONTACT: Judith V. May 755-5426.

SUPPLEMENTARY INFORMATION: The Deputy Assistant Secretary for Economic Affairs is delegated the power and authority of the Assistant Secretary for Policy Development and Research with respect to the following functions and responsibilities under section 255 of the National Housing Act, 12 U.S.C. 1715Z-20. This authority may be redelegated to employees of the Department.

1. Provide or cause to be provided, training for housing counseling agencies who are approved by the Secretary as responsible and able to provide the information to mortgagors as specified in section 255(f).

2. Make investigations and studies, and publish and distribute reports in accordance with section 255(h)(2).

3. Prepare for submittal by the Assistant Secretary to Congress an interim report, a preliminary evaluation, and annual reports, as provided in section 255(k).

This Redelegation is effective upon execution and until such time as it may be expressly superseded or terminated.

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

Washington, DC, June 14, 1989.

Thomas M. Humbert,

Deputy Assistant Secretary for Policy Development.

[FR Doc. 89-14648 Filed 6-21-89; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-940-09-5410-10-ZBAO; CACA 25073]

Conveyance of Mineral Interests in California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of segregative effect—conveyance of the reserved mineral interests.

SUMMARY: The private lands described in this notice will be examined for suitability for conveyance of the reserved mineral interests pursuant to section 209(b) of the Federal Land Policy and Management Act of October 21, 1976.

The mineral interests will be conveyed in whole or in part upon favorable mineral examination.

FOR FURTHER INFORMATION CONTACT: JOAN MANGOLD, California State Office, 2800 Cottage Way, Room E-2845, Federal Office Building, Sacramento, California 95825, (916) 978-4820.

The purpose is to allow consolidation of surface and subsurface ownership, for the lands described below, where there are no known mineral values or in those instances where the reservation of ownership of the mineral interest in the United States interferes with or precludes appropriate non-mineral development of the lands and such development would be a more beneficial use of the lands than its mineral development.

San Bernardino Meridian

CACA 25073

T. 8 S., R. 1 E.,
Sec. 5, NW¼SE¼.

The area described contains 40.00 acres in Riverside County. Currently, 100 percent of the mineral interest in these lands is owned by the United States.

The application was filed on May 26, 1989.

Upon publication of this Notice of Segregative Effect in the **Federal Register** as provided in 43 CFR 2091.3-1(c) and 43 CFR 2720.1-1(b), the mineral interests owned by the United States in the private lands covered by the application shall be segregated to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate by publication of an opening order in the **Federal Register** specifying the date and time of opening; or upon issuance of a patent or other document of conveyance to such mineral interests; or upon final rejection of the application; or two years from the date of filing of the application, whichever occurs first.

Date: June 14, 1989.

Nancy J. Alex,

Chief, Lands Section, Branch of Adjudication and Records.

[FR Doc. 89-14798 Filed 6-21-89; 8:45 am]

BILLING CODE 4310-40-M

[AZ-010-09-4332-11]

Vermillion Resource Area, Arizona Strip District, Arizona; Wilderness Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of draft wilderness management plan for Mt. Trumbull and Mt. Logan Wilderness areas.

SUMMARY: The draft wilderness management plan (WMP) for the Mt. Trumbull and Mt. Logan Wilderness Areas, Vermillion Resource Area, Arizona Strip District is available for distribution to the public, federal, state and local agencies, and Indian tribes. The WMP will guide management of the wilderness resources as well as other uses in the two areas for the next ten years.

The draft WMP would provide comprehensive management direction and objectives, as well as specific management actions for a total of 22,500 acres of statutory wilderness in northern Mohave County, Arizona.

A 45-day public comment period on the draft WMP will commence with publication in the **Federal Register** of this Notice of Availability.

FOR FURTHER INFORMATION CONTACT: Robert D. Roundabush, Vermillion Resource Area, BLM, 390 North 3050 East, St. George, Utah 84770; (801) 628-4491.

SUPPLEMENTARY INFORMATION: The Mt. Trumbull and Mt. Logan Wilderness Areas were incorporated into the *National Wilderness Preservation System* on August 28, 1984, by the *Arizona Wilderness Act of 1984* (Pub. L. 98-406) after almost six years of inventory and study. The WMP incorporates the Limits of Acceptable Change (LAC) system, which provides direction for much of the wilderness monitoring and effectively focuses BLM activities to areas where management attention is most needed. The WMP includes an Environmental Assessment of the proposed plan and alternatives, as well as a draft Fire Managment Plan for the two areas.

G. William Lamb,

District Manager.

[FR Doc. 89-14799 Filed 6-21-89; 8:45 am]

BILLING CODE 4310-32-M

[NM-932-09-4332-09]

New Mexico; Public Review Period for USGS/USBM "Mineral Survey Reports"; Wilderness Study Areas

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The New Mexico Bureau of Land Management (BLM) is requesting the public to review combined U.S. Geological Survey (USGS) and U.S. Bureau of Mines (USBM) "Mineral Survey Reports" which have been completed for preliminary suitable Wilderness Study Areas (WSAs). If the public identifies significant differences in interpretation of the data presented in the reports or submits significant new minerals data for consideration, the BLM will request USGS/USBM evaluate these comments in relation to their final Mineral Survey Report. The BLM will consider the USGS/USBM evaluations as well as the Mineral Survey Report in developing final wilderness suitability recommendations. Copies of the WSA reports can be reviewed in BLM offices in Santa Fe, Albuquerque, Taos, Farmington, Las Cruces, Socorro, Roswell, Carlsbad, Tulsa and Oklahoma City.

DATE: New information will be accepted on the reports enumerated in this notice until August 21, 1989.

ADDRESS: Send information on reports to Deputy State Director, Mineral

Resources, Bureau of Land Management, New Mexico State Office, P.O. Box 1449, Santa Fe, NM 87504–1449.

FOR FURTHER INFORMATION CONTACT: Powell King, BLM, New Mexico State Office, Division of Mineral Resources, (505) 988–6186.

SUPPLEMENTARY INFORMATION: Section 603 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2785, directed the Secretary of the Interior to inventory lands having wilderness characteristics as described in the Wilderness Act of September 3, 1964, and from time to time report to the President his recommendations as to the suitability or non-suitability of each area for preservation as wilderness. The USGS and USBM are charged with conducting mineral surveys for areas that have been preliminarily recommended suitable for inclusion into the wilderness system, to determine the mineral values, if any, that may be present in such areas.

To ensure that all available minerals data are considered by the Bureau of Land Management prior to making its final wilderness suitability recommendations to the Secretary of the Interior, the State Director, New Mexico is providing this public review and comment period. Usually there is a one to two year lag time between actual field work and final printing of a mineral survey report. New information may have been collected by the public during this lag time or the public may have a new interpretation of the data presented in the mineral survey reports. Any new data or new interpretations of data in the reports will be screened for its significance and validity by the Bureau of Land Management. Significant new minerals data or new interpretations of the minerals data will be forwarded to the U.S. Geological Survey and U.S. Bureau of Mines for further consideration. Evaluations received by the Bureau of Land Management from the U.S. Geological Survey and U.S. Bureau of Mines will be considered by the State Director in the final wilderness suitability recommendations.

Information requested from the public via this invitation is not limited to any specific energy or mineral resource. Information can be in the form of a letter and should be as specific as possible and include:

1. The name and number of the subject Wilderness Study Area and Mineral Survey Report.

2. Mineral(s) of interest.

3. A map or land description by legal subdivision of the public land surveys or protracted surveys showing the specific parcel(s) of concern within the subject Wilderness Study Area.

4. Information and documents that depict the new data or reinterpretation of data.

5. The name, address and phone number of the person who may be contacted by technical personnel of the Bureau of Land Management, U.S. Geological Survey or U.S. Bureau of Mines assigned to review the information.

Geologic maps, cross sections, drill hole records and sample analyses, etc., should be included. Published literature and reports may be cited. Each comment should be limited to a specific Wilderness Study Area. All information submitted and marked confidential will be treated as proprietary data and will not be released to the public without consent.

The following is a list of available Mineral Survey Reports by Wilderness Study Area (WSA) on which new information will be accepted.

WSA No.	Name	Report No.
010–020	Ignacio Chaves	BU 1733–D
020–014	Petaca Pinta	BU 1734–H
020–016	Sierra Ladrones	BU 1734–F
030–007	Cowboy Spring	BU 1735–F
030–074	Organ Mountains.	BU 1735–D
060–109/110A	Little Black Peak/ Carrizozo Lava Flow.	BU 1734–E

Reports available for review in BLM offices will not be available for sale or removal from the office. Copies of the listed reports may be purchased from: U.S. Geological Survey, Books and Open File Reports, Box 25425, Federal Center, Denver, Colorado 80225.

Date: June 15, 1989.

Gilbert O. Lockwood,

Deputy State Director, Mineral Resources.

[FR Doc. 89–14762 Filed 6–21–89; 8:45 am]

BILLING CODE 4310–FB–M

Minerals Management Service

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Hall-Houston Oil Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 10541, Block 57, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on June 9, 1989. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: June 9, 1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89-14800 Filed 6-21-89; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

Motor Carrier Applications To Consolidate, Merge or Acquire Control

The following Applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by 49 CFR 1182.1.

Persons wishing to oppose an application must follow the rules under 49 CFR 1182.2. If the protest includes a request for oral hearing, the request shall meet the requirements of 49 CFR 1182.3 and shall include the required certification. Failure seasonable to oppose will be construed as a waiver of opposition and participation in the proceeding.

In the absence of legally sufficient protests as to the finance application or to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Findings

The findings for these applications are set forth at 49 CFR 1182.6.

MC-F-19405, filed May 4, 1989. Greyhound Lines, Inc. (GLI) (Suite 2400, 901 Main Street, Dallas, TX 75202)—Purchase (Portion)—Kerrville Tours, Inc. (KTI) (429 Sidney Baker Street, Kerrville, TX 78029-0172); Kerrville Tours, Inc.—Purchase (Portion)—Greyhound Lines, Inc.; and Kerrville Bus Company, Inc. (KBCI) (same address as KTI)—Purchase (Portion)—Greyhound Lines, Inc. Applicants' representatives: Fritz R. Kahn, William C. Evans, and Mark J. Andrews, Suite 700, 901 Fifteenth Street NW., Washington, DC 20005-2301, attorneys for GLI.

GLI, KTI, and KBCI, motor carriers of passengers, seek approval for a route exchange transaction in which GLI will acquire certain interstate and intrastate regular-route motor carrier authorities from KTI, and, in turn, KTI and KBCI will acquire certain such authorities from GLI, without cash consideration in either direction. GLI would acquire KTI's authority covering operations east of Shreveport, LA; KTI would acquire certain of GLI's authority covering operations between eastern Texas and western Louisiana points; and KBCI would acquire GLI's authority covering operations between Houston and Austin, TX, and between Austin and Columbus, TX.

GLI would acquire KTI's operating authority under MC-12907 to provide service: (1) Between Shreveport and Lafayette, LA (Sub-No. 3); and (2) between Meeker and Opelousas, LA, over U.S. Hwy 167 (Sub-No. 6); (3) between Opelousas and Baton Rouge, LA, over U.S. Hwy 190 (Sub-No. 7); (4) between Shreveport and Meridian, MS, over Interstate Hwy 20 (portion of Sub-No. 8); and (5) between Meridian and Montgomery, AL, over U.S. Hwy 80 (part (1) of Sub-No. 9).

KTI would acquire GLI's operating authority under MC-109780 to provide service: (1) Between Texarkana, AR-TX, and Shreveport, LA (Sub-No. 97, sheet 2, portion of route 6, and sheet 9, portion of route 6); (2) between Shreveport and Houston, TX, via Logansport, LA, and Nacogdoches and Lufkin, TX (Sub-No. 79, portion of sheets 16 and 17); (3) between Houston and Humble, TX (Sub-No. 97, sheet 18, portion of route (8)); and (4) between Beaumont and Henderson, TX, via Nacogdoches, San Augustine, and Bronson, TX (Sub-No. 79, portion of sheet 16).

KBCI would acquire GLI's operating authority under MC-109780 to provide service between Austin and Columbus, TX, over Texas Hwy 71, and between Austin and Houston, TX, over U.S. Hwy 290 (Sub-No. 128, portions of sheet 13).

The involved certificates of KTI, with the exception of the Sub-No. 9 certificate, authorize intrastate service corresponding to the described interstate service. GLI holds Texas intrastate authority, in RCT 00007BD5C, Certificate 7B, and RCT 003979A6C, Certificate 3979, approximately corresponding to the interstate authority described above. Applicants would transfer the pertinent intrastate rights along with the interstate rights described above. *See* No. MC-C-30122, Thurston Motor Lines, Inc., Brown Transport Co., Inc., and Brown Transport Truckload, Inc.—Petition for Declaratory Order—Transfer of Intrastate Rights Under 49 U.S.C. 11343 (a) and (e) (not printed), served January 13, 1989.

GLI is a wholly-owned subsidiary of noncarrier GLI Bus Operations Holding Company which, in turn, is a wholly-owned subsidiary of noncarrier GLI Holding Company which, in turn, is controlled through stock ownership by Fred G. Currey, Craig R. Lentzsch, and Anthony P. Lannie, noncarrier individuals, of Dallas, TX. Certain affiliations of GLI with other carriers have been approved in other proceedings and would not be affected by the instant transaction. Common control of GLI with BusLease Contract Services, Inc. (MC-193190), Texas, New Mexico & Oklahoma Coaches, Inc. (MC-161120), and Vermont Transit Co., Inc. (MC-45626) was approved in MC-F-18260. Acquisition by GLI of the former 50 percent stock interest of Trailways Lines, Inc., in Continental Panhandle Lines, Inc. (MC-8742) was approved in MC-F-18505. Collectively, GLI and its affiliates currently hold and exercise, and will continue to hold and exercise, authority encompassing regular-route interstate and intrastate operations throughout the 48 contiguous States and DC, interstate charter and special operations in DC and every State except HI, and package express operations nationwide.

KTI is a wholly-owned subsidiary of KBCI, which also owns all the stock of passenger motor carriers Custom Convention Services, Inc. (MC-180463), North Texas Lines, Inc. (MC-191219), and Painter Bus Lines, Inc. (MC-57678). The controlling shareholder of KBCI is F.E. Kaiser, a noncarrier individual, of Kerrville, TX. Collectively, KBCI, KTI, and their affiliates currently provide regular route, charter, and package express service in interstate and intrastate commerce throughout most of TX, and regular-route service eastward to Baton Rouge, LA, and Montgomery, AL. Applicants state that the proposed route exchange would not affect any of KBCI's of KTI's existing service between Shreveport, LA, and points west thereof, including points in TX.

By decision served June 15, 1989, the Commission has granted applicants' petition for waiver of the otherwise applicable information requirements of Appendices A-6/AA-6/AAA-6, A-7/AA-7/AAA-7, B-4/BB-4, C-2, C-5, and C-6 of the OP-F-44 application form.

Applicants have been granted temporary authority to lease the pertinent operating rights pending final disposition of the finance application.

Decided: June 16, 1989.

By the Commission, Motor Carrier Board.

Noreta R. McGee,

Secretary.

[FR Doc. 89-14815 Filed 6-21-89; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 290; Sub No. 5; 89-3]

Quarterly Rail Cost Adjustment Factor

AGENCY: Interstate Commerce Commission.

ACTION: Notice.

SUMMARY: The Commission has approved the third quarter 1989 rail adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The third quarter RCAF (Unadjusted) is 1.067. The third quarter RCAF (Adjusted) is 1.058, an increase of 1.0 percent over the second quarter RCAF (Adjusted) of 1.048. Maximum third quarter RCAF rate levels may not exceed 101.0 percent of maximum second quarter 1989 RCAF rate levels.

DATE: Effective July 1, 1989.

FOR FURTHER INFORMATION CONTACT: William T. Bono (202) 275-7354; Robert C. Hasek (202) 275-0938; 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 or 4359. Assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., Room 2229 at Commission Headquarters.

This action will not significantly affect either the quality of the human environment or energy conservation. It will not have a significant impact on a substantial number of small entities.

Decided: June 15, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips. Commissioner Lamboley concurred in the result with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 89-14751 Filed 6-21-89; 8:45 am]

BILLING CODE 7035-01-M

Release of Waybill Data for Use by Freight Equipment Management Research-Demonstration Program Association of American Railroads

The Commission has received a request from the Freight Equipment Management, Research-Demonstration Program of the Association of American Railroads (AAR) for permission to use certain data from the Commission's 1988 ICC Waybill Sample. Excluded from the request is any cost or revenue information contained in the sample data. The data will be used to support a variety of studies, such as:

1. *Tank Car Safety Research*—investigates safety related issues in the management of the tank car fleet.

2. *Freight Car Utilization*—investigates car utilization issues across a variety of car types (e.g., mileage savings expected with pooling)

The Commission requires rail carriers to file waybill sample information if in any of the past three years they terminated on their lines: (1) 4,500 revenue carloads or (2) 5 percent of revenue carloads in any one State (49 CFR Part 1244). From the waybill information, the Commission has developed a Public Use Waybill File that has satisfied the majority of all our waybill data request while protecting the confidentiality of proprietary data submitted by the railroads. However, if confidential waybill data are requested, as in this case, we will consider releasing the data only after certain protective conditions are met and public notice is given. More specifically, under the Commission's current policy for handling waybill requests, we will not release any confidential waybill data until after: (1) Public notice is provided so affected parties have an opportunity to object and (2) certain requirements designed to protect the data's confidentiality are agreed to by the requesting party (Ex Parte No. 385; Sub-No. 2; 52 FR 12415, April 16, 1987).

Accordingly, if any parties object to this request, they should file their objections (an original and 2 copies) with the Director of the Commission's Office of Transportation Analysis (OTA) within 14 calendar days of the date of this notice. They should also include all grounds for objections to the full or partial disclosure of the requested data. The Director of OTA will consider these objections in determining whether to release the requested waybill data. Any parties who objected will be timely notified of the Director's decision.

Contact: James A. Nash, (202) 275-6864.

Noreta R. McGee,

Secretary.

[FR Doc. 89-14812 Filed 6-21-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55; Sub-No. 300X]

CSX Transportation, Inc.—Abandonment Exemption—in Lewis County, WV

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 5.60-mile line of railroad between milepost 23.88 at Deanville to milepost 26.98 at Ben Dale and milepost 24.64 at MacPelah to milepost 27.14 at Keeley No. 4, in Lewis County, WV.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user or rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 22, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1]

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C.2d 400 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by July 3, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by July 12, 1989, with Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Patricia Vail, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by June 27, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kasier, Acting Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes availble to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: June 15, 1989.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–14657 Filed 6–21–89; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–55; Sub-No. 302X]

CSX Transportation, Inc.—Abandonment Exemption—in Lewis County, WV

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 0.99-mile line of railroad between milepost 17.94 at Good Hope Junction and the end of the line at milepost 18.93, in Lewis County, WV.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 22, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by July 3, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by July 12, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Patricia Vail, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environmental (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by June 27, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Acting Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: June 15, 1989.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–14658 Filed 6–21–89; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–55; Sub-No. 303X]

CSX Transportation, Inc.—Abandonment Exemption—Between Gaston Junction and Willard in Harrison and Marion Counties, WV

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon 18.72 miles of line in Harrison and Marion Counties, WV: (1) Between milepost 1.08 at Gaston Junction and milepost 15.01 at Willard; (2) between milepost 0.0 and 3.88, the Bingamon Branch; and (3) between milepost 0.0 and milepost 0.91, the Killarm Industrial Track.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee *Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this

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[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines,* 4 I.C.C.2d 400 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440–48446).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 22, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by July 3, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by July 12, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representatives: Patricia Vail, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by June 27, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Acting Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: June 14, 1989.

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C. 2d 400 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440–48446).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–14659 Filed 6–21–89; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31452]

Indiana Hi-Rail Corp.—Lease and Trackage Rights Exemption—Southern Railway Co. Certain Southeastern Indiana Lines

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemptions.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts: (1) From the prior approval requirements of 49 U.S.C. 11343, *et seq.*, the lease by Indian Hi-Rail Corporation (IHR) from Southern Railway Company (SR) of 54.8 miles of rail and rail related property between (a) Rockport and Rockport Junction, IN; (b) Cannelton and Lincoln City, IN; and (c) Huntingburg and Dubois, IN; subject to standard employee protective conditions; and (2) from the provisions of 49 U.S.C. 10761, 10762 and 11145, IHR's operations over (a) the same lines described in (1) above, and (b) the 14.8-mile line described below. IHR will acquire from SR trackage rights between Rockport Junction and Huntingburg. This trackage rights transaction is exempt under the class exemption in 49 CFR 1180.2(d)(7) and is subject to similar employee protective conditions.

DATES: These exemptions will be effective on June 29, 1989. Petitions for reconsideration must be filed by July 12, 1989.

ADDRESSES: Send pleadings referring to Finance Docket No. 31452 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioners' representatives:

Indiana Hi Rail Corporation: John D. Heffner, Gerst, Heffner, Foldes & Podgorsky, Suite 1107, 1700 K Street, NW., Washington, DC 20006

Southern Railway Company: Mark D. Perreault, Three 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) 289–4537/4539. [Assistance for the hearing impaired is available through TDD services (202) 275–1721].

Decided: June 7, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips. Commissioner Lamboley concurred in part, and dissented in part with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 89–14752 Filed 6–21–89; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31484]

Southeast Shortlines, Inc., D/B/A Thermal Belt Railway—Lease, Operation and Acquisition Exemption—A Rail Line in Rutherford County, NC

Southeast Shortlines, Inc., d/b/a, Thermal Belt Railway (Railway) has filed a notice of exemption for the lease, operation and possible future acquisition of a line extending from south of Forest City, NC at milepost SB 175.5 to north of Gilkey, NC at milepost SB 188.34, a distance of 12.84 miles. The Rutherford Railroad Development Corporation (RRDC) is in the process of purchasing the line from the Southern Railway Company (Southern).[1] After the acquisition, Railway expects to lease the line from RRDC. Railway is currently negotiating the terms of the lease, including an option to purchase the line in the future. The transaction is expected to be consummated on or before June 8, 1989. The transaction involves the issuance of exempt securities.

Any Comments must be filed with the Commission and served on John D. Heffner, Gerst, Heffner, Foldes & Podgorsky, 1700 K Street, NW., Washington, DC 20006.

Applicant must preserve intact all sites and structures more than 50 years old until compliance with the requirements of section 106 of the National Historic Preservation Act, 16 U.S.C. 470, is achieved. *See Class Exemption—Acq. & Oper. of R. Lines Under 49 U.S.C. 10901*, 4 I.C.C.2d 305 (1988).[2]

[1] Southern was authorized to abandon the line in Docket No. AB-290 (Sub-No. 36), *Southern Railway—Carolina Division and Southern Railway Company—Abandonment and Discontinuance of Service—In Cleveland and Rutherford Counties, NC* (not printed), served October 17, 1988.

[2] Applicant has certified to the North Carolina State Historic Preservation Officer that no

Continued

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: June 15, 1989.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-14656 Filed 6-21-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on June 16, 1989 a proposed consent decree was lodged with the United States District Court for the District of Maryland in *United States* v. *Allied-Signal Inc.*, Civil Action No. R89-1804. The proposed consent decree addresses surface water and ground water contamination at a facility located at the intersection of Block and Wills Streets in Baltimore, Maryland (the "Site"). The decree requires the defendant, Allied-Signal Inc. ("Allied"), to conduct certain studies to further define the nature and extent of the endangerment at the Site. Allied also will implement measures to prevent further contamination of surface water and ground water at the Site and further migration of hazardous wastes from the Site.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Allied-Signal Inc.*, DJ Ref. 90-7-1-478.

The proposed consent decree may be examined at the Office of the United States Attorney, District of Maryland, U.S. Courthouse, 8th Floor, 101 West Lombard Street, Baltimore, Maryland, and at the Region III office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania. Copies of the consent decree may be examined at the offices of the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1647, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice. In requesting a copy, please enclose a check in the amount of $23.00 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-14754 Filed 6-21-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Joint Stipulation Pursuant to Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Joint Stipulation in *United States* v. *General Electric Company*, Civil Action No. 88-C-2564, was lodged with the United States District Court for the Northern District of Illinois on June 2, 1989. The Complaint filed by the United States alleged violation of section 113 of the Clean Air Act for failure by defendant to comply with applicable provisions of the Illinois State Implementation Plan ("SIP"), relating to emissions of volatile organic compounds ("VOCs"), at defendant's Cicero, Illinois manufacturing plant.

The proposed Joint Stipulation requires defendant to pay a civil penalty of $150,000 for alleged past violations of the Clean Air Act and the SIP, and also provides that the action shall be dismissed without prejudice.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Joint Stipulation. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *General Electric Company*, D.J. Reference No. 90-5-2-1-1090.

The proposed Joint Stipulation may be examined at the office of the United States Attorney, Northern District of Illinois, Everett McKinley Dirkson Building, 219 South Dearborn Street, Chicago, Illinois 53202, and at the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 111 West Jackson Street, Chicago, Illinois 60604. Copies of the proposed Joint Stipulation may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1647, Ninth Street and Pennsylvania Avenue, NW., Washington, DC. A copy of the proposed Joint Stipulation may be obtained in person from the above address or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-14801 Filed 6-21-89; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—CAD Framework Initiative, Inc.; Antitrust Division

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), CAD Framework Initiative, Inc. ("CFI") on May 17, 1989, has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in the membership of CFI. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act, limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On December 30, 1988, CFI filed its original notification pursuant to section 6(a) of the Act. That filing was amended on February 7, 1989. The Department of Justice published a notice in the Federal Register pursuant to section 6(b) of the Act on March 13, 1989, 54 FR 10456, as corrected by 54 FR 16013.

The changes consist of the following: (1) The addition of corporate members: International Business Machines (IBM), Mitsubishi Electronic Corp., Philips Research Laboratories, Plessey Semiconductors Ltd., and Zycad Corp.; and (2) the addition of associate members: Gateway Design Automation Corp., Timothy Andrews, Hong-Tai Chou, Daniel Daly, Alan Ford, Arding Hsu, Marlene Kasmir, Mitch Morey, and Dyson Wilkes.

The following entities are Corporate Members of the CAD Framework Initiative, Inc.:

Advanced Micro Devices, Inc.
Alcatel NV

properties qualifying for inclusion in the *National Register of Historic Places* will be transferred as a result of this transaction.

Apollo Bell Laboratories
Bull, S.A.
CADENCE Design Systems, Inc.
Control Data Corp.
Daisy Systems Corp.
Digital Equipment Corporation
EDA Systems, Inc.
GE Aerospace
General Motors/Delco Electronics
Harris Corp.
Hewlett-Packard Company
Honeywell, Inc.
IMEC, VZW
Intergraph Corp.
International Business Machines (IBM)
International Computers Ltd.
Mentor Graphics Corporation
Microelectronics and Computer Technology Corporation
Mitsubishi Electronic Corp.
Motorola, Inc.
NCR Corp.
Nixdorf Computer AG
Object Design, Inc.
Objectivity, Inc.
Philips Research Laboratories
Plessey Semiconductors Ltd.
Robert Bosch GbmH
SCME Foundation Centers For Micro-Electronics
SGS Thomson Microelectronics
Siemens AG
Sony Corporation
Sun Microsystems
Texas Instruments, Inc.
Valid Logic Systems, Inc.
VIEWLOGIC Systems, Inc.
VLSI Technology
Westinghouse Electric Corp.
Zycad Corp.

The following entities and individuals are Associate Members of the CAD Framework Initiative Inc.:

Delft University of Technology
Frauhofer AIS
Gateway Design Automation Corp.
Gesellschaft fur Mathematik und Datenverarbeitung mbH (GMD)
Intel Corp.
PTT Research Neher Laboratories
Semiconductor Research Corporation
Timothy Andrews
Kenneth Bakalar
Hong-Tai Chou
Daniel Daly
Alan Ford
Bill Harding
Arding Hsu
David Jakopac
Marlene Kasmir
Mitch Morey
Moe Shahdad
Erwin Warshawsky
Dyson Wilkes

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89-14802 Filed 6-21-89; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984—UNIX International, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), UNIX International, Inc. on May 4, 1989, filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in the membership of UNIX International, Inc. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act, limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On January 30, 1989, UNIX International, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act of March 1, 1989, 54 FR 8608.

As of April 26, 1989, the following have become members of UNIX International, Inc.:

Acer
ASCII
AVCOM
C. Itoh
Concurrent
Dell Computer
Dupont Fibers
EMSCA
EDS/GM
Encore
ERSO–ITRI
Informix
Locus
Micro Focus
Modcomp
Nihon Unisys
Nippon Steel
Omron
Phoenix Technologies
Prisma
Sequent
Sequola
Silicon Graphics
Sony
Stellar
Tandem
Tata Consultancy
Texas Instruments
Thomson-CETIA
Wang
Xerox

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89-14803 Filed 6-21-89; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[App. No. D-7550 et al.]

Proposed Exemptions; ALTA Health Strategies, Inc., et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N–5671, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–5570, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register.** Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

ALTA Health Strategies, Inc. (ALTA) and ALTA Reinsurance Company (ALTA Re) Located in Salt Lake City, Utah

[App. No. D–7550]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a) of the Act shall not apply to the reinsurance of group health, life, and accidential death and dismemberment risks, and the receipt of premiums therefrom, by ALTA Re pursuant to reinsurance arrangements with Issuing Carriers in connection with stop-loss insurance contracts sold to employee welfare benefit plans for which ALTA serves as a third party administrator or provides brokerage services (the Plans), provided the following conditions are satisfied:

(1) The plans pay no more than adequate consideration for the insurance contracts;

(2) The transactions covered by the proposed exemption will be offered as an option to be considered by the Plan fiduciary described in 2(d) below, only when each of the following conditions are satisfied: (a) The Plans for which the transactions are presented as an option have 100 or more participants; (b) ALTA concludes, on the basis of its analysis, that the stop-loss insurance arrangement covered by this exemption is consistent with the insurance needs of the Plans; (c) ALTA concludes that the proposed transactions would be less expensive than conventional stop-loss insurance offered by comparable primary insurers and reinsurers having the equivalent reserves and Best's ratings; further, ALTA will not offer this option unless it concludes that, based on a review of the available data concerning the insurance market, stop-loss insurance consistent with this exemption will, in fact, be more beneficial to the Plans than comparable coverage not subject to this exemption; (d) ALTA determines that, in accordance with the procedures described in (e), below, the decision to utilize the option covered by this exemption is being made by a fiduciary of the Plan who is independent of ALTA and ALTA Re, who is capable of making an independent decision, and who is sufficiently knowledgeable with respect to the Plan, and administrative, benefits, and funding matters related thereto, to make an informed decision concerning the option covered by this exemption; and (e) with respect to the determinations made by ALTA pursuant to (d), above, ALTA maintains a written procedure under which criteria are established for making such determinations. Pursuant to such precedure, each determiniation, and the basis therefore, shall be documented and, thereafter, approved by an officer of ALTA who was not involved in the presentation of the options to the Plan fiduciary. Such documentation shall, among other things, include: written representations provided by the fiduciary or plan sponsor supporting such determinations, the qualifications of the fiduciary on which ALTA based its determination, and any other factors which ALTA took into account in making its determination, and the relevance of such factors. Such documentation shall be retained for a period of six years from the date that the transaction was entered into pursuant to this exemption. Similarly, a copy of the procedure shall be retained during any period for which documentation is required to be retained. Both the procedure and documentation shall be unconditionally available at ALTA's principal place of business for examination during working hours by any duly authorized employee or representative of the Department;

(3) ALTA provides to the fiduciary described in 2(d) above a complete description of all services, commissions, fees, contracts or arrangements and relationships between ALTA, ALTA Re and any other party, and will provide a complete description of the insurance arrangements offered by the direct insurers, and the fiduciary acknowledges in writing the receipt of such information and that the decision to select an option (including the proposed option) is a decision made in its fiduciary capacity;

(4) No commissions will be paid with respect to the reinsurance of the risks by ALTA Re;

(5) No single group of affiliated Plans will represent more than 5 percent of the total premiums written pursuant to the subject transactions;

(6) ALTA will follow its standard claims processing practices regarding any claims submitted with respect to Plans engaging in the subject transactions;

(7) ALTA will not offer any incentives to any of its emloyees with respect to the stop-loss option covered by the proposed exemption and in all cases the compensation paid with respect to employees or other persons acting on behalf of ALTA will be paid in the same manner regardless of the option selected;

(8) ALTA Re will comply with all applicable requirements of the law of its domiciliary state, Arizona, regarding its operations and reserves; and

(9) ALTA Re will be subject to a financial audit by the Arizona Department of Insurance no less frequently than once every three years.

Summary of Facts and Representations

1. ALTA is a third party contract administrator (TPA), headquartered in Salt Lake City, Utah, which provides services to self-insured health plans throughout the United States.[1] ALTA is as successor organization to the TPA and healt claims business previously conducted by Fred S. James & Company, Inc. ALTA Re is a wholly owned subsidiary of ALTA licensed to do business as a reinsurance company by the State of Arizona.

2. ALTA currently provides its plan sponsor customers with plan design and administrative services in connection with the operation of their health and life programs. Such administrative services include health claims processing, benefit disbursement, preadmission and outpatient surgery claims review, negotation of preferred provider organization (PPO) agreements and the implementation of PPOs networks within geographical areas. ALTA dose not act as plan administrator and it is intended and

[1] According to the applicants, ALTA acts through a number of wholly-owned subsidiaries throughout the country. Accordingly, all references to ALTA shall, for purposes of this exemption, include such subsidiaries (other that ALTA Re).

agreed between ALTA and the plan sponsors it serves that ALTA does not have final authority to authorize or disallow benefit payments. All decisions of ALTA are tentative decisions subject to review by plan sponsors.

3. ALTA also currently provides insurance brokerage in connection with the placement of life insurance or stop-loss insurance coverage for self-insured health plans. In this regard, ALTA has structured its agreements with plan sponsors to come within the safeguards of Prohibited Transaction Exemption (PTE) 84–24 (49 FR 13208, April 3, 1984). ALTA, on behalf of its plan sponsor customers, currently deals with 28 different insurance carriers. Annually, ALTA negotiates health plan excess stop-loss coverages with premiums over $14 million and negotiates group life premiums associated with stop-loss coverages of over $8 million. The life insurance carriers and the excess stop-loss insurance carriers almost universally act as Issuing Carriers (also referred to as "primary" insurers). That is, such carriers deal with reinsurers, with respect to whom the Issuing Carriers "lay off" (i.e., reinsure) substantial portions of the risk on a straight percentage of layer basis.

4. ALTA has recently completed an analysis of the current insurance and reinsurance arragements for various welfare plans. On the basis of this analysis and survey of the activities of other TPAs, ALTA has determined that a consolidation of its insurance arrangements with five or six insurance carriers will benefit the Plans. These primary insurance carriers are unrelated to ALTA. The applicants represented that this will increase ALTA's bargaining power on behalf of the Plans by increasing the preimum volumes with these carriers. It will also reduce the insurance carriers' home office overhead by simplifying insurance arrangements and making them more uniform. In addition, ALTA's survey of existing insurance carrier arrangements has also convinced ALTA that it can provide certain of the activities currently performed by the home office of insurance carriers more cost effectively, through the elimination of the current duplication of underwriting and marketing activities. For the same reasons, ALTA has determined that reinsurance arrangements may be streamlined to the benefit of the Plans. ALTA believes that its bargaining power with those selected insurance carriers will be further enhanced if it offers a ready source of reinsurance on behalf of the Plans.

5. The applicants have requested an exemption to permit the reinsurance by ALTA Re of group health, life, and accidental death and dismemberment risks for a premium pursuant to reinsurance arrangements with Issuing Carriers for employee welfare plans with respect to which ALTA provides other services.[2] ALTA Re would reinsure these coverages under terms attractive to the Issuing Carrier as well as the Plans. The precise amount of reinsurance ceded to ALTA Re would be the result of an arms-length negotiation on the part of the Issuing Carrier and ALTA Re. The issuing Carrier remains 100 percent liable for all insured risks, including the insurance risks ceded to ALTA Re or other reinsurance carriers. ALTA believes that by offering an expanded package of underwriting, insurance administration and reinsurance services and products, it will be in a position to negotiate group life and self-insured excess stop-loss insurance arrangements which will be more beneficial to the Plans than insurance arrangements that do not involve ALTA and ALTA Re. In this regard, the applicants represent that the proposed arrangement will be less expensive than conventional stop-loss insurance offered by comparable Issuing Carriers and reinsurers. In addition to the direct cost savings of the Plans, the applicants represent that participants will be directly benefited by the lower plan costs in that most plans charge employees a portion of the cost of coverage, which factors in the costs attributable to stop-loss insurance premiums.

6. The applicants represent that, in addition to compliance with all applicable insurance laws of the State of Arizona, including capitalization, surplus, and underwriting requirements, ALTA Re, with respect to the transactions which are the subject of this exemption, will comply with reserve and other requirements imposed by Issuing Carriers, and will include a requirement that all Issuing Carriers be domestic companies with a Best rating of "A" and minimum assets of $100 million. The applicants represent that ALTA Re will provide, as a reserve, a fully secured Letter of Credit in the minimum amount of $500,000 with respect to coverages provided through each Issuing Carrier. This reserve is designed to provide an additional guarantee prior to the issuance of the first dollar of coverage. ALTA will guarantee these initial reserves. The Issuing Carriers will not be affiliates of ALTA or ALTA Re.

7. The applicants represent that the transactions which are the subject of this exemption will be presented as an option to be considered by the Plan fiduciary only when each of the following conditions are satisfied: (a) The Plans for which the transactions are presented as an option have 100 or more participants; (b) ALTA concludes, on the basis of its analysis, that the stop-loss insurance arrangement covered by this exemption is consistent with the insurance needs of the Plans; (c) ALTA concludes that the proposed transactions would be less expensive than conventional stop-loss insurance offered by comparable primary insurers and reinsurers having the equivalent reserves and Best's ratings; in this regard, the applicants represent that ALTA will not offer this option unless it concludes that, based on a review of the available data concerning the insurance market, that stop-loss insurance consistent with this exemption will, in fact, be more beneficial to the Plans than comparable coverage not subject to this exemption; (d) the decision to utilize the option covered by this exemption is being made by a fiduciary who is independent of ALTA and ALTA Re, and who exhibits a capability for independent decision making; and (e) ALTA institutes and maintains a procedure for determining that such fiduciary is independent of ALTA and ALTA Re, and sufficiently knowledgeable to make an informed decision regarding the transaction (as described in condition 2(e), above).

8. The applicants represent that no more than 5 percent of the total premiums written by ALTA Re pursaunt to the transactions covered by the proposed exemption will be derived from any one single group of affiliated Plans.

9. The applicants represent that, in presenting options to the Plan fiduciary, ALTA will provide the fiduciary with as complete a description of the options satisfying the fiduciary's objectives as possible, given the prevailing conditions of the insurance market. As part of this presentation, ALTA will provide a thorough description of all services, commissions, contracts and other arrangements between ALTA, ALTA Re and any other party and will provide a complete description of the insurance arrangements offered by the primary insurers. This disclosure will include details regarding commissions, fees, relationships between the parties and

[2] In this proposed exemption the Department is not providing relief for the receipt of fees with respect to other services provided by ALTA. In this regard, see section 408(b)(2) of the Act and PTE 84–24.

disclosures required by PTE 84–24.[3] In addition, the fiduciary will acknowledge in writing the receipt of such information and that the decision to select an option, including the proposed option, is a decision made in a fiduciary capacity.

10. Following the presentation of options, the plan fiduciary will be free to select from among the available options. The options presented will include options in addition to the transactions covered by this exemption. The plan fiduciary is free to decline any options presented and request ALTA to pursue additional options.[4] If the plan fiduciary selects an option covered by the proposed exemption, ALTA will only engage in the transactions if it has received clear and unequivocal evidence that such fiduciary is aware that it is acting in a fiduciary capacity and is responsible for selection of the insurance company and approval of the proposed transactions.[5]

11. The applicants represent that ALTA has a standard operating procedure whereby all claims received by ALTA are expected to be processed within five working days. While this standard is occasionally not satisfied because of factors beyond the control of ALTA or its plan customers, on average ALTA has been successful in maintaining this standard. ALTA is committed to maintaining its standard claims processing practices with respect to any claims submitted with respect to plans which participate in the stop-loss insurance arrangements covered by this proposed exemption. Under these procedures, benefit payments are determined based on the date services are "incurred", not the date the claim is processed. The applicants represent that ALTA's claims processing procedures and its commitment to maintain its regular five-day processing cycle create a situation in which ALTA cannot manipulate plan experience in order to indirectly benefit ALTA Re. The only claims that would affect stop-loss coverage would be large catastrophic claims or smaller claims under a plan which has accumulated other major catastrophic claims during the period. In all such cases, claims denials which affect stop-loss coverage are immediately brought to the attention of the plan fiduciary for decision. Following payment of a claim, a claim subject to stop-loss coverage may be disputed by the primary carrier. To the extent such a dispute arises, it would not be ALTA's role nor would ALTA engage in the role of resolving such dispute. Such a dispute would be resolved as a matter of interpretation of the contract between the primary carrier and the customer. Moreover, ALTA provides its customers with a complete report of all claims processed so that all of its decisions implementing plan provisions may be audited in an ongoing manner by its customers. ALTA understands that most of its customers routinely audit those reports as they are received. In addition, all of ALTA's customers whose plans cover more than 100 or more employees engage the services of an independent auditor as required by section 103(a)(3) of the Act. Each of these auditors annually engage in a thorough and detailed audit of ALTA's performance of its claims handling responsibilities.

12. The applicants represent that neither ALTA's claims processing personnel nor its customer service representatives have any economic incentive in the form of additional compensation or incentive pay which could affect their objective performance of their jobs. In this regard, the applicants represent that ALTA will not offer any incentives to any of its employees with respect to the stop-loss option covered by this proposed exemption. The applicants further represent that in all cases the compensation paid with respect to employees or other persons acting on behalf of ALTA will be paid in the same manner regardless of the option selected.

13. In summary, the applicants represent that the proposed transactions satisfy the criteria of section 408(a) of the Act because, among other things: (a) The subject transactions will be offered as an option to fiduciaries of the Plans only if ALTA concludes that the subject transactions would be less expensive than conventional stop-loss insurance offered by comparable primary insurers and reinsurers; (b) the decisions to enter the transactions are made by informed, knowledgeable, independent fiduciaries of the Plans, each of the Plans having at least 100 participants; (c) ALTA will institute and maintain a written procedure (as described in condition 2(e), above) establishing criteria for determining that the Plan fiduciaries are independent of ALTA and ALTA Re, and sufficiently knowledgeable to make an informed decision regarding the transaction; (d) the independent fiduciaries will be making their decisions after a complete disclosure by ALTA of all fees, commissions, and relationships of the parties, and after consideration of options to the subject transactions; (e) ALTA has established claims processing procedures which are subject to audit and verification by the Plans; (f) ALTA will not offer any incentives to any of its employees with respect to the stop-loss option covered by the proposed exemption and in all cases the compensation paid with respect to employees or other persons acting on behalf of ALTA will be paid in the same manner regardless of the option selected; and (g) no more than 5 percent of the total premiums written by ALTA Re pursuant to the subject transactions will be derived from any one single group of affiliated Plans.

FOR FURTHER INFORMATION CONTACT: Gary Lefkowkitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Bear Lumber Company, Inc./Bear Brothers, Inc. Second Amended and Restated Profit Sharing Plan (the Plan) Located in Montgomery, Alabama

[App. No. D–7794]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set

[3] PTE 84–24 exempts certain transactions relating to purchases with plan assets of investment company securities or insurance contracts, and the payment of sales commissions in conjunction with such purchases. Among the conditions required by PTE 84–24 is the disclosure of various information to an independent plan fiduciary by parties in interest who will be relying on the exemption. Such disclosure includes, among other things, the relationship of the party in interest to the insurance company selling the contract, the sales commission, expressed as a percentage of gross annual premiums, that will be paid by the insurance company to the party in interest, and a description of any charges, fees, discounts, penalties or adjustments which may be imposed under the contract.

[4] The Department notes that the exemption proposed herein does not apply to the general fiduciary responsibility provisions of section 404 of the Act.

[5] Because of the various administrative and other services provided by ALTA to the Plans, ALTA may be considered to be a fiduciary or other party in interest with respect to such Plans. However, the applicants represent that ALTA will not use any of the authority, discretion, or influence which might cause it to be a fiduciary with respect to the Plan to cause the Plan to engage in the transactions covered by this proposed exemption.

The Department notes that, to the extent that ALTA is considered to be a fiduciary by virtue of rendering investment advice, as described in 29 CFR 2550.3–21(c)(ii)(B), the presence of an unrelated second fiduciary acting on the investment advisor's recommendations on behalf of the plan is not sufficient to insulate the investment advisor from fiduciary liability under section 406(b) of the Act. (*See:* Advisory Opinion Nos. 84–03A and 84–04A.) The Department is unable to conclude that fiduciary self-dealing of this type (if present) is in the interest or protective of plans and their participants and beneficiaries. Accordingly, the Department has limited relief for the proposed transactions to section 406(a) of the Act.

forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale for cash by the Plan of certain real property to Bear Lumber Company, Inc., the Plan sponsor, for $415,000, provided that the price paid is no less than the fair market value of the real property on the date of sale.

Summary of Facts and Representations

1. The Plan is a profit sharing plan which terminated effective December 31, 1988. The Plan is sponsored by Bear Lumber Company, Inc. and Bear Brothers, Inc., building materials suppliers doing business in Montgomery, Alabama. As of October 19, 1988, the Plan had 27 participants. As of August 8, 1988 the Plan had total assets of $1,390,271.06.

2. The Plan purchased a warehouse (the Real Property) located in Columbus, Georgia, from officers of the Plan sponsors on March 31, 1960 for $185,000 by paying $40,000 in cash and financing the remainder at 5% interest. All outstanding mortgage indebtedness on the Real Property was satisfied in 1982. At the time of the purchase of the Real Property, the Plan leased the Real Property to Sears, Roebuck and Company (Sears) for a period of twenty years plus four five-year renewal options. In 1966, additions to the warehouse were made at Sears' request, and additional property was leased to Sears beginning in 1972. The applicant represents that Sears is unrelated to the Plan and its sponsors.

3. Because the Plan is now terminated, the Plan proposes to sell the Real Property for $415,000 in cash to Bear Lumber Co., Inc., one of the Plan's sponsors. The applicant represents that attempts to find an unrelated third party to purchase the Real Property have failed. The applicant believes it to be in the best interest of the Plan's participants and beneficiaries for them to receive a distribution of their benefits in cash through sale of the Real Property rather than a distribution in kind.

4. On May 31, 1988, Harry F. Boyce, MAI, SRDA, of Valuation Services, Inc., real estate appraisers, consultants and analysts, doing business in Columbus, Georgia, an independent and qualified appraiser, valued the Real Property at between $173,000 and $507,000. The spread between these two figures depends upon whether Sears renews its lease on the Real Property for any or all renewal periods.

5. On December 1, 1988, AmSouth Bank, N.A., of Birmingham, Alabama (AmSouth), an unrelated third party, acting as independent fiduciary to the Plan, stated that in view of the fact the appraisal referred to in paragraph 4 valued the Real Property at $173,000 if Sears renews its lease to the extent permitted under the lease, and in view of the fact that such renewal seems likely (since the terms of the lease are so favorable to Sears), the proposed cash payment to the Plan of $415,000 is not less than the fair market value of the Real Property and should be accepted. In addition, Mr. Boyce, the real estate appraiser, states that the proposed price of $415,000 is more than could be reasonably expected if the Real Property was offered for sale on the open market. AmSouth further states that the terms of the proposed sale of the Real Property compare favorably with the terms of similar transactions between unrelated parties. Finally, as attempts to find an unrelated purchaser for the Real Property have failed, and as it is in the best interest of the Plan's participants to receive distributions in cash rather than an in kind distribution of the Real Property upon Plan termination, AmSouth believes the proposed transaction to be in the best interest and protective of the Plan's participants. AmSouth has undertaken the responsibility to monitor the proposed transaction on behalf of the Plan and to take appropriate actions to safeguard the Plan's interests.

6. In summary, the applicant represents that the proposed transaction will satisfy the criteria of section 408(a) of the Act because, among other things: (a) The sale represents a one-time transaction for cash, which can be easily verified; (b) the Plan's independent fiduciary has determined that the price to be paid for the Real Property is not less than fair market value, that the terms of the sale compare favorably with the terms of similar transactions between unrelated parties and that the proposed transaction is prudent and in the interest and protective of the Plan's participants; and (c) the participants of the Plan will receive distribution of their benefits in cash rather than in kind.

FOR FURTHER INFORMATION CONTACT: Joseph L. Roberts III of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Frank W. Hilliard, D.D.S., M.S.D., Inc. Profit Sharing Plan and Trust (the Plan) Located in Arlington, Texas

[Application No. D–7821]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, effective June 30, 1984, to the past and proposed lease by the individual account of Frank W. Hilliard, D.D.S., M.S.D. (Dr. Hilliard), in the Plan of certain real property (the Land) to Frank W. Hilliard, D.D.S., M.S.D., Inc. (the Employer), the sponsor of the Plan; provided that all terms of such transaction have been and will be at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party.

Effective Date: This exemption, if granted, shall be effective as of June 30, 1984.

Summary of Facts and Representations

1. The Plan is an indivdual-account defined contribution plan with twelve participants and total net assets of $1,513,189 as of September 30, 1988. The trustee of the Plan is the Texas Commerce Bank (the Trustee) in Arlington, Texas. The Employer is a Texas closely-held professional services corporation engaged in the general practice of dentistry and is wholly owned by Dr. Hilliard, an officer/employee of the Employer and a participant in the Plan. The Plan provides for individual participant direction of the investments of the individual participant accounts in the Plan.

2. Among the assets in Dr. Hilliard's individual account (the Account) in the Plan is the Land, a rectangular parcel of real property located at 711 North Fielder Road in Arlington, Texas, consisting of approximately 22,695 square feet. The Employer has leased the Land from the Account continuously since the Account acquired it on March 22, 1974, pursuant to directions of Dr. Hilliard. The Employer represents that its lease of the Land from the Account prior to June 30, 1984 (the Prior Lease) satisfied the requirements of section 414(c)(2) of the Act and, therefore, was exempt until June 30, 1984 from the

prohibitions of section 406 of the Act.[6] The land serves as the site of the Employer's principal place of business (the Building), a 2,800 square-foot dental office facility and related improvements constructed on the Land by the Employer from April to November in 1974. The Trustee represents that the Employer constructed the Building on the Land pursuant to provisions in the Prior Lease granting the Employer the right to add and remove improvements of the Property. As of October 12, 1984 the Land had a fair market value of $90,800, according to Thomas S. Hanes, MAI, SRPA (Hanes), an independent professional real estate appraiser in Arlington, Texas. As of July 1, 1987, Hanes determined the Land's fair market value to be $96,450. Each of Hanes' appraisals included determinations that the fair market rental value of the Land was equal to 12 percent of the Land's fair market value. The Trustee represents that the Land's fair market value has constituted and continues to constitute less than 10 percent of the total assets in the account.

Effective July 1, 1984, the Employer and the Trustee, on behalf of the Account and pursuant to directions of Dr. Hilliard, executed a new lease agreement (the New Lease) providing for the continuation of the Employer's lease of the Land from the Account after June 30, 1984. The Employer is requesting an exemption for the continuation of the Employer's lease of the Land from the Account under the New Lease after June 30, 1984 and for its proposed continuation under terms and conditions described herein.

3. The New Lease is a triple net lease under which the Employer is obligated for all costs of maintenance and repair, all utilities and all taxes with respect to the Land. The interests of the Account under the New Lease are represented for all purposes by the Trustee. The New Lease provides for an initial term of thirty six months, renewable upon approval of the Trustee for no more than four successive renewal terms of thirty six months each. Pursuant to such renewal provisions, the Trustee approved the first renewal of the New Lease on July 1, 1987. Rentals under the New Lease are paid monthly in the amount of no less than the land's fair market rental value as determined at the commencement of the thirty six month term by an independent appraiser selected by the Trustee. Under the New Lease the Employer agrees to indemnify and hold harmless the Account against any and all claims arising from the Employer's use of the Land.

4. The Trustee states that it has represented the interests of the Account continuously since June 30, 1984 in all matters relating to the Employer's lease of the Land from the Account. According to its representations, the Trustee made an independent determination that the Account's lease of the Land to the Employer should continue after June 30, 1984 under the provisions of the New Lease effective July 1, 1984 because it was in the best interests and protective of the Account. The Trustee maintains that factors which figured prominently in this determination included the proven financial success of the lease as an investment for the Account, the creditworthiness of the Employer as a tenant, the alternative investments available to the Account, the size of the transaction in relation to total Account assets and the fact that the transaction involved only one individual account in the Plan. The Trustee represents that for the same reasons it made an independent determination as of July 1, 1987 to permit a renewal of the New Lease for a renewal term of thirty six months. The Trustee represents that rentals paid by the Employer since June 30, 1984 have been determined by Hanes' appraisals and have provided the Account with rentals of no less than fair market value. For the duration of the New Lease and any renewals thereof, the Account will be represented thereunder for all purposes by the Trustee.

5. In summary, the applicant represents that the criteria of section 408(a) of the Act are satisfied in the Account's lease of the Land to the Employer under the New Lease for the following reasons: (1) The New Lease affects only the Account in the Plan, an individually-directed account of a participant who desires to continue the subject transaction as an investment of the Account; (2) The interests of the Account have been and will remain represented under the New Lease for all purposes by the Trustee, which is independent of the Employer; (3) The Trustee determined that the continuation of the Employer's lease of the Land from the Account after June 30, 1984, and the renewal of the New Lease on July 1, 1987, were in the best interests and protective of the Account and that rentals paid under the New Lease have been no less than the fair market rental value of the Land; (4) The New Lease provides the Account with an absolute net return and requires the Employer to assume responsibility for all costs of maintenance, repair, utilities and taxes with respect to the Land; and (5) The New Lease ensures that the Account will receive rentals for the Land of no less than the Land's fair market rental value as determined by an appraiser selected by the Trustee.

Notice to Interested Persons: Because Dr. Hilliard is the sole shareholder of the Plan sponsor and the only Plan participant whose account in the Plan will be affected by the transaction, it has been determined that there is no need to distribute the notice of pendency to interested persons. Comments and requests for a hearing must be received by the Department within 30 days of the date of publication of this notice of proposed exemption.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

J. Lee Milligan, Inc. Profit Sharig Plan and Trust (the Plan) Located in Amarillo, Texas

[App. No. D–7838]

Proposed Exemption

The Department is considering graning an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale by the Plan for cash of certain real property (the Real Property) to J. Lee Milligan, Inc., the Plan sponsor, provided that the price paid for the Real Property be no less than the greater of the fair market value of the Real Property as of the date of sale, as determined by an independent and qualified appraiser, or the total outlay by the Plan in connection with its acquisition and retention of the Real Property to the date of sale.

Summary of Facts and Representations

1. The Plan is a defined contribution plan sponsored by J. Lee Milligan, Inc. (the Employer), a Texas corporation the primary business of which is paving construction, having its principal office in Amarillo, Potter County, Texas. As of May 31, 1988 the Plan had 13 participants. As of September 30, 1988, the Plan assets were $612,414.

[6] In this proposed exemption the Department expresses no opinion as to whether the Employer's lease of the Land from the Account satisfied the requirements of section 414(c)(2) of the Act.

2. On November 14, 1975 the Plan purchased the Real Property, Tracts Number 1 and 2 of "66" Village, a subdivision of a part of survey number 73, block number 2, ABE&M survey, Potter County, Texas, consisting of 2.066 acres occupied by a single family residence, from Margaret Wurger, an unrelated third party, for $18,000. The Real Property is now free and clear of all liens and encumbrances. The Employer owns 10.38 acres of land contiguous (the Continguous Land) to the Real Property acquired in 1985 from the Plan pursuant to an order by the Department to take corrective action with respect to an on-going prohibited transaction consisting in the lease of the Contiguous Land to the Employer. The Employer's offices and storage and equipment facilities are located on the Contiguous Land.

3. The Real Property has been occupied for the past two years by David Langford (Mr. Langford), an employee of the Plan sponsor. Mr. Langford pays $200 per month under a month-to-month rental contract. The applicant represents that Mr. Langford is not a participant in the Plan, nor is he a disqualified person with respect to the Plan as described in section 4975(e)(2)(A) through (I) of the Code.[7] The Real Property was previously rented by an unrelated party.

4. On April 27, 1989, Kenneth E. Lard, SRA (Mr. Lard), an independent and qualified appraiser in Amarillo, Texas, stated that the fair market value of the Real Property was $19,000, taking into account the fact that the Employer owns the Contiguous Land. Mr. Lard also estimated that the fair market rental value of the Real Property is $200 per month.

5. The Employer wishes to terminate the Plan and distribute the Plan's assets among the participants. Accordingly, in order to facilitate the distribution of assets, the Plan proposes to sell the Real Property to the Employer for cash for the higher of the fair market value of the Real Property as of the date of sale or the total outlay by the Plan in connection with its acquisition and holding of the Real Property.

6. In summary, the applicant represents that the proposed tranaction will meet the statutory criteria of section 408(a) of the Act because: (a) The Real Property will be sold for the higher of its fair market value as of the date of sale as established by an independent and qualified appraiser or the Plan's total expense in acquiring and holding the Real Property; (b) the Plan will not incur any loss in connection with its outlay for repairs and maintenance of the Real Property; (c) the proposed sale represents a one-time transaction for cash, which can be readily verfified; (d) the Plan will pay no fees, taxes, or other transfer costs in connection with the proposed sale; (e) the proposed sale will enable the Plan to terminate and make full distribution to participants of benefits; and (f) the Plan's trustees have determined that the proposed sale is in the best interest and protective of the Plan and its partcipants and beneficiaries.

For Further Information Contact: Joseph L. Roberts III of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Marlin D. Grant Individual Retirement Account (the IRA) Located in Bloomington, Minnesota

[App. No. D-7865]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the proceures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed purchase by the IRA of a contract for deed (the Contract) from Marvin H. Anderson Construction Company (the Company), a disqualified person with respect to the IRA, provided that the IRA pays the lesser of $64,412.00 or the fair market value of the Contract at the time of the sale.[8]

Summary of Facts and Representations

1. The IRA is an individual retirement account which was created approximately 10 years ago. Mr. Marlin D. Grant (Mr. Grant) is the sponsor of the IRA. The applicant represents that as of January 31, 1989, the total assets of the IRA were $435,160. The proposed transaction would involve approximately 15% of the IRA assets. Mr. Grant is the president and the majority owner of the Company.

2. The Company, which is in the construction business in Minneapolis, Minnesota sold a house on March 2, 1988 (the House) to an unrelated third party for $132,981. The down payment in the amount of $62,981 as paid to the Company by the purchaser. For the remaining $70,000 of the purchase price the Company extended credit to the purchaser via the 24 month Contract with a 10.5% fixed interest rate. Beginning from the Contract's origination date of Setpember 22, 1988, monthly minimum payments of interest and principal are to be $650.00 commencing November 1, 1988 and continuing until November 1, 1990, at which time the unpaid balance together with interest shall be paid in full. Out of each monthly payments, interest shall be first deducted and the balance applied to principal. The payment due November 1, 1990 is a balloon payment of approximately $69,000.

3. The Company proposes to sell the Contract to the IRA for a purchase price of $64,412 or the fair market value at the time of the sale. The Purchase price represents a discount of 7.85% which was established by an appraisal dated December 22, 1988, conducted by Mark Terfehr, an independent appraiser with the Noteworthy Investment Company of Minneapolis (the Terfer appraisal). The applicant states that the Discount will create an effective yield for the IRA of approximately 15 percent, which is a higher rate of return than is currently available through other investments.

4. An appraisal of the House, dated March 10, 1988, was completed by L. John Lundquist, a licensed real estate broker in the state of Minnesota for the past 30 years. Mr. Lundquist represents that he is qualified and independent. He concludes that the House has a fair market value of $133,500.

5. The applicant represents that the transaction is desirable for the IRA. It will be a one time cash sale and the IRA will bear no costs associated with the sale. The applicant represents that the transaction is in the best interest of the IRA. If the purchaser defaults on the Contract it can be foreclosed rapidly and repossession of the underlying real property can occur within 90 days. The Contract allows for a short processing period. It is also protective of the IRA as the Contract is adequately secured by the value of the House and a $62,981 down payment. The Discount will further increase investment return.

6. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 4975(c)(2) of the Code because:

(a) The proposed sale will be a one-time cash transaction;

(b) The price paid by the IRA will be $64,412 or the fair market value at the time of the sale, whichever is less;

[7] The Department is not providing exemptive relief under Title I of the Act for the lease of the Real Property to Mr. Langford.

[8] Pursuant to 29 CFR 2510.3-2(d), there is no jurisdiction with respect to the IRA under Title I of the Act. However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

(c) The IRA will pay no expenses associated with the sale; and

(d) Mr. Grant as the sole participant of the IRA, would be the only individual affected by the transaction.

Notice to Interested Persons

Because Mr. Grant is the sole participant of the IRA, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and request for a hearing are due 30 days from the date of publication of this notice in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department at (202) 523–8194 (this is not a toll-free number).

Washington Mortgage Company, Inc. (WMC) Located in Seattle, Washington

[App. No. D–7891 and D–7892]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975) as follows:

I. If the exemption is granted the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to: (1) The sale, exchange or transfer between WMC and its affiliates and certain employee benefit plans (the Plans) of certain construction loans or participation interests therein to non-party in interest entities; and (2) the sale, exchange or transfer between WMC and its affiliates and the Plans of any construction or permanent loan made by a Plan to a party in interest, and the resulting extension of credit thereform, provided that:

(a) The terms of the transactions are not less favorable to the Plans than the terms generally available in arm's-length transactions between unrelated parties;

(b) Such sales, exchanges or transfers are expressly approved by a Plan fiduciary independent of WMC and its affiliates who has authority to manage or control those Plan assets being invested in mortgages or participation interests therein;

(c) No investment management, advisory, underwriting fee or sales commission or similar compensation is paid to WMC or any of its affiliates with regard to such sale, exchange or transfer;

(d) The decision to invest in a loan or a participation interest therein is not part of an arrangement under which a fiduciary of a Plan, acting with the knowledge of WMC or its affiliate, causes a transaction to be made with or for the benefit of a party in interest (as defined in section 3(14) of the Act) with respect to the Plan;

(e) At the time of its acquisition of a loan or participation therein, no Plan will have more than 25% of its assets invested in construction or permanent mortgages;

(f) WMC and its affiliates do not and will not act as fiduciaries with regard to any Plan investing in permanent and construction loans and interests therein as described in this proposed exemption; and

(g) WMC shall maintain or will cause to be maintained, for the duration of any loan or participation therein sold to a Plan pursuant to this proposed exemption, such records as are necessary to determine whether the conditions of this exemption have been met. The records mentioned above must be unconditionally available at their customary location for examination for purposes reasonably related to protecting rights under the Plans, during normal business hours, by: Any trustee, investment manager, employer of Plan participants, employee organization whose members are covered by a Plan, participant or beneficiary of a Plan.

II. If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to any transactions to which such restrictions or taxes would otherwise apply merely because WMC or any of its affiliates is deemed to be a party in interest with respect to a Plan by virtue of providing services to the Plan in connection with the subject loan transactions (or because it has a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act), solely because of the ownership of a loan or participation interest therein as described in this exemption by such Plan.

III. Definitions. For purposes of this exemption,

(a) An "affiliate" of WMC includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with WMC,

(2) Any officer, director, employee, relative of, or partner in any such person, and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(b) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

Temporary Nature of Exemption: This exemption, if granted, will be effective only for those transactions entered into within five years of the date on which the Final Grant of this proposed exemption is published in the **Federal Register.**

Summary of Facts and Representations

1. WMC has originated income property (commercial and multifamily) loans since 1949 for major institutional buyers, including pension funds, life insurance companies and thrift institutions. In 1982, WMC was acquired by Puget Sound Bancorp (Bancorp), as a wholly owned subsidiary. Bancorp also has four bank subsidiaries. In all, the assets of Bancorp are currently in the range of $3.8 billion. WMC has averaged in excess of $300 million in loan originations per year over the past 8 years. WMC has offices in Seattle and Tacoma, Washington, and Portland, Oregon.

2. WMC works on behalf of the borrower/developer in putting together construction and permanent financing for commercial and multifamily residential real estate projects. The role of WMC is to provide or arrange for all of the construction financing and to arrange a negotiated permanent commitment, so that construction financing is paid off when the building is completed. In some cases, WMC or its affiliates also participate in funding the construction or permanent loans. WMC works on behalf of the borrower/developer to secure permanent financing alternatively by: (1) Committing directly to the borrower for permanent financing, with the intention of later securing a permanent lender; (2) committing to the borrower based on a commitment for permanent financing provided by another lending institution to WMC; or (3) securing for the borrower, directly, a commitment from another lending institution for the permanent financing, with such a commitment going directly from the lender to the borrower, but assigned to WMC during the construction phase as additional collateral and security for the construction loan.

3. WMC's affiliate, Puget Sound Mortgage Servicing Corporation (PSMS), is responsible for servicing all permanent real estate loans originated by WMC. PSMS typically services the

permanent loan for a fee of ⅛ of 1% per annum on the outstanding principal balance of the loan. Servicing fees for construction loans are determined as a percentage of the outstanding balance of the loans. The applicants represent that all fees and charges are set in advance in accordance with prevailing market conditions.[9]

4. WMC currently sells permanent loans to Plan. The applicants represent that, in doing so, WMC does not act in a fiduciary capacity to any Plans. Rather, all decisions by Plans to purchase permanent loans from WMC are made by the Plan trustees or by investment advisers independent of WMC, acting on behalf of the Plans. Before its acquisition by Bancorp in 1982, WMC entered into loan servicing agreements with Plans which purchased permanent loans from WMC, and WMC thus became a "service provider" as described in section 3(14)(B) of the Act. In order to avoid prohibited transactions resulting from the sale of mortgage loans to the same Plans for which servicing was being done, WMC obtained an exemption from the Department (PTE 85–1, 50 FR 1004, January 8, 1985). Although PSMS now does the servicing of loans originated by WMC and funded by Plans, in all other material res1pects WMC still operates its permanent loan business with respect to Plans in the manner described in the proposed exemption for PTE 85–1 (49 FR 44034, November 1, 1984).

5. The loans which are the subject of this proposed exemption fall into categories which are not expressly covered by PTE 85–1. These are: (1) Construction loans to non-party in interest entities; and (2) construction or permanent loans to a party in interest which would usually be a contributing employer to a multi-employer plan or an affiliate of such contributing employer.[10] In all of these cases, WMC and its affiliates would continue to act as a non-fiduciary in originating, selling and servicing these loans. Any decision to acquire the subject loan or participation interests therein will be made by a plan fiduciary independent of WMC and its affiliates. Any loan or participation interest sold to a Plan will conform to WMC's standards for making such a loan. In the case of construction loans, it is anticipated that loan servicing would be done by WMC itself instead of PSMS.

6. With regard to the construction loans, there are some differences in the administration or servicing of these loans from that involved in permanent loans. Specifically, WMC would be charged with responsibility for the following: (1) Releasing construction loan draws and hold backs as various conditions of the construction loan are satisfied; (2) adjustment of hard-line cost items in the construction loan budget to reflect actual costs; (3) making certain the borrower corrects any non-monetary defaults; (4) implementing borrower-requested change orders approved by WMC staff or independent inspectors; (5) clearing mechanics' liens placed on the property during the course of construction; and (6) insuring general compliance by all parties with a construction loan agreement and related agreements.

7. As in the case of permanent loans, administration of construction loans which are in default would involve an independent Plan fiduciary making decisions on behalf of the Plans at the time of the default, or by WMC in accordance with pre-approved guidelines set forth in the loan participation agreement. Such guidelines would be approved in advance of the loan purchase by the independent Plan fiduciary. The Plan, acting through its own independent fiduciary, would also retain the ability (with the consent of WMC) to transfer, assign or otherwise dispose of its interest in the construction loans to a third party without the payment of any fee or penalty. The applicants represent that with respect to the servicing of the construction loans, as in the case of the permanent loans, WMC and its affiliates will not be acting as fiduciaries with respect to the investing Plans.

8. As in the case of permanent loans, Plans purchasing construction loan interests would not pay WMC an investment management, investment advisory, sales commission or similar fee. In addition, as in the case of permanent loans, such Plans would not pay more for their participation interest in any construction loan than would be paid by an unrelated party in an arm's-length transaction.

9. With respect to construction or permanent loans which are made to parties in interest, the applicants represent that any decision to invest in such loans will be made by a plan fiduciary independent of WMC and its affiliates, and also independent of the party in interest receiving the proceeds of the loan. If construction is to be performed by a contributing employer or other party in interest, WMC would require a written statement executed by the independent fiduciary that its decision to invest was not influenced or controlled by the borrower or any other party in interest.[11]

10. WMC represents that as a result of being a party in interest with respect to Plans by virtue of servicing the subject loans or participations purchased thereby, WMC would be prohibited from engaging in other commercial transactions with these Plans, such as the making of loans, which transactions have nothing to do with the mortgages or participation interests held by the Plans. The Department has considered WMC's request for relief for such transactions and has decided that because the servicing relationship is established as a necessary result of the purchase of a mortgage or participation interest by a Plan, subsequent transactions between the parties otherwise prohibited by section 406(a) are not likely to present an inherent abuse potential. Accordingly, the Department had determined it would be appropriate to propose the relief from section 406(a) contained in Part II of the proposed exemption.

11. In summary, the applicants represent that the proposed transactions satisfy the criteria of section 408(a) of the Act because:

(a) The Plans will pay no more for the mortgages and participation interests therein than would be paid by an unrelated party in an arms'-length transaction;

(b) All Plan decisions to invest in mortgages and participation interests therein will be made by a Plan fiduciary independent of WMC and its affiliates;

(c) At the time of its acquisition of a loan or a participation therein, no Plan

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[9] The Department is not proposing any relief herein for the receipt of fees beyond that which is provided by the statutory exemption contained in section 408(b)(2) of the Act.

[10] The applicants represent that no loan acquired by a Plan which is made to a party in interest will be a loan to a fiduciary or an affiliate thereof. In this regard, the Department notes that any such loan would involve violations of section 406(b) of the Act for which no relief is being proposed herein.

The applicants represent that, with respect to the subject loans, construction and other services related to the project may or may not be performed by a party in interest. The Department further notes, as it did in the proposal to PTE 85–1, that where the construction on the property which secures the loan is by a contributing employer to the Plan and a principal of such employer exercises fiduciary authority in approving the Plan's investment in the loan, a separate prohibited transaction under section 406(b) of the Act may occur, which transaction would not be covered by this proposed exemption. See also condition (d) of Part I of this proposed exemption which has the effect of precluding relief under section 406(a) of the Act for certain transactions undertaken for the benefit of parties in interest.

[11] The Department is not proposing exemptive relief herein for any violation of section 406(b) of the Act resulting from the provision of such construction services. See footnote 10, *supra*.

will have more than 25% of its assets invested in construction or permanent mortgages;

(d) The terms of the construction or permanent loans will not be less favorable to the Plans than the terms generally available in arms'-length transactions with unrelated parties; and

(e) No investment management, advisory, underwriting fee or sales commission will be paid to WMC or any of its affiliates with regard to such sale, exchange or transfer.

Notice to Interested Persons: In addition to the notice requirement outlined in the general provisions of this notice, WMC agrees to provide a copy of the notice of proposed exemption and any subsequent grant of such exemption to all employee benefit plans with whom WMC may contract in the future to provide services as described herein. Such notification will be provided prior to WMC entering into a contract to provide such services.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 16th Day of June, 1989.

Robert J. Doyle,

Director of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 89-14704 filed 6-21-89; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 89-53; Exemption App. Nos. L-7657, L-7658 et al.]

Grant of Individual Exemptions; Northwest Ironworkers—Employees Vacation Trust Fund and the Pacific Northwest Ironworkers and Employers Apprenticeship and Training Trust Fund, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing the held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Northwest Ironworkers—Employers Vacation Trust Fund (the Vacation Trust) and the Pacific Northwest Ironworkers and Employers Apprenticeship and Training Trust Fund (the Training Trust; together, the Trusts) Located in Seattle, Washington

[Prohibited Transaction Exemption 89-53; Exemption Application Nos. L-7657 and L-7658]

Exemption

The restrictions of section 406(b)(2) of the Act shall not apply to the proposed transfer of $235,000 in unclaimed, surplus funds from the Vacation Trust to the Training Trust.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 24, 1989 at 54 FR 8022.

Written Comments: The Department received three comment letters with respect to the notice of proposed exemption (the Notice).

Two of the comment letters were from individuals who are participants in the Vacation Trust and members of Iron Workers Local Union No. 86 (Local 86) of the International Association of Bridge, Structural, Reinforcing Steel and Ornamental Iron Workers, Riggers and Machinery Movers (the Union). These individuals opposed the proposed

transfer of funds from the Vacation Trust to the Training Trust because they believed that the funds could be put to better uses in other employee benefit plans sponsored by the Union. In addition, these individuals requested that a hearing be held on the proposed transaction and claimed that insufficient information was given to the Union's membership to allow the membership to oppose the proposed transaction.

The remaining comment letter was from William D. Glockner (Mr. Glockner), an officer of Local 86, which stated that the Local 86 membership unanimously opposed the proposed transaction at a meeting held on March 16, 1989.

By letter dated May 1, 1989, the applicant responded to the comment letters.

The applicant's representative states that he has spoken with Mr. Glockner and the other individuals and that they are concerned that if there are other transfers of funds from the Vacation Trust in the future, an exemption for the proposed transaction will constitute a favorable precedent for such additional transfers of funds. However, the applicant states that assurances have been made to these individuals, as well as the other members of Local 86, that future transfers of funds from the Vacation Trust will have to be justified on their own merits, regardless of whether the proposed exemption is granted. In addition, a decision regarding what to do with future surplus funds will have to be made by the board of trustees of the Vacation Trust (the Vacation Trust Trustees) at a later date before any additional transactions can take place.

The applicant represents that with respect to the present transaction, the Vacation Trust Trustees by unanimous action, including the Vacation Trust Trustees from Local 86, voted to transfer the surplus funds to the Training Trust. The applicant states that even though the surplus funds could be put to other uses which would also serve the participants of the Trusts, the Vacation Trust Trustees determined that the interests of the participants would be best served by using such funds for training and retraining ironworkers who are participants in the Training Trust. Thus, the applicant asserts that the comment letters represent merely a disagreement by the Local 86 membership with a decision of the Vacation Trust Trustees regarding the proposed use of the funds. The applicant maintains that such a disagreement with the Vacation Trust Trustees, half of whom are duly elected representatives of the Union membership, does not provide sufficient grounds for the Department to deny the requested exemption.

The applicant states that diligent efforts have been and continue to be made to locate those participants who have unclaimed funds in the Vacation Trust. Paragraph 7 of the Notice states that the Vacation Trust Trustees and the board of trustees of the Training Trust (together, the Trustees) have executed an indemnification agreement (the Agreement). The Agreement provides that the Training Trust will indemnify the Vacation Trust in an amount up to $235,000 for any unclaimed Vacation Trust contributions that are required to be paid to the participants of the Vacation Trust which have accumulated as of the date that the Vacation Trust transfers to the Training Trust the unclaimed, surplus funds.

Paragraph 4 of the Notice also states that a contribution of $1.00 per hour is made by an employer to the Vacation Trust for each hour of covered work performed by an employee. The applicant wishes to clarify for the record that the contribution rate to the Vacation Trust since June 1, 1986 has been $1.50 per hour.

With respect to the issues raised by the comment letters, the Department does not believe that a hearing on the proposed exemption is necessary. In this regard, the Department notes that by letter dated March 7, 1989, the applicant acknowledged that all the Union Locals, including Local 86, were notified by the deadline for the notice to interested persons, were provided with a copy of the Notice, and posted the Notice in accordance with ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). All interested persons were informed that they had 30 days to comment on the proposed exemption.

With respect to the concerns raised by Mr. Glockner and the other individuals regarding possible future transfers of funds from the Vacation Trust, the Department would point out that the present transaction concerns a one-time transfer of funds from the Vacation Trust to the Training Trust. The Department notes that in the event of any future transfers of funds by the Trustees from the Vacation Trust to the Training Trust, or to any other employee benefit plan that has trustees in common with the Vacation Trust, such transfers would be considered a separate prohibited transaction under the Act and would properly be the subject of another exemption application which would require the Department's review and approval.

Finally, with respect to the appropriateness of the proposed transfer of funds, the Department notes that the Trustees, as the responsible decision-makers and plan fiduciaries, have determined that the proposed transaction is in the best interests of the participants of the Trust.

Accordingly, after consideration of the entire record, the Department has determined to grant the exemption.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Green Mountain Radiology Profit Sharing Plan (the Plan) Located in Montpelier, Vermont

[Prohibited Transaction Exemption 89–54; Exemption App. No. D-7904]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to a proposed cash sale by the Plan of certain parcel of unimproved land to Dr. James R. Chandler, a party in interest with respect to the Plan, provided that the Plan receives the greater of $16,000 or the fair market value at the time of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to notice of proposed exemption published on April 26, 1989 at 54 FR 18048.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Hanson, Toller, and Lockwood M.D.'s Profit Sharing Plan and Trust (the Plan) Located in Yuba City, California

[Prohibited Transaction Exemption 89–55; App. No. D–7828]

Exemption

The restrictions of section 406(a), (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the Plan's proposed sale (the Sale) of the Lakeridge Athletic Club (the Club) located in El Sobrante, California, to Dr. John W. Lockwood and his wife Julia, parties in interest with respect to the Plan, for a total Sale price of $2,200,000 in cash; provided this amount is not less than the appraised fair market value of the Club at the time of Sale and provided further that the terms and conditions of the Sale

are at least as favorable to those obtainable by the Plan in an arm's length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 4, 1989 at 54 FR 13589.

FOR FURTHER INFORMATION CONTACT: Mrs. B.S. Scott of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Ralph Wilson Plastics Employees Retirement Plan (the Plan) Located in Temple, TX

[Prohibited Transaction Exemption 89–56; Exemption App. No. D–7921]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale by the Plan of a parcel of unimproved real property (the Property) to Ralph Wilson Plastics Company, a party in interest, provided the sales price for the Property is not less than the greater of: (a) The fair market value of such Property on the date of sale; or (b) the Plan's total acquisition and holding costs with respect to the Property.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 26, 1989 at 54 FR 18050.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 523–8881. This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 16th day of June, 1989

Robert J. Doyle,

Director of Regulations and Interpretations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 89–14705 Filed 6–21–89; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 89–48]

NASA Advisory Council (NAC), Space Systems and Technology, Advisory Committee (SSTAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee, Ad Hoc Review Team on Technology Requirements for Human Performance on Long Space Missions.

DATE: July 18, 1989, 1 p.m. to 5 p.m.

ADDRESS: National Aeronautics and Space Administration, Federal Building 10B, Room 625, 600 Independence Avenue, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. James P. Jenkins, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453–2750.

SUPPLEMENTARY INFORMATION: The NAC Space Systems and Technology Advisory Committee (SSTAC) was established to provide overall guidance to the Office of Aeronautics and Space Technology (OAST) on space systems and technology programs. Special ad hoc review teams are formed to address specific topics. The Ad Hoc Review Team on Technology Requirements for Human Performance on Long Space Missions, chaired by Dr. Gerald P. Carr, is comprised of eight members. The meeting will be open to the public up to the seating capacity of the room (approximately 40 persons including the team members and other participants).

Type of Meeting:

Open.

Agenda:

July 18, 1989.

1 p.m.—OAST Programs Discussion: Pathfinder, Space Human Factors, Extravehicular Activity Suits, and Base Research and Technology Program.

3 p.m.—Discussion on Proposed Committee Activities.

5 p.m.—Adjourn.

June 15, 1989.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 89–14703 Filed 6–21–89; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

Issues Related to Comments Concerning the U.S. Office of Technology Assessment's Report Informing the Nation

AGENCY: U.S. National Commission on Libraries and Information Science.

ACTION: Notice of public hearing.

SUMMARY: In late 1988, the U.S. Office of Technology Assessment released its report entitled *Informing the Nation: Federal Information Dissemination in an Electronic Age.* The report discusses alternatives concerning the roles and responsibilities of several agencies involved with the dissemination of federal information. The purpose of this hearing is to gather comments from the public and private sector information communities concerning reactions to the report and its recommendations. This notice announces the public hearing designed to elicit views, comments and information from interested organizational representatives. The

Commission's hearings are authorized under Pub. L. 91–345.

DATE/LOCATION: The hearing will be held July 13, 1989 in Auditorium (A–5) of the Martin Luther King, Jr. Memorial Library, 901 G Street, NW., Washington, DC, 9:30 a.m.–4:30 p.m.

Anyone desiring to testify should submit a written request, which should be received no later than July 1, 1989. Twenty copies of the written statements must be received in the NCLIS office by 4:00 p.m. on July 6, 1989.

Supplemental or reply statements will become part of the record if received by 4:00 p.m. on July 21, 1989. Twenty copies of such statements should be submitted.

ADDRESS: Written requests to present testimony and twenty copies of all statements should be submitted to: U.S. National Commission on Libraries and Information Science, 1111 18th Street, NW., Suite 310, Washington, DC 20036.

All requests to testify should clearly identify the individual or group desiring to testify. The NCLIS office will attempt to contact all requestors to confirm their appearances.

Special provisions will be made for handicapped individuals by calling Jane McDuffie (202) 254–3100, no later than one week in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Robert Dugan, Research Associate, U.S. National Commission on Libraries and Information Science, (202) 254–3100.

Dated: June 16, 1989.

Jane D. McDuffie,

Staff Assistant.

[FR Doc. 89–14804 Filed 6–21–89; 8:45 am]

BILLING CODE 7527–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted by July 24, 1989.

ADDRESSES: Send comments to Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3002, Washington, DC 20503 (202–395–7316). In addition, copies of such comments may be sent to Mrs. Anne C. Doyle, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202–682–5401).

FOR FURTHER INFORMATION CONTACT: Mrs. Anne C. Doyle, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests a review of a new collection of information. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per reponse; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: FY 90 Inter-Arts Program Application Guidelines Artists' Projects: New Forms

Frequency of Collection: One-time

Respondents: Non-profit institutions

Use: Guideline instructions and applications elicit relevant information from non-profit organizations that apply for funding under the Artists' Projects: New Forms category. This information is necessary for the accurate, thorough, and fair consideration of competing proposals in the peer review process.

Estimated Number of Respondents: 400

Average Burden Hours per Response: 30

Total Estimated Burden: 12,000

Anne C. Doyle,

Administrative Services Division, National Endowment for the Arts.

[FR Doc. 89–14730 Filed 6–21–89; 8:45 am]

BILLING CODE 7537–01–M

Dance Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Dance Companies Section) to the National Council on the Arts will be held on July 17–20, 1989, from 9:00 a.m.–9:00 p.m. and July 21, 1989, from 9:00 a.m.–5:00 p.m. in Room M07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on July 21, 1989, from 3:00 p.m.–5:00 p.m. The topics for discussion will be policy issues.

The remaining portion of this meeting on July 17–20, 1989, from 9:00 a.m.–9:00 p.m. and July 21, 1989, from 9:00 a.m.–3:00 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

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. 89–14727 Filed 6–21–89; 8:45 am]

BILLING CODE 7537–01–M

Inter-Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Inter-Arts Advisory Panel (New Forms Regional Initiative Section) to the National Council on the Arts will be held on July 11, 1989, from 9:00 a.m.–5:30 p.m. in Room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on July 11, 1989, from 4:00 p.m.–5:30 p.m. The topics for discussion will be policy issues.

The remaining portion of this meeting on July 11, 1989, from 9:00 a.m.–4:00 p.m. is for the purpose of Panel review, discussion, evaluation, and

recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

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. 89–14728 Filed 6–21–89; 8:45 am]

BILLING CODE 7537–01–M

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Challenge III Section) to the National Council on the Arts will be held on July 12, 1989, from 9:00 a.m.–4:30 p.m. in Room M14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on July 12, 1989, from 3:30 p.m.–4:30 p.m. The topics for discussion will be policy issues and guidelines.

The remaining portion of this meeting on July 12, 1989, from 9:00 a.m.–3:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

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. 89–14729 Filed 6–21–89; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Informal Science Education Panel; Meeting

The National Science Foundation announces the following meeting:

Name: Informal Science Education Panel Meeting.

Date and Time: July 12–14, 1989, from 8:30 a.m. to 5:00 p.m.

Place: Museum of Science, Science Park Boston, MA 02114.

Type of Meeting: Closed Meeting.

Contact Person: Michael Templeton or Kenneth Starr, National Science Foundation, 1800 G St., NW., Washington, DC 20550, Informal Science Education, Room 635–A, Phone (202) 357–7076.

Summary of Minutes: May be obtained from the Contact persons at the above address.

Purpose of Meeting: To provide advice and recommendations concerning Informal Science Education proposals.

Agenda: To review and evaluate Informal Science Education proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a propriety or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

June 18, 1989.

[FR Doc. 89–14823 Filed 6–21–89; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Niagara Mohawk Power Corp.; Environmental Assessment and Finding of No Significant Impact

[Docket No. 50–220]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuing an exemption from certain requirements of 10 CFR part 50, Appendix J, to the Niagara Mohawk Power Corporation (the licensee), for the Nine Mile Point Nuclear Station, Unit 1 (NMP–1), located at the licensee's site in Scriba, New York.

Environmental Assessment

Identification of Proposed Action

The proposed action would exempt the licensee from meeting certain requirements of 10 CFR 50, Appendix J, until startup following the next refueling outage. Appendix J requires containment isolation valves to be Type C leakage tested. In the past the licensee has not included the four containment isolation valves in the shutdown cooling system suction and return line (38–01, –02, 38–12, –13) in the Type C testing program. The licensee did not consider them to be containment isolation valves. However, by letter dated May 6, 1988 the NRC transmitted to the licensee a safety evaluation (SE) concerning the licensee's leakage rate testing program. In that SE the staff stated its finding that the subject values needed to be included in the Type C testing program. Recent attempts by the licensee to perfrom the Type C tests have resulted in the isolation valve leak rates exceeding Appendix J criteria. The licensee has determined that the valves can not be made sufficiently leak-tight to meet Appendix J criteria.

The licensee has proposed that a schedular exemption be granted from the requirement to perform Type C leakage testing of the shutdown cooling system isolation valves (38–01, –02, –12, and –13) and from the requirement that the leakage of these valves be included in the $0.60L_a$ acceptance criteria for Type B and Type C tests. The requested exemption is for the period up to and including the next refueling outage. The

schedular exemption was requested to allow time to procure needed hardware and to develop and install the necessary changes to meet the requirement of 10 CFR 50, Appendix J.

The licensee's request for this exemption, and the basis therefor are contained in its letter dated November 22, 1988.

The Need for the Proposed Action

The exemption is required in order to permit the licensee to startup from the current outage and operate the plant while the necessary changes are developed and the necessary hardware is procured. Without this exemption the restart and operation of this plant would be delayed until the necessary changes and testing were completed.

Environmental Impacts of the Proposed Action

The exemption would allow the changes needed to the isolation valves on the shutdown cooling system suction and return lines to meet the requirements of 10 CFR 50, Appendix J, to be completed during the next refueling outage. The exemption would allow the plant to be operated during the period of time necessary to determine the necessary changes and procure the necessary hardware.

The effect of leakage from the shutdown cooling system isolation valves has been evaluated with respect to normal operation, shutdown and accident conditions. Each case indicates that leakage is into a closed loop or the leakage through the valve is minor. The leakage will not affect the processing of effluents, including radiological effluents during normal operation. During accident conditions, leakage through the valves will be into a closed system and will be further restricted by the other isolation valves in the process stream prior to its release back into the Reactor Coolant System inside the primary containment. If a break occurs in the shutdown cooling system, any leakage into it from the reactor coolant system would be minimized by the valves themselves and core uncovery or fuel failure is not expected. Therefore, leakage from the valves will not significantly contribute to the radiological release to the environment following a design basis loss of coolant accident (LOCA).

The licensee has stated the exemption would not increase the probability of an accidental release of radioactivity. The exemption would not increase the probability of fuel clad failure or decrease the mitigation effects of the emergency core cooling systems nor decrease the decay heat removal process. The exemption will not affect normal radiological plant effluents or increase normal occupation exposures.

Therefore, based on the considerations discussed above, the staff concludes that granting the proposed exemption will not increase the probability of an accident and will not result in any post-accident radiological releases significantly in excess of those previously determined for Nine Mile Point Nuclear Station, Unit 1. Moreover, the proposed exemption would not otherwise affect radiological plant effluents, nor result in any significant occupational exposure. Likewise, the exemption does not affect non-radiological plant effluents and has no other environmental impact.

Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

The staff has concluded that there is no measurable impact associated with the proposed exemption. Therefore, alternatives to the exemption will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested exemption. Such action would not reduce environmental impacts of the Nine Mile Point Nuclear Station, Unit 1 operations and would result in unwarranted delays in plant startup and operation.

Alternative Use of Resources

These actions associated with the granting of the proposed exemption as detailed above do not involve the use of resources not previously considered in connection with the "Final Environmental Statement Related to Operation of Nine Mile Point Nuclear Station, Unit No. 1," dated January 1974.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's submittal that supports the proposed exemption discussed above. The NRC staff did not consult other agencies or persons.

Findings of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed aciton will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for the exemption as listed herein, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Penfield Library, State University College, Oswego, New York 13126.

Dated at Rockville, Maryland, this 14th day of June 1989.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate 1–1, Division of Reactor Projects I/II.

[FR Doc. 89–14820 Filed 6–21–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–374]

Commonwealth Edison Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 48 to facility Operating License No. NPF–18 issued to Commonwealth Edison Company, which revised the Technical Specifications for operation of the LaSalle County Station, Unit 2, located in LaSalle County, Illinois. The amendment was effective as of the date of its issuance.

The amendment issued revised the Technical Specifications to allow the licensee to increase the spent fuel pool storage capacity from 1120 to 4078 fuel assemblis.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the Federal Register on November 16, 1987 (52 FR 43810). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has concluded that an environmental impact statement is not warranted because there will be no environmental impact attributable to the action beyond that which has been predicted and described in the Commission's Final Environmental Statement related to the Operation of LaSalle Project, Units 1 and 2 dated November 1978.

For further details with respect to the actions see: (1) The application for amendment dated September 16, 1986, supplemented August 18, November 5, 24, 1987, May 17, 1988, and June 6, 1989, (2) Amendment No. 48 to License NPF–18, and (3) the Commission's related Safety Evaluation and Environmental Assessment and Finding of No Significant Impact. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348. A copy of items (2), and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Dated at Rockville, Maryland, this 15th day of June 1989.

For the Nuclear Regulatory Commission.

Paul C. Shemanski,

Acting Director, Project Directorate III–2, Division of Reactor Projects III, IV, V, and Special Projects.

[FR Doc. 89–14818 Filed 6–21–89; 8:45 am]

BILLING CODE 7590–01–M

Maine Yankee Atomic Power Co.;

[Docket No. 50–309]

Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–36 issued to Maine Yankee Atomic Power Company, (the licensee), for operation of the Maine Yankee Atomic Power Station, located in Lincoln County, Maine. The amendment will uprate the Cycle 11 power level to 2700 MWt.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the provisions in the Technical Specification (TS) to reflect the operating limits for the Cycle 11 operation at a power level of 2700 MWt.

The proposed action is in accordance with the licensee's application for amendment dated December 28, 1988 and as clarified May 30, 1989. The May 30, 1989 clarification, regarding component cooling water heat loads, did not significantly change the December 28, 1988 submittal.

The Need for the Proposed Action

The proposed change to the TS is required in order to provide for the operation of the plant at 2700 MWt during the remainder of operating Cycle 11 and beyond. Maine Yankee is currently in Cycle 11 operation, operating the facility with a limiting power level of 2630 MWt.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the Technical Specifications. The proposed revision would allow the licensee to operate the plant at 2700 MWt for he remainder of Cycle 11 and beyond.

The licensee has performed an assessement of the environmental impact resulting from operation at 2700 MWt. It has been concluded that, because improvements to the plant thermal efficiency made during the recent past more than offset the slight increase in the heat rejection rate, the environmental limits will not change as a result of this uprate.

The only environmental impact of this uprate will be due to a slightly higher heat rejection to the environment through the offshore diffuser located in Montsweag Bay. THis increased heat rejection has been estimated by MYAPCo to increase the cooling water temperature by 0.7°F. However, because the typical dilution of the thermal plume in the diffuser mixing zone is 10 to 1, the impact of this uprate to Montsweag Bay will be to raise the temperature in the mixing zone by approximately 0.1°F.

Based on this information, the staff concludes that the environmental impacts of the increase in power to 2700 MWt are not significantly changed from previous operating cycles, and therefore, are acceptable.

With regard to potential nonradiological impacts, the proposed change to the TS involves systems located within the restricted area as defined in 10 CFR 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register**. No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Maine Yankee Atomic Power Station dated July 1972.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Findings of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated December 28, 1988 and clarifying letter, dated May 30, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Local Public Document Room, Wiscasset Library, High Street, P. O. Box 367, Wiscasset, Maine 04578.

Dated at Rockville, Maryland, this 15th day of June 1989.

For the Nuclear Commission.

Patrick M. Sears,

Acting Director, Project Directorate I–3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–14819 Filed 6–21–89; 8:45 am]

BILLING CODE 7590–01–M

RAILROAD RETIREMENT BOARD

Computer Matching and Privacy Protection Act of 1988; RRB Records Used in Computer Matching

AGENCY: Railroad Retirement Board (RRB).

ACTION: Notice of records used in computer matching programs, notification to individuals who are

beneficiaries under the Railroad Retirement Act on or after July 19, 1989.

SUMMARY: As required by the Computer Matching and Privacy Protection Act of 1988, RRB is issuing public notice of its use and intent to use, in ongoing computer matching programs, information obtained from the Social Security Administration of the amount of wages reported to the Social Security Administration and the amount of benefits paid by that agency.

The purpose of this notice is to advise individuals applying for or receiving benefits under the Railroad Retirement Act of the use made by RRB of this information obtained from the Social Security Administration by means of a computer match.

ADDRESSES: Interested parties may comment on this publication by writing to Mr. Steven A. Bartholow, Deputy General Counsel, 844 N. Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Mr. Steven A. Bartholow, Deputy General Counsel, 844 N. Rush Street, Chicago, Illinois 60611, telephone number (312) 751–4935.

SUPPLEMENTARY INFORMATION: The Computer Matching and Privacy Protection Act of 1988, Pub. L. 100–503, requires a Federal agency participating in a computer matching program to publish a notice regarding the establishment of a matching program.

Name of Participating Agencies: Social Security Administration and Railroad Retirement Board.

Purpose of the Match: The RRB will on a daily basis obtain from the Social Security Administration a record of the wages reported to the Social Security Administration of applicants and the amount of benefits paid by that agency to applicants or beneficiaries for benefits under the Railroad Retirement Act. That wage information is needed to compute the amount of the tier I annuity component provided by sections 3(a), 4(a) and 4(f) of the Railroad Retirement Act (45 U.S.C. 231b(a), 45 U.S.C. 231c(a) and 45 U.S.C. 231c(f)). This information is available from no other source.

Authority for Conducting the Match: Section 7(b)(7) of the Railroad Retirement Act (45 U.S.C. 231f(h)(7)) provides that the Social Security Administration shall supply information necessary to administer the Railroad Retirement Act.

Categories of Records and Individuals Covered: All applicants for benefits under the Railroad Retirement Act and current beneficiaries will have a record of their wages and the amount of their social security benefits requested from the Social Security Administration.

Inclusive Dates of the Matching Program: These matches will be done on a daily basis commencing on July 19, 1989 for the full 18 months of the agreement.

The notice we are giving here is in addition to any individual notice.

A copy of this notice has been or will be furnished to both Houses of Congress and OMB.

Dated: June 16, 1989.

By authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 89–14796 Filed 6–21–89; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–26939; Filed No. SR-Amex-89–08]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Accelerated Approval to Proposed Rule Change

On April 17, 1989, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4[2] thereunder, a proposed rule change to amend Amex Rule 905F to provide for additional circumstances under which the case value of the proportionate number of shares of the index underlying an Amex equity index participation ("EIP"), or any component thereof, will be paid to an EIP holder exercising the physical delivery privilege.

Currently, pursuant to Amex Rule 905F, IP holders exercising the physical delivery privilege will receive cash in lieu of actual shares: (1) If the number of shares of a particular stock to be delivered is fewer than ten; (2) to compensate for fractional shares since no partial shares will be delivered and the number of deliverable shares is rounded down to the nearest whole share; and (3) if a component stock does not open for trading on the delivery date, in which case the cash value of the otherwise deliverable shares would be paid to the exercising IP holder. The Amex proposes to amend Exchange Rule 905F by adding new paragraphs (e) and (f).

Proposed new paragraph (e) of Exchange Rule 905F provides that the cast value of the proportionate number of shares of stock of the index underlying an Amex EIP, which would otherwise be delivered, may be paid to an exercising EIP holder in lieu of the physical delivery of the shares if it is determined by the Amex or the Options Clearing Corporation ("OCC") that: (1) Any component stock is ineligible for secondary trading under the securities laws of any U.S. jurisdiction; (2) such stock is ineligible for settlement under the rules of a correspondent clearing corporation; or (3) other extraordinary circumstances make delivery of such stock impossible or impractical. In this regard, proposed new paragraph (f) of Exchange Rule 905F provides that the OCC, in accordance with its rules, shall pay the cash-out value[3] to holders exercising for physical delivery if a physical delivery facilitator[4] on the Exchange is unavailable to make delivery to holders on the quarterly delivery date because the facilitator's status as an OCC clearing member has been terminated or suspended before the opening of trading on such date, and another physical delivery facilitator has not been designated by the Exchange. Cash will be paid in lieu of physical delivery under the immediately aforementioned circumstance only if the number of delivery units of a particular class of EIPs for which delivery has been requested exceeds the number of delivery units of such class made available by persons with short positions.

The Amex states that the proposed rule change is designed to conform to OCC Rules 1905(c)(2) and 1907(b)(9) and will permit the Amex to inform Exchange members and the physical delivery facilitator, as far as is practicable in advance of the first delivery date, of additional circumstances under which cash rather than shares may be delivered to EIP holders exercising for physical delivery.

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1988).

[3] The cast-out value of an EIP trading unit (100 EIPs) is an amount in dollars equal to the number of trading units times the applicable multiplier (1/10) times the settlement value of the underlying index (based on opening stock prices) on the business day following the day on which the EIP is exercised.

[4] The term "physical delivery facilitator" means a member or member organization designated by the Amex to make physical delivery of the component stocks of the index underlying an Amex EIP, at delivery times, to EIP holders who exercise the delivery privilege, in the event that the number of delivery units (25,000 EIPs for the XMI EIP and 50,000 EIPs for the S&P 500 EIP) for which holders have requested physical delivery exceeds the number of delivery units offered for physical delivery by persons holding short positions.

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 national securities exchange, and, in particular, the requirements of Section 6 and the rules and regulations thereunder. Modifying the circumstances under which the case value of the proportionate number of shares of the index underlying an Amex EIP will be paid to an EIP holder exercising the physical delivery privilege, so as to conform with existing OCC rules regarding such cash delivery, should ameliorate any possible investor confusion regarding physical delivery in advance of the first anticipated delivery date. Moreover, the proposed rule change is reasonably designed to improve the physical delivery process.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication in the **Federal Register** because proposed new paragraphs (e) and (f) to Amex Rule 905F simply conform Rule 905F to OCC Rules 1907(b)(9) and 1905(c)(2), respectively. Further, the changes are intended to accommodate the first EIP quarterly delivery date, June 16, 1989.

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 also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 13, 1989.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change be, and hereby, is approved.

[5] 15 U.S.C. 78s(b)(2) (1982).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Shirley E. Hollis,

Assistant Secretary.

Dated: June 15, 1989.

[FR Doc. 89-14733 Filed 6-21-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26934; File Nos. SR-Amex-88-35; SR-CBOE-88-26; SR-NYSE-88-42; SR-Phlx-89-26; and PSE-88-29]

Self-Regulatory Organizations; American Stock Exchange, Inc., et al; Order Granting Permanent Approval to Proposed Rule Changes

On December 19, 21, and 27, 1988, respectively, the American ("Amex"), Philadelphia ("Phlx"), and Pacific ("PSE") Stock Exchanges, and the Chicago Board Options Exchange ("CBOE"), (Collectively, the "Exchanges") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4[2] thereunder, proposed rule changes requesting extensions of the Exchanges' pilot programs providing for four expiration months for stock options, including two near-term months, until April 30, 1989.[3] In April, at the request of Commission staff, the Exchanges amended their original filings to request an additional extension of the pilots until June 30, 1989, and permanent approval prior to expiration of the pilots at that time.[4] This Order approves the Exchanges' near-term options expiration pilot programs on a permanent basis.

In 1985 the options exchanges implemented stock option pilot programs for certain January cycle stock options. Under the terms of the pilots, the traditional January trading cycle was altered to ensure that (i) One-month and two-month options were made available for trading at all times and (ii) four expiration months were outstanding at all itmes. Since that time, the pilot programs have been extended and expanded to all equity options on all three expiration cycles.

The purpose of the pilot programs was to determine whether a near-term expiration cycle, featuring four expiration months, would improve investors' interest in such stock options. After monitoring the programs since their inception and receiving highly favorable comments from both on-floor and off-floor market participants, the Exchanges believe the pilots have improved investors' interest in trading such options.

The Exchanges believe the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Exchanges because they perfect the mechanism of a free and open market by making permanent a pilot program tailored to meet investors[1] preferences for stock options with near-term expiration cycles.

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to securities exchanges, and in particular, the requirements of section 6 and the rules and regulations thereunder. The Commission believes that the proposed rule changes will benefit public customers by providing investors with broad investment choices through the establishment, on a permanent basis of programs designed to meet investors' preferences for stock options with near-term expiration cycles.

In connection with their monitoring of the pilot programs, Commission staff asked the Exchanges to compile data providing daily open interest and volume, aggregated by monthly expiration, for each class of equity options for a one week period in January, February and March. After reviewing the data, the Exchanges reported that there is significant volume and open interest in the additional near-term month.[5] An independent review of the data by commission staff supports this conclusion. The Commission, therefore, is satisfied that the program meets investors' preferences for trading near-term options. Moreover, the Commission notes that the current pilot programs have operated effectively and

[6] 17 CFR 200.30-3(a)(12) (1988).

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1988).

[3] *See* Securities Exchange Act Release No. 26413 (December 30, 1988), 54 FR 723, granting partial approval of File Nos. SR-Amex-88-35; SR-CBOE-88-26; SR-Phlx-88-43; and SR-PSE-88-29. In a separate filing, the New York Stock Exchange ("NYSE") requested and received Commission approval of an extension of the NYSE near-term options expiration pilot program until June 30, 1989. *See* Securities Exchange Act Release No. 26369 (December 16, 1988), 53 FR 51941.

[4] *See* Securities Exchange Act Release No. 26782 (May 3, 1989), 54 FR 20226.

[5] *See* Letters to Judith Poppalardo, Attorney, SEC, from Barbara D. Salmanson, Special Counsel, AMEX, dated June 6, 1989; Robert P. Ackerman, Vice President Legal Services, CBOE, dated April 25, 1989; James E. Buck, Senior Vice President and Secretary, NYSE, dated June 1, 1989; Craig R. Carberry, Director, Options Compliance, PSE, dated April 25, 1989; and Amy L. Kitzen, Market Surveillance, PHLX, dated May 3, 1989.

generally have been well received. In addition, the Commission solicited comments on these near-term expiration pilot programs on a number of occasions and has not received any negative comments on their operation.

Finally, in light of problems experienced during the October 1987 market break, the Commission staff requested the Exchanges to respond to the possibility that the additional expiration month could lead to an unmanageable proliferation of strike prices in a volatile market. The Exchanges represent that they have upgraded their systems since the market break and, therefore, proliferation of series is not a systems impact problem. Nevertheless, the Commission expects that the Exchanges will to monitor their capacity and the capacity of vendors supplying price information to handle a considerable increase in strike prices which could be exacerbated by trading in an additional near-term month.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule changes (File Nos. SR-Amex-88-35; SR-CBOE-88-26; SR-NYSE-88-42; SR-Phlx-89-26 and SR-PSE-88-29) be, and hereby are, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 14, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89-14734 Filed 6-21-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26924; File No. SR-CBOE-89-04]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc., Order Approving Proposed Rule Change

On February 2, 1989, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder, [2] a proposal that narrows the bid-ask differentials for certain option quotations and obliges the trading crowd to make ten-up markets for option series that the Exchange includes in a pilot program.

The proposed rule change was published for comment in Securities Exchange Act Release No. 26570 (February 24, 1989), 54 FR 8857 (March 2, 1989). No comments were received on the proposed rule change.

The Exchange proposes, among other things, [3] to narrow the maximum permissible spread between bids and offers for certain option contracts.[4] Specifically, the Exchange proposes to permit bidding and offering so as to create a difference of no more than ¼ or $1 between the bid and offer for each option contract for which the prevailing bid is less than $2. At present, the ¼ of $1 differential is only applicable if the prevailing bid is $1 or less; and accordingly the proposal will result in narrower spreads for bids and offers greater than $1 but less than $2.

The Exchange also proposes to modify the permissible bid-ask differential provisions for options that are in-the-money. Currently, the bid-ask differential provisions apply to in-the-money options except that the differential for option series that are ten or more dollars in-the-money may be as wide as the differential between the bid and offer quotation of the underlying security. The Exchange proposes to extend this exemption from the normal bid-ask differentials to all in-the-money options and permit such options to have a bid-ask differential equalling the bid-ask differential in the underlying security.[5] The Exchange, in support of its proposal, submitted data demonstrating that only a small portion of those options series that trade for less than ten dollars in-the-money would be affected by the proposal.[6]

Additionally the Exchange proposes to establish a pilot program to ensure that the trading crowd fills public customer orders to a minimum depth of ten contracts at the best bid or offer. Currently, under normal market conditions a market maker's bid or offer is for five contracts unless a smaller or larger size is specified. The Exchange proposal requires the trading crowd, for options series included in the pilot, to execute at least ten public customer orders at the best bid or offer. All orders, other than a market maker order represented by a floor broker, will impose an obligation upon the market makers comprising the trading crowd to execute ten contracts at the best bid or offer.[7]

The Market Performance Committee ("MPC") will determine the options series included in the pilot program. The ten-up requirement does not apply during rotation or if a "fast market" has been declared by the Exchange. In addition, the MPC may grant exemptions, for an options class or a series within an options class, if it believes an exemption is warranted or if an obvious error occurs in a posted market quote.

The Exchange believes that the proposed rule changes will promote just and equitable principles of trade and are designed to remove inpediments to and perfect the mechanism of a free and open market.

The Commission believes that narrowing the maximum allowable bid-ask differentials for an options contract bid greater than $1 and less than $2 will result in improved price continuity and tighter, more liquid markets. All orders, including public customer orders, will benefit from the narrow bid-ask differentials. Additionally, the CBOE proposal will provide public customers with the benefits of ten-up markets.[8] Specifically, public customers, for the options included in the pilot program, can be assured order execution to a minimum depth of ten contracts at the best bid or offer. In addition, the proposal should encourage market makers to become more competitive in making size markets, thereby facilitating transactions in securities and contributing to a more free and open market. Finally, as the Commission has not received any negative comments from market makers potentially affected by the proposal, the Commission has no reason to believe that the ten-up

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[1] 15 U.S.C. 78s(b)(1) (1984).

[2] 17 CFR 240.19B-4 (1988).

[3] The Exchange proposal additionally changes the format of Chapter VIII of the Exchange rules. Certain rules will be renumbered in order to divide the chapter into three sections, one each for market makers, trading crowds and modified trading systems.

[4] The present rule requires market makers to bid or offer for options contracts within certain bid-ask differentials. The maximum allowable differential increases as the dollar value of the bid increases.

[5] Notwithstanding this exemption, Exchange market makers would be required to make bids or offers calculated to contribute to the maintenance of a fair and orderly market. *See* CBOE Rule 8.7(a).

[6] *See supra* Exchange Act Release No. 26570, Exhibit A.

[7] Market maker orders for less than ten contracts that are represented in the crowd by a floor broker will not be reflected in the displayed market quote.

[8] Other exchanges also have extended or are proposing to extend the benefits of ten-up markets to public customer orders. The Commission approved a Philadelphia Stock Exchange Inc. ("PHLX") proposal in June 1987 requiring PHLX specialists to provide ten-up markets for options series that are at, just in, and just out-of-the money. *See* Securities Exchange Act Release No. 24580 (June 11, 1987), 52 FR 23120 (June 17, 1987). Moreover, the Commission approved a rule change by the Phlx in February 1989 to extend the ten-up requirements to all options series. *See* Securities Exchange Act Release No. 26669 (March 27, 1989), 54 FR 13282 (March 31, 1989). Additionally, the American Stock Exchange, Inc. recently proposed to require specialists to make ten-up markets. *See* Securities Exchange Act Release No. 26834 (May 18, 1989) 54 FR 22643 (May 25, 1989).

requirement will be particularly burdensome on them.

Accordingly, 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 national securities exchange, and, in particular sections 6 and 11A.[9] Specifically, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act because it will promote just and equitable principles of trade, protect investors, and promote the public interest by assuring narrower bid-ask differentials and a minimum ten contract execution of public customers' orders. Also, the Commission finds that the proposal is consistent with Section 11A(a)(1) (ii) and (iv) because it will promote "fair competition among brokers and dealers" and "the practicability of brokers executing investors' orders in the best market." While extending the underlying spread exemption to all in-the-money options will increase the instances that the narrower bid-ask differentials will be bypassed, in light of the narrower bid-ask differentials and ten contract execution guarantee it is reasonable to permit in-the-money options quotations to reflect the market condition of the underlying securities. Moreover, the CBOE has provided data to indicate that this increase will be small.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change is approved.

For the Commission, by the Divisions of Market Regulation, pursuant to delegated authority.[11]

Jonathan G. Katz,

Secretary.

Dated: June 13, 1989.

[FR Doc. 89-14735 Filed 6-21-89; 8:45 am]

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[9] 15 U.S.C. 78f and 78k-1 (1984).

[10] 15 U.S.C. 78s(b)(2) (1984).

[11] 17 CFR 200.30-3(a)(12) (1988).

[Release No. 34-26938; File No. SR-CBOE-87-30]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change Relating to Options on Treasury Measures

Pursuant to section 19 (b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange"), on July 28, 1987, submitted to the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change to allow the Exchange to list two interest rate measure option contracts. On November 6, 1987, the CBOE submitted Amendment No. 1 to its proposal. On February 16, 1989, the CBOE submitted Amendment No. 2 to its proposal. On May 30, 1989, the CBOE submitted Amendment No. 3 to its proposal.

The CBOE's proposal was published for comment in Securities Exchange Act Release No. 25350 (February 12, 1988), 53 FR 5235. The Commission received one comment letter regarding the proposed rule change.

I. *Description of the Contracts*

The CBOE proposes to list options on two interest rate measures.[3] The short-term interest rate measure would be based on the most recently-auctioned 13-week bill issued by the U.S. Department of the Treasury ("Treasury"). Because 13-week Treasury bills are auctioned weekly, the bill used to calculate the short-term interest rate measure generally would change weekly. The newly-auctioned bill would replace the previous bill on the first business day following the auction.[4]

A designated reporting authority appointed by the CBOE would calculate and update the current value of the short-term interest rate measure during the CBOE trading day.[5] The reporting authority would calculate the current annualized discount yield of the most recently-auctioned 13-week Treasury bill pursuant to specific procedures and based on quotations of primary dealers of Treasury instruments.[6] The current annualized discount yield of the 13-week bill then would be multiplied by ten to arrive at the current value of the short-term interest rate measure. If, for example, the current discount yield were 8.534%, the current value of the short-term interest rate measure would be 85.34. The current value would be updated as frequently throughout the trading day as the information used by the reporting authority to calculate it changed.[7] The multiplier for the option on the short-term measure would be 100, so that each 1/10 point move in the discount yield (after being multiplied by ten) would move the aggregate exercise price $100.

The long-term interest rate measure would be based on the most recently-auctioned seven- and ten-year Treasury notes and 30-year Treasury bonds.[8] In particular, the long-term measure would be calculated from the average of the yields to maturity of two securities from each of the three maturities. Treasury securities of each of these three maturities usually are auctioned quarterly, and these are the only long-term issues in which the Treasury holds auctions.[9] A newly-auctioned issue would replace the earliest-dated issue in the relevant maturity on the first business day following the auction.[10]

The designated reporting authority also would calculate and update the long-term interest rate measure during the CBOE trading day. The reporting authority would calculate the current bids and asks for the six issues pursuant to specific procedures and based on primary dealer quotations. The reporting authority then would use the arithmetic average of the midpoint between the bid and ask for each of the six issues to calculate an average yield to maturity for the issues (to three decimals, using the Securities Industry Association method [11]), and then would multiply this average by ten to arrive at the current value of the long-term measure. If, for example, the average yield to maturity were 9.534%, the current value of the long-term interest rate measure would be 95.34. As with the short-term measure, the current value of the long-term measure would be updated as frequently throughout the trading day as the information used by the reporting authority to calculate it changed. The multiplier for the option on the long-term

[1] 15 U.S.C. 78f (1982).

[2] 17 CFR 240.19b-4 (1989).

[3] The Exchange proposes to add Chapter 23 to its rules to govern trading of interest rate measure options. Proposed Chapter 23 was included as Appendix A in the release publishing the CBOE proposal for comment. *See* 53 FR 5236.

[4] If an auction were not held on or near the normally scheduled date, the Exchange would either substitute the existing Treasury bill having nearest to 13 weeks to maturity or continue to use as the underlying security the most recently-auctioned 13-week bill.

[5] The CBOE plans initially to designate Telerate Systems, Inc. as the reporting authority.

[6] Telerate's New York newsroom reporters are in regular contact with approximately two dozen primary dealers.

[7] Telerate generally receives quotes and updates the interest rate measures every one to three minutes.

[8] The Treasury currently auctions a total of seven notes and bonds on a regular basis, with maturities of two, three, four, five, seven, ten and 30 years. Of these, the seven-, ten-, and 30-year issues generally are considered long-term.

[9] The CBOE would substitute another issue if the Treasury were to add or delete an issue or otherwise revise its auction schedule.

[10] Such a procedure would ensure that the long-term interest rate measure would consist only of recent issues, the markets for which generally are the most liquid.

[11] The Securities Industry Association method for calculating yield from prices is widely-used and somewhat less complex than an alternative method employed by the Federal Reserve System.

measure also would be 100, so that each 1/10 point move in the average yield to maturity (after being multiplied by ten) would move the aggregate exercise price $100.

Both proposed option contracts would be cash-settled and feature European-style exercise.[12] Position and exercise limits would be 25,00 contracts for long-term options and 5,000 contracts for short-term options. The margin requirement for a short position in either contract would be 100% of the current market value of the contract plus the product of 10% of the current value of the relevant interest rate measure times the multiplier (100 for both contracts), less the out-of-the-money amount. In no event, however, could the margin maintained fall below 100% of the current market value of the contract plus the product of 5% of the current value of the interest rate measure times the multiplier.[13] In addition, the Exchange would determine fixed exercise price intervals for call and put interest rate options, with a minimum $2.50 interval between strike prices.

Expiration of short- and long-term contracts would fall on the Saturday following the third Friday of the month and would occur either quarterly on the December cycle or monthly.[14] The exercise settlement values of both interest rate measures would be determined by the CBOE pursuant to a polling procedure conducted at or near the close of the last trading day.[15] The CBOE would conduct a random sampling of 12 primary dealers of U.S. Treasury securities[16] to obtain bid and ask quotations for the relevant 13-week Treasury bill and for each of the relevant six long-term notes and bonds. For each of the 12 bid-ask quotations a midpoint would be calculated, the two lowest and two highest midpoint quotations would be dropped, and the remaining eight quotes would be used to calculate a mean quotation for the respective issue which would be used to compute the exercise settlement value.

Consistent with the manner in which Treasury bills are quoted in the secondary market, the quotations supplied to the Exchange for the short-term composite would be in the form of annualized discount yields (to one basis point). The closing value of the short-term interest rate measure would be calculated by multiplying the mean quotation by ten.

For the long-term measure, the Exchange would use the mean quotation of each of the underlying six issues to calculate the yield-to-maturity (rounded to three decimals) of each issue. The closing value of the long-term interest rate measure then would be calculated by averaging the yields-to-maturity of the six issues and multiplying this average by ten. The closing values would be disseminated publicly immediately following their calculation and would be used to settle the short- and long-term contracts.

In order to test the accuracy and to maintain the efficient functioning of its closing value polling procedures, the CBOE proposes to conduct such a polling on a weekly basis. In order to faciliate comparison of these weekly polling results with the current interest rate measure values calculated and disseminated by the designated reporting authority, the CBOE has agreed to publich its polling results in its weekly bulletin to members.[17]

II. Basis and Purpose of the Contracts

In support of its proposal, the Exchange argues that there is significant investor interest in options on interest rate measures. Because both the short- and long-term interest rate measures would be expressed in terms of yield, both measures would rise as interest rates increase. Accordingly, "[m]arket participants will be able to think in terms of buying calls (selling puts) when interest rates go up and selling calls (buying puts) when interest rates go down."[18]

The CBOE asserts that public investors are interested in an option on a short-term measure due to the volatility of short-term interest rates. The 13-week Treasury bill was chosen as the underlying instrument for the short-term contract because it is the "most liquid and widely followed short-term Treasury security."[19] In contrast, the long-term contract is designed for hedging in "the long sector of the yield curve, where price movement substantially exceeds that of shorter maturities."[20] As noted above, the seven- ten-, and 30-year Treasury instruments were chosen as components of the long-term measure because they generally are considered to be long-term instruments.

The CBOE believes that its proposed position and exercise limits are reasonable in relation to the overall value of outstanding short- and long-term Treasury securities. In addition, the CBOE asserts that its proposed margin requirements for short interest rate option contracts currently are adequate to provide more than a 95% level of coverage for a seven-day period for both composites.[21] Last, the CBOE notes that registered representatives would have to complete the General Securities Registered Representative Examination (Series 7) prior to accepting interest rate option orders.

III. Comment Letter

The Commission received one comment letter regarding the CBOE proposal.[22] The commentator expressed support for the CBOE's proposed interest rate measure contracts, noting the potential usefulness of such products to swap market participants and fixed income traders and investors. In particular, the commentator stressed the need for an exchange-traded options contract overlying debt instruments with different maturities than those subject to trading of options on futures on the Chicago Board of Trade ("CBT") and the Chicago Mercantile Exchange ("CME").[23] In addition, the commentator emphasized the value of a portfolio hedging device that would correlate closely to a basket of five-, seven-, ten-, and 30-year Treasury issues, which are "the issues most frequently traded by the primary dealers, interest rate swap groups and large fixed income traders and investors."[24]

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[12] Although a European-style option is designed so that exercise cannot occur prior to the option's expiration date, investors are free to close out their positions by buying or selling, as appropriate, at any time throughout the life of the option.

[13] *See* Amendment No. 3 to the CBOE filing.

[14] Proposed Rule 23.5(b) would permit the Exchange to place the options on either a monthly or quarterly expiration cycle, with a maximum of six expiration months. The CBOC would submit to the Commission a rule filing describing its proposed expiration cycle prior to listing the interest rate measure contracts.

[15] A description of the CBOE's polling procedures was filed with the Commission in Amendment No. 1 to the CBOE proposal. The CBOE noted in its original filing that a similar procedure has been used for cash-settled Eurodollar futures. File No. SR-CBOE-87-30 (Revised), at 13.

[16] The 12 primary dealers polled would be selected from a universe of at least 24 primary dealers that have agreed to supply quotes to the CBOE.

[17] Telephone conversation between Joseph Furey, Branch Chief, and David Underhill, Attorney, Division of Market Regulation, SEC, and Nancy Crossman, General Counsel, CBOE, on November 28, 1988.

[18] File No. SR-CBOE-87-30 (Revised), at 11.

[19] *Id.* at 12.

[20] *Id.*

[21] Letter from Margaret Wiermanski, Manager, Department of Financial Compliance, CBOE, to David Underhill, Division of Market Regulation, SEC, dated May 30, 1989.

[22] Letter from Jack Rhoades, Editor, Financial Futures (Data Lab Corp.), to Brandon Becker, Associate Director, Division of Market Regulation, SEC, dated April 15, 1988 ("Comment Letter").

[23] In particular, the commentator noted the options on ten- and 30-year Treasury instrument futures traded on the CBT and the options on Eurodollar futures traded on the CME.

[24] Comment Letter, *supra* note 22, at 1.

IV. Discussion

In order to grant approval to exchange rules governing trading of new options,[25] the Commission must determine that the rules are designed, among other things, to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and maintain fair and orderly markets.[26] In the case of options on Treasury instruments, the Commission and the options exchanges have applied a number of standards designed to ensure that the trading of such options is consistent with these goals. For example, the exchanges (including the CBOE) that currently trade options on Treasury and other debt securities have attempted to ensure that options only are traded on Treasury instruments that are widely-held, actively-trade, and recently-issued.[27]

As with Treasury security and index options, the Commission's analysis of the CBOE proposal begins with an analysis of the characteristics of the securities underlying the interest rate measure options, and, because the options would be cash-settled, the formula for determining the exercise settlement values of the interest rate measures.[28] The Commission believes that the CBOE proposal is adequate in these two areas.

First, the CBOE interest rate measure contracts would be based on Treasury securities that are among the most widely-held and actively-traded securities in the world.[29] In addition, by the terms of the CBOE proposal the underlying Treasury securities would be the most recently-issued in their respective maturities. Finally, in support of its decision to limit the short-term measure to a single Treasury bill, the CBOE argues that the 13-week bill is a well-publicized barometer of short-term interest rates and is the "basis for interest received on savings and variable interest paid on loans." [30]

Second, the Commission has examined closely the pricing procedures for such options. In particular, the Commission has examined carefully the procedures pursuant to which the interest rate measures would be calculated and maintained during the trading day by the designated reporting authority and the polling procedures to be employed by the CBOE to establish the closing value of the interest rate measures. While the Commission traditionally has believed that indexes based on transaction prices generally are more reliable than index values based on dealer quotations,[31] it recognizes that for certain securities there are no last sale prices or quotations disseminated publicly. For this reason, the Commission did not object to the listing of futures on three securities indexes that are calculated on the basis of polling procedures designed specifically to ensure accuracy and prevent manipulation.[32]

Although the COBE's proposed cash-settled options on Treasury measures present the same issue with regard to reliance on polling procedures for pricing purposes, the Commission believes that the CBOE and the designated reporting authority have designed polling procedures adequate to guard against unreliable or manipulated quotes. For example, the CBOE would determine the settlement values of the interest rate measures by conducting a random sampling of 12 primary dealers of U.S. Treasury securities (out of a universe of 24 potential dealers) to obtain bid and ask quotations for the relevant 13-week Treasury bill and for each of the relevant six long-term notes and bonds. For each of the 12 bid-ask quotations a midpoint would be calculated, the two lowest and two highest midpoint quotations would be dropped, and the remaining eight quotes would be used to calculate a mean quotation for the respective issue.

Unlike the three index futures contracts noted above, the CBOE's Treasury measures would be calculated on an intra-day basis and for settlement purposes by different entities and pursuant to different procedures. Based on a comparison of test results produced by the designated reporting authority and the CBOE to date, however, the Commission believes that the procedures to be used by the designated reporting authority and the CBOE to calculate the daily and closing interest rate measures would yield accurate and reliable results.[33]

In addition to options design and pricing, the CBOE's proposed rules governing the trading of interest rate measure options should ensure that such trading is conducted in a fair and orderly manner. In particular, the Commission believes that the proposed position and exercise limits [34] applicable to interest rate measure options are reasonable and sufficient to protect investors. In addition, the Commission believes that the proposed margin levels applicable to the interest rate contracts would be adequate for prudential purposes, in that they are designed to "protect broker-dealers * * * and clearing corporations from investor and trade defaults on their margin obligations." [35] Indeed, those limits and margin requirements in general are at least as stringent as those applicable to options and futures on individual Treasury securities. In addition, the Commission is satisfied that the CBOE has in place adequate surveillance procedures for listed options in general and that the CBOE also will monitor actively any interest rate options trading conducted by primary dealers that are polled by the

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[25] Of course, the Commission notes that both the short-term and long-term interest rate measure options are securities within the defintion of section 3(a)(1) of the Securities Exchange Act of 1934. More specifically, these interest rate measure instruments fall within the Act's definition of security because they are an option on a security or a "group or index of securities (including any interest therein or based on the value thereof)" * * *. 15 U.S.C. 76c(a)(1) 1982.

[26] *See* Sections 6 and 11A of the Act, 15 U.S.C. §§ 78f and 78k–1 (1982).

[27] *See e.g.*, Amex Rule 917; CBOE Rule 21.7. Currently, the CBOE trades options on five-year Treasury notes and 30-year Treasury bonds. The Amex's 13-week Treasury bill and ten-year Treasury note options are inactive.

[28] Any manipulation of the proposed contracts would be more likely to occur at settlement, when positions are unwound automatically.

[29] For example, during February 1989, the average daily trading volume for Treasury bills, in terms of par value was nearly $34 billion. The most recently-auctioned 13-week bill accounted for a sizable proportion of this volume. Board of Governors of the Federal Reserve System, *Federal Reserve Bulletin* (May 1989), at A31.

[30] Letter from Nancy R. Crossman, First Vice President, Legal Services, CBOE, to Howard Kramer, Assistant Director, Division of Market Regulation, SEC, dated September 12, 1988, at 1.

[31] *See* letter from Jonathan G. Katz, Secretary, SEC, to Paula Tosini, Director, Division of Economic Analysis, Commodity Futures Trading Commission ("CFTC"), dated August 24, 1987, at 5–8 (CBT Long-Term Corporate Bond Index future); letter from Jonathan G. Katz, Secretary, SEC, to Paula Tosini, Director, Division of Economic Analysis, CFTC, dated August 24, 1987, at 6–10 (Commodity Exchange Moody's Investment Grade Corporate Bond Index future).

[32] *Id. See also* letter from George A. Fitzsimmons, Secretary SEC, to Paula Tosini, Director, Division of Economics and Education, CFTC, dated July 23, 1984 (CBT Bond Buyer Municipal Bond Index future).

[33] The most recent figures supplied to the Commission indicate average variations between the CBOE and reporting authority figures of .10 points ($10.00 per contract) for the short-term measure and .09 points ($9.00 per contract) for the long-term measure. *See* letter from Frederick E. Rohrbach, Director, New Product Planning, CBOE, to David Underhill, Staff Attorney, Division of Market Regulation, SEC, dated December 19, 1988.

[34] The Exchange originally had proposed a 15,000-contract position and exercise limit for the short-term contract. In order to allay any concerns that such a limit would enable market participants to hold positions that were equivalent to a very large percentage of the total cash market for the underlying 13-week Treasury bills, the CBOE reduced the limit to 5,000 contracts. *See* Amendment No. 2 to the CBOE filing (letter from Robert P. Ackermann, Vice President, Legal Services, CBOE, to Joseph Furey, Division of Market Regulation, SEC, dated February 16, 1989).

[35] *Interim Report of the Working Group on Financial Markets* (May 1988), at 5.

CBOE to establish the closing interest rate values.[36]

The trading of listed options on short-term and long-term interest rate measures should provide investors with hedging and risk-shifting vehicles that reflect accurately the overall movement of short- and long-term interest rates. Indeed, Treasury instrument yields are viewed as a key barometer of overall U.S. interest rates, while Treasury instruments are very widely-held by institutional and individual investors alike. Investors with substantial investments in Treasury instruments would be able to use the CBOE interest rate measure contracts to hedge their exposure to interest rates or to supplement income by writing interest rate option calls.[37]

While it is unclear whether options on short-term and long-term interest rate measures would attract widespread retail investor participation, the Commission accepts the CBOE's representation that interest rate composite options would serve an economic function by allowing investors to hedge portfolios of Treasury securities or other interest rate-sensitive investments and to take positions with respect to short- and long-term interest rate movements.[38] Although the proposed options could attract significant speculative interest, thereby raising potential sales practice concerns, the Commission believes that the CBOE rules described above, as well as the CBOE sales practice and trading rules applicable to all options, should help to minimize abuses associated with marketing and trading of interest rate measure options.[39]

For the reasons described above, the Commission finds that the CBOE's proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6[40] and the rules and regulations thereunder. In particular, the availability of options on short- and long-term interest rate measures should marketing and trading of interest rate measure options. In addition, the Exchange's proposed rules governing interest rate measure options trading are designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest.

It therefore is ordered, Pursuant to section 19(b)(2) of the Act,[41] that the proposed rule change is approved.

By the Commission.

Dated: June 15, 1989.

Shirley E. Hollis,

Assistant Secretary.

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[36] The Commission notes that staff of the Federal Reserve Bank of New York ("New York Fed"), in discussions with SEC staff, raised several concerns regarding the CBOE's proposed interest rate measure contracts. In particular, the New York Fed questioned the hedging value of the CBOE's proposed contracts and expressed concern that the short-term measure contract could be susceptible to manipulation in light of the large position limit proposed initially for that contract (*see* note 34, *supra*), as well as the fact that it would be based on a single Treasury instrument. *See* letter from Barbara Walter, Vice President, Dealer Surveillance Function, New York Fed, to Brandon Becker, Associate Director, Division of Market Regulation, SEC, dated June 16, 1988; letter from Frank Keane, Senior Financial Analyst, Dealer Surveillance Function, New York Fed, to David Underhill, Attorney, Division of Market Regulation, SEC, dated November 9, 1988. The New York Fed's position limit concerns were addressed by the CBOE's agreement to reduce to 5,000 contracts the position limit applicable to the short-term measure contract. For the reasons described above, the Commission also believes that the New York Fed's concerns regarding the hedging value of the contracts and the fact that the short-term measure would be based on a single Treasury bill have been addressed adequately by the CBOE. Last, the New York Fed agreed that the differences between the polling results produced by the CBOE and the designated reporting authority have been reduced to an acceptable level.

[37] Unlike the regulations under the Commodity Exchange Act, the Federal securities laws do not contain an explicit "economic purpose" test for new options products. Nevertheless, to approve a new options proposal the Commission must be satisfied that its introduction is in the public interest. *See* section 6(b)(5) of the Act, 15 U.S.C. 78f(b)(5) (1982). Such a finding would be difficult with respect to an options product that served no hedging or other economic function, because any benefits that might be derived by market participants would likely be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other concerns that the Commission is instructed to consider by the terms of the Exchange Act.

[38] *See* File No. SR-CBOE-87-30 (Revised), at 11.

[39] In this connection, the Commission notes that the Options Disclosure Document distributed to options customers already has been amended to include a discussion of interest rate measure options.

[40] 15 U.S.C. 78f (1982).

[41] 15 U.S.C. 78s(b)(2) (1982).

[Release No. 34-26937; File No. SR-MSRB-89-1]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change Amending the MSRB's Arbitration Code Concerning Small Claims

On March 3, 1989, the Municipal Securities Rulemaking Board ("MSRB") submitted a proposed rule change (File No. SR-MSRB-89-1) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") to amend MSRB rule G-35, the Arbitration Code, to permit the Director of Arbitration to assign cases that do not exceed $30,000 to a single arbitrator (either a public arbitrator for customer cases or an industry arbitrator for industry cases).

Notice of the proposed rule change was given in Securities Exchange Act Release No. 26765 (April 27, 1989), 54 FR 19479 (May 5, 1989). The Commission received no comments on the proposal. This order approves the proposal.

Currently, section 12 of MSRB rule G-35 provides that arbitration cases over $10,000 are decided by a panel of three arbitrators.[1] The proposed rule change would revise rule G-35 to permit the Director of Arbitration to assign cases that do not exceed $30,000 to a single arbitrator (either a public arbitrator for customer cases or an industry arbitrator for industry cases). At the request of a party in its initial complaint or answer, or at the request of the designated arbitrator, the Director of Arbitration would be required to designate a panel of three arbitrators. All cases over $30,000 would continue to be decided by a panel of three arbitrators.

In its filing with the Commission, the MSRB stated that of the 115 arbitration cases received by the Board in 1988, claimants in 64 cases, asked for under $10,000 in damages and under Sections 34 and 35, these cases would have been decided by one arbitrator under the small claims procedure, usually without a hearing. The MSRB further stated that claimants in another 20 cases asked for damages between $10,000 and $30,000 and that these cases were decided at hearings by panels of three arbitrators.

The MSRB believes that the proposed rule change would reduce costs and delays in arbitration proceedings, while preserving the opportunity to be heard before a three-person panel upon timely motion of a party or the designated arbitrator. The MSRB believes that if the parties agree to have cases involving claims between $10,000 and $30,000 decided by only one arbitrator at a hearing, then the administrative burdens of a case, as well as arbitrator transportation costs, would be dramatically reduced. The MSRB further believes that scheduling problems would be lessened when only one arbitrator's schedule must be considered, and that the proposed rule change will reduce the demand on the Board's arbitrator pool.

[1] There are two exceptions, however: in certain complicated cases, the Director of Arbitration may appoint a panel of five arbitrators to hear the case and cases under $10,000 are decided by one arbitrator, usually without a hearing, under the Board's small claims procedure.

The Commission agrees with the MSRB that the amendment would reduce the costs and delays in arbitration proceedings involving claims that do not exceed $30,000, while preserving the opportunity to be heard before a three-person panel. Thus, 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 MSRB. In particular the Commission finds that the proposal is consistent with section 15B(b)(2)(C), which requires MSRB rules to, among other things, "promote just and equitable principles of trade * * * to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest * * *" The Commission also believes that the proposal is consistent with Section 15B(b)(2)(D), which states that the Board shall, if it deems appropriate,

provide for the arbitration of claims, disputes, and controversies relating to transactions in municipal securities: Provided, however, That no person other than a municipal securities broker, municipal securities dealer, or person associated with such a municipal securities broker or municipal securities dealer may be compelled to submit to such arbitration except at his instance and in accordance with section 29 of this title.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that File No. SR-MSRB-89-1, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(12).

Dated: June 15, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89-14737 Filed 6-21-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26920; File No. SR-NASD-88-26]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

The National Association of Securities Dealers, Inc. ("NASD") filed a proposed rule change on September 29, 1988, [1] pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [2] and Rule 19b-4 [3] thereunder to establish a new registration category for Assistant Representative—Order Processing ("AR-OP").

Notice of the proposed rule change together with the substance of the terms of the proposed rule change was provided by the issuance of a Commission release (Securities Exchange Act Release No. 26202, October 19, 1988) and by publication in the **Federal Register** (53 FR 43063, October 25, 1988.) The Commission received seven comment letters regarding the proposed rule change.[4] The NASD, in turn, has responded to the concerns addressed in the comment letters.[5]

I. Background

Schedule C to the NASD's By-Laws contains the requirements for registration with the NASD of persons associated with a member firm, including the requirement that an appropriate qualifications examination be taken. In general, prior to the rule change discussed in this order, Schedule C required that associated persons, with some exceptions, take and pass the General Securities Representative (Series 7) examination to qualify for registration. The Series 7 exam is the most comprehensive exam that the NASD uses to test registered representatives. The NASD also has several categories that permit registered representatives to function in limited capacities. These categories are: (1) Investment Company and Variable Contracts Products (Series 6); (2) Direct Participation Program (Series 22); and (3) Corporate Securities (Series 62).[6] Qualification as a limited representative in any of these categories permits and associated person to sell a limited range of securities products.[7]

The impetus for the instant proposed change to Schedule C arose out of a series of letters between the Commission and the NASD over recent years and a 1986 decision by the Fourth Circuit Court of Appeals.[8] The letters and the court's decision discussed the appropriate qualifications standards for associated persons who accept unsolicited customer orders and provide certain related information services. In particular, the need for a rule arose out of the continuing development of personnel practices at discount brokerage firms that hire personnel for the limited purpose of accepting unsolicited customer orders.

Developments involving the rule change proceeded along two separate but related tracks. In 1986, the Fourth Circuit affirmed a 1985 Commission decision that upheld an NASD determination requiring the associated persons of Exchange Services, Inc., a discount broker, to register as General Securities Representatives. Exchange Services hired persons to take, on a regular basis, unsolicited orders from the firm's customers. When the broker requested that these order takers be exempted from the requirement of registration as General Securities Representatives, the NASD informed the broker that its order takers did not fall within any exemption to the Schedule C requirements [9] and, therefore, its order

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[1] The NASD originally submitted the proposed rule change on July 1, 1988, and an amendment on August 30, 1988.

[2] 15 U.S.C. 78s(b)(1) (1982).

[3] 17 CFR 240.19b-4 (1988).

[4] The comment letters were as follows: (1) letter from James B.G. Hearty, Chairman, Municipal Securities Rulemaking Board ("MSRB") to Jonathan G. Katz, Secretary, Securities and Exchange Commission ("SEC") (August 17, 1988); (2) letter from Gary C. Liddicoat, Attorney, Edward D. Jones & Co. ("Jones") to Jonathan G. Katz (November 8, 1988); (3) letter from Colleen Curran Harvey, Counsel, IDS Financial Services, Inc. ("IDS") to Jonathan G. Katz (November 11, 1988); (4) letter from Craig S. Tyle, Assistant General Counsel, Investment Company Institute ("ICI") to Jonathan G. Katz (November 15, 1988); (5) letter from Henry H. Hopkins, Vice President, T. Rowe Price Associates, Inc. ("T. Rowe Price") to Jonathan G. Katz (November 18, 1988); (6) letter from Manuel R. Ojeda, Vice President, Shearson Lehman Hutton, Inc. ("Shearson") to Jonathan G. Katz (December 9, 1988); and (7) letter from Edward I. O'Brien, President, Securities Industry Association ("SIA"), to Jonathan G. Katz (January 19, 1989).

[5] *See* letters from: (1) Jacqueline D. Whelan, Senior Attorney, NASD, to Eugene A. Lopez, Attorney, OTC Branch, Division of Market Regulations, SEC (November 30, 1988); and (2) Jacqueline D. Whelan to Katherine A. England, Branch Chief, OTC Branch, SEC (May 17, 1989).

[6] In addition, the Municipal Securities Rulemaking Board requires that associated persons take and pass an NASD-administered examination to become municipal securities representatives. *See* Rule G-3(e), *MSRB Manual* ¶ 3511. Passage of the Series 7 exam also entitles a registered representative to sell municipal securities.

[7] *See* Schedule C, Part III, Sections 2 (b), (c) and (e), *NASD Securities Dealers Manual,* ¶ 1785. In addition, the NASD is developing a limited examination for Registered Options Representatives. [*See* Securities Exchange Act Release No. 26695 (April 4, 1989), 54 FR 14718; File No. SR-NASD-89-16.) Once all four of these exams are available, the NASD will permit associated persons to take and pass either the Series 7 exam or each of the four exams plus the municipal securities exam to qualify as a general securities representative and be able to sell the full range of securities products.

[8] *Exchange Services, Inc.* v. *SEC,* 797 F.2d 188 (4th Cir. 1986), *aff'g In re* Exchange Services, Inc., Securities Exchange Act Release No. 22245 (July 10, 1985); and letters from: (1) Richard T. Chase, Associate Director, Division of Market Regulation, SEC, to Frank J. McAuliffe, Vice President, Qualifications, NASD, dated April 5, 1985; (2) Richard T. Chase to Frank J. McAuliffe, dated July 5, 1985; (3) Frank J. Wilson, General Counsel, NASD, to Michael J. Simon, Assistant Director, SEC, dated February 18, 1986; (4) Richard G. Ketchum, Director, Division of Market Regulation, SEC, to Gordon Macklin, President, NASD, dated April 6, 1987; and (5) Frank J. McAuliffe to Richard G. Ketchum, dated April 14, 1987.

[9] *See* Schedule C, Part V, Section 1(a), *NASD Securities Dealers Manual,* ¶ 1787. This Section

Continued

takers must take and pass the Series 7 exam. When Exchange Services sought a waiver of the examination requirement pursuant to Part VI of Schedule C to the NASD By-Laws, the NASD denied the waiver request. Exchange Services appealed that determination to the Commission.

After the Commission affirmed the NASD determination,[10] the broker petitioned the court for review. Although the court affirmed the Commission's decision requiring that order takers take the Series 7 examination, the court, in *dicta*, commented that "Exchange Services' argument is not without merit" [11] and suggested that it might be appropriate for the NASD to consider development of a new, less comprehensive exam for order takers.

Simultaneous with, and subsequent to, the review of the NASD's determination in the Exchange Services matter, the Commission staff and the NASD exchanged a series of letters regarding the appropriateness of the Series 7 exam for order takers. In April 1985, July 1985, and again, in April 1987, the staff of the Division of Market Regulation stated its preliminary belief that the NASD should consider developing a limited examination category for those persons, such as order takers, who perform restricted functions in connection with securities transactions.[12] In response to these letters and subsequent discussions with the staff, the NASD agreed to develop such a category and an appropriate examination.[13]

As a result of these discussions and letters, the NASD proposed the instant rule change to Schedule C of its By-Laws. The rule change establishes a new category of registration and permits associated persons who pass a newly designed qualifications examination to register with the NASD and to act on behalf of the member in performing certain limited functions.

Specifically, the new category of AR-OP is strictly limited to accepting unsolicited customer orders on behalf of existing accounts. The rule specifically proscribes certain activities, including the solicitation of orders, opening new accounts whether solicited or unsolicited, rendering investment advice, making recommendations to customers regarding the appropriateness of securities transactions or effecting transactions in securities on behalf of members. AR-OPs may not be registered consurrently in any other category.

Further, the AR-OPs may be compensated only on an hourly wage or salary basis; compensation may not be based, directly or indirectly, on the number or size of the transactions effected for customers, although, if the firm has a bonus plan or profit-sharing plan in effect for all firm employees, the AR-OPs may participate in such plan.[14] Finally, AR-OPs may engage in permissible activities only at business locations of the member that are under the direct supervision of an appropriately registered principal.

II. Comments

The NASD solicited comment on the proposed rule change in Notice To Members 87-47. Out of 97 responses received by the NASD, 34 favored the proposal and 58 expressed some form of opposition.[15] In general, those favoring the proposal expressed support because the category establishes an appropriate level of examination and registration for those persons at discount brokerage and other firms who engage in limited activities and the category would promote efficiency and facilitate cost savings. Those opposed to the new category expressed concern that the category may be difficult to supervise and could lead to the lowering of the standards in the industry. Further, some believed that discount brokerage firms could obtain a competitive advantage with the new category.

After publication in the **Federal Register** of notice of the proposed rule change, the Commission received seven comment letters, all expressing some form of opposition to the proposed rule change. In general, six comment letters did not object specifically to the concept of establishing a new category of registration; instead, the commentators' concerns focused on the particular manner in which the rule could be applied. One comment letter, submitted by the SIA and discussed more fully below, objected to the proposed rule change and requested that the Commission institute proceedings to determine whether the proposed rule change should be disapproved.[16]

The MSRB also submitted a comment regarding its concerns with the proposed rule change. The MSRB's primary concern with the rule change is that, if individuals covered by the new category were not supervised or inspected properly, such individuals, to the extent registered as AR-OP's at integrated, general securities firms that sell municipal securities as well as other securities, may improperly transact business related to municipal securities. Such a result, the MSRB argued, "can undermine qualifications standards in the municipal securities industry."

III. Discussion

Initially, it should be noted that the NASD's establishment of this new category and its concomitant exam requirement does not affect the MSRB's rules regarding its registration requirement. The MSRB rules plainly require that associated persons be qualified as municipal securities representatives or principals or as general securities representatives in order to sell municipal securities.

Further, the NASD states that it has developed a three-faceted plan to ascertain compliance with the restrictions of the new category.[17] Included in this plan are: (1) NASD monitoring of registrations for the AR-OP examination and investigation of suspicious activities related to such registration; [18] (2) development of an

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contains an exemption from the NASD's registration requirements for associated persons who perform solely clerical or ministerial functions.

[10] The Commission's determination was based, in part, on the existing regulatory structure. The NASD's rules provided only two alternatives: the order takers could either register as general securities representatives and take the Series 7 exam or be deemed to perform solely clerical or ministerial functions, and consequently not be subject to any examination requirement.

[11] The essence of Exchange Service's argument was that the Series 7 exam was not an appropriate exam to measure the ability of the order takers to perform their job. Exchange Services asserted that much of the material covered by the exam was not relevant to the functions performed by the order takers. *See* Exchange Services Inc., *supra* note 8.

[12] *See* letters, *supra* note 8.

[13] *See* letters, *supra* note 8.

[14] The rule's limitation on compensation methods for AR-OPs is not intended to restrict a member's ability to evaluate an employee's prompt, efficient and expeditious performance of tasks as an AR-OP.

[15] *See* File No. SR-NASD-88-26, Amendment No. 2, dated April 17, 1989. Five letters did not express any opinion.

[16] The SIA comment letter filed with the Commission did not specify its objections to the new category. Instead, the SIA letter attached its September 24, 1987 comment letter to the NASD's Notice to Members 87-47, wherein the SIA stated its opposition to the proposed rule change. *See* note 4, *supra*.

It should also be noted that two other commentators, IDS and Sherson, requested that the Commission institute proceedings to disapprove the proposed rule change. These requests, however, were in the alternative and were dependent upon the manner in which the NASD proposed to apply its new category.

[17] *See* letter from Jacqueline D. Whelan, Senior Attorney, NASD, to Katherine England, Branch Chief, OTC Branch, Division of Market Regulation, SEC, dated August 29, 1988. Regarding the MSRB's concern about the ability to supervise the new registration category, the Commission finds that the rule change, together with the NASD's plans to monitor its use, provides a clear standard which the NASD can enforce. Of course, the Commission in its oversight capacity will scrutinize application of the rule.

[18] The NASD states that it has the computerized capability to determine which offices of brokerage

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examination module [19] for the category; and (3) when branch office examinations by the NASD are conducted, inspection for compliance with AR–OP restrictions, in addition to other possible compliance problems.[20] The Commission believes that this combination of actions addresses the MSRB's concerns regarding any potential spillover effect on the purchase or sale of municipal securities.

The MSRB also expressed concern that it would be inappropriate for an AR–OP to accept any municipal securities order because the person accepting such order "must have knowledge of municipal securities and the market, including availability of securities with specific characteristics and this information must be verified with the customer."[21] In its response the NASD notes that the rule contemplates that AR–OPs will be able to accept municipal securities orders only in very limited circumstances such as when the customer specifies the "bond and quantity desired such that the [AR–OP] has merely to make a record of the order * * *."[22]

The Commission believes that, in most circumstances, firms may not permit AR–OPs to accept municipal securities orders because such orders usually will require discussion of information and rendering of advise regarding the order; such activity by an AR–OP is clearly outside the scope of the category. The only instances in which AR–OPs will be able to accept municipal securities orders will be when such activity is consistent with the MSRB's clerical and ministerial exemption.[23] Presently, persons covered by the exemption are subject to no registration or examination requirements. Any other orders must be handled by qualified registered representatives and firms must ensure that AR–OPs are instructed in the limited scope of this category and properly supervised to ensure no excursions beyond the category's narrow boundaries.

Three commentators were concerned that the establishment of the AR–OP category would encompass mutual fund organization personnel who currently engage in ministerial or clerical functions and that the establishment of the AR–OP category would force the industry's ministerial personnel to register as AR–OPs and to take the examination.[24] The mutual fund commentators represent that these ministerial persons assist in accepting telephone purchases by existing shareholders, telephone exchanges between funds in the same mutual fund organization and telephone redemption of shares of the fund. The proposal, however, is not intended to cover such personnel. In its statement of the purpose of the proposed rule, the NASD specifically explained that the AR–OP category was intended to apply to "persons employed by members for the sole or primary purpose of accepting unsolicited customer orders—for example, in a discount brokerage operation." [25] Moreover, the NASD reaffirmed the continuing availability of the "ministerial" exemption from registration found in Part V of Schedule C to its By-Laws.[26] In its November 30, 1988 letter, the NASD stated:

> It was not the intent of the Qualifications Committee or the Board of Governors, in adopting the amendments set forth in the rule filing, to bring within their scope these clerical and ministerial functions. The NASD, therefore, does not intend to take regulatory action against investment companies who use such personnel in the manner set forth in the IDS and ICI letters.[27]

In a comment letter addressing similar concerns involving the employment of personnel performing clerical and ministerial functions, Shearson raised two concerns: first, that the new category would force Shearson's Sales Assistants and some of its experienced secretaries to register under the new category; and, second, that the new category imposes an increased burden of supervision and liability on members. The Commission believes that the response to the mutual fund organizations' concerns applies with similar force here. As stated previously regarding the clerical and ministerial function exception to registration, the proposed rule change was not intended to alter the existing exemption. Personnel that do not fall within the exemption, however, must be registered in the appropriate category.[28] Indeed, based on the holding in Exchange Services, the issues raised by the Shearson letter are not applicable to the instant rule filing. Under current law, either an employee is properly classified as "clerical and ministerial" or an employee is not. If properly classified, the AR–OP category would have no bearing on the employee's status. If improperly classified, the employee would be considered in violation of the registration requirements and the AR–OP category would provide only an alternative mechanism to achieve compliance.

Regarding the second concern involving supervision of the new category, the Commission believes that the new category can be adequately supervised. Indeed, as discussed in the Shearson letter, firms already have personnel with differing levels of registration and apparently are able to supervise them. In addition, as discussed above, the NASD's three-faceted plan to ascertain compliance with the category's restriction should assist in ensuring proper conduct.

One comment letter expressed concern about whether the rule permitted AR–OPs to accept unsolicited new accounts and suggested that the language of the rule be clarified to permit such actions. The rule and its accompanying filing, however, do not permit an AR–OP to open new accounts.

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firms are employing the various registration categories of Schedule C. By monitoring such registrations, the NASD can evaluate whether the potential for abuse of a particular category exists.

[19] An examination module consists of a checklist used by examiners to assist them during their inspections of member firms to determine a firm's compliance with the federal securities laws and regulations and the rules of the self-regulatory organization.

[20] The NASD does not plan to conduct, on a regular basis, inspections of branch offices to determine whether the new category is being supervised properly. Instead, the NASD stated that, if a branch office is inspected for other reasons, the branch office's AR–OPs will also be scrutinized to determine whether the branch was complied with the rule. *See* letters from: (1) Jacqueline Whelan to Eugene A. Lopez, *supra*, note 5; and (2) Jacqueline Whelan to Katherine England, *supra* note 16.

[21] *See* letter from MSRB at 4, *supra*, note 4.

[22] *See* letter from Jacqueline Whelan to Eugene A. Lopez, *supra* note 5.

[23] *MSRB Manual*, "Interpretive Notice of Professional Qualifications," at 3355–6. Because the MSRB has jurisdiction with respect to qualifications of persons who sell municipal securities, this proposed rule change does not alter the MSRB examination requirement with respect to such persons. Unless they are within the MSRB's clerical and ministerial exemption, persons selling municipal securities will have to qualify as prescribed by the MSRB. Further, because the NASD's proposed rule does not permit concurrent registration in any other category, an AR–OP may not register as a municipal securities representative.

[24] *See* letters from: (1) ICI; (2) IDS; and (3) T. Rowe Price, *supra* note 4.

[25] *See* File No. SR–NASD–88–28 Amendment No. 1 at 3.

[26] *See* Schedule C, Part V, Section (1)(a), *NASD Securities Dealers Manual*, ¶ 1787.

[27] *See* letter from Jacqueline D. Whelan to Eugene A. Lopez *supra*, note 5. *See also* letter from Jacqueline D. Whelan to Katherine A. England *supra*, note 5.

[28] The determination regarding the classification of the duties of a particular associated person as a general securities representative, an AR–OP, or as a person exempt from registration under Schedule C, Part V is fact specific and must be made on a case-by-case basis. In this connection, in light of the number of changes adopted recently regarding supervision and new categories of registration, it may be beneficial for member firms to review their operations to ascertain whether they are in compliance with the appropriate NASD rules.

As clearly stated in the filing,[29] the NASD intended that "[u]nder no circumstances would [AR–OPs] be permitted to * * * solicit or accept new accounts * * *." Further, in its response to the comment letters, the NASD plainly stated that the AR–OP category is intended to be limited to the acceptance of unsolicited orders for existing accounts.[30] Thus, the commentator's suggestion for expansion of the language in the rule runs directly contrary to the express intent of the rule.[31] The Commission agrees with the NASD's view and believes that the commentator's expansive interpretation would be inappropriate in that it would open the rule to the possibility of impermissible conduct by an AR–OP and could affect adversely the NASD's "know your customer" rule. For example, NASD rules require that a registered representative obtain information about a customer prior to effecting a first transaction for that customer.[32] Given the limited discretion permitted to the AR–OP, the Commission believes that the category cannot and should not be expanded to permit the AR–OP to open new accounts for customers.

As noted previously, the SIA objected to the proposed rule change and requested that the Commission institute disapproval proceedings. The SIA believes that the new category could lead some AR–OPs to exceed the limits of the category. Specifically, the SIA believes that the new category could detract from the concept of high-quality, complete brokerage service and that the establishment of the new category could create problems in determining whether a customer's order was solicited or unsolicited. The SIA believes that it could be difficult to prevent the solicitation of orders by AR–OPs. As stated above, however, the Commission believes that the NASD's plan to monitor compliance with the limits of the new category should control the potential for such problems. In view of the NASD's intent to perform such monitoring function and for the above-mentioned reasons, the Commission does not believe it necessary to institute disapproval proceedings.

[29] File No. SR–NASD–88–26 at 4.

[30] *See* letter from Jacqueline Whelan to Eugene A. Lopez, *supra* note 5.

[31] The commentator, Jones, also commented about compensation for AR–OP employees. Jones sought further clarification in the rule that permissible AR–OP participation in profit-sharing arrangements includes participation in arrangements which are based on the member's overall profitability. The NASD agrees that the rule language encompasses such plans, provided that the plan: (1) covers all firm employees similarly situated; (2) is an established aspect of the firm's compensation program with established standards for implementation; and (3) does not act as an incentive to AR–OPs to exceed their permitted functions. *See* letter from Jacqueline Whelan to Eugene A. Lopez, *supra* note 5. The Commission believes that the proposed language of the rule includes such compensation arrangements and sees no need to change the language.

Similarly, regarding the concerns of mutual fund organizations involving compensation for its service personnel, because those personnel performing clerical and ministerial functions are not covered by the rule change, the new category's restrictions on compensation do not apply to such personnel.

[32] *See* Article III, Section 21(c), Rules of Fair Practice *NASD Securities Dealer Manual*, ¶ 2171.

IV. Conclusion

For the foregoing reasons, 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, with 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 proposed rule change, SR–NASD–88–26, be, and hereby, is approved. The NASD intends to submit to the Commission the examination for this category in June of 1989. Therefore, the rule change shall become effective 30 days after approval of the exam, when, as, and if the examination is approved by the Commission.

By the Commission.

Jonathan G. Katz,

Secretary.

Dated: June 12, 1989.

[FR Doc. 89–14738 Filed 6–21–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–26940; File No. SR–NYSE–89–06]

Self-Regulatory Organization; Notice and Order Granting Accelerated Approval of Proposed Rule Change by New York Stock Exchange, Inc.

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 June 1, 1989, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, 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 Exchange proposes to modify Rule 717.10(c) so that the time at which the closing rotation for stock options is implemented on the business day before option expiration is at 4:10 p.m. instead of 4:00 p.m.

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) The Exchange has utilized 4:00 p.m. as the time option specialists can commence the closing rotation for equity options on the business day prior to expiration. Other option exchanges have changed from 4:00 p.m. to 4:10 p.m. As the later time is becoming the industry standard, the Exchange is seeking approval to modify its Rule 717.10(c) so that it is in conformity with the other option exchanges.

(b) The statutory basis of the proposed rule change is section 6(b) of the Securities Exchange Act of 1934 (the "Act") in general and, in particular, paragraph (5) of section 6(b), which requires that the rules of a national securities exchange be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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 with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests accelerated effectiveness of the proposed rule

change pursuant to section 19(b)(2) of the Act. Accelerated approval of the Exchange's proposal will enable the Exchange to maintain both continuity in its monthly expirations program for stock option series and, since the Exchange anticipates that similar proposals have or will be filed by the other options exchanges, uniformity among exchange rules.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rule and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rule and regulations thereunder. By permitting trading in expiring stock options to continue until 4:10 p.m., rather than 4:00 p.m., on the Friday prior to expiration, the Exchange will conform its procedures with those of the CBOE, PHLX, PSE, and AMEX and eliminate the possibility of investor confusion. In addition, continuing trading until 4:10 will provide the NYSE with additional time to receive closing stock prices for the purpose of pricing expiring stock options.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof. In particular, the CBOE, PHLX, PSE, and AMEX already have implemented identical provisions. In addition, accelerated approval will permit the Exchange to implement its revised trading procedures on June 16, 1989, the next Expiration Friday.

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 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 13, 1989.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[1] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Dated: June 15, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89-14739 Filed 6-21-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26941; File No. SR-OCC-88-04]

Self-Regulatory Organizations; Options Clearing Corporation, Inc.; Ordering Approving Proposed Rule Change

The Options Clearing Corporation ("OCC") on May 5, 1988, submitted a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"). The proposal would authorize yield-based options on United States Treasury securities. Notice of the proposal appeared in the **Federal Register** on July 14, 1988, to solicit comments, from interested persons.[1] No comments were received. This order approves the proposed rule change.

I. Description

The proposed rule change would authorize OCC to issue, clear and settle options that are based upon the annualized yield to maturity of U.S. Treasury securities (or based upon the annualized discount to maturity in the case of U.S. Treasury bills), to be known as the "yield-based Treasury option" ("YBTO").[2] YBTOs would be cash-settled,[3] European-style options.[4]

The proposed rule change also would amend OCC's By-laws and rules to clarify the rights and obligations of OCC and clearing members with respect to YBTOs. Under the terms of the proposed rule change, OCC will classify YBTO's as index options, so that as a general rule, existing OCC by-laws and rules that govern OCC index options also would apply to YBTOs. OCC's proposal, however, would establish several provisions that would apply only to YBTOs, including: (1) Definitions of particular YBTO terms, (2) YBTO general rights and obligations, and (3) YBTO exercise and settlement procedures.

A. Definitions

OCC would amend Article I (Definitions) of its By-Laws as follows: (1) The existing term "option contract" would be modified to include YBTOs; (2) the new term "cash-settled option contract" would mean an index option contract or a YBTO contract; and (3) "index clearing member," also a new term, would mean a clearing member approved by OCC to clear transactions in cash-settled options.

Additionally, OCC would add a new Article XVI, captioned "Yield-Based Treasury Options," to its By-Laws. Article XVI's Section 1 would define 14 new YBTO terms, including the following: (1) "Underlying yield" would mean the YBTO annualized yield to maturity (or annualized discount in the case of Treasury bills); (2) "settlement value" would mean the current underlying yield (a percentage figure) on the last trading day prior to expiration of the option; (3) "multiplier," the equivalent to number of units in other forms of options, would mean the dollar amount by which the settlement value (a percentage figure) must be multiplied to obtain the aggregate settlement value of a contract; (4) "aggregate settlement value" (*i.e.*, the multiplier times the settlement value) would mean the value required to be delivered to [by] the holder of a call [put] (against payment of the exercise price) upon the valid exercise of a YBTO; (5) "exercise price" (a percentage figure) would mean the specified value of the underlying yield at which, under the terms of the option contract, the settlement value theoretically could be purchased [sold] in the case of a call [put] upon the exercise of such option; [5] (6) "aggregate

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[1] 15 U.S.C. 78s(b)(2) (1982).

[2] 17 CFR 200.30-3(a)(12) (1986).

[1] *See* Securities Exchange Act Release No. 25885 (July 6, 1988), 53 FR 16701.

[2] OCC notes in the filing that YBTOs, theoretically, could be classified within the broader non-equity option categories of the interest rate option contracts and Treasury securities option contracts, but that, for the purposes of OCC's rules, YBTOs will be classified as a new and separate form of non-equity option contract.

[3] The term "case settlement" means that settlement would be in case rather than in the assets underlying the option. Index options, as well as index futures, already are subject to cash settlement. *See* D. Scott *Wall Street Words*, 52 (1988).

[4] A "European option" or "European-style option" is a security option that can be exercised only on its expiration date, in contrast to the most security options available in the United States (American-style options) that can be exercised at any time up to and including the expiration date. *See id.* at 121.

[5] A YBTO's "exercise price," which would be set by the exchanges where they are traded, would be a percentage figure and would have to be multiplied by the multiplier (a dollar amount) to produce the "aggregate exercise price," also a dollar amount.

exercise price" (*i.e.*, the multiplier times the exercise price) would mean the exercise price at which the aggregate settlement value may be purchased [sold] in the case of a call [put]; and (7) the "exercise settlement amount" would mean the amount to be paid in settlement of the exercises of such option.

B. General Terms

The general terms of the proposal governing YBTOs are found in proposed Article XVI, Section 2 through 5. Sections 2, the rights and obligations of YBTO holders and writers, provides that on, but only on, the contract's expiration date (until 10:59 p.m. Central Time): (1) The holder of a YBTO in the case of a call [put] would have the right to purchase from [sell to] OCC at the aggregate exercise price the aggregate settlement value of the underlying yield; and (2) the writer of a YBTO would have the obligation, in event of assignment to it of an exercise notice of such contract, in the case of a call [put] to sell to [buy from] OCC at the aggregate settlement value of the underlying yield.

Proposed Article XVI, Section 3 provides that OCC could adjust the terms YBTOs in event the U.S. Treasury Department were to change the terms, the issuance schedule, or stop issuing a Treasury security of a particular maturity underlying a class of YBTOs. In such event, OCC could make such adjustments as it determines, in its sole discretion, to be fair to the parties.[6]

Proposed Article XVI, Section 4 provides that the settlement value of the underlying yield of any series of YBTOs, as initially reported by the reporting authority,[7] shall be conclusively presumed to be accurate except where OCC determines otherwise. If, however, OCC determines that such settlement value is clearly erroneous, unreported, or otherwise unavailable for the purpose of calculating the settlement amount for exercised contracts, OCC may: (1) postpone settlement obligations until such information becomes available, or (2) set the settlement amount based on the best information available.[8]

Proposed Article XVI, Section 5 provides that the exchange where a YBTO is traded will specify by contract the time of day and method by which settlement values for YBTOs are to be determined. Any changes is such terms may be made applicable to outstanding YBTOs if the exchange so specifies.

Margin requirements on YBTOs would be governed by existing OCC Rule 602A (Margins on Positions in Non-Equity Options). Additionally, Rule 602A(b)(6)(B), as proposed, would define the marking price for YBTOs as the YBTO's "underlying yield as reported by the reporting authority."

C. Premiums and Margin

The proposal would require clearing members to pay OCC, prior to 9 a.m. (CST), all premiums due in respect of exchange transactions in YBTOs. Under existing OCC Rules 501 and 502, OCC would be authorized to net YBTO premiums with other exchange transactions. Under those rules, OCC would be obligated to pay to clearing members any credits payable in respect of premiums on exchange transactions in YBTOs. The YBTO premium would be defined as an amount equal to the per-unit price of each option, as agreed upon by the purchaser and seller in an exchange transaction, times the multiplier and the number of options subject to the transactions.

The proposal also would authorize OCC to collect margin from clearing members who write YBTO options or who hold short positions in YBTO options. Under the proposal, OCC would treat YBTOs as non-equity options, and will calculate margin on YBTOs as separate product groups and class groups. Generally, OCC will determine each clearing member's net YBTO position, and charge clearing members premium and additional margin based on their net short positions in YBTOs.

D. Exercise and Settlement

Proposed OCC Rules 1701 through 1705 govern exercise and settlement. Proposed Rule 1701 provides that OCC Rules 610 and 612, permit clearing members to deposit underlying securities and Treasury bills in lieu of margin,[9] would not apply to YBTOs. OCC states that inasmuch as YBTOs are to be settled in cash and not by delivery of securities, Rules 610 and 612 would be inapplicable to YBTOs.[10]

Proposed OCC Rule 1702 provides that the expiration date procedures set forth in existing OCC Rule 805 (Expiration Date Exercise Procedures) also would apply to YBTOs, except that Rule 805, paragraph (f)(2), which sets forth the qualifying prices for existing option exercises, would not apply. Instead, under Rule 1702, each OCC clearing member would be deemed to have tendered to OCC on the expiration date, immediately prior to expiration time a proper exercise notice for each YBTO contract for which the aggregate exercise price is below [above] in the case of a call [put] the aggregate settlement value of the underlying yield (*i.e.*, in the money) by at least $25.00 for a YBTO contract carried in a customer's account or at least $1.00 for a YBTO contract in any other account.

Proposed OCC Rule 1703 provides that the settlement date for exercised YBTOs would be the business day following the expiration date. Additionally, Rule 1703 would authorize OCC's Board of Directors to extend such settlement dates whenever, in its opinion, such action is required in the public interest or to meet unusual conditions. Proposed OCC Rule 1704(a) provides for settlement of YBTOs by the exchange of payments between OCC and its clearing members for: (1) Exercised YBTOs (*i.e.*, long YBTO positions that have been exercised for the holder), and (2) YBTO short positions to which exercise notices have been assigned. In the case of an exercised call [put] option contract, if the aggregate settlement value is: (1) greater [less] than the aggregate exercise price, OCC would pay the exercise settlement amount to the exercising clearing member, and the assigned clearing member would pay such amount to OCC; and (2) less [greater] than the aggregate exercise price, OCC would pay the exercise settlement amount to the assigned clearing member, and the assigned clearing member would pay such amount to OCC.

Proposed OCC Rule 1704(b) provides that prior to 7:00 a.m. Central Time on

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[6] Any such adjustments would be effected by OCC's Securities Committee as provided in OCC's existing By-Laws, Article IV, Section 11, as supplemented by the proposed Section 3 of Article XVI. For the operation of Article IV, Section 11, *see* Securities Exchange Act Release 24024 (January 23, 1987), 52 FR 3184.

[7] Proposed OCC By-Law, Article XVI, Section 1(e) would provide: The term "reporting authority" means the institution or reporting service designated by the Exchange as the official source for the current value of settlement value of the underlying yield for a particular class of yield-based Treasury options.

[8] OCC states in the filing that it will not adjust: officially reported settlement values, even if erroneous, except in extraordinary circumstances (*e.g.*, the value is clearly erroneous and inconsistent with earlier reports of the same trading day), and (2) completed settlements due to errors in reported settlement values.

[9] Rule 610 authorizes the deposit of underlying securities in lieu of margin on call options, and Rule 612 authorizes the deposit of Treasury bills in lieu of margin on put options.

[10] OCC emphasizes in its filing that Rules 610 and 612 would remain applicable to certain other Treasury options as provided in OCC'S By-Laws (*e.g.*, Article XIV—Treasury Security Options, which are settled through the delivery of underlying securities), but that the rules would not apply to YBTOs.

each YBTO exercise settlement date, OCC would: (1) Determine, for each account of each OCC clearing member, the number of exercised and assigned contracts of each series of YBTOs for which the current business day is the exercise date; (2) net the exercise settlement amounts payable by each clearing member to OCC against the exercise settlement amounts payable by OCC to the clearing membr to obtain a single net amount for YBTOs with respect to each account of each clearing member; and (3) issue to each clearing member a report showing the results of the YBTO netting.

Proposed Rule 1704(c) provides that by 9:00 a.m. Central Time on each YBTO exercise settlement date, each OCC clearing member must pay to OCC any net settlement amount in any account of such clearing membr due to OCC per the daily reports provided under Rule 1704(b) and that OCC either may withdraw such amount from the clearing member's bank account, or offset such amount against any credit balance due to the clearing member by OCC.

Proposed OCC Rule 1704(d) provides that b 10:00 a.m. Central Time (11:00 a.m. Eastern Time) on each YBTO exercise settlement date, OCC must pay each OCC clearing member (provided the member is properly margined) the net settlement amount in any account shown to be due from OCC per the daily reports provided under Rule 1704(b).

Finally, proposed Rule 1705, which supplements OCC Rule1104 (Creation of a Liquidation Settlement Account) provides that exercised YBTOs, to which an OCC clearing member is a party either as an exercising member or as assigned member, shall be settled pursuant to Rule 1704, provided that the net settlement amounts in respect of such contracts shall be paid from or credited to the Liquidated Settlement Account of such member pursuant to OCC Rule 1104. Under Rule 1705, OCC must effect settlement with all clearing members that: (1) Have been assigned an exercise notice filed by a suspended clearing member or (2) have filed exercise notices that were assigned to a suspended clearing member without regard to the suspension.[11]

II. OCC's Rationale

OCC states in its filing the purpose of the filing is to permit the issuance, clearance, and settlement of cash-settled, European-style options covering the annualized yield to maturity of U.S. Treasury securities. OCC further states that the proposal is intended to permit the trading of such options, which it notes has been proposed by the Chicago Board Options Exchange, Inc. ("CBOE").

OCC believes that the proposal is consistent with the Act, particularly Section 17A of the Act, in that the YBTO proposal would: (1) Facilitate the prompt and accurate clearance and settlement of transactions in yield-based options on U.S. Treasury securities; and (2) conform with OCC's existing standards for protecting funds and securities for which OCC has responsibility by authorizing a system of safeguards, including margin and clearing fund requirements, which would be substantially the same as OCC currently uses for other option securities.

III. Discussion

The Commission believes that OCC's proposal to issue, clear and settle YBTO options is consistent with the Act. In particular, the Commission believes that the proposal is consistent with OCC's obligation to safeguard funds and securities and to promote prompt and accurate clearance and settlement of securities transactions.

The Commission recently approved a CBOE proposal to trade interest rate measure options, which OCC classifies under the current proposal as YBTO contracts. The Commission is satisified that OCC's by-laws, rules and procedures, as modified by the proposed rule change, will provide for safe and efficient processing of YBTO transactions, including settlement of exercises and assignments of YBTO transactions. For example, exchanges will use existing systems to report opening and closing trades in YBTO contracts, and OCC will maintain records and process opening and closing transactions, will process exercises and assignments, and will effect net settlement daily with its clearing members for YBTO contracts and other options and cleared securities.

Because YBTOs will be cash-settled, index options, the Commission notes that OCC will be dependent upon the CBOE and its reporting authority, for timely and accurate pricing data in computing, among other things, clearing member margin and exercise settlement obligations. As discussed in Release No. 34-16938 (June 15, 1989), the Commission has examined carefully the procedures CBOE will use to determine the interest rate measure and the formula for determining the exercise settlement value of those options and is satisified that those procedures will yield accurate and reliable data. Accordingly, the Commission believes that OCC/s reliance on this data is consistent with the Act.

The Commission notes that similar option products already have been approved by the Commission. In 1985, for example, the Commission approved OCC's proposals to issue, clear and settle European-style options,[12] and in 1986 it approved OCC's proposals to issue, clear and settle Eruopean-style Treasury options.[13]

IV. Conclusion

For the reasons discussed in this order, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b) of the Act, that the above-mentioned proposed rule change (SR-OCC-88-04) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: June 16, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89-14829 Filed 6-21-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17008; 812-7194]

The Arch Fund, Inc., et al.; Application

June 14, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for approval under the Investment Company Act of 1940 ("1940 Act").

Applicants: The Arch Fund, Inc. (consisting of The Arch Money Market Portfolios, Class A and Class B; The Arch Capital Appreciation Portfolio; and The Arch Short Government Portfolio), The Arch Tax-Exempt Trust (consisting of the Arch Tax-Exempt Money Market Portfolios, Class A and Class B, and The Arch Long-Term Tax-Exempt Portfolio) (collectively, "Funds"), and TBC Funds Distributor, Inc. (the "Distributor") and on behalf of each future investment company for which the Distributor (or

[11] OCC notes in the filing that, for the purpose of YBTOs, its proposed Rule 1705 would supplement OCC Rule 1104 and replace OCC Rule 1107.

[12] *See* Securities Exchange Act Release No. 22369 (March 28, 1985), 50 FR 35176 (File No. SR-OCC-85-09). At that time, the Commission found that proper safeguards were in place for OCC to process European-style options. OCC had amended its By-Laws and Rules to: (1) Provide definitions of the new trading terms; (2) define the rights and obligations of holders and writers, and (3) clarify the new exercise procedures.

[13] *See* Securities Exchange Act Release No. 23004 (March 12, 1986), 51 FR 9563 (File No. SR-OCC-85-18).

its subsidiaries or affiliates) serves as distributor.

Relevant 1940 Act Section: Section 11(a) of the 1940 Act.

Summary of Application: Applicants seek an order approving certain offers of exchange of shares on a basis other than their relative net asset values per share at the time of the exchange.

Filing Dates: The application was filed on December 12, 1988, and an amendment thereto was filed on June 6, 1989. A letter was also submitted on March 6, 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 10, 1989, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest , the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicants, c/o Drinker Biddle & Reath, 1100 PNB Building, Broad & Chestnut Streets, Philadelphia, PA 19107. Attention: W. Bruce McConnel, III, Esq. or Keith A. Weller, 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. Each Fund is registered under the 1940 Act as an open-end managment investment company. The Arch Money Market Portfolios, Class A and Class B and the Arch Tax-Exempt Money Market Portfolios, Class A and Class B are no-load funds (the "No-Load Funds"). The Arch Capital Appreciation Portfolio, The Arch Diversified Fixed Income Portfolio, The Arch Short Government Portfolio and The Arch Long-Term Tax-Exempt Portfolio are load funds (the "Load Funds"). The Distributor distributes shares of each Load Fund and No-Load Fund. Shares of the No-Load Funds are also sold at net asset value without a sales charge. Shares of the Load Funds are offered at net asset value plus a front-end sales load. None of the Funds currently charges a contingent deferred sales load or a redemption fee.

Applicants' Analysis

1. Applicants state that the purpose of their proposed exchange offers is to permit simultaneous, voluntary redemption and purchase transactions initiated solely at a shareholder's request. Applicants state that certain share exchange transactions may not comply with section 11(a) of the 1940 Act because they could be interpreted to be on a basis other than relative net asset value. Applicants are concerned, however, that if exchanges are always made at the relative net asset values of the shares involved in the exchanges without the imposition of any sales load, the distribution system of the Load Funds would be distrupted because an investor could easily avoid the sales load by acquiring No-Load Fund shares and immediately exchanging the shares for Load Fund shares.

2. Existing shareholders of the Funds would not be harmed by the proposed exchange offers. The proposed exchange offers would not impose a redemption fee, an administration fee or a deferred sales load. The granting of the requested order upon the terms and conditions as stated in the application would eliminate any ambiguity concerning the Funds' ability to offer certain exchanges. Instead of being harmed by the proposed exchange offers, the Funds' shareholders would be benefited by being able to exchange shares of any Fund for the shares of any other Fund on a fair and equitable basis, where market, tax considerations, and changes in the shareholder's investment objective might warrant such an exchange. Applicants assert further that the arrangements described in the application are substantially identical to those that have been the subject of other applications granted by the SEC and are consistent with the requirments of revised proposed Rule 11a–3 under the 1940 Act.

3. Accordingly, Applicants submit that the granting of their request is 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.

Applicants' Conditions

If the requested Order is granted, Applicants agree to the following conditions:

1. Applicants will comply with the requirements of revised proposed Rule 11a–3 under the 1940 Act, Investment Company Act Release No. 16504 (July 20, 1988), 53 FR 30299 (August 11, 1988), as it currently exists and as it may be further revised or adopted. Applicants acknowledge that they bear the burden of ensuring that the exchange offer complies with this requirement.

2. Applicants will obtain an amended order prior to any modification of the exchange offer in a manner inconsistent with the provisions of revised proposed Rule 11a–3, except that an amended order is not required to terminate the exchange offer.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–14740 Filed 6–21–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–17009; 811–4686]

The Endowment and Annuity Trust; Application for Deregistration

June 14, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "1940 Act").

Applicant: The Endowment and Annuity Trust ("Applicant").

Relevant 1940 Act Section: Section 8(f) and Rule 8f–1.

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

Filing Dates: The application on Form N–8F was filed on February 24, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 10, 1989, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish

to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicant, 60 State Street, Boston, MA 02109.

FOR FURTHER INFORMATION CONTACT: Patricia Copeland, Legal Technician, (202) 272–3009, or Brion Thompson, Branch Chief, (202) 272–3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant is a business trust organized under the laws of the Commonwealth of Massachusetts. Applicant is registered under the 1940 Act as an open-end, diversified management investment company. On May 30, 1986, Applicant filed a Notification of Registration pursuant to section 8(a) of the 1940 Act on Form N–8A. On the same date, Applicant filed a registration statement under the Securities Act of 1933 on Form N–1A which was declared effective on August 11, 1986. However, Applicant has never made a public offering of its securities.

2. Applicant has no shareholders, assets or liabilities. Applicant is not a party to any litigation or administrative proceeding.

3. Applicant is not engaged, nor does it propose to engage in any business activities other than those necessary to wind up its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–14741 Filed 6–21–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IA–1170; 803–63]

Smith Breeden Associates, Inc.; Application

June 14, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the investment Advisers Act of 1940 (the "Advisers Act").

Applicant: Smith Breeden Associates, Inc.

Relevant Sections of the Advisors Act: Exemption requested under section 206A from the provisions of section 205(a)(1).

Summary of Application: Applicant seeks an order permitting it to receive an incentive fee for the disposition of certain assets of a failed thrift. These assets are now held in the securities portfolio of a federally-insured thrift institution, and the fee and the assets are subject to an assistance agreement with the Federal Savings and Loan Insurance Corporation ("FSLIC").

Filing Date: The application was filed on January 26, 1989, and amended on April 12, 1989. In addition, letters dated January 25, 1989, and May 22, 1989, were submitted by FSLIC as exhibits to the application.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 10, 1989, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certficate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o V. Diana Pitts, Esq., Jenkens & Gilchrist, P.C., 1445 Ross Avenue, Suite 3200, Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: Victor R. Siclari, Staff Attorney, at (202) 272–3567 or Stephanie M. Monaco, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier which can be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant is a registered investment adviser under the Advisers Act. Applicant has entered into an agreement (the "Agreement") with the FSLIC, as receiver, for an insolvent thrift association. Under the Agreement, Applicant has been retained to value the collateralized mortgage obligation securities portfolio (the "CMO Assets") of the failed thrift; to develop, implement, and maintain a hedging strategy with respect to the CMO Assets; and to recommend, from time to time, the disposition of the CMO Assets. FSLIC has transferred its interest, as receiver, in the CMO Assets to a newly-formed, federally-insured thrift institution ("Thrift"), and entered into an assistance agreement with the Thrift. Under the assistance agreement, FSLIC will provide loss coverage to the Thrift if the proceeds from the dispositon of the CMO Assets are less than their book value.

2. The Agreement provides for the payment to Applicant of an incentive disposition fee (the "Incentive Fee") upon the sale of any CMO Asset, in addition to a monthly, flat fee for Applicant's valuation and analysis. The Incentive Fee is calculated as a percentage of the excess of the amount realized from the sale of the CMO Asset over either the basis of the fair value of the Asset as of the disposition date, depending upon the extent to which FSLIC and the Thrift direct Applicant to hedge the Asset. Under the Agreement, the fair value is calculated by discounting ther future anticipated cash flow from the Asset at an option-adjusted spread to Treasury security rates, and the basis is calculated as the value of the discounted cash from the Asset, adjusted for any cash inflows or outlays, interest costs, and gains or losses on the hedge position on the Asset. The FSLIC will review all calculations relating to the Incentive Fee.

3. Under the Agreement, FSLIC and the Thrift must authorize and approve Applicant's decisions to dispose any of the CMO Assets, except when the amount realized from the sale is equal to or greater than a price determined by a specified calculation (the "Preauthorized Dispositions"). The Agreement requires that FSLIC be notified of any proposed disposition of a CMO Asset, including Preauthorized Dispositions, so that FSLIC may bid on that CMO Asset. The Agreement also gives FSLIC and the Thrift the right to initiate the disposition of a CMO Asset upon notice to Applicant, who will then take and evaluate bids for its purchase. In addition, the Agreement requires Applicant to report monthly to, and to attend a monthly portfolio review meeting with, FSLIC and the Thrift.

Applicant's Legal Conclusions

Applicant states that an exemption from the performance fee prohibitions of section 205(a)(1) is necessary or

appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Advisers Act for the following reasons.

1. The section was designed to avoid any conflicts of interest with regard to risk and to protect the interest of investors. Applicant argues that FSLIC and the Thrift are not the type of investment advisory clients needing the protection of section 205(a)(1) because of their significant level of sophistication regarding financial markets and their control over Applicant's decisions to dispose of the CMO Assets. Also, through effective management, Applicant will seek to reduce risk and FSLIC's exposure under the assistance agreement with the Thrift. In addition, Applicant will be mangaging a pre-existing portfolio of securities, rather than investing in high risk/high reward securities to increase its fee. Furthermore, FSLIC and the Thrift must approve all of Applicant's decisions to dispose of the CMO Assets, and FSLIC will review the Incentive Fee calculations.

2. Applicant also submits that the Incentive Fee is justified because of the complexity and illiquid nature of the CMO Assets and the skill required to dispose of them profitably. In addition, FSLIC uses an incentive based fee arrangement in its Standard Asset Management Contract for the management and disposition of real estate, and FSLIC desires to use the Incentive Fee here to increase the returns on the CMO Assets.

3. Finally, Applicant maintains that the exemption is in the public interest since use of the Incentive Fee will allow implementation of a Federal agency's program—the salvaging of a failed thrift's assets—that is important to that agency and the Federal budget.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-14742 Filed 6-21-89; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2350; Amdt 1]

North Dakota; (And Contiguous Counties in the State of South Dakota); Declaration of Disaster Loan Area

The above-numbered Declaration (54 FR 22390) is hereby amended to include Steele County, in the State of North Dakota, which was inadvertently omitted as a contiguous county, as a result of damages from flooding which began on March 29, 1989.

Applications for economic injury from small businesses located in the above-named county may be filed until the specified date at the designated location. All other information remains the same.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: May 12, 1989.

Alfred E. Judd,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89-14761 Filed 6-21-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: June 16, 1989.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0233
Form Number: 7004
Type of Review: Revision
Title: Application for Automatic Extension of Time To File Corporation Income Tax Return
Description: Form 7004 is used by corporations and certain non-profit institutions to request an automatic 6-month extension of time to file their income tax returns. The information is needed by IRS to determine whether Form 7004 was timely filed so as not to impose a late filing penalty in error and also to insure that the proper amount of tax was computed and deposited.
Respondents: Farms, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations
Estimated Number of Respondents: 1,097,748
Estimated Burden Hours Per Response/ Recordkeeping:
Recordkeeping: 5 hours 30 minutes
Learning about the law or the form: 46 minutes
Preparing the form: 1 hour 49 minutes
Copying, assembling, and sending the form to IRS: 16 minutes
Frequency of Response: Annually
Estimated Total Recordkeeping/ Reporting burden: 9,177,173 hours
Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 89-14794 Filed 6-21-89; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF VETERANS AFFAIRS

Special Medical Advisory Group, Meeting

The Department of Veterans Affairs gives notice under Pub. L. 92-463 that a meeting of the Special Medical Advisory Group will be held on July 13-14, 1989. The session on July 13 will be held at the Capital Hilton Hotel, 16th and "K" Streets, NW., Washington, DC 20036, and the session on July 14 will be held in the Omar Bradley Conference Room (10th floor) at the Department of Veterans Affairs Central Office, 810 Vermont Avenue, NW., Washington, DC 20420. The purpose of the Special Medical Advisory Group is to advise the Secretary and Chief Medical Director relative to the care and treatment of disabled veterans, and other matters pertinent to the Department's Veterans Health Services and Research Adminstration. The session on July 13 (held at the Capital Hilton Hotel) will convene at 6 p.m. and the session on July 14 will convene at 8 a.m. All sessions will be open to the public up to the seating capacity of the rooms. Because this capacity is limited, it will be necessary for those wishing to attend to contact Lorri Fertal, Office of the Chief Medical Director, Department of Veterans Affairs (phone 202/233-3985) prior to July 7, 1989.

Dated: June 13, 1989.

By direction of the Secretary.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 89-14766 Filed 6-21-89; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 119
Thursday, June 22, 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).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 2:00 p.m., Thursday, June 29, 1989.

PLACE: 2033 K St., NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Application of the Chicago Mercantile Exchange for designation as a contract market in:

—Euromark forward spread agreements
—Eurosterling forward spread agreements
—Euroyen forward spread agreements
—Options on physical British pounds sterling

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89-14890 Filed 6-21-89; 8:45 am]

BILLING CODE 6351-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:07 a.m. on Monday June 19, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider (1) a recommendation concerning an administrative enforcement proceeding; and (2) matters relating to assistance agreements pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room on the sixth floor of the FDIC Building located at 550-17th Street, NW., Washington, DC.

Dated: June 19, 1989.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 89-14891 Filed 6-21-89; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, June 27, 1989, 10:00 a.m.

PLACE: 999 E. Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, June 29, 1989, 10:00 a.m.

PLACE: 999 E. Street, NW., Washington, DC (Ninth Floor)

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Draft Advisory Opinion 1989-08:
Grant A. Billingsley on behalf of Insilco Corp.
Final Audit Report—Albert Gore, Jr., for President Committee, Inc.
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 89-14885 Filed 6-21-89; 8:45 am]

BILLING CODE 6715-01-M

federal register

Thursday
June 22, 1989

Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 52 and 53
Federal Acquisition Regulation (FAR); Computer Generation of Forms by the Public; Proposed Rule

Federal Register

Thursday
June 22, 1989

Part II

Department of Defense
General Services
Administration
National Aeronautics and
Space Administration

48 CFR Parts 52 and 53
Federal Acquisition Regulation (FAR);
Computer Generation of Forms by the
Public; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 52 and 53

Federal Acquisition Regulation (FAR); Computer Generation of Forms by the Public

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering revisions to the Federal Acquisition Regulation (FAR) to revise 53.105 and to add 53.111 and a clause at 52.253–1 to provide that forms prescribed by the FAR or by agency supplements to the FAR may be computer generated by the public.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before August 21, 1989 to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 89–45 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Regulatory Flexibility Act

The proposed changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because this proposed rule will apply to all small businesses that do business or wish to do business with the Government. This rule is expected to have a beneficial impact on those firms. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited.

Comments from small entities concerning the affected FAR subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite section 89–610 (FAR Case 89–45) in correspondence.

B. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) is deemed to apply because the proposed rule contains information collection requirements. This proposed rule is expected to reduce the burden associated with several currently approved collections of information. However, the extent of the reduction cannot be determined at this time. Consequently, while this rule is being submitted to OMB for approval, submission of the revised burden estimated under existing clearances will not take place until the public has had an opportunity to use the computer generated forms. A request for approval of a new information collection requirement concerning Computer Generated Forms is being submitted to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* Public comments concerning this request will be invited through a subsequent **Federal Register** notice.

List of Subjects in 48 CFR Parts 52 and 53

Government procurement.

Dated: June 12, 1989.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, 48 CFR Parts 52 and 53 are amended as set forth below:

1. The authority citation for 48 CFR Parts 52 and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

2. Section 52.253–1 is added to read as follows:

52.253–1 Computer generated forms.

As prescribed in FAR 53.111, insert the following clause:

Computer Generated Forms (Jun 1989)

(a) Any data required to be submitted on a Standard or Optional Form prescribed by the Federal Acquisition Regulation (FAR), or on a form prescribed by an agency supplement to the FAR, may be submitted on a computer generated version of the form, *provided* there is no change to the name, content, or sequence of the data elements on the form, and *provided* the form carries the Standard or Optional Form or agency form number and edition date.

(b) If the Contractor submits a form that is different than the required form, then the rights and obligations of the parties will be determined based on the content of the required form.

(End of clause)

PART 53—FORMS

3. Section 53.105 is amended by designating the existing text as paragraph (a) and by adding a paragraph (b) to read as follows:

53.105 Computer generation.

* * * * *

(b) The forms prescribed by this regulation may be computer generated by the public. Unless prohibited by agency regulations, forms prescribed by agency FAR supplements may also be computer generated by the public. Computer generated forms shall not change the name, content, or sequence of the data elements, and shall carry the Standard or Optional Form or agency number and edition date (see 53.111).

4. Section 53.111 is added to read as follows:

53.111 Contract clause.

Contracting officers shall insert the clause at 52.253–1, Computer Generated Forms, in solicitations and contracts that require the contractor to submit data on Standard or Optional Forms prescribed by this regulation or, unless prohibited by agency regulations, forms prescribed by agency supplements.

[FR Doc. 89–14795 Filed 6–21–89; 8:45 am]

BILLING CODE 6820–JC–M

federal register

Thursday
June 22, 1989

Part III

Department of Education

34 CFR Part 303

Early Intervention Program for Infants and Toddlers With Handicaps; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 303

RIN 1820-AA49

Early Intervention Program for Infants and Toddlers With Handicaps

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues final regulations for the program for infants and toddlers with handicaps that was established under the 1986 amendments to the Education of the Handicapped Act (EHA). These regulations are intended to assist States in applying for funds under this authority, and to ensure that an effective early intervention program is established in each participating State.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments, with the exception of the following sections: § 303.113(b); §§ 303.141 through 303.146; §§ 303.148 through 303.150; § 303.151(b)(4); § 303.152; §§ 303.160 through 303.175; $303.301; § 303.341; § 303.344; § 303.403; § 303.420; § 303.510; § 303.520; § 303.540; and § 303.653. These provisions of the regulations will become effective after the information collection requirements contained in the provisions have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Thomas B. Irvin, Office of Special Education Programs, Department of Education, 400 Maryland Avenue SW. (Switzer Building, Room 4618 M/S 2313-4600), Washington, DC 20202. Telephone: (202) 732-1114.

SUPPLEMENTARY INFORMATION:

A. Background

The Education of the Handicapped Act Amendments of 1986 (Pub. L. 99-457) added a new formula grant program to assist States in establishing a statewide, comprehensive system of early intervention services for infants and toddlers with handicaps and their families. This new program (designated as Part H of the EHA) provides a phase-in period for States to develop the statewide system, including (1) adopting a policy that incorporates all of the components of the statewide system, as part of a State's third year application; (2) having the system in effect no later than the beginning of the fourth year of participation; and (3) providing appropriate early intervention services to all eligible children and their families no later than the beginning of the fifth year.

The following is a list of the components of the statewide system and the sections or subparts in which the components are included in these regulations:

(1) State definition of developmental delay (§§ 303.160 and 303.300);

(2) Central directory of information (§§ 303.161 and 303.301);

(3) Timetables for serving all eligible children (§§ 303.162 and 303.302);

(4) Public awareness program (§§ 303.163 and 303.320);

(5) Comprehensive child find system (§§ 303.164 and 303.321);

(6) Evaluation and assessment (§§ 303.165 and 303.322);

(7) Individualized family service plans (§§ 303.166 and 303.340 through 303.346);

(8) Comprehensive system of personnel development (§§ 303.167 and 303.360);

(9) Personnel standards (§§ 303.168 and 303.361);

(10) Procedural safeguards (§ 303.169 and Subpart E);

(11) Lead agency designation and responsibilities (§§ 303.142, 303.170 through 303.174, and Subpart F);

(12) Policy for contracting or otherwise arranging for services (§§ 303.174 and 303.526);

(13) Procedure for timely reimbursement of funds (§§ 303.172, 303.527(b), 303.528); and

(14) Data collection (§§ 303.175 and 303.540).

Part H is the only grant program within the Federal government that focuses exclusively on the provision of services to children with handicaps from birth through age two. However, in enacting Part H, the Congress made clear that the success of the program is dependent upon interagency coordination—both in providing and paying for appropriate early intervention services. The statute includes a number of requirements that are directed toward ensuring a coordinated approach to the provision and financing of services, including (1) interagency agreements that define the financial responsibility of each agency, (2) a State Interagency Coordinating Council to assist the lead agency in identifying and coordinating financial resources, and (3) nonsubstitution of funds and non-reduction of benefits.

Regarding the need for shared financial responsibility, the Report of the House of Representatives on Pub. L. 99-457 states:

> Thus, it is our intent that other funding sources continue; that there is greater coordination among agencies regarding the payment of costs; and that funds under Part H be used only for direct services for handicapped infants and toddlers that are not otherwise provided from other public or private sources * * * (House Rpt. No. 99-860, 15 (1986).)

Part H is designed to build upon existing State systems of early intervention services, and to facilitate development of systems in those States desiring to serve young children with handicaps from birth through age two. The program enables States to use funds under this part to develop a statewide system that fits their own characteristics.

During the initial years of participation under Part H, it is expected that, to the extent appropriate, States will continue, or capitalize on, the planning, development, and implementation efforts that were started under the EHA amendments of 1983 (Pub. L. 98-199). Under those amendments, a State grant provision was added to the Handicapped Children's Early Education Program (section 623(b) of the EHA) to assist States in establishing a comprehensive delivery system for providing special education and related services to children with handicaps from birth through age five. The 1983 amendments also added a provision that permitted States to use funds under the preschool incentive grant program (section 619 of the EHA) to serve children from birth through two, as well as three through five.

With the enactment of Pub. L. 99-457, (1) the State grant provision under section 623(b) was eliminated, and Part H was added, and (2) section 619 was amended to only permit direct services for children three through five. However, under the new section 619 (Preschool Grants program), States may still use a portion of their annual grant funds (up to 20%) for planning and developing a comprehensive delivery system of services for children from birth through five.

Part H substantially expands the State grant provisions that were initiated under Pub. L. 98-199, but limits the age range of children to be served by the program to children from birth through two. Thus, activities under Part H must be directed to infants and toddlers with handicaps—including activities to prepare for the transition of these

children as they reach age three to preschool services under Part B of the EHA or other appropriate services (see § 303.344(h)).

B. Analysis of Comments and Changes

In the November 18, 1987, NPRM, the Secretary allowed 60 days for interested parties to comment on the proposed regulations. At public request, that period was extended for an additional 30 days.

Over 2,500 written comments were received on the NPRM from a variety of agencies, individuals, and organizations. An analysis of the comments and of the changes that have been made in the regulations since publication of the NPRM is included in Appendix A to these final regulations.

A technical change has been made to § 303.4, due to the publication in the **Federal Register** (53 FR 8033 through 8103, March 11, 1988) of the new 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments). Part 80 is a part of the Education Department General Administrative Regulations (EDGAR). Effective October 1, 1988, Part 80 and not Part 74 applies with respect to grants and cooperative agreements to State and local governments.

An additional technical change has been made to § 303.4 to reference the new 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Work Place (Grants)) published May 26, 1988 (53 FR 19190 through 19193, 19204 through 19211). Part 85 is also a part of EDGAR and became effective October 1, 1988.

Another technical change has been made to § 303.4 to eliminate the references to Part 78 (Education Appeal Board). Section 3501 of the Hawkins-Stafford Elementary and Secondary School Improvement Amendments of 1988 amended Part E of the General Education Provisions Act (GEPA) to provide for new enforcement procedures that became effective October 25, 1988. The amended Part E requires the Secretary to establish an Office of Administrative Law Judges (OALJ) to replace the existing Education Appeal Board, and sets out new hearing procedures. 20 U.S.C. 1234 through 1234i.

On May 5, 1989, the Department published final regulations (54 FR 19512 through 19522) adding a new Part 81 to Title 34 of the Code of Federal Regulations and establishing general procedural rules for proceedings before the OALJ and specific rules for OALJ hearings for recovery of funds. A reference to the new Part 81 has been added to these regulations.

The drafters of the NPRM for this part contemplated that the State complaint procedures contained in the Education Department General Administrative Regulations (EDGAR) at 34 CFR 76.780 through 76.782 would be applicable to this program. (The NPRM at § 303.4(a)(1) made 34 CFR Part 76 applicable to the Part H program.) A number of commenters, however, requested that the final regulations specifically include State procedures for resolving complaints under the Part H program.

In addition, subsequent to the publication of the NPRM for this program, the Department published an NPRM proposing changes to EDGAR. *See* 53 FR 31580 through 31606 (August 18, 1988). One of those proposed changes was the removal of the State complaint procedures in 34 CFR 76.780 through 76.782 of EDGAR and the transfer of those procedures, with some modification, to the regulations implementing Part B of the Education of the Handicapped Act, which had shown the greatest need for the complaint procedures. In response to comments on the EDGAR NPRM, the Secretary is reconsidering whether to remove the complaint procedures from EDGAR. Since no final action has yet been taken on the changes proposed to EDGAR, and in light of the Secretary's determination that the EDGAR procedures needed some minor adjustments to accommodate distinctive features of the Part H program, the Secretary has included the State complaint procedures from EDGAR, with appropriate minor modifications, in these Part H regulations.

C. Major Changes in the Regulations

1. General and Organizational Changes

A number of changes have been made in the regulations as a result of the comments received. For example, additional guidance has been added in the text of the regulations and in the explanatory notes throughout the document to address the large number of requests for that guidance. Other changes have been made to clarify and unify treatment of common issues.

The term "infants and toddlers with handicaps," as used throughout the NPRM, has generally been replaced in these final regulations with the term "children eligible under this part."

Some major organizational changes have also been made, as indicated below:

- The five subparts in the NPRM have been reorganized into seven subparts, as follows: The requirements on procedural safeguards and State administration have been moved from Subpart D and made into separate subparts (i.e., "Procedural Safeguards" and "State Administration"). Subpart D has been retitled "Program and Service Components of a Statewide System of Early Intervention Services."
- The section numbers have been changed, so that each subpart begins with the next one hundred number (e.g., Subpart A begins with § 303.1, Subpart B with § 303.100, and Subpart C with § 303.200).

2. Redesignation Table

To assist readers in finding where each section from the NPRM is located in the final regulations, a redesignation table has been included in Appendix B to these final regulations.

3. Changes in Subpart A (General)

Some of the changes that have been made in Subpart A are:

- The term "case management" has been added to the regulations. The term "case management services" has been retained, and a distinction has been made between the two terms. "Case management" is a coordinative function that includes activities that are designed to assist and enable an eligible child and the child's family to obtain appropriate early intervention services (see § 303.6). On the other hand, "case management services" are included under the definition of early intervention services (see § 303.12(c)(2)).
- A definition of "early intervention program" (§ 303.11) has been added to clarify that services and funding from other agencies and programs are important in meeting the needs of eligible children and their families.
- The reference to the related services definitions in Part B of the EHA (§ 303.16) has been dropped. New definitions for each of the early intervention services in Part H, which conform to professionally accepted definitions, have been added at § 303.12.
- Several new definitions have been added to the regulations, including "days" (§ 303.9), "include-including" (§ 303.15), "multidisciplinary" (§ 303.17), "parent" (§ 303.18), "policies" (§ 303.19), "public agency" (§ 303.20), "qualified" (§ 303.21), "State" (§ 303.22), and "transportation" (§ 303.23).
- Clarifying notes have been added to the definitions of "early intervention services," "health services," and "infants and toddlers with handicaps."

4. Changes in Subpart B (State Application for a Grant)

Some of the changes that have been made in Subpart B are:

- A subheading has been added on "Public participation." All substantive requirements concerning public participation have been consolidated under that subheading (see §§ 303.110 through 303.113).
- The section on fourth year applications (§ 303.150) has been revised to include a requirement that information on each component of the statewide system must be included in the application for that year.
- A new subheading has been added to specify what information must be in a State's fourth year application for each component in the statewide system (see §§ 303.160 through 303.175).
- The section on fifth year applications (§ 303.152) has been revised to require that a State's application for that year must include (a) a policy that, no later than the beginning of the fifth year of the State's participation, appropriate early intervention services will be available to all eligible children in the State and their families, and (b) a description of the services to be provided no later than the beginning of the fifth year.
- A provision regarding payments to the Secretary of the Interior, that was in Subpart C (§ 303.52(a)) of the NPRM, has been moved to Subpart B under the section entitled, "Eligibility of the Secretary of the Interior for assistance."

5. Changes in Subpart C

The following changes have been made in Subpart C (Procedures for Making Grants to States):

- The section on "Distribution of allotments for non-participating States" (§ 303.201) has been changed to clarify that all funds will be allotted.
- The statutory definition of "infants and toddlers" that is used for the purpose of alloting funds has been added. The definition has been modified to clarify that the term means "children from birth through age two in the general population, based on the most recent satisfactory data as determined by the Secretary."

6. Changes in Subpart D

In response to public comments on Subpart D (Program and Service Components of a Statewide System of Early Intervention Services), additional guidance has been added to most of the sections in that subpart, including the provisions on the central directory, public awareness program, comprehensive child find system, evaluation and assessment, and individualized family service plans (IFSPs). Some of the changes that have been made are:

- A timeline of 45 days has been established for an agency, upon receiving a referral, to (a) complete the evaluation and assessment process and (b) hold an IFSP meeting (see §§ 303.321 and 303.322).
- The decision-making role of the family in the family assessment has been strengthened (see § 303.322).
- A new section has been added on "Nondiscriminatory procedures" (§ 303.323).
- The provisions on individualized family service plans have been reorganized and greatly expanded, including adding (a) a definition of IFSP (§ 303.340(b)), (b) requirements about IFSP meetings and participants at those meetings (§§ 303.342 and 303.343), and (c) conditions regarding the provision of services before assessment is completed (§ 303.345).
- The section on "Content of IFSPs" has been expanded to (a) distinguish between early intervention services and other services that a child may need, but that are not required under this part, and (b) provide other guidance and clarifying information.
- A note has been added following § 303.344 to stress the need for lead agencies to adopt a process for ensuring the effective transition of children from the program under Part H to preschool services under Part B of the Act.
- The requirements regarding "personnel standards" (§ 303.380) have been changed to reflect the comments received on the regulations for both this part and Part B of the Act.

7. Subpart E (Procedural Safeguards)

The procedural safeguards provisions in the NPRM have been reorganized and new provisions have been added to address the comments received. Some of the changes that have been made are:

- The requirements on native language that are in the Part B regulations (34 CFR Part 300) have been incorporated into the regulations for this part and expanded (§ 303.403(b)). The following other provisions from the Part B regulations have been added to this part with adaptations: Parental consent (§ 303.404), surrogate parents (§ 303.405), and parental rights in administrative hearings (§ 303.422).
- The confidentiality of information requirements under Part B (34 CFR 300.560 through 300.576) have been adopted (and referenced) as the procedures for States to follow under Part H (see § 303.460). A note has been added following that section to clarify that the regulations in 34 CFR Part 99 (Privacy Rights of Parents and Students), which are incorporated by reference in the Part B confidentiality regulations, also apply to Part H.
- The provision in the NPRM that gave States the option of adopting the procedural safeguards under Part B, adopting selected parts of the Part B safeguards and developing new procedures for the remaining safeguards required by Part H, or establishing new safeguards has been changed to limit the options to (a) adopting the due process procedures in Part B (34 CFR 300.506 through 300.513), or (b) developing new impartial procedures for resolving individual child complaints under this part.

8. Subpart F (State Administration)

The provisions on State administration have been reorganized and expanded. They now include:

- Requirements adapted from EDGAR regarding lead agency procedures for resolving complaints (including systemic complaints).
- Clarifying provisions related to financial matters, including sections on fees (§ 303.521), identification and coordination of resources (§ 303.522), interagency agreements (§ 303.523), and payor of last resort (§ 303.527).
- A new § 303.560 has been added to clarify that lead agencies may use funds under this part for administering the State's early intervention program.

9. Subpart G (State Interagency Coordinating Council)

The subpart on the Council has been reorganized and expanded to address the comments received. The following are some of the changes that have been made:

- Clarifying notes have been added to the sections on establishment and composition of the Council (§§ 303.601 and 303.602).
- The provisions related to the conduct of Council meetings (§ 303.603) have been expanded.
- The functions of the Council have been expanded to clarify that the Council plays an important role in ensuring the effective implementation of this part within each State, especially in identifying and developing policies and procedures for coordinating payments for services, and promoting interagency agreements (§§ 303.650 through 303.653).

D. Use of Notes in the Regulations

In the text of these final regulations, a series of notes has been included following selected sections. These notes provide explanatory material or

suggestions for meeting specific legal requirements. Where a note sets forth a permissible course of action, a State may either rely upon the note or take any other course of action that meets the applicable requirements.

Executive Order 12606

Part H recognizes the unique and critical role that families play in the development of infants and toddlers who are eligible under this Part. It is clear, both from the statute and the legislative history of the Act, that the Congress intended for families to play an active, collaborative role in the planning and provision of early intervention services. Thus, these regulations, which are consistent with the requirements of Executive Order 12606—The Family—should have a positive impact on the family, because they strengthen the authority and encourage the increased participation of parents in meeting the early intervention needs of their children.

Executive Order 12612

These final regulations have been developed (1) to be responsive to the overarching request by hundreds of commenters that more guidance be provided in all major areas under this part, and (2) to be consistent with the principles of Executive Order 12612—Federalism. Every effort has been made to ensure that, to the extent possible, each State has the authority and flexibility to implement the provisions of this part in accordance with that State's own unique situation; and that decisions related to the planning, development, and implementation of the statewide system of early intervention services remain with the State.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster intergovernmental partnership and a strengthened Federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the NPRM, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by any other agency or authority of the United States.

Based on the response to the NPRM 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 303

Education, Education of the handicapped, Grant program education, medical personnel, State educational agencies.

Dated: May 12, 1989.

(Catalogue of Federal Domestic Assistance Number 84.181; Early Intervention Programs for Infants and Toddlers with Handicaps)

Lauro F. Cavazos,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations by adding a new Part 303 to read as follows:

PART 303—EARLY INTERVENTION PROGRAM FOR INFANTS AND TODDLERS WITH HANDICAPS

Subpart A—General

Purpose, Eligibility, and Other General Provisions

Definitions

Subpart B—State Application for a Grant

General Requirements

Public Participation

Statement of Assurances

General Requirements for a State Application

Specific Application Requirements for Years One Through Five and Thereafter

Application Requirements for Years Four, Five, and Thereafter Related to Components of a Statewide System

Authority: 20 U.S.C. 1471–1485, unless otherwise noted.

Subpart A—General

Purpose, Eligibility, and Other General Provisions

§ 303.1 Purpose of the early intervention program for infants and toddlers with handicaps.

The purpose of this part is to provide financial assistance to States to—

(a) Develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency program of early intervention services for infants and toddlers with handicaps and their families;

(b) Facilitate the coordination of payment for early intervention services from Federal, State, local, and private sources (including public and private insurance coverage); and

(c) Enhance the States' capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to infants and toddlers with handicaps and their families.

(Authority: 20 U.S.C. 1471)

§ 303.2 Eligible applicants for an award.

Eligible applicants include the 50 States, Puerto Rico, the District of Columbia, the Secretary of the Interior, and the following jurisdictions: Guam, American Samoa, the Virgin Islands, the Republic of Palau, and the Commonwealth of the Northern Mariana Islands. The future eligibility of the Republic of Palau will be governed by the terms of the Compact of Free Association.

(Authority: 20 U.S.C. 1484)

§ 303.3 Activities that may be supported under this part.

Funds under this part may be used for the following activities:

(a) To plan, develop, and implement a statewide system of early intervention services for children eligible under this part and their families.

(b) For direct services for eligible children and their families that are not otherwise provided from other public or private sources.

(c) To expand and improve on services for eligible children and their families that are otherwise available, consistent with § 303.527.

(Authority: 20 U.S.C. 1473, 1479)

§ 303.4 Applicable regulations.

(a) The following regulations apply to this part:

(1) The Education Department General Administrative Regulations (EDGAR), including—

(i) Part 76 (State Administered Programs), except for § 76.103;

(ii) Part 77 (Definitions that Apply to Departmental Programs);

(iii) Part 79 (Intergovernmental Review of Department of Education Programs and Activities);

(iv) Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments);

(v) Part 81 (Grants and Cooperative Agreements under the General Education Provisions Act); and

(vi) Part 85 (Governmentwide Debarment and Suspension (Non—procurement) and Governmentwide Requirements for Drug-Free Work Place (Grants)).

(2) The regulations in this Part 303.

(3) The following regulations in 34 CFR Part 300 (Assistance to States for Education of Handicapped Children): §§ 300.560 through 300.576, and §§ 300.581 through 300.586.

(b) In applying the regulations cited in paragraphs (a)(1) and (a)(3) of this section, any reference to—

(1) "State educational agency" means the lead agency under this part; and

(2) "Special education," "related services," "free public education," or "education" means "early intervention services" under this part.

(Authority: 20 U.S.C. 1401–1418; 1420; 1483)

Definitions

Note: Sections 303.5–303.23 include definitions that are used throughout these regulations. Other terms are defined in the specific subparts in which they are used. Below is a list of those terms and the specific sections in which they are defined:

Aggregate amount (§ 303.200(b)(1))
Appropriate professional requirements in the State (§ 303.361(a)(1))
Assessment (§ 303.322(b)(2))
Consent (§ 303.401(a))
Evaluation (§ 303.322(b)(1))
Frequency and intensity (§ 303.344(d)(2)(i))
From the profession most immediately relevant to the child's or family's needs (§ 303.344(g)(3))
Highest requirements in the State applicable to a profession or discipline (§ 303.361)(a)(2))
Individualized family service plan and IFSP (§ 303.340(b))
Impartial (§ 303.421(b))
Location (§ 303.344(d)(2)(ii))
Method (§ 303.344(d)(iii))
Native language (§ 303.401(b))
Personally identifiable (§ 303.401(c))
Primary referral sources (§ 303.321(d)(3))
Profession or discipline (§ 303.361(a)(3))
Special definition of "infants and toddlers" (§ 303.200(b)(2))
Special definition of "State" (§ 303.200(b)(3))
State approved or recognized certification, licensing, registration, or other comparable requirements (§ 303.361(a)(4))
Statement of assurances (§ 303.120)

§ 303.5 Act.

As used in this part, "Act" means the Education of the Handicapped Act.

(Authority: 20 U.S.C. 1401 *et seq.*)

§ 303.6 Case management.

(a) *General.* (1) As used in this part, "case management" means the activities carried out by a case manager to assist and enable a child eligible under this part and the child's family to receive the rights, procedural safeguards, and services that are authorized to be provided under the State's early intervention program.

(2) Each child eligible under this part and the child's family must be provided with one case manager who is responsible for—

(i) Coordinating all services across agency lines; and

(ii) Serving as the single point of contact in helping parents to obtain the services and assistance they need.

(3) Case management is an active, ongoing process that involves—

(i) Assisting parents of eligible children in gaining access to the early intervention services and other services identified in the individualized family service plan;

(ii) Coordinating the provision of early intervention services and other services (such as medical services for other than diagnostic and evaluation purposes) that the child needs or is being provided;

(iii) Facilitating the timely delivery of available services; and

(iv) Continuously seeking the appropriate services and situations necessary to benefit the development of each child being served for the duration of the child's eligibility.

(b) *Specific case management activities.* Case management activities include—

(1) Coordinating the performance of evaluations and assessments;

(2) Facilitating and participating in the development, review, and evaluation of individualized family service plans;

(3) Assisting families in identifying available service providers;

(4) Coordinating and monitoring the delivery of available services;

(5) Informing families of the availability of advocacy services;

(6) Coordinating with medical and health providers; and

(7) Facilitating the development of a transition plan to pre-school services, if appropriate.

(c) *Employment and assignment of case managers.* (1) Case managers may be employed or assigned in any way that is permitted under State law, so long as it is consistent with the requirements of this part.

(2) A State's policies and procedures for implementing the statewide system of early intervention services must be designed and implemented to ensure that case managers are able to effectively carry out on an interagency basis the functions and services listed under paragraphs (a) and (b) of this section.

(d) *Qualifications of case managers.* Case managers must be persons who, consistent with § 303.344(g), have demonstrated knowledge and understanding about—

(1) Infants and toddlers who are eligible under this part;

(2) Part H of the Act and the regulations in this part; and

(3) The nature and scope of services available under the State's early intervention program, the system of payments for services in the State, and other pertinent information.

(Authority: 20 U.S.C. 1472(2))

Note: If States have existing case management systems, the States may use or adapt those systems, so long as they are consistent with the requirements of this part.

§ 303.7 Children.

As used in this part, "children" means "infants and toddlers with handicaps" as that term is defined in § 303.16.

(Authority: 20 U.S.C. 1472(1))

§ 303.8 Council.

As used in this part,"Council" means the State Interagency Coordinating Council.

(Authority: 20 U.S.C. 1472(4))

§ 303.9 Days.

As used in this part, "days" means calendar days.

(Authority: 20 U.S.C. 1471–1485)

§ 303.10 Developmental delay.

As used in this part, "developmental delay" has the meaning given to that term by a State under § 303.300.

(Authority: 20 U.S.C. 1472(3))

§ 303.11 Early intervention program.

As used in this part, "early intervention program" means the total effort in a State that is directed at meeting the needs of children eligible under this part and their families.

(Authority: 20 U.S.C. 1471 *et. seq.*)

§ 303.12 Early intervention services.

(a) *General.* As used in this part, "early intervention services" means services that—

(1) Are designed to meet the developmental needs of each child eligible under this part and the needs of the family related to enhancing the child's development;

(2) Are selected in collaboration with the parents;

(3) Are provided—

(i) Under public supervision;

(ii) By "qualified" personnel, as defined in § 303.21. including the types

of personnel listed in paragraph (e) of this section.

(iii) In conformity with an individualized family service plan; and

(iv) At no cost, unless, subject to § 303.520(b)(3), Federal or State law provides a system of payments by families, including a schedule of sliding fees; and

(4) Meet the standards of the State, including the requirements of this part.

(b) *Location of services.* To the extent appropriate, early intervention services must be provided in the types of settings in which infants and toddlers without handicaps would participate.

(c) *General role of service providers.* To the extent appropriate, service providers in each area of early intervention services included in paragraph (d) of this section are responsible for—

(1) Consulting with parents, other service providers, and representatives of appropriate community agencies to ensure the effective provision of services in that area;

(2) Training parents and others regarding the provision of those services; and

(3) Participating in the multidisciplinary team's assessment of a child and child's family, and in the development of integrated goals and outcomes for the individualized family service plan.

(d) *Types of services; definitions.* Following are types of services included under "early intervention services," and, if appropriate, definitions of those services:

(1) "Audiology" includes—

(i) Identification of children with auditory impairment, using at risk criteria and appropriate audiologic screening techniques;

(ii) Determination of the range, nature, and degree of hearing loss and communication functions, by use of audiological evaluation procedures;

(iii) Referral for medical and other services necessary for the habilitation or rehabilitation of children with auditory impairment;

(iv) Provision of auditory training, aural rehabilitation, speech reading and listening device orientation and training, and other services;

(v) Provision of services for prevention of hearing loss; and

(vi) Determination of the child's need for individual amplification, including selecting, fitting, and dispensing appropriate listening and vibrotactile devices, and evaluating the effectiveness of those devices.

(2) "Case management services" means assistance and services provided by a case manager to a child eligible under this part and the child's family that are in addition to the functions and activities included under § 303.6.

(3) "Family training, counseling, and home visits" means services provided, as appropriate, by social workers, psychologists, and other qualified personnel to assist the family of a child eligible under this part in understanding the special needs of the child and enhancing the child's development.

(4) "Health services" (See § 303.13).

(5) "Medical services only for diagnostic or evaluation purposes" means services provided by a licensed physician to determine a child's developmental status and need for early intervention services.

(6) "Nursing services" includes—

(i) The assessment of health status for the purpose of providing nursing care, including the identification of patterns of human response to actual or potential health problems;

(ii) Provision of nursing care to prevent health problems, restore or improve functioning, and promote optimal health and development; and

(iii) Administration of medications, treatments, and regimens prescribed by a licensed physician.

(7) "Nutrition services" includes—

(i) Conducting individual assessments in—

(A) Nutritional history and dietary intake;

(B) Anthropometric, biochemical, and clinical variables;

(C) Feeding skills and feeding problems; and

(D) Food habits and food preferences;

(ii) Developing and monitoring appropriate plans to address the nutritional needs of children eligible under this part, based on the findings in paragraph (b)(7)(i) of this section; and

(iii) Making referrals to appropriate community resources to carry out nutrition goals.

(8) "Occupational therapy" includes services to address the functional needs of a child related to the performance of self-help skills, adaptive behavior and play, and sensory, motor, and postural development. These services are designed to improve the child's functional ability to perform tasks in home, school, and community settings, and include—

(i) Identification, assessment, and intervention;

(ii) Adaptation of the environment, and selection, design and fabrication of assistive and orthotic devices to facilitate development and promote the acquisition of functional skills; and

(iii) Prevention or minimization of the impact of initial or future impairment, delay in development, or loss of functional ability.

(9) "Physical therapy" includes—

(i) Screening of infants and toddlers to identify movement dysfunction;

(ii) Obtaining, interpreting, and integrating information appropriate to program planning, to prevent or alleviate movement dysfunction and related functional problems; and

(iii) Providing services to prevent or alleviate movement dysfunction and related functional problems.

(10) "Psychological services" includes—

(i) Administering psychological and developmental tests, and other assessment procedures;

(ii) Interpreting assessment results;

(iii) Obtaining, integrating, and interpreting information about child behavior, and child and family conditions related to learning, mental health, and development; and

(iv) Planning and managing a program of psychological services, including psychological counseling for children and parents, family counseling, consultation on child development, parent training, and education programs.

(11) "Social work services" includes—

(i) Making home visits to evaluate a child's living conditions and patterns of parent-child interaction;

(ii) Preparing a psychosocial developmental assessment of the child within the family context;

(iii) Providing individual and family-group counseling with parents and other family members, and appropriate social skill-building activities with the child and parents;

(iv) Working with those problems in a child's and family's living situation (home, community, and any center where early intervention services are provided) that affect the child's maximum utilization of early intervention services; and

(v) Identifying, mobilizing, and coordinating community resources and services to enable the child and family to receive maximum benefit from early intervention services.

(12) "Special instruction" includes—

(i) The design of learning environments and activities that promote the child's acquisition of skills in a variety of developmental areas, including cognitive processes and social interaction;

(ii) Curriculum planning, including the planned interaction of personnel, materials, and time and space, that leads to achieving the outcomes in the child's individualized family service plan;

(iii) Providing families with information, skills, and support related to enhancing the skill development of the child; and

(iv) Working with the child to enhance the child's development.

(13) "Speech-language pathology" includes—

(i) Identification of children with communicative or oral pharyngeal disorders and delays in development of communication skills, including the diagnosis and appraisal of specific disorders and delays in those skills;

(ii) Referral for medical or other professional services necessary for the habilitation or rehabilitation of children with communicative or oral pharyngeal disorders and delays in development of communication skills; and

(iii) Provision of services for the habilitation, rehabilitation, or prevention of communicative or oral pharyngeal disorders and delays in development of communication skills.

(14) "Transportation" (see § 303.23).

(e) *Qualified personnel.* Early intervention services must be provided by qualified personnel, including—

(1) Audiologists;

(2) Nurses;

(3) Nutritionists;

(4) Occupational therapists;

(5) Physical therapists;

(6) Physicians;

(7) Psychologists;

(8) Social workers;

(9) Special educators; and

(10) Speech and language pathologists.

(Authority: 20 U.S.C. 1472(2))

Note 1: With respect to the requirement in paragraph (b) of this section, the appropriate location of services for some infants and toddlers might be a hospital setting—during the period in which they require extensive medical intervention. However, for these and other eligible children, it is important that efforts be made to provide early intervention services in settings and facilities that do not remove the children from natural environments (e.g., the home, day care centers, or other community settings). Thus, it is recommended that services be community-based, and not isolate an eligible child or the child's family from settings or activities in which children without handicaps would participate.

Note 2: The list of services in paragraph (d) of this section is not exhaustive and may include other types of services, such as vision services, and the provision of respite and other family support services. There also are other types of personnel who may provide services under this part, including vision specialists, paraprofessionals, and parent-to-parent support personnel.

§ 303.13 Health services.

(a) As used in this part, "health services" means services necessary to enable a child to benefit from the other early intervention services under this part during the time that the child is receiving the other early intervention services.

(b) The term includes—

(1) Such services as clean intermittent catheterization, tracheotomy care, tube feeding, the changing of dressings or osteotomy collection bags, and other health services; and

(2) Consultation by physicians with other service providers concerning the special health care needs of eligible children that will need to be addressed in the course of providing other early intervention services.

(c) The term does not include the following:

(1) Services that are—

(i) Surgical in nature (such as cleft palate surgery, surgery for club foot, or the shunting of hydrocephalus); or

(ii) Purely medical in nature (such as hospitalization for management of congenital heart ailments, or the prescribing of medicine or drugs for any purpose).

(2) Devices necessary to control or treat a medical condition.

(3) Medical-health services (such as immunizations and regular "well-baby" care) that are routinely recommended for all children.

(Authority: 20 U.S.C. 1472(2))

Note: The definition in this section distinguishes between the health services that are required under this part, and the medical-health services that are not required. The IFSP requirements in Subpart D provide that, to the extent appropriate, these other medical-health services are to be included in the IFSP, along with the funding sources to be used in paying for the services. Identifying these services in the IFSP does not impose an obligation to provide the services if they are otherwise not required to be provided under this part. (See § 303.344(e), and the note following that section.)

§ 303.14 IFSP.

As used in this part, "IFSP" means the individualized family service plan, as that term is defined in § 303.340(b).

(Authority: 20 U.S.C. 1477)

§ 303.15 Include; including.

As used in this part, "include" or "including" means that the items named are not all of the possible items that are covered whether like or unlike the ones named.

(Authority: 20 U.S.C. 1484)

§ 303.16 Infants and toddlers with handicaps.

(a) As used in this part, "infants and toddlers with handicaps" means individuals from birth through age two who need early intervention services because they—

(1) Are experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the following areas:

(i) Cognitive development;

(ii) Physical development, including vision and hearing;

(iii) Language and speech development;

(iv) Psychosocial development; or

(v) Self-help skills; or

(2) Have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay.

(b) The term may also include, at a State's discretion, children from birth through age two who are at risk of having substantial developmental delays if early intervention services are not provided.

(Authority: 20 U.S.C. 1472(1))

Note 1: As used in paragraph (a)(2) of this section, "high probability" is not intended to be viewed as a statistical term. Rather, the phrase "have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay" applies to conditions with known etiologies and developmental consequences. Examples of these conditions include Down Syndrome and other chromosomal abnormalities, sensory impairments, including vision and hearing, inborn errors of metabolism, microcephaly, severe attachment disorders, including failure to thrive, seizure disorders, and fetal alcohol syndrome.

Note 2: With respect to paragraph (b) of this section, children who are at risk may be eligible under this part if a State elects to extend services to that population, even though they have not been identified as handicapped.

Under this provision, States have the authority to define who would be "at risk of having substantial developmental delays if early intervention services are not provided." In defining the "at risk" population, States may include well-known biological and other factors that can be identified during the neonatal period, and that place infants "at risk" for developmental delay. Commonly cited factors relating to infants include low birth weight, respiratory distress as a newborn, lack of oxygen, brain hemorrhage, and infection. It should be noted that these factors do not predict the presence of a barrier to development, but they may indicate children who are at higher risk of developmental delay than children without these problems.

§ 303.17 Multidisciplinary.

As used in this part, "multidisciplinary" means the involvement of two or more disciplines or professions in the provision of integrated and coordinated services, including evaluation and assessment activities in § 303.322, and development of the IFSP in § 303.342.

(Authority: 20 U.S.C. 1476(b)(3); 1477(a))

§ 303.18 Parent.

As used in this part, "parent" means a parent, a guardian, a person acting as a parent of a child, or a surrogate parent who has been appointed in accordance with § 303.405. The term does not include the State if the child is a ward of the State.

(Authority: 20 U.S.C. 1477)

Note: The term "parent" has been defined to include persons acting in the place of a parent, such as a grandparent or stepparent with whom a child lives, as well as persons who are legally responsible for the child's welfare. The definition in this section is identical to the definition used in the Part B regulations (34 CFR 300.10.)

§ 303.19 Policies.

(a) As used in this part, "policies" means State statutes, regulations, Governor's orders, directives by the lead agency, or other written documents that represent the State's position concerning any matter covered under this part.

(b) State policies include—

(1) A State's commitment to develop and implement the statewide system (see § 303.148);

(2) A State's definition of "developmental delay" (see 303.303);

(3) A State's position regarding the provision of services to children who are at risk;

(4) A statement that—

(i) Provides that, subject to § 303.520(b)(3), services under this part will be provided at no cost to parents, except where a system of payments is provided for under Federal or State law; and

(ii) Sets out what fees (if any) will be charged for early intervention services, and the basis for those fees;

(5) A State's standards for personnel who provide services to children eligible under this part (see 303.361);

(6) A State's position and procedures related to contracting or making other arrangements with service providers under Subpart F; and

(7) Other positions that the State has adopted related to implementing any of the other requirements under this part.

(Authority: 20 U.S.C. 1471–1485)

§ 303.20 Public agency.

As used in this part, "public agency" includes the lead agency and any other political subdivision of the State that is responsible for providing early intervention services to children eligible under this part and their families.

(Authority: 20 U.S.C. 1471–1485)

§ 303.21 Qualified.

As used in this part, "qualified" means that a person has met State approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the person is providing early intervention services.

(Authority: 20 U.S.C. 1472(2))

Note: These regulations contain the following provisions relating to a State's responsibility to ensure that personnel are qualified to provide early intervention services:

1. Section 303.12(a)(4) provides that early intervention services must meet State standards. This provision implements a requirement that is similar to a longstanding provision under Part B of the Act (i.e., that the State educational agency establish standards and ensure that those standards are currently met for all programs providing special education and related services).

2. Section 303.12(a)(3)(ii) provides that early intervention services must be provided by qualified personnel.

3. Section 303.361 requires States to establish policies and procedures related to personnel standards.

§ 303.22 State.

Except as provided in § 303.200(b)(2), "State" means each of the 50 States, Puerto Rico, the District of Columbia, and the jurisdictions of Guam, American Samoa, the Virgin Islands, the Republic of Palau, and the Commonwealth of the Northern Mariana Islands.

(Authority: 20 U.S.C. 1402(a)(6))

§ 303.23 Transportation.

As used in this part, "transportation" includes the cost of travel (e.g., mileage, or travel by taxi, common carrier, or other means) and related costs (e.g., tolls and parking expenses) that are necessary to enable a child eligible under this part and the child's family to receive early intervention services.

(Authority: 20 U.S.C. 1472(2))

§ 303.24 EDGAR definitions that apply.

The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Award
Contract
Department
EDGAR
Fiscal year
Grant
Grantee
Grant period
Private
Public
Secretary

(Authority: 20 U.S.C. 1471 *et seq.*)

Subpart B—State Application for a Grant

General Requirements

§ 303.100 Conditions of assistance.

(a) In order to receive funds under this part for any fiscal year, a State shall—

(1) Have an approved application that contains the information required in this subpart for the year in which the State is applying; and

(2) Have on file with the Secretary the statement of assurances required under §§ 303.120 through 303.127.

(b) For years one through five, a State must submit an annual application. Thereafter, a State may submit a three-year application.

(Authority: 20 U.S.C. 1478)

§ 303.101 How the Secretary disapproves a State's application or statement of assurances.

The Secretary follows the procedures in 34 CFR 300.580 through 300.586 before disapproving a State's application or statement of assurances submitted under this part.

(Authority: 20 U.S.C. 1478)

Public Participation

§ 303.110 General requirements and timelines for public participation.

(a) Before submitting to the Secretary its application under this part, and before adopting a new or revised policy that is not in its current application, a State shall—

(1) Publish the application or policy in a manner that will ensure circulation throughout the State for at least a 60-day period, with an opportunity for comment on the application or policy for at least 30 days during that period;

(2) Hold public hearings on the application or policy during the 60-day period required in paragraph (a)(1) of this section; and

(3) Provide adequate notice of the hearings required in paragraph (a)(2) of this section at least 30 days before the dates that the hearings are conducted.

(b) A State may request an exemption from the timelines in paragraph (a) of this section if the State can demonstrate that—

(1) There are circumstances that would warrant such an exception; and

(2) The timelines that were followed provided an adequate opportunity for public participation and comment.

(Authority: 20 U.S.C. 1478(a)(4))

§ 303.111 Notice of public hearings and opportunity to comment.

The notice required in § 303.110(a)(3) must—

(a) Be published in newspapers or announced in other media, or both, with coverage adequate to notify the general public throughout the State about the hearings and opportunity to comment on the application or policy; and

(b) Be in sufficient detail to inform the public about—

(1) The purpose and scope of the State application or policy, and its relationship to Part H of the Act;

(2) The length of the comment period, and the date, time, and location of each hearing; and

(3) The procedures for providing oral comments or submitting written comments.

(Authority: 20 U.S.C. 1478(a)(4)(A))

§ 303.112 Public hearings.

Each State shall hold public hearings in a sufficient number and at times and places that afford interested parties throughout the State a reasonable opportunity to participate.

(Authority: 20 U.S.C. 1478(a)(4))

§ 303.113 Reviewing and reporting on public comments received.

(a) *Review of comments.* Before adopting its application, and before the adoption of a new or revised policy not in the application, the lead agency shall—

(1) Review and consider all public comments; and

(2) Make any modifications it deems necessary in the application or policy.

(b) *Reporting on comments to the Secretary.* In submitting the State's application or policy to the Secretary, the lead agency shall include—

(1) A summary of the public comments received as a result of the activities required in §§ 303.110 through 303.112;

(2) The State's responses to those comments; and

(3) Copies of news releases, advertisements, and announcements used to provide notice.

(Authority: 20 U.S.C. 1478(a))

Statement of Assurances

§ 303.120 General.

(a) A State's statement of assurances must contain the information required in §§ 303.121 through 303.127.

(b) Unless otherwise required by the Secretary, the statement is submitted only once, and remains in effect throughout the term of a State's participation under this part.

(c) A State may submit a revised statement of assurances if the statement is consistent with the requirements in §§ 303.121 through 303.127.

(Authority: 20 U.S.C. 1478(b))

§ 303.121 Reports and records.

The statement must provide for—

(a) Making reports in such form and containing such information as the Secretary may require; and

(b) Keeping records and affording access to those records as the Secretary may find necessary to assure compliance with the requirements of this part, the correctness and verification of reports, and the proper disbursement of funds provided under this part.

(Authority: 20 U.S.C. 1478(b)(4))

§ 303.122 Control of funds and property.

The statement must provide assurance satisfactory to the Secretary that—

(a) The control of funds provided under this part, and title to property acquired with those funds, is in a public agency for the uses and purposes provided in this part; and

(b) A public agency administers the funds and property.

(Authority: 20 U.S.C. 1478(b)(3))

§ 303.123 Prohibition against commingling.

The statement must include an assurance satisfactory to the Secretary that funds made available under this part will not be commingled with the State funds.

(Authority: 20 U.S.C. 1478(b)(5)(A)

Note: As used in this part, "commingle" means depositing or recording funds in a general account without the ability to identify each specific source of funds for any expenditure. Under that general definition, it is clear that commingling is prohibited. However, to the extent that the funds from each of a series of Federal, State, local, and private funding sources can be identified—with a clear audit trail for each source—it is appropriate for those funds to be consolidated for carrying out a common purpose. In fact, a State may find it essential to set out a funding plan that incorporates, and accounts for, all sources of funds that can be targeted on a given activity or function related to the State's early intervention program.

Thus, the assurance in this section is satisfied by the use of an accounting system that includes an "audit trail" of the expenditure of funds awarded under this part. Separate bank accounts are not required.

§ 303.124 Prohibition against supplanting.

(a) The statement must include an assurance satisfactory to the Secretary that Federal funds made available under this part will be used to supplement and increase the level of State and local funds expended for children eligible under this part and their families and in no case to supplant those State and local funds.

(b) To meet the requirement in paragraph (a) of this section—

(1) The total amount of State and local funds budgeted for expenditures in the current fiscal year for early intervention services for children eligible under this part and their families must be at least equal to the total amount of State and local funds actually expended for early intervention services for these children and their families in the most recent preceding fiscal year for which the information is available. Allowance may be made for—

(i) Decreases in the number of children who are eligible to receive early intervention services under this part; and

(ii) Unusually large amounts of funds expended for such long-term purposes as the acquisition of equipment and the construction of facilities; and

(2) Funds under this part must not be used to displace State or local funds for any particular cost.

(Authority: 20 U.S.C. 1478(b)(5)(B))

Note: The nonsupplanting requirement in this section prohibits a State from supplanting State and local funds on either an aggregate basis or for a given expenditure. Thus, under Part H, whether supplanting has occurred is evaluated on the basis of two tests, as follows:

(1) First, whether State and local expenditures budgeted for the current fiscal year for early intervention services are at least equal to expenditures from the most recent fiscal year for which they are available. (This means that if a State spent $1,000,000 for early intervention services in FY–1, the State must budget at least $1,000,000 in FY–2, unless one of the conditions in paragraph (b)(1) of this section applies.).

(2) Second, whether Part H funds are used to pay for a particular activity that was previously supported with State or local funds. Thus, if a hospital-based project was supported entirely by State and local funds in FY–1, Part H funds could not be used to support that project in FY–2. However, to the extent that new services are added to the hospital project in FY–2, those new services could be paid for with Part H funds.

§ 303.125 Fiscal control.

The statement must provide assurance satisfactory to the Secretary that such fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under this part.

(Authority: 20 U.S.C. 1478(b)(6))

§ 303.126 Payor of last resort.

The statement must include an assurance satisfactory to the Secretary that the State will comply with the provisions in § 303.527, including the requirements on—

(a) Nonsubstitution of funds; and

(b) Non-reduction of other benefits.

(Authority: 20 U.S.C. 1478(b)(2))

§ 303.127 Assurance regarding expenditure of funds.

The statement must include an assurance satisfactory to the Secretary that the funds paid to the State under this part will be expended in accordance with the provisions of this part, including the requirements in § 303.3.

(Authority: 20 U.S.C. 1478(b)(1))

General Requirements for a State Application

§ 303.140 General.

A State's application under this part must contain the information required in §§ 303.141 through 303.146.

(Authority: 20 U.S.C. 1478(a))

§ 303.141 Information about the Council.

Each application must include information demonstrating that the State has established a State Interagency Coordinating Council that meets the requirements of Subpart G.

(Authority: 20 U.S.C. 1478(a)(2))

§ 303.142 Designation of lead agency.

Each application must include a designation of the lead agency in the State that will be responsible for the administration of funds provided under this part.

(Authority: 20 U.S.C. 1478(a)(1))

§ 303.143 Assurance regarding use of funds.

Each application must include an assurance that funds received under this part will be used to assist the State to plan, develop, and implement the statewide system required under Subparts D through F.

(Authority: 20 U.S.C. 1475, 1478(a) (2), (3))

§ 303.144 Description of use of funds.

(a) *General.* Each application must include a description of how a State proposes to use its funds under this part for the fiscal year covered by the application. The description must be presented separately for the lead agency and the Council, and include the information required in paragraphs (b) through (d) of this section.

(b) *Administrative positions.* Each application must include—

(1) A list of administrative positions, with salaries, and a description of the duties for each person whose salary is paid in whole or in part with funds awarded under this part; and

(2) For each position, the percentage of salary paid with those funds.

(c) *Planning, development, and implementation activities.* Each application must include—

(1) A description of the nature and scope of each major activity to be carried out under this part in planning, developing, and implementing the statewide system of early intervention services; and

(2) The approximate amount of funds to be spent for each activity.

(d) *Direct services.* (1) Each application must include a description of any direct services that the State expects to provide to eligible children and their families with funds under this part, consistent with §§ 303.521 and 303.527.

(2) The description must include information about each type of service to be provided, including—

(i) A summary of the methods to be used to provide the service (e.g., contracts or other arrangements with specified public or private organizations); and

(ii) The approximate amount of funds under this part to be used for the service.

(e) *Activities by other agencies.* If other agencies are to receive funds under this part, the application must include—

(1) The name of each agency expected to receive funds;

(2) The approximate amount of funds each agency will receive; and

(3) A summary of the purposes for which the funds will be used.

(Authority: 20 U.S.C. 1478 (a)(3), (a)(5))

§ 303.145 Information about public participation.

Each application must include the information on public participation that is required in § 303.113(b).

(Authority: 20 U.S.C. 1478(a)(4))

§ 303.146 Equitable distribution of resources.

(a) Each application must include a description of the procedures used by the State to ensure an equitable distribution of resources made available under this part among all geographic areas within the State.

(b) In determining equitable distribution of resources, a State must take into account the need for services across all geographical areas within the State.

(Authority: 20 U.S.C. 1478(a)(6))

Specific Application Requirements for Years One Through Five and Thereafter

§ 303.147 Application requirements for first and second years.

A State's annual application for the first and second years of participation under this part must contain the information required in §§ 303.141 through 303.146.

(Authority: 20 U.S.C. 1475; 1478(a))

§ 303.148 Third year applications.

(a) *General.* A State's third year application under this part must contain the following:

(1) The information required in §§ 303.141 through 303.146.

(2) Either—

(i) The information and assurances regarding the statewide system of early intervention services, as required in paragraph (b) of this section; or

(ii) If the State is eligible for a waiver, a request for a waiver, in accordance with the requirements in § 303.149.

(3) Other information that the Secretary may require.

(b) *Adoption of policy on statewide system.* Each third year application must include information and assurances demonstrating to the satisfaction of the Secretary that—

(1) It is the policy of the State to develop and implement a statewide, comprehensive, coordinated, interagency, multidisciplinary system for providing early intervention services to all children eligible under this part and their families;

(2) The policy in paragraph (b)(1) of this section incorporates all of the components of the statewide system of early intervention services that are required under this part; and

(3) Subject to § 303.341(a), the statewide system will be in effect no later than the beginning of the State's fourth year of participation under this part.

(Authority: 20 U.S.C. 1475(b); 1478(a))

§ 303.149 Waiver of the policy adoption requirement for the third year.

The Secretary may award a grant to a State under this part for the third year even if the State has not adopted the policy required in § 303.148(b), if the State, in its third year application, includes a statement requesting a waiver, including—

(a) Information demonstrating that the State has made a good faith effort to adopt a policy that meets the requirements in § 303.148 (b)(1) and (b)(2);

(b) The reasons why the State was unable to meet the timeline for policy adoption, and the steps remaining before the policy will be adopted; and

(c) An assurance that, except as provided in § 303.341(a), the policy required in § 303.148 (b)(1) and (b)(2) will be adopted and go into effect no later than the beginning of the State's fourth year of participation under this part.

(Authority: 20 U.S.C. 1475(b)(2))

Note: An example of when the Secretary may grant a waiver is a situation in which a State's policy is awaiting action by the State legislature, but the legislative session does not commence until after the State's application must be submitted.

§ 303.150 Fourth year applications.

A State's application for the fourth year of participation under this part must contain—

(a) The information required in §§ 303.141 through 303.146;

(b) Information and assurances to demonstrate that—

(1) The requirements in § 303.148 (b)(1) and (b)(2) are met; and

(2) Subject to § 303.341(a), the statewide system of early intervention services is in effect, or will be in effect no later than the beginning of the fourth year of the State's participation under this part;

(c) Information and assurances about each component of the statewide system, as required in §§ 303.160 through 303.175; and

(d) Other information that the Secretary may require.

(Authority: 20 U.S.C. 1475(b), 1478(a))

§ 303.151 States with mandates as of September 1, 1986 to serve children with handicaps from birth.

(a) Subject to the requirements in paragraph (b) of this section, a State that has in effect a State law, enacted before September 1, 1986, that requires the provision of a free appropriate public education to children with handicaps from birth through two is eligible for a grant under this part for the first through the fourth year of its participation.

(b) A State meeting the conditions in paragraph (a) of this section must—

(1) Have on file with the Secretary a statement of assurances containing the information required in §§ 303.121 through 303.127;

(2) Submit an annual application for years one through four that contains the information in §§ 303.141 through 303.146;

(3) Meet the public participation requirements in §§ 303.110 through 303.113; and

(4) Provide a copy of the State law that requires the provision of a free appropriate public education to children with handicaps from birth through age two.

(c) In order to receive funds under this part for the fifth and succeeding years, the State must submit an application that meets the requirements in § 303.152.

(Authority: 20 U.S.C. 1475(d))

§ 303.152 Applications for year five and each year thereafter.

(a) *Fifth year application.* A State's application for the fifth year of its participation under this part must contain—

(1) The information required in §§ 303.141 through 303.146, and 303.160 through 303.175;

(2) Information and assurances demonstrating to the satisfaction of the Secretary that the statewide system of early intervention services required in this part is in effect;

(3) A policy that, no later than the beginning of the fifth year of the State's participation, appropriate early intervention services will be available to all children in the State who are eligible under this part and their families;

(4) A description of the services to be provided no later than the beginning of the fifth year, in accordance with the timetables under § 303.302; and

(5) Other information that the Secretary may require.

(b) *Applications for succeeding years.* A State's applications for the succeeding years of participation under this program must contain information and assurances demonstrating to the satisfaction of the Secretary that the State will continue to meet all applicable conditions in paragraph (a) of this section.

(Authority: 20 U.S.C. 1475(c); 1478(a); 1476(b)(2))

Application Requirements for Years Four, Five, and Thereafter Related to Components of a Statewide System

§ 303.160 State definition of developmental delay.

Each application must include the State's definition of "developmental delay." The definition must include the information required in § 303.300.

(Authority: 20 U.S.C. 1476(b)(1))

§ 303.161 Central directory.

Each application must include information and assurances demonstrating to the satisfaction of the Secretary that the State has developed a central directory of information that meets the requirements in § 303.301.

(Authority: 20 U.S.C. 1476(b)(7))

§ 303.162 Timetables for serving all eligible children.

Each application must include an assurance that the timetables required in § 303.302 have been established and will be met.

(Authority: 20 U.S.C. 1476(b)(2))

§ 303.163 Public awareness program.

Each application must include information and assurances demonstrating to the satisfaction of the Secretary that the State has established a public awareness program that meets the requirements in § 303.320.

(Authority: 20 U.S.C. 1476(b)(6))

§ 303.164 Comprehensive child find system.

Each application must include—

(a) The policies and procedures required in § 303.321(b);

(b) Information demonstrating that the requirements on coordination in § 303.321(c) are met;

(c) The referral procedures required in § 303.321(d), and either—

(1) A description of how the referral sources are informed about the procedures; or

(2) A copy of any memorandum or other document used by the lead agency to transmit the procedures to the referral sources; and

(d) The timelines in § 303.321(e).

(Authority: 20 U.S.C. 1476(b)(5))

§ 303.165 Evaluation, assessment, and nondiscriminatory procedures.

Each application must include information to demonstrate that the requirements in §§ 303.322 and 303.323 are met.

(Authority: 20 U.S.C. 1476(b)(3), 1477 (a)(1), (d)(2), (d)(3))

§ 303.166 Individualized family service plans.

Each application must include—

(a) An assurance that the IFSP requirements in § 303.341 will be met; and

(b) Information demonstrating that—

(1) The State's procedures for developing, reviewing, and evaluating IFSPs are consistent with the requirements in §§ 303.340, 303.342, 303.343, and 303.345; and

(2) The content of IFSPs used in the State is consistent with the requirements in § 303.344.

(Authority: 20 U.S.C. 1476(b)(4); 1477(d))

§ 303.167 Comprehensive system of personnel development (CSPD).

Each application must include the following:

(a) Information to show that the requirements in § 303.360(a) are met. A State meets this requirement by either—

(1) Incorporating the State's CSPD procedures under Part B of the Act (34 CFR 300.380 through 300.387); or

(2) Including procedures that the State has developed.

(b) An assurance that the State's personnel development system will meet the requirements in § 303.360(b).

(Authority: 20 U.S.C. 1476(b)(8))

§ 303.168 Personnel standards.

(a) Each application must include policies and procedures that are consistent with the requirements in § 303.361.

(Authority: 20 U.S.C. 1476(b)(13))

§ 303.169 Procedural safeguards.

Each application must include procedural safeguards that—

(a) Are consistent with §§ 303.400 through 303.405, 303.420 through 303.425, and 303.460; and

(b) Incorporate either—

(1) The due process procedures in 34 CFR 300.506 through 300.512; or

(2) The procedures that the State has developed to meet the requirements in §§ 303.420(b) and 303.421 through 303.425.

(Authority: 20 U.S.C. 1476(b)(12))

§ 303.170 Supervision and monitoring of programs.

Each application must include information to show that the requirements in § 303.501 are met.

(Authority: 20. U.S.C. 1476(b)(9)(A))

§ 303.171 Lead agency procedures for resolving complaints.

Each application must include procedures that are consistent with the requirements in §§ 303.510 through 303.512.

(Authority: 20 U.S.C. 1476(b)(9))

§ 303.172 Policies and procedures related to financial matters.

Each application must include—

(a) Funding policies that meet the requirements in §§ 303.520 and 303.521;

(b) Information about funding sources, as required in § 303.522;

(c) Procedures to ensure the timely delivery of services, in accordance with § 303.525; and

(d) A procedure related to the timely reimbursement of funds under this part, in accordance with §§ 303.527(b) and 303.528.

(Authority: 20 U.S.C. 1476(b)(9)(D); (E); (b)(11); 1481)

§ 303.173. Interagency agreements; resolution of individual disputes.

Each application must include—

(a) A copy of each interagency agreement that has been developed under § 303.523; and

(b) Information to show that the requirements in § 303.524 are met.

(Authority: 20 U.S.C. 1476(b)(9)(E))

§ 303.174 Policy for contracting or otherwise arranging for services.

Each application must include a policy that meets the requirements in § 303.526.

(Authority: 20 U.S.C. 1476(b)(10))

§ 303.175 Data collection.

Each application must include procedures that meet the requirements in § 303.540.

(Authority: 20 U.S.C. 1476(b)(14))

Participation by the Secretary of the Interior

§ 303.180 Eligibility of the Secretary of the Interior for assistance.

(a) The Secretary is authorized to make payments to the Secretary of the Interior according to the need for assistance for the provison of early intervention services to children with handicaps and their families on reservations served by the elementary and secondary schools operated for Indians by the Department of the Interior.

(b) The Secretary of the Interior may receive an award under this part only after submitting an application that—

(1) Meets the conditions of assistance required by § 303.100; and

(2) Is approved by the Secretary.

(Authority: 20 U.S.C. 1484(b))

Subpart C—Procedures for Making Grants to States

§ 303.200 Formula for State allocations.

(a) For each fiscal year, from the aggregate amount of funds available under this part for distribution to the States, the Secretary allots to each State an amount that bears the same ratio to the aggregate amount as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States.

(b) For the purpose of allotting funds to the States under paragraph (a) of this section—

(1) "Aggregate amount" means the amount available for distribution to the States after the Secretary determines the amount of payments to be made to the Secretary of the Interior under § 303.203 and to the jurisdictions under § 303.204;

(2) "Infants and toddlers" means children from birth through age two in the general population, based on the most recently satisfactory data as determined by the Secretary; and

(3) "State" means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Authority: 20 U.S.C. 1484(c))

§ 303.201 Distribution of allotments from non-participating States.

If a State elects not to receive its allotment, the Secetary reallots those funds among the remaining States, in accordance with § 303.200(a).

(Authority: 20 U.S.C. 1484(d))

§ 303.202 Minimum grant that a State may receive.

No State receives less than 0.5 percent of the aggregate amount available under § 303.200.

(Authority: 20 U.S.C. 1484(d))

§ 303.203 Payments to the Secretary of the Interior.

Subject to § 303.180(a), the amount of payment to the Secretary of the Interior for any fiscal year is 1.25 percent of the aggregate amount available to States after the Secretary determines the amount of payments to be made to the jurisdictions under § 303.204.

(Authority: 20 U.S.C. 1484(b))

§ 303.204 Payments to the jurisdictions.

From the sums appropriated to carry out this part for any fiscal year, the Secretary may reserve up to 1 percent for payments to the jurisdictions listed in § 303.2 in accordance with their respective needs.

(Authority: 20 U.S.C. 1484(a))

Subpart D—Program and Service Components of a Statewide System of Early Intervention Services

General

§ 303.300 State definition of developmental delay.

Each statewide system of early intervention services (system) must include the definition of "developmental delay" that will be used by the State in carrying out programs under this part. The State's definition must—

(a) Specify that a child may be determined to be eligible if the child has a delay, in accordance with paragraphs (b) and (c) of this section, in one or more of the following developmental areas: Cognitive development; physical development, including vision and hearing; language and speech development; psychosocial development; or self-help skills;

(b) Designate the levels of functioning, or other criteria, that will be used in determining a child's eligibility as a result of developmental delay; and

(c) Describe the procedures the State will use to determine the existence of a developmental delay in each developmental area included in paragraph (a) of this section.

(Authority: 20 U.S.C. 1472(1), 1476(b)(1))

Note: Under § 303.322(c)(3), States are required to ensure that informed clinical opinion is used in determining a child's eligibility under this part. Informed clinical opinion is especially important if there are no standardized measures, or the standardized procedures are not appropriate for a given age or developmental area. If a given standardized procedure is considered to be appropriate, a State's criteria could include percentiles or percentages of levels of functioning on standardized measures.

§ 303.301 Central directory.

(a) Each system must include a central directory of information about—

(1) Public and private early intervention services, resources, and experts available in the State;

(2) Research and demonstration projects being conducted in the State; and

(3) Professional and other groups that provide assistance to children eligible under this part and their families.

(b) The information required in paragraph (a) of this section must be in sufficient detail to—

(1) Ensure that the general public will be able to determine the nature and scope of the services and assistance available from each of the sources listed in the directory; and

(2) Enable the parent of a child eligible under this part to contact, by telephone or letter, any of the sources listed in the directory.

(c) The central directory must be—

(1) Updated at least annually; and

(2) Accessible to the general public.

(d) To meet the requirements in paragraph (c)(2) of this section, the lead agency shall arrange for copies of the directory to be available—

(1) In each geographic region of the State, including rural areas; and

(2) In places and a manner that ensure accessibility by persons who are handicapped.

(Authority: 20 U.S.C. 1476(b)(7))

Note: Examples of appropriate groups that provide assistance to eligible children and their families include parent support groups and advocate associations.

§ 303.302 Timetables for serving all eligible children.

Each system must include timetables for ensuring that appropriate early intervention services will be available to all infants and toddlers with handicaps no later than the beginning of the fifth year of the State's participation under this part.

(Authority: 20 U.S.C. 1476(b)(2))

Identification and Evaluation

§ 303.320 Public awareness program.

Each system must include a public awareness program that focuses on the early identification of children who are eligible to receive early intervention services under this part. The public awareness program must provide for informing the public about—

(a) The State's early intervention program;

(b) The child find system, including—

(1) The purpose and scope of the system;

(2) How to make referrals; and

(3) How to gain access to a comprehensive, multidisciplinary evaluation and other early intervention services; and

(c) The central directory.

(Authority: 20 U.S.C. 1476(b)(6))

Note 1: An effective public awareness program is one that does the following:

1. Provides a continuous, ongoing effort that is in effect throughout the State, including rural areas;

2. Provides for the involvement of, and communication with, major organizations throughout the State that have a direct interest in this part, including public agencies at the State and local level, private providers, professional associations, parent groups, advocate associations, and other organizations;

3. Has coverage broad enough to reach the general public, including those who are handicapped; and

4. Includes a variety of methods for informing the public about the provisions of this part.

Note 2: Examples of methods for informing the general public about the provisions of this part include: (1) Use of television, radio, and newspaper releases, (2) pamphlets and posters displayed in doctor's offices, hospitals, and other appropriate locations, and (3) the use of a toll-free telephone service.

§ 303.321 Comprehensive child find system.

(a) *General.* (1) Each system must include a comprehensive child find system that is consistent with Part B of the Act (see 34 CFR 300.128), and meets the requirements in paragraphs (b) through (e) of this section.

(2) The lead agency, with the advice and assistance of the Council, shall be responsible for implementing the child find system.

(b) *Procedures.* The child find system must include the policies and procedures that the State will follow to ensure that—

(1) All infants and toddlers in the State who are eligible for services under this part are identified, located, and evaluated; and

(2) An effective method is developed and implemented to determine which children are receiving needed early intervention services, and which children are not receiving those services.

(c) *Coordination.* (1) The lead agency, with the assistance of the Council, shall ensure that the child find system under this part is coordinated with all other major efforts to locate and identify children conducted by other State agencies responsible for administering the various education, health, and social service programs relevant to this part, including efforts in the—

(i) Assistance to States Program under Part B of the Act;

(ii) Maternal and Child Health program under Title V of the Social Security Act;

(iii) Medicaid's Early Periodic Screening, Diagnosis and Treatment (EPSDT) program under Title XIX of the Social Security Act;

(vi) Developmental Disabilities Assistance and Bill of Rights Act; and

(v) Head Start Act.

(2) The lead agency, with the advice and assistance of the Council, shall take steps to ensure that—

(i) There will not be unnecessary duplication of effort by the various agencies involved in the State's child find system under this part; and

(ii) The State will make use of the resources available through each public agency in the State to implement the child find system in an effective manner.

(d) *Referral procedures.* (1) The child find system must include procedures for use by primary referral sources for referring a child to the appropriate public agency within the system for—

(i) Evaluation and assessment, in accordance with §§ 303.322 and 303.323; or

(ii) As appropriate, the provision of services, in accordance with § 303.342(a) or § 303.345.

(2) The procedures required in paragraph (b)(1) of this section must—

(i) Provide for an effective method of making referrals by primary referral sources; and

(ii) Ensure that referrals are made no more than two working days after a child has been identified.

(3) As used in paragraph (d)(1) of this section, "primary referral sources" includes—

(i) Hospitals, including prenatal and postnatal care facilities;
(ii) Physicians;
(iii) Parents;
(iv) Day care programs;
(v) Local educational agencies;
(vi) Public health facilities;
(vii) Other social service agencies; and
(viii) Other health care providers.

(e) *Timelines for public agencies to act on referrals.* Once the public agency receives a referral, it shall, within 45 days—

(i) Complete the evaluation and assessment activities in § 303.322; and

(ii) Hold an IFSP meeting, in accordance with § 303.342.

(Authority: 20 U.S.C. 1476(b)(5))

Note: In developing the child find system under this part, States should consider (1) tracking systems based on high-risk conditions at birth, and (2) other activities that are being conducted by various agencies or organizations in the State.

§ 300.322 Evaluation and assessment.

(a) *General.* (1) Each system must include the performance of a timely, comprehensive, multidisciplinary evaluation of each child, birth through age two, referred for evaluation, including assessment activities related to the child and the child's family.

(2) The lead agency shall be responsible for ensuring that the requirements of this section are implemented by all affected public agencies and service providers in the State.

(b) *Definitions of evaluation and assessment.* As used in this part—

(1) "Evaluation" means the procedures used by appropriate qualified personnel to determine a child's initial and continuing eligibility under this part, consistent with the definition of "infants and toddlers with handicaps" in § 303.16, including determining the status of the child in each of the developmental areas in paragraph (c)(3)(ii) of this section.

(2) "Assessment" means the ongoing procedures used by appropriate qualified personnel throughout the period of a child's eligibility under this part to identify—

(i) The child's unique needs;

(ii) The family's strengths and needs related to development of the child; and

(iii) The nature and extent of early intervention services that are needed by the child and the child's family to meet the needs in paragraphs (b)(2)(i) and (b)(2)(ii) of this section.

(c) *Evaluation and assessment of the child.* The evaluation and assessment of each child must—

(1) Be conducted by personnel trained to utilize appropriate methods and procedures;

(2) Be based on informed clinical opinion; and

(3) Include the following:

(i) A review of pertinent records related to the child's current health status and medical history.

(ii) An evaluation of the child's level of functioning in each of the following developmental areas:

(A) Cognitive development.

(B) Physical development, including vision and hearing.

(C) Language and speech development.

(D) Psychosocial development.

(E) Self-help skills.

(iii) An assessment of the unique needs of the child in terms of each of the developmental areas in paragraph (c)(3)(ii) of this section, including the identification of services appropriate to meet those needs.

(d) *Family assessment.* (1) Family assessments under this part must be designed to determine the strengths and needs of the family related to enhancing the development of the child.

(2) Any assessment that is conducted must be voluntary on the part of the family.

(3) If an assessment of the family is carried out, the assessment must—

(i) Be conducted by personnel trained to utilize appropriate methods and procedures;

(ii) Be based on information provided by the family through a personal interview; and

(iii) Incorporate the family's description of its strengths and needs related to enhancing the child's development.

(e) *Timelines.* (1) Except as provided in paragraph (e)(2) of this section, the evaluation and initial assessment of each child (including the family assessment) must be completed within the 45-day time period required in § 303.321(e).

(2) The lead agency shall develop procedures to ensure that in the event of exceptional circumstances that make it impossible to complete the evaluation and assessment within 45 days (e.g., if a child is ill), public agencies will—

(i) Document those circumstances; and

(ii) Develop and implement an interim IFSP, to the extent appropriate and consistent with § 303.345 (b)(1) and (b)(2).

(Authority: 20 U.S.C. 1476(b)(3), 1477 (a)(1), (d)(2), (d)(3))

Note: This section combines into one overall requirement the provisions on evaluation and assessment under the following sections of the Act: (1) Section 676(b)(3) (timely, comprehensive, multidisciplinary evaluation), and (2) Section 677(a)(1) (multidisciplinary assessment).

The section also requires that the evaluation-assessment process be broad enough to obtain information required in the IFSP concerning (1) the family's strengths and needs related to the development of the child (section 677(d)(2)), and (2) the child's functioning level in each of the five developmental areas (section 677(d)(1)).

§ 303.323 Nondiscriminatory procedures.

Each lead agency shall adopt nondiscriminatory evaluation and assessment procedures. The procedures must provide that public agencies responsible for the evaluation and assessment of children and families under this part shall ensure, at a minimum, that—

(a) Tests and other evaluation materials and procedures are administered in the native language of the parents or other mode of communication, unless it is clearly not feasible to do so;

(b) Any assessment and evaluation procedures and materials that are used are selected and administered so as not to be racially or culturally discriminatory;

(c) No single procedure is used as the sole criterion for determining a child's eligibility under this part; and

(d) Evaluations and assessments are conducted by qualified personnel.

(Authority: 20 U.S.C. 1476(b)(3), 1477 (a)(1), (d)(2), (d)(3))

Individualized Family Service Plans (IFSPs)

§ 303.340 General.

(a) Each system must include policies and procedures regarding individualized family service plans (IFSPs) that meet the requirements of this section and §§ 303.341 through 303.346.

(b) As used in this part, "individualized family service plan" and "IFSP" mean a written plan for providing early intervention services to a child eligible under this part and the child's family. The plan must—

(1) Be developed jointly by the family and appropriate qualified personnel involved in the provision of early intervention services;

(2) Be based on the multidisciplinary evaluation and assessment of the child, and the assessment of the child's family, as required in § 303.322; and

(3) Include services necessary to enhance the development of the child and the capacity of the family to meet the special needs of the child.

Lead agency responsibility. The lead agency shall ensure that an IFSP is developed and implemented for each eligible child, in accordance with the requirements of this part. If there is a dispute between agencies as to who has responsibility for developing or implementing an IFSP, the lead agency shall resolve the dispute, or assign responsibility.

(Authority: 20 U.S.C. 1477)

Note: In instances where an eligible child must have both an IFSP and an individualized service plan under another Federal program, it may be possible to develop a single consolidated document, provided that it (1) contains all of the required information in § 303.344, and (2) is developed in accordance with the requirements of this part.

§ 303.341 Meeting the IFSP requirements for years four and five.

(a) *Fourth year requirements.* No later than the beginning of the fourth year of a State's participation under this part, the State shall ensure that—

(1) Evaluations and assessments are conducted in accordance with § 303.322

(2) An IFSP is developed, in accordance with §§ 303.342(a) and 303.343 (a), for each child determined to be eligible under this part and the child's family; and

(3) Case management services are available to each eligible child and the child's family.

(b) *Requirements for the fifth year.* No later than the beginning of the fifth year of a State's participation under this part, a current IFSP must be in effect and implemented for each eligible child and the child's family.

(Authority: 20 U.S.C. 1476 (b)(2), (b)(4), 1477 (a)(2), (c))

§ 303.342 Procedures for IFSP development, review, and evaluation.

(a) *Meeting to develop initial IFSP; timelines.* For a child who has been evaluated for the first time and determined to be eligible, a meeting to develop the initial IFSP must be conducted within the 45 day time period in § 303.321(e).

(b) *Periodic review.* (1) A review of the IFSP for a child and the child's family must be conducted every six months, or more frequently if conditions warrant, or if the family requests such a review. The purpose of the periodic review is to determine—

(i) The degree to which progress toward achieving the outcomes is being made; and

(ii) Whether modification or revision of the outcomes or services is necessary.

(2) The review may be carried out by a meeting or by another means that is acceptable to the parents and other participants.

(c) *Annual meeting to evaluate the IFSP.* A meeting must be conducted on at least an annual basis to evaluate the IFSP for a child and the child's family, and, as appropriate, to revise its provisions. The results of any current evaluations conducted under § 303.322(c), and other information available from the ongoing assessment of the child and family, must be used in determining what services are needed and will be provided.

(d) *Accessibility and convenience of meetings.* (1) IFSP meetings must be conducted—

(i) In settings and at times that are convenient to families; and

(ii) In the native language of the family or other mode of communication used by the family, unless it is clearly not feasible to do so.

(2) Meeting arrangements must be made with, and written notice provided to, the family and other participants early enough before the meeting date to ensure that they will be able to attend.

(Authority: 20 U.S.C. 1477)

Note: The requirement for the annual evaluation incorporates the periodic review process. Therefore, it is necessary to have only one separate periodic review each year (i.e., six months after the initial and subsequent annual IFSP meetings), unless conditions warrant otherwise.

Because the needs of infants and toddlers change so rapidly during the course of a year, certain evaluation procedures may need to be repreated before conducting the periodic reviews and annual evaluation meetings in paragraphs (b) and (c) of this section.

§ 303.343 Participants in IFSP meetings and periodic reviews.

(a) *Initial and annual IFSP meetings.* (1) Each initial meeting and each annual meeting to evaluate the IFSP must include the following participants:

(i) The parent or parents of the child.

(ii) Other family members, as requested by the parent, if feasible to do so;

(iii) An advocate or person outside of the family, if the parent requests that the person participate.

(iv) The case manager that has been working with the family since the initial referral of the child for evaluation, or that has been designated by the public agency to be responsible for implementation of the IFSP.

(v) A person or persons directly involved in conducting the evaluations and assessments in § 303.322.

(vi) As appropriate, persons who will be providing services to the child or family.

(2) If a person listed in paragraph (a)(1)(v) of this section is unable to attend a meeting, arrangements must be made for the person's involvement through other means, including—

(i) Participating in a telephone conference call;

(ii) Having a knowledgeable authorized representative attend the meeting; or

(iii) Making pertinent records available at the meeting.

(b) *Periodic review.* Each periodic review must provide for the participation of persons in paragraphs (a)(1)(i) through (a)(1)(iv) of this section. If conditions warrant, provisions must be made for the participation of other representatives identified in paragraph (a) of this section.

(Authority: 20 U.S.C. 1477(b))

§ 303.344 Content of IFSP.

(a) *Information about the child's status.* (1) The IFSP must include a statement of the child's present levels of physical development (including vision, hearing, and health status), cognitive development, language and speech development, psychosocial development, and self-help skills.

(2) The statement in paragraph (a)(1) of this section must be based on professionally acceptable objective criteria.

(b) *Family information.* With the concurrence of the family, the IFSP must include a statement of the family's strengths and needs related to enhancing the development of the child.

(c) *Outcomes.* The IFSP must include a statement of the major outcomes expected to be achieved for the child and family, and the criteria, procedures, and timelines used to determine—

(1) The degree to which progress toward achieving the outcomes is being made; and

(2) Whether modifications or revisions of the outcomes or services are necessary.

(d) *Early intervention services.* (1) The IFSP must include a statement of the specific early intervention services necessary to meet the unique needs of the child and the family to achieve the outcomes identified in paragraph (c) of this section, including—

(i) The frequency, intensity, location, and method of delivering the services; and

(ii) The payment arrangements, if any.

(2) As used in paragraph (d)(1)(i) of this section—

(i) "Frequency" and "intensity" mean the number of days or sessions that a service will be provided, the length of time the service is provided during each session, and whether the service is

provided on an individual or group basis;

(ii) "Location" means, subject to § 303.12(b), where a service is provided (e.g., in the child's home, early intervention centers, hospitals and clinics, or other settings, as appropriate to the age and needs of the individual child); and

(iii) "Method" means how a service is provided.

(e) *Other services.* (1) To the extent appropriate, the IFSP must include—

(i) Medical and other services that the child needs, but that are not required under this part; and

(ii) If necessary, the steps that will be undertaken to secure those services through public or private resources.

(2) The requirement in paragraph (e)(1) of this section does not apply to routine medical services (e.g., immunizations and "well-baby" care), unless a child needs those services and the services are not otherwise available or being provided.

(f) *Dates; duration of services.* The IFSP must include the projected dates for initiation of the services in paragraph (d)(1) of this section, and the anticipated duration of those services.

(g) *Case manager.* (1) The IFSP must include the name of the case manager from the profession most immediately relevant to the child's or family's needs, who will be responsible for the implementation of the IFSP and coordination with other agencies and persons.

(2) In meeting the requirements in paragraph (g)(1) of this section, the public agency may—

(i) Assign the same case manager to be responsible for implementing a child's and family's IFSP who was appointed at the time that the child was initially referred for evaluation; or

(ii) Appoint a new case manager.

(3) As used in paragraph (g)(1) of this section, the term "profession" includes "case management."

(h) *Transition at age three.* (1) The IFSP must include the steps to be taken to support the transition of the child, upon reaching age three, to—

(i) Preschool services under Part B of the Act, to the extent that those services are considered appropriate; or

(ii) Other services that may be available, if appropriate.

(2) The steps required in paragraph (h)(1) of this section include—

(i) Discussions with, and training of, parents regarding future placements and other matters related to the child's transition;

(ii) Procedures to prepare the child for changes in service delivery, including steps to help the child adjust to, and function in, a new setting; and

(iii) With parental consent, the transmission of information about the child to the local educational agency, to ensure continuity of services, including evaluation and assessment information required in § 303.322, and copies of IFSPs that have been developed and implemented in accordance with §§ 303.340 through 303.346.

(Authority: 20 U.S.C. 1477(d))

Note 1: Throughout the process of developing and implementing IFSPs for an eligible child and the child's family, it is important for agencies to recognize the variety of roles that family members play in enhancing the child's development. It also is important that the degree to which the needs of the family are addressed in the IFSP process are determined in a collaborative manner with the full agreement and participation of the parents of the child. Parents retain the ultimate decision in determining whether they, their child, or other family members will accept or decline services under this part.

Note 2: The early intervention services in paragraph (d) of this section are those services that a State is required to provide to a child in accordance with § 303.12.

The "other services in paragraph (e) of this section are services that a child or family needs, but that are neither required nor covered under this part. While listing the non-required services in the IFSP does not mean that those services must be provided, their identification can be helpful to both the child's family and the case manager, for the following reasons: First, the IFSP would provide a comprehensive picture of the child's total service needs (including the need for medical and health services, as well as early intervention services). Second, it is appropriate for the case manager to assist the family in securing the non-required services (e.g., by (1) determining if there is a public agency that could provide financial assistance, if needed, (2) assisting in the preparation of eligibility claims or insurance claims, if needed, and (3) assisting the family in seeking out and arranging for the child to receive the needed medical-health services).

Thus, to the extent appropriate, it is important for a State's procedures under this part to provide for ensuring that other needs of the child, and of the family related to enhancing the development of the child, such as medical and health needs, are considered and addressed, including determining (1) who will provide each service, and when, where, and how it will be provided, and (2) how the service will be paid for (e.g., through private insurance, an existing Federal-State funding source, such as Medicaid or EPSDT, or some other funding arrangement).

Note 3: Although the IFSP must include information about each of the items in paragraphs (b) through (h) of this section, this does not mean that the IFSP must be a detailed, lengthy document. It might be a brief outline, with appropriate attachments that address each of the points in the paragraphs under this section. It is important for the IFSP itself to be clear about (a) what services are to be provided, (b) the actions that are to be taken by the case manager in initiating those services, and (c) what actions will be taken by the parents.

Note 4: It is important for the lead agency to take steps to ensure a smooth and effective transition of children eligible under this part to special education and related services under Part B of the Act. This is especially critical if the lead agency and the State educational agency (SEA) are not the same agency in a State. In this situation, agreement between the two agencies regarding the responsibilities of each agency during the transition period is very important. Agreements could be in the form of existing or new interagency agreements. Examples of important areas that might be addressed in such agreements include the following:

1. The assignment of financial and other responsibilities during transition, including the (a) performance of evaluations, (b) development of individualized education programs (IEPs) that meet the requirements in 34 CFR 300.340 through 300.349, if appropriate, and (c) provision of services on a continuous, uninterrupted basis.

2. Procedures to ensure a smooth transfer of responsibilities from local service providers to local educational agencies (LEAs), including any requirements for continued services under this part that are the responsibility of the LEAs.

3. Other provisions necessary to ensure effective transition of children under this part to preschool services under Part B of the Act. Agreements that are made between the two agencies need to be flexible enough to ensure that gaps in services will not occur.

§ 303.345 Provision of services before evaluation and assessment are completed.

Early intervention services for an eligible child and the child's family may commence before the completion of the evaluation and assessment in § 303.322, if the following conditions are met:

(a) Parental consent is obtained.

(b) An interim IFSP is developed that includes—

(1) The name of the case manager who will be responsible, consistent with § 303.344(g), for implementation of the interim IFSP and coordination with other agencies and persons; and

(2) The early intervention services that have been determined to be needed immediately by the child and the child's family.

(c) The evaluation and assessment are completed within the time period required in § 303.322(e).

(Authority: 20 U.S.C. 1477(c))

Note: This section is intended to accomplish two specific purposes: (1) To facilitate the provision of services in the event that a child has obvious immediate needs that are identified, even at the time of referral (e.g., a physician recommends that a child with cerebral palsy begin receiving physical therapy as soon as possible); and (2)

to ensure that the requirements for the timely evaluation and assessment are not circumvented.

§ 303.346 Responsibility and accountability.

Each agency or person who has a direct role in the provision of early intevention services is responsible for making a good faith effort to assist each eligible child in achieving the outcomes in the child's IFSP. However, Part H of the Act does not require that any agency or person be held accountable if an eligible child does not achieve the growth projected in the child's ISFP.

(Authority: 20 U.S.C. 1477)

Personnel Training and Standards

§ 303.360 Comprehensive system of personnel development.

(a) Each system must include a comprehensive system of personnel development. Subject to paragraph (b) of this section, a State's current personnel development system required under Part B of the Act (34 CFR 300.380 through 300.387) may be used to satisfy this requirement.

(b) The personnel development system under this part must—

(1) Provide for preservice and inservice training to be conducted on an interdisciplinary basis, to the extent appropriate;

(2) Provide for the training of a variety of personnel needed to meet the requirements of this part, including public and private providers, primary referral sources, paraprofessionals, and persons who will serve as case managers; and

(3) Ensure that the training provided relates specifically to—

(i) Meeting the interrelated psychosocial, health, developmental, and educational needs of eligible children under this part; and

(ii) Assisting families in enhancing the development of their children, and in participating fully in the development and implementation of IFSPs.

(Authority: 20 U.S.C. 1476(b)(8))

§ 303.361 Personnel standards.

(a) As used in this part—

(1) "Appropriate professional requirements in the State" means entry level requirements that—

(i) Are based on the highest requirements in the State applicable to the profession or discipline in which a person is providing early intervention services; and

(ii) Establish suitable qualifications for personnel providing early intervention services under this part to eligible children and their families, who are served by State, local, and private agencies.

(2) "Highest requirements in the State applicable to a specific profession or discipline" means the highest entry-level academic degree needed for any State approved or recognized certification, licensing, registration, or other comparable requirements that apply to that profession or discipline.

(3) "Profession or discipline" means a specific occupational category that—

(i) Provides early intervention services to children eligible under this part and their families;

(ii) Has been established or designated by the State; and

(iii) Has a required scope of responsibility and degree of supervision.

(4) "State approved or recognized certification, licensing, registration, or other comparable requirements" means the requirements that a State legislature either has enacted or has authorized a State agency to promulgate through rules to establish the entry-level standards for employment in a specific profession or discipline in that State.

(b)(1) Each statewide system must have policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained.

(2) The policies and procedures required in paragraph (b)(1) of this section must provide for the establishment and maintenance of standards that are consistent with any State approved or recognized certification, licensing, or other comparable requirements that apply to the profession or discipline in which a person is providing early intervention services.

(c) To the extent that a State's standards for a profession or discipline, including standards for temporary or emergency certification, are not based on the highest requirements in the State applicable to a specific profession or discipline, the State's application for assistance under this part must include the steps the State is taking, the procedures for notifying public agencies and personnel of those steps, and the timelines it has established for the retraining or hiring of personnel that meet appropriate professional requirements in the State.

(d)(1) In meeting the requirements in paragraphs (b) and (c) of this section, a determination must be made about the status of personnel standards in the State. That determination must be based on current information that accurately describes, for each profession or discipline in which personnel are providing early intervention services, whether the applicable standards are consistent with the highest requirements in the State for that profession or discipline.

(2) The information required in paragraph (d)(1) of this section must be on file in the lead agency, and available to the public.

(e) In identifying the "highest requirements in the State" for purposes of this section, the requirements of all State statutes and the rules of all State agencies applicable to serving children eligible under this part and their families must be considered.

(Authority: 20 U.S.C. 1476(b)(13))

Note: This section requires that a State use its own existing highest requirements to determine the standards appropriate to personnel who provide early intervention services under this part. The regulations do not require States to set any specified training standard, such as a master's degree, for employment of personnel who provide services under this part.

The regulations permit each State to determine the specific occupational categories required to provide early intervention services to children eligible under this part and their families, and to revise or expand these categories as needed. The professions or disciplines need not be limited to traditional occupational categories.

Subpart E—Procedural Safeguards

General

§ 303.400 General responsibility of lead agency for procedural safeguards.

Each lead agency shall be responsible for—

(a) Establishing or adopting procedural safeguards that meet the requirements of this subpart, and

(b) Ensuring effective implementation of the safeguards by each public agency in the State that is involved in the provision of early intervention services under this part.

(Authority: 20 U.S.C. 1480)

§ 303.401 Definitions of consent, native language, and personally identifiable information.

As used in this subpart—

(a) "Consent" means that—

(1) The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language or other mode of communication;

(2) The parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

(3) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time;

(b) "Native language," when used with reference to persons of limited English proficiency, means the language or mode of communication normally used by the parent of a child eligible under this part;

(c) "Personally identifiable" means that information includes—

(1) The name of the child, the child's parent, or other family member;

(2) The address of the child;

(3) A personal identifier, such as the child's or parent's social security number; or

(4) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

(Authority: 20 U.S.C. 1480)

§ 303.402 Opportunity to examine records.

In accordance with the confidentiality procedures in the regulations under Part B of the Act (CFR 300.560 through 300.576), the parents of a child eligible under this part must be afforded the opportunity to inspect and review records relating to evaluations and assessments, eligibility determination, development and implementation of IFSPs, individual complaints dealing with the child, and any other area under this part involving records about the child and the child's family.

(Authority: 20 U.S.C. 1480(3))

§ 303.403 Prior notice; native language.

(a) *General.* Written prior notice must be given to the parents of a child eligible under this part a reasonable time before a public agency or service provider proposes, or refuses, to initiate or change the identification, evaluation, or placement of the child, or the provision of appropriate early intervention services to the child and the child's family.

(b) *Consent of notice.* The notice must be in sufficient detail to inform the parents about—

(1) The action that is being proposed or refused:

(2) The reasons for taking the action; and

(3) All procedural safeguards that are available under this part.

(c) *Native language.* (1) The notice must be—

(i) Written in language understandable to the general public; and

(ii) Provided in the native language of the parents, unless it is clearly not feasible to do so.

(2) If the native language or other mode of communication of the parent is not a written language, the public agency, or designated service provider, shall take steps to ensure that—

(i) The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;

(ii) The parent understands the notice; and

(iii) There is written evidence that the requirements of this paragraph have been met.

(3) If a parent is deaf or blind, or has no written language, the mode of communication must be that normally used by the parent (such as sign language, braille, or oral communication).

(Authority: 20 U.S.C. 1480 (5), (6))

§ 303.404 Parent consent.

(a) Written parental consent must be obtained before—

(1) Conducting the initial evaluation and assessment of a child under § 303.322; and

(2) Initiating the provision of early intervention services for the first time (i.e., at the time that the initial IFSP is developed).

(b) If consent is not given, the public agency shall make reasonable efforts to ensure that the parent—

(1) Is fully aware of the nature of the evaluation and assessment or the services that would be available; and

(2) Understands that the child will not be able to receive the evaluation and assessment or services unless consent is given.

(Authority: 20 U.S.C. 1480)

Note 1: In addition to the consent requirements in this section, other consent requirements (regarding personally identifiable information) are included in the confidentiality requirements in the regulations under Part B of the Act (34 CFR 300.571), and in 34 CFR Part 99 (Privacy Rights of Parents and Students), both of which apply to this part.

Note 2: The Part B regulations contain procedures to enable public agencies to initiate a due process hearing or use other procedures to override a parent's refusal to consent to the initial evaluation of the parent's child. Those procedures apply to eligible children under this part, since the Part B evaluation requirement applies to all handicapped children in a State, including infants and toddlers.

§ 303.405 Surrogate parents.

(1) *General.* Each lead agency shall ensure that the rights of children eligible under this part are protected if—

(1) No parent (as defined in § 303.18) can be identified;

(2) The public agency, after reasonable efforts, cannot discover the whereabouts of a parent; or

(3) The child is a ward of the State under the laws of that State.

(b) *Duty of lead agency and other public agencies.* The duty of the lead agency, or other public agency under paragraph (a) of this section, includes the assignment of an individual to act as a surrogate for the parent. This must include a method for—

(1) Determining whether a child needs a surrogate parent; and

(2) Assigning a surrogate parent to the child.

(c) *Criteria for selecting surrogates.* (1) The lead agency or other public agency may select a surrogate parent in any way permitted under State law.

(2) Public agencies shall ensure that a person selected as a surrogate parent—

(i) Has no interest that conflicts with the interests of the child he or she represents; and

(ii) Has knowledge and skills that ensure adequate representation of the child.

(d) *Non-employee requirement; compensation.* (1) A person assigned as a surrogate parent may not be an employee of any agency involved in the provision of early intervention or other services to the child.

(2) A person who otherwise qualifies to be a surrogate parent under paragraph (d)(1) of this section is not an employee solely because he or she is paid by a public agency to serve as a surrogate parent.

(e) *Responsibilities.* A surrogate parent may represent a child in all matters related to—

(1) The evaluation and assessment of the child;

(2) Development and implementation of the child's IFSPs, including annual evaluations and periodic reviews;

(3) The ongoing provision of early intervention services to the child; and

(4) Any other rights established under this part.

(Authority: 20 U.S.C. 1480(4))

Impartial Procedures for Resolving Individual Child Complaints

§ 303.420 Administrative resolution of individual child complaints by an impartial decision-maker.

Each system must include written procedures for the timely administrative resolution of individual child complaints by parents concerning any of the matters in § 303.403(a). A State may meet this requirement by—

(a) Adopting the due process procedures in 34 CFR 300.506 through 300.512; or

(b) Developing procedures that—

(1) Meet the requirements in §§ 303.421 through 303.425; and

(2) Provide parents a means of filing a complaint.

(Authority: 20 U.S.C. 1480(1))

Note 1: Sections 303.420 through 303.425 are concerned with the adoption of impartial procedures for resolving individual child complaints (i.e., complaints that generally affect only a single child or the child's family). These procedures require the appointment of an impartial decision-maker, who is not an employee of any agency involved in the provision of early intervention services, to resolve a dispute between the parent and the public agency. The agency is bound by the decision of the impartial decision-maker, and is required to implement the decision, unless it is reversed on appeal.

A different type of administrative procedure is included in §§ 303.510 through 303.512 of Subpart F. Under those procedures, the lead agency is responsible for (1) investigating any complaint that it receives (including individual child complaints, and those that are systemic in nature); and (2) resolving the complaint, if the agency determines that a violation has occurred.

Note 2: It is important that the administrative procedures developed by a State be designed to result in speedy resolution of complaints. An infant's or toddler's development is so rapid that undue delay could be potentially harmful.

In an effort to facilitate resolution, States may wish, with parental concurrence, to offer mediation as an intervening step prior to implementing the procedures in this section. Although mediation is not required under either Part B or Part H of the Act, some States have reported that mediations conducted under Part B have led to speedy resolution of differences between parents and agencies, without the development of an adversarial relationship and with minimal emotional stress to parents.

While a State may elect to adopt a mediation process, the State cannot require that parents use that process. Mediation may not be used to deny or delay a parent's rights under this part. The complaint must be resolved, and a written decision made, within the 30-day timeline in § 303.423.

§ 303.421 Appointment of an impartial person.

(a) *Qualifications and duties.* An impartial person must be appointed to implement the complaint resolution process in this subpart. The person must—

(1) Have knowledge about the provisions of this part, and the needs of, and services available for, eligible children and their families; and

(2) Perform the following duties:

(i) Listen to the presentation of relevant viewpoints about the complaint, examine all information relevant to the issues, and seek to reach a timely resolution of the complaint.

(ii) Provide a record of the proceedings, including a written decision.

(b) *Definition of impartial.* (1) As used in this section, "impartial" means that the person appointed to implement the complaint resolution process—

(i) Is not an employee of any agency or program involved in the provision of early intervention services or care of the child; and

(ii) Does not have a personal or professional interest that would conflict with his or her objectivity in implementing the process.

(2) A person who otherwise qualifies under paragraph (b)(1) of this section is not an employee of an agency solely because the person is paid by the agency to implement the complaint resolution process.

(Authority: 20 U.S.C. 1480(1))

§ 303.422 Parent rights in administrative proceedings.

(a) *General.* Each lead agency shall ensure that the parents of children eligible under this part are afforded the rights in paragraph (b) of this section in any administrative proceedings carried out under § 303.420.

(b) *Rights.* Any parent involved in an administrative proceeding has the right to—

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for children eligible under this part;

(2) Present evidence, and confront, cross-examine, and compel the attendance of witnesses;

(3) Prohibit the introduction of any evidence at the proceeding that has not been disclosed to the parent at least five days before the proceeding;

(4) Obtain a written or electronic verbatim transcription of the proceeding; and

(5) Obtain written findings of fact and decisions.

(Authority: 20 U.S.C. 1480)

§ 303.423 Convenience of proceedings; timelines.

(a) Any proceeding for implementing the complaint resolution process in this subpart must be carried out at a time and place that is reasonably convenient to the parents.

(b) Each lead agency shall ensure that not later than 30 days after the receipt of a parent's complaint, the impartial proceeding required under this subpart is completed and a written decision mailed to each of the parties.

(Authority: 20 U.S.C. 1480(1))

Note: Under Part B of the Act, States are allowed 45 days to conduct an impartial due process hearing (i.e., within 45 days after the receipt of a request for a hearing, a decision is reached and a copy of the decision is mailed to each of the parties). (See 34 CFR 300.512.) Thus, if a State, in meeting the requirements of § 303.420, elects to adopt the due process procedures under Part B, that State would also have 45 days for hearings. However, any State in that situation is encouraged (but not required) to accelerate the timeliness for the due process hearings for children who are eligible under this part—from 45 days to the 30-day timeline in this section. Because the needs of children in the birth through two age range change so rapidly, quick resolution of complaints is important.

§ 303.424 Civil action.

Any party aggrieved by the findings and decision regarding an administrative complaint has the right to bring a civil action in State or Federal court under section 680(1) of the Act.

(Authority: 20 U.S.C. 1480(1))

§ 303.425 Status of a child during proceedings.

(a) During the pendency of any proceeding involving a complaint under this subpart, unless the public agency and parents of a child otherwise agree, the child must continue to receive the appropriate early intervention services currently being provided.

(b) If the complaint involves an application for initial services under this part, the child must receive those services that are not in dispute.

(Authority: 20 U.S.C. 1480(7))

Confidentiality

§ 303.460 Confidentiality of information.

(a) Each State shall adopt or develop policies and procedures that the State will follow in order to ensure the protection of any personally identifiable information collected, used, or maintained under this part.

(b) These policies and procedures must meet the requirements in 34 CFR 300.560 through 300.576, with the following modifications:

(1) Any reference to the "State educational agency" means the lead agency under this part.

(2) Any reference to "education of handicapped children," "education of all handicapped children," or "provision of free public education to all handicapped children" means the provision of services to children eligible under this part and their families.

(3) Any reference to "local educational agencies" and

"intermediate educational units" means local service providers.

(4) Any reference to 34 CFR 300.128 means §§ 303.164 and 303.321.

(5) Any reference to 34 CFR 300.129 means this section (§ 303.460).

(Authority: 20 U.S.C. 1480(2), 1483)

Note: With the modifications in paragraphs (b)(1) through (b)(5) of this section, the confidentiality requirements in the regulations implementing Part B of the Act (34 CFR 300.560 through 300.576) are to be used by public agencies to meet the confidentiality requirements under Part H of the Act and this section (303.560).

The Part B provisions incorporate by reference the regulations in 34 CFR Part 99 (Privacy Rights of Parents and Students); therefore, those regulations also apply to this part.

Subpart F—State Administration

General

§ 303.500 Lead agency establishment or designation.

Each system must include a single line of responsibility in a lead agency that—

(a) Is established or designated by the Governor; and

(b) Is responsible for the administration of the system, in accordance with the requirements of this part.

(Authority: 20 U.S.C. 1476(b)(9))

§ 303.501 Supervision and monitoring of programs.

(a) *General.* Each lead agency is responsible for the general administration, supervision, and monitoring of programs and activities receiving assistance under this part, to ensure compliance with the provisions of this part.

(b) *Methods of administering programs.* In meeting the requirement in paragraph (a) of this section, the lead agency shall adopt and use proper methods of administering each program, including—

(1) Monitoring of agencies, institutions, and organizations receiving assistance under this part;

(2) Enforcement of any obligations imposed on those agencies under Part H of the Act and these regulations;

(3) Providing technical assistance, if necessary, to those agencies, institutions, and organizations; and

(4) Correction of deficiencies that are identified through monitoring.

(Authority: 20 U.S.C. 1476(b)(9)(A))

Lead Agency Procedures for Resolving Complaints

§ 303.510 Adopting complaint procedures.

Each lead agency shall adopt written procedures for—

(a) Receiving and resolving any complaint that one or more requirements of this part are not being met; and

(b) Conducting an independent on-site investigation of a complaint if the lead agency determines that an on-site investigation is necessary.

(Authority: 20 U.S.C. 1476(b)(9))

Note: Because of the interagency nature of Part H of the Act, complaints received under these regulations could concern violations by (1) any public agency in the State that receives funds under this part (e.g., the lead agency and the Council), (2) other public agencies that are involved in the State's early intervention program, or (3) private service providers that receive Part H funds on a contract basis from a public agency to carry out a given function or provide a given service required under this part. These complaint procedures are in addition to any other rights under State or Federal law. Complaints under these procedures are filed with the lead agency.

§ 303.511 An organization or individual may file a complaint.

An individual or organization may file a written signed complaint with the lead agency. The complaint must include—

(a) A statement that the State has violated a requirement of Part H of the Act or the regulations in this part; and

(b) The facts on which the complaint is based.

(Authority: 20 U.S.C. 1476(b)(9))

§ 303.512 Minimum complaint procedures.

Each lead agency shall include the following in its complaint procedures:

(a) A time limit of 60 days after the agency receives the complaint—

(1) To carry out an independent on-site investigation, if necessary; and

(2) To resolve the complaint.

(b) An extension of the time limit under paragraph (a) of this section only if exceptional circumstances exist with respect to a particular complaint.

(c) The right to request the Secretary to review the final decision of the lead agency.

(Authority: 20 U.S.C. 1476(b)(9))

Policies and Procedures Related to Financial Matters

§ 303.520 Policies related to payment for services.

(a) *General.* Each lead agency is responsible for establishing State policies related to how services to children eligible under this part and their families will be paid for under the State's early intervention program. The policies must—

(1) Meet the requirements in paragraph (b) of this section; and

(2) Be reflected in the interagency agreements required in § 303.523.

(b) *Specific funding policies.* A State's policies must—

(1) Specify which functions and services will be provided at no cost to all parents;

(2) Specify which functions or services, if any, will be subject to a system of payments, and include—

(i) Information about the payment system and schedule of sliding fees that will be used; and

(ii) The basis and amount of payments; and

(3) Include an assurance that—

(i) Fees will not be charged for the services that a child is otherwise entitled to receive at no cost to parents; and

(ii) The inability of the parents of an eligible child to pay for services will not result in the denial of services to the child or the child's family.

(c) *Procedures to ensure the timely provision of services.* No later than the beginning of the fifth year of a State's participation under this part, the State shall implement a mechanism to ensure that no services that a child is entitled to receive are delayed or denied because of disputes between agencies regarding financial or other responsibilities.

(Authority: 20 U.S.C. 1476(b)(9))

§ 303.521 Fees.

(a) *General.* A State may establish, consistent with § 303.12(a)(3)(iv), a system of payments for early intervention services, including a schedule of sliding fees.

(b) *Functions not subject to fees.* The following are required functions that must be carried out at public expense by a State, and for which no fees may be charged to parents:

(1) Implementing the child find requirements in § 303.321;

(2) Evaluation and assessment, as included in § 303.322, and including the functions related to evaluation and assessment in § 303.12.

(3) Case management, as included in §§ 303.6 and 303.344(g).

(4) Administrative and coordinative activities related to—

(i) The development, review, and evaluation of IFSPs in §§ 303.340 through 303.346; and

(ii) Implementation of the procedural safeguards in Subpart E, and the other components of the statewide system of early intervention services in Subparts D and F.

(c) *States with mandates to serve children from birth.* If a State has in effect a State law requiring the provision of a free appropriate public education to children with handicaps from birth, the State may not charge parents for any

services (e.g., physical or occupational therapy) required under that law that are provided to children eligible under this part and their families.

(Authority: 20 U.S.C. 1472(2))

§ 303.522 Identification and coordination of resources.

(a) Each lead agency is responsible for—

(1) The identification and coordination of all available resources for early intervention services within the State, including those from Federal, State, local, and private sources; and

(2) Updating the information on the funding sources in paragraph (a)(1) of this section, if a legislative or policy change is made under any of those sources.

(b) The Federal funding sources in paragraph (a)(1) of this section include—

(1) Title V of the Social Security Act (relating to Maternal and Child Health);

(2) Title XIX of the Social Security Act (relating to the general Medicaid Program, and EPSDT);

(3) The Head Start Act;

(4) Parts B and H of the EHA;

(5) Subpart 2 of Part D of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, as amended;

(6) The Developmentally Disabled Assistance and Bill of Rights Act (Pub. L. 94–103); and

(7) Other Federal programs.

(Authority: 20 U.S.C. 1476(b)(9)(B))

§ 303.523 Interagency agreements.

(a) *General.* Each lead agency is responsible for entering into formal interagency agreements with other State-level agencies involved in the State's early intervention program. Each agreement must meet the requirements in paragraphs (b) through (d) of this section.

(b) *Financial responsibility.* Each agreement must define the financial responsibility of the agency for paying for early intervention services (consistent with State law and the requirements of this part).

(c) *Procedures for resolving disputes.* (1) Each agreement must include procedures for achieving a timely resolution of intra- and interagency disputes about payments for a given service, or disputes about other matters related to the State's early intervention program. Those procedures must include a mechanism for making a final determination that is binding upon the agencies involved.

(2) The agreement with each agency must—

(i) Permit the agency to resolve its own internal disputes (based on the agency's procedures that are included in the agreement), so long as the agency acts in a timely manner; and

(ii) Include the process that the lead agency will follow in achieving resolution of intra-agency disputes, if a given agency is unable to resolve its own internal disputes in a timely manner.

(d) *Additional components.* Each agreement must include any additional components necessary to ensure effective cooperation and coordination among all agencies involved in the State's early intervention program.

(Authority: 20 U.S.C. 1476(b)(9)(F))

Note: A State may meet the requirement in paragraph (c)(1) of this section in any way permitted under State law, including (1) providing for a third party (e.g., an administrative law judge) to review a dispute and render a decision, (2) assignment of the responsibility by the Governor to the lead agency or Council, or (3) having the final decision made directly by the Governor.

§ 303.524 Resolution of disputes.

(a) Each lead agency is responsible for resolving individual disputes, in accordance with the procedures in § 303.523(c)(2)(ii).

(b) (1) During the pendency of a dispute, the lead agency shall—

(i) Assign financial responsibility to an agency, subject to the provisions in paragraph (b)(2) of this section; or

(ii) Pay for the service, in accordance with the "payor of last resort" provisions in § 303.527.

(2) If, in resolving the dispute, the lead agency determines that the assignment of financial responsibility under paragraph (b)(1)(i) of this section was inappropriately made, the lead agency shall—

(i) Reassign the responsibility to the appropriate agency; and

(ii) Make arrangements for reimbursement of any expenditures incurred by the agency originally assigned responsibility.

(c) To the extent necessary to ensure compliance with its action in paragraph (b)(2) of this section, the lead agency shall—

(1) Refer the dispute to the Council or the Governor; and

(2) Implement the procedures in § 303.525.

(Authority: 20 U.S.C. 1476(b)(9)(E))

§ 303.525 Delivery of services in a timely manner.

Each lead agency is responsible for the development of procedures to ensure that services are provided to eligible children and their families in a timely manner, pending the resolution of disputes among public agencies or service providers.

(Authority: 20 U.S.C. 1476(b)(9)(D))

§ 303.526 Policy for contracting or otherwise arranging for services.

Each system must include a policy pertaining to contracting or making other arrangements with public or private service providers to provide early intervention services. The policy must include—

(a) A requirement that all early intervention services must meet State standards and be consistent with the provisions of this part;

(b) The mechanisms that the lead agency will use in arranging for these services, including the process by which awards or other arrangements are made; and

(c) The basic requirements that must be met by any individual or organization seeking to provide these services for the lead agency.

(Authority: 20 U.S.C. 1476(b)(10))

Note: In implementing the statewide system, States may elect to continue using agencies and individuals in both the public and private sectors that have previously been involved in providing early intervention services, so long as those agencies and individuals meet the requirements of this part.

§ 303.527 Payor of last resort.

(a) *Nonsubstitution of funds.* Except as provided in paragraph (b)(1) of this section, funds under this part may not be used to satisfy a financial commitment for services that would otherwise have been paid for from another public or private source but for the enactment of Part H of the Act. Therefore, funds under this part may be used only for early intervention services that an eligible child needs but is not currently entitled to under any other Federal, State, local, or private source.

(b) *Interim payments; reimbursement.* (1) If necessary to prevent a delay in the timely provision of services to an eligible child or the child's family, funds under this part may be used to pay the provider of services, pending reimbursement from the agency or entity that has utlimate responsibility for the payment.

(2) Payments under paragraph (b)(1) of this section may be made for—

(i) Early intervention services, as described in § 303.12;

(ii) Eligible health services (see § 303.13); and

(iii) Other functions and services authorized under this part, including child find, and evaluation and assessment.

(3) The provisions of paragraph (b)(1) of this section do not apply to medical

services or "well-baby" health care (see § 303.13(c)(1)).

(c) *Non-reduction of benefits.* Nothing in this part may be construed to permit a State to reduce medical or other assistance available or to alter eligibility under Title V of the Social Security Act (SSA) (relating to maternal and child health) or Title XIX of the SSA (relating to Medicaid for children eligible under this part) within the State.

(Authority: 20 U.S.C. 1481)

Note: The Congress intended that the enactment of Part H not be construed as a license to any agency (including the lead agency and other agencies in the State) to withdraw funding for services that currently are or would be made available to eligible children but for the existence of the program under this part. Thus, the Congress intended that other funding sources would continue, and that there would be greater coordination among agencies regarding the payment of costs.

The Congress further clarified its intent concerning payments under Medicaid by including in section 411(k)(13) of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100-360) an amendment to Title XIX of the Social Security Act. That amendment states, in effect, that nothing in this title shall be construed as prohibiting or restricting, or authorizing the Secretary of Health and Human Services to prohibit or restrict, payment under subsection (a) for medical assistance for covered services furnished to a handicapped infant or toddler because such services are included in the child's IFSP adopted pursuant to Part H of the EHA.

§ 303.528 Reimbursement procedure.

Each system must include a procedure for securing the timely reimbursement of funds used under this part, in accordance with § 303.527(b).

(Authority: 20 U.S.C. 1476(b)(11))

Reporting Requirements

§ 303.540 Data collection.

(a) Each system must include the procedures that the State uses to compile data on the statewide system. The procedures must—

(1) Include a process for—

(i) Collecting data from various agencies and service providers in the State;

(ii) Making use of appropriate sampling methods, if sampling is permitted; and

(iii) Describing the sampling methods used, if reporting to the Secretary; and

(2) Provide for reporting the data required under section 676(b)(14) of the Act, and other information that the Secretary may require, including information required under section 618 of the Act.

(b) The information required in paragraph (a)(2) of this section must be provided at the time and in the manner specified by the Secretary.

(Authority: 20 U.S.C. 1476(b)(14))

Use of Funds for State Administration

§ 303.560 Use of funds by the lead agency.

A lead agency may use funds under this part that are reasonable and necessary for administering the State's early intervention program for infants and toddlers with handicaps.

(Authority: 20 U.S.C. 1473; 1476(b)(9))

Subpart G—State Interagency Coordinating Council

General

§ 303.600 Establishment of Council.

(a) A State that desires to receive financial assistance under this part shall establish a State Interagency Coordinating Council composed of 15 members.

(b) The Council and the chairperson of the Council must be appointed by the Governor. The Governor shall ensure that the membership of the Council reasonably represents the population of the State.

(Authority: 20 U.S.C. 1482(a))

Note. The number of members on the Council was established by statute. However, to the extent that a State determines that full and effective representation requires more than 15 members, it would be appropriate for the Council to request the Governor to appoint additional members of an ex officio basis, or, with the permission of the Governor, for the Council chairperson to take that action.

In addition to appointing ex officio members to the Council, consideration might be given to establishing (1) regional committees, or (2) special committees to address key issues related to the effective implementation of this part.

To the extent that additional members are added—either on an ex officio basis or through the establishment of regional or special committees—the Council may wish to ensure that the general proportion of parents on the Council (as specified in § 303.601(a)) is maintained. However, to avoid a potential conflict of interest, it is recommended that parent representatives who are selected to serve on the Council not be employees of any agency involved in providing early intervention services.

In any deliberations by the Council for increasing the number of people who have a role in Council activities, it is suggested that consideration be given to maintaining an appropriate balance between the urban and rural communities of the State.

§ 300.601 Composition.

The Council must be composed of the following:

(a) At least—

(1) Three members who are parents of infants and toddlers with handicaps or of handicapped children aged three through six;

(2) Three public or private providers of early intervention services;

(3) One representative from the State legislature; and

(4) One person in personnel preparation.

(b) Other members representing each of the appropriate agencies involved in the provision of or payment for early intervention services to eligible children and their families, and others selected by the Governor.

(Authority: 20 U.S.C. 1482(b))

Note: In order to enhance the effectiveness of the Council in carrying out its functions under this part, it is recommended that efforts be made to include representatives of each State agency or other major service provider that has a role in the State's early intervention program, such as the state health and education departments, health care providers, and other key providers. It is important for State agency representatives to have the authority to effectively represent their agencies.

A representative of the SEA who is responsible for, or knowledgeable about, the Preschool Grants Program under Section 619 of the Act (34 CFR Part 301) would be an appropriate person to be appointed as a regular member of the Council. Inclusion of such a person will help to ensure the smooth transition of children under this part who will require special education and related services under this program.

It is recommended that the person selected to represent the field of personnel preparation have expertise in early intervention programs for children eligible under this part and their families.

§ 303.602 Use of funds by the Council.

(a) *General.* Subject to the approval by the Governor, the Council may use funds under this part to hire staff and obtain the services of professional, technical, and clerical personnel, as may be necessary to carry out the performance of its functions under this part.

(b) *Compensation and expenses of Council members.* (1) Except as provided in paragraph (b)(2) of this section, Council members shall serve without compensation from funds available under this part, but the Council shall reimburse its members for reasonable and necessary expenses for attending meetings and performing Council duties. Funds provided under this part may be used for this purpose.

(2) Funds under this part may be used to pay compensation if—

(i) A Council member is not employed; or

(ii) A Council member must forfeit wages from other employment when participating in official Council functions.

(Authority: 20 U.S.C. 1479; 1482(c), (d))

§ 303.603 Meetings.

(a) The Council shall meet at least quarterly and in such places as it deems necessary.

(b) The meetings must—

(1) Be publicly announced sufficiently in advance of the dates thay are to be held to ensure that all interested parties have an opportunity to attend; and

(2) To the extent appropriate, be open and accessible to the general public.

(c) Interpreters for persons who are deaf and other necessary services must be provided at Council meetings, both for Council members and participants. The Council may use funds under this part to pay for those services.

(Authority: 20 U.S.C. 1482(c), (d))

§ 303.604 Conflict of interest.

No member of the Council may cast a vote on any matter that would provide direct financial benefit to that member or otherwise give the appearance of a conflict of interest.

(Authority: 20 U.S.C. 1842(f))

Functions of the Council

§ 303.650 General.

Each Council shall—

(a) Advise and assist the lead agency in the development and implementation of the policies that constitute the statewide system;

(b) Assist the lead agency in achieving the full participation, coordination, and cooperation of all appropriate public agencies in the State;

(c) Assist the lead agency in the effective implementation of the statewide system, by establishing a process that includes—

(1) Seeking information from service providers, case managers, parents, and others about any Federal, State, or local policies that impede timely service delivery; and

(2) Taking steps to ensure that any policy problems identified under paragraph (c)(1) of this section are resolved; and

(d) To the extent appropriate, assist the lead agency in the resolution of disputes.

(Authority: 20 U.S.C. 1482(e))

§ 303.651 Advising and assisting the lead agency in its administrative duties.

Each Council shall advise and assist the lead agency in the—

(a) Identification of sources of fiscal and other support for services for early intervention programs under this part;

(b) Assignment of financial responsibility to the appropriate agency; and

(c) Promotion of the interagency agreements under § 303.523.

(Authority: 20 U.S.C. 1482(e)(1))

§ 303.652 Applications.

Each Council shall advise and assist the lead agency in the preparation of applications under this part, and amendments to those applications.

(Authority: 20 U.S.C. 1482(e)(2))

§ 303.653 Annual report to the Secretary.

(a) Each Council shall—

(1) Prepare an annual report to the Governor and to the Secretary on the status of early intervention programs operated within the State for children eligible under this part and their families; and

(2) Submit the report to the Secretary by a date that the Secretary establishes.

(b) Each annual report must contain the information required by the Secretary for the year for which the report is made.

(Authority: 20 U.S.C. 1482(e)(3))

Existing Councils

§ 303.670 Use of existing councils.

If a State established a Council before September 1, 1986, that is comparable to the requirements for a Council in this subpart (e.g., in terms of its composition, meetings, and functions), that Council is considered to be in compliance with these requirements. However, within four years after the date that a State accepts funds under this part, the State shall establish a Council that complies in full with the requirements of this subpart.

(Authority: 20 U.S.C. 1482(g))

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

Appendix A—Analysis of Comments and Changes

The following is an analysis of the comments received on the Notice of Proposed Rulemaking (NPRM), and the changes made in the regulations since publication of the NPRM. Substantive issues, including comments on the preamble that applied to the text of the regulations, are included under the subpart, subheading, and section to which they pertain in these final regulations. Therefore, unless otherwise indicated, all section numbers used in the Appendix refer to sections in the final regulations. Technical and other minor changes are not addressed.

To assist readers in finding where each section in the NPRM is located in the final regulation, a redesignation table has been included in Appendix B.

Subpart A—General

Purpose of the early intervention program for infants and toddlers with handicaps (§303.1)

Comment: There was a general theme throughout the comments that the regulations should express the broader purposes of the Act (e.g., those related to improving the total functioning of eligible children, and enhancing the abilities of parents and other family members to meet the developmental needs of their children).

Discussion: The Secretary believes that these final regulations provide the background and context for the implementation of this program, and reflect the broader purposes of the Act, especially in terms of supporting the role of parents and other family members in enhancing the development of infants and toddlers with handicaps.

Change: No change has been made in § 303.1. However, throughout these final regulations, greater emphasis has been given to (1) the importance of families of eligible children in enhancing the development of their children (see, for example, §§ 303.22(2), 303.340(b), and 303.344(b)), and (2) parents as decision-makers in determining the extent to which they, their eligible children, and other family members accept or decline services under this part (see, for example, §§ 303.345, 303.404, and 303.422).

Eligible applicants for an award (§ 303.2)

Comment: Some commenters recommended that the Department of Defense Schools (DODS) be listed specifically as an eligible applicant in this section to ensure that children whose families are in the military receive early intervention services.

Discussion: The list of eligible applicants for an award is taken from the Act, and includes the 50 States, Puerto Rico, the District of Columbia, and eligible territories. There is no statutory basis for adding other applicants for an award. Eligible children whose families are in the military will be able to receive services based upon where they are domiciled.

Change: No change has been made with respect to children of military families. However, a sentence has been added to § 303.2 to clarify that the future eligibility of the Republic of Palau will

be governed by the terms of the Compact of Free Association.

Activities that may be supported under this part (§ 303.3)

Comment. A few commenters requested that this section be amended to permit funds under this part to be used in coordination with funds under the Preschool Grants program, 34 CFR Part 301, for the planning and development of a statewide comprehensive delivery system for children from birth through age five.

Discussion: Although funds under this part must be used only for activities related to infants and toddlers with handicaps, a broader provision is contained under the Preschool Grants program. Under that authority, States may use up to 20% of their annual grant funds (1) for planning and developing a comprehensive delivery system of services for children from birth through five, and (2) for providing direct and support services to children with handicaps, aged three through five (see 34 CFR 301.30).

Funds under this part may be used in coordination with the Preschool Grant funds for planning and implementation activities for children from birth through age five, so long as (1) there is a clear audit trail on each funding source, and (2) the funds under this part are used only for activities for children birth through age two.

Change: None.

Comment: Commenters requested that a definition of "direct services" be added. Commenters also asked for guidance about what would constitute allowable administrative costs for activities to plan, develop, and implement the statewide system.

Discussion: Information about allowable administrative costs is included in the EDGAR regulations, 34 CFR Part 80. With respect to "direct services," the Secretary feels that a definition in the regulations is not necessary. Direct services are those that would be provided directly to a child (e.g., physical therapy or occupational therapy), or to the family (e.g., counseling or transportation).

Change: None.

Comment: A commenter stated that the use of the term "private sources" in the Act should not be construed to require private nonprofit organizations to maintain their fiscal effort or to prevent States from using funds under this part if those funds are withdrawn. The commenter further stated that the inclusion of "private sources" was intended as an expression of insurers continue to pay for early intervention services.

Discussion: The Secretary agrees, that, although private organizations are encouraged to continue to provide early intervention services to eligible children and their families, they cannot be required to do so. States are not prohibited from using funds under this part to pay for services to children and families that were previously funded by private organizations, if the private funds are withdrawn.

Change: None.

Applicable regulations (§ 303.4)

Comment: May commenters requested that the applicable provisions from other regulations (i.e., the Education Department General Administrative Regulations (EDGAR), and those implementing Part B of the EHA) be incorporated in this part, rather than making reference to those provisions, as was done in the NPRM. Some of the commenters stated that having a self-contained set of regulations would facilitate administration of the program. A few commenters pointed out that simply referencing the other regulations places an undue burden on parents, because they are forced to search out the other documents. Other commenters recommended that certain of the Part B definitions that were referenced in § 303.16 of the NPRM (e.g., "public agency," "qualified," and certain related services definitions) be modified to reflect the special needs of infants and toddlers.

Discussion: The Secretary agrees with commenters that, to the extent possible, these regulations should contain all relevant information within one document. The Secretary has determined that complaint procedures, like those in EDGAR, should be added in this part, because the Department has proposed to delete those procedures from Part 76. However, it is not feasible to include all applicable provisions of EDGAR.

The Secretary believes that the EDGAR definition of "State" that was referenced in §303.15 of the NPRM should be deleted, and that the definition of "State" in section 602(a)(6) of the Act should be added to these regulations, because that definition includes the specific States and jurisdictions covered under this part for program operation purposes. Thus, each "State" included in the definition must meet all substantive requirements under this part. A special definition of "State" is included in §303.200(b)(2) for the purpose of making grants under this

Although it is not feasible to include all of the applicable provisions of Part B, the Secretary has determined that a number of provisions should be added, particularly all definitions that were incorporated by reference in §303.16 of the NPRM, and certain procedural requirements. To the extent appropriate, modifications have been made in those provisions to reflect the special requirements of infants and toddlers with handicaps and their families.

Change: The following changes have been made: (1) Minimum State complaint procedures, similar to those in EDGAR, have been added at §§303.510 through 303.512; (2) The EDGAR definition of "State", as referenced in §303.15 of the NPRM, has been deleted; (3) The definition of "State" from Section 602(a)(6) of the Act has been added at §303.22 with appropriate modifications; and (4) A number of provisions from the Part B regulations have been added to this part, including (a) certain procedural safeguards that have either been adopted with modifications or adapted (see discussion on §303.400 in this Appendix), (b) definitions that have been adopted verbatim (i.e., "include; including" (§303.15), and "parent" (§303.18)), and (c) definitions that have been adapted (i.e., "public agency" (§303.20), and "qualified" (§303.21)).

Definitions of related services that were referenced in §303.16 of the NPRM have also been adapted and included under this part (see discussion on §303.12 in this Appendix).

Definitions

Case management (§303.6)

Comment: Many commenters recommended that the term "enable" be used in the definition of case management to emphasize the need to strengthen the ability of families to carry out discussion and functions related to case management.

Discussion: The Secretary agrees that "enable" connotes an active role for families and should be included in the regulations.

Change: The definition of case management has been amended to include "enable."

Comment: A number of commenters requested that the specific case management activities described in the legislative history of Pub. L. 99-457 be added to the case manager's duties and responsibilities in §303.6. These included: (1) assuring the timely delivery of services, (2) informing parents of the availability of advocacy services, and

active, ongoing process of continuously seeking the appropriate services or situations to benefit the development of each infant or toddler being served for the duration of the child's eligibility.

Discussion: The Secretary agrees that the specific case management activities included in the legislative history of the Act should be added to the definition in §303.6, in order to reflect more accurately the duties and responsibilities of case managers under this part.

Change: Section 303.6 has been amended to include the requested activities.

Comment: Many commenters requested that the final regulations include additional clarification regarding the role of parents in terms of case management activities.

Discussion: The Secretary agrees that more clarification is needed. Under this part, case managers, as public agency employees, serve as "system advocates" for families, and function in a facilitating role, as needed (e.g., to assist parents in obtaining services for their child and other family members). However, case management is not a static function, nor is it expected to be the same at every stage of a child's development or for every family. The kinds of assistance that a family needs during the neonatal stage of a child's development may be different than their needs later in the child's life; and some parents may want, and be able, to play a more active role than others. Effective case management must be responsive to individual differences and family needs.

Case management will be most effective if case managers and parents are able to work cooperatively together. For this reason, States should take all responsible efforts to ensure that a well-functioning collaborative working relationship is created.

Change: None.

Comment: Some commenters requested that the regulations provide that parents be appointed as case managers for their children.

Discussion: The Secretary believes that the Congress included the requirements for case managers and case management in order to ensure that, because of the interagency, multidisciplinary nature of Part H, the burden of seeking out and obtaining services guaranteed under this program would be placed upon appropriate public agencies in the State and not on the parents of eligible infants and toddlers. Thus, the statute requires that each IFSP must include "the name of the case manager from the profession most immediately relevant to the infants and toddlers or family's needs who will be responsible for the implementation of the plan and coordination with other agencies and persons."

The Secretary believes that the statutory requirements evidence a clear congressional intent that the responsibility for "case management," as that term is defined in § 303.6, be assigned to an appropriate, qualified public agency employee. It is also clear that the Congress did not intend for parents to have to assume this responsibility.

Although parents may not be named as case managers, the Secretary recognizes that parents (1) must be actively involved in making sure that their eligible children and other family members receive all of the services and protections that they are entitled to under this part, and (2) are major decision-makers in deciding the extent to which they will participate in, and receive services under, this program.

Change: None.

Comment: Several commenters asked for regulations or clarifying notes that provide for case managers to (1) coordinate services across agencies, and (2) have the authority to ensure services. Some commenters requested that language be added specifying that it is not necessary to develop a new case management system if a system is already in place.

Discussion: The Secretary believes that it is the lead agency's responsibility, with the assistance of the Council, to ensure that (1) services are coordinated across agencies, and (2) case managers are able to carry out case management on an interagency basis, as needed. The Secretary agrees that case managers, because of their facilitating role, must be able to coordinate services for a child across agencies, in order to ensure the timely delivery of those services. He also agrees that new case management systems do not need to be developed, if a system that meets the requirements of this part is already in place.

Change: A provision has been added at § 303.6(c)(2) to require that States design their policies and procedures to enable case managers to effectively carry out case management functions on an interagency basis.

Comment: A number of commenters requested that provisions be added to ensure that case managers have the necessary qualifications to carry out effectively their responsibilities under this part.

Discussion: The Secretary agrees that, because of the crucial role that case managers play under this program, the qualifications for case managers should be added to the regulations. The Secretary believes that, to perform effectively the tasks required of them, case managers should have demonstrated knowledge and understanding about (1) the children who are eligible under this part, (2) the provisions of this part, and (3) the State's early intervention service delivery system.

Change: Section 303.6 has been amended to include the qualifications of case managers.

Comment: Several commenters recommended that additional duties be added to case management, including (1) offering guidance to families regarding financial planning and payment, and (2) continuing case management throughout and beyond the transition period when a child moves to services under Part B.

Discussion: In carrying out case management responsibilities under this part, it is expected that case managers would provide guidance to families, as needed, regarding financial planning and payment to enable a child to receive early intervention services. Thus, an additional requirement is not necessary in the regulations. Case managers are responsible for assisting families in planning services for the transition to services under Part B. Part H does not authorize the continuation of case management beyond the transition period when a child moves to services under Part B. (See comments and discussion on § 303.344 in this Appendix.)

Change: None.

Children (§ 303.7)

Comment: Some commenters expressed concern that the term "infants and toddlers with handicaps," as used throughout the NPRM and in the definition of "children," could unnecessarily stigmatize children, especially "at risk" children who might be eligible for services, but are not handicapped.

Discussion: The Secretary believes that the commenters' concerns are valid, because of the potential for children to be stigmatized.

Change: Beginning with § 303.1, and throughout the final regulations, the term "children eligible under this part" has generally replaced the term "infants and toddlers with handicaps." A note has been added to § 303.16 to address the concern raised by the commenters.

Council (§ 303.8)

Comment: One commenter recommended that the name of the State Interagency Coordinating Council be changed to Coordinating Council on Early Intervention Services.

Discussion: The name of the Council is statutory; there is no basis for a change.

Change: None.

Early intervention program (§ 303.11)

Comment: A number of commenters recommended that the regulations acknowledge that a comprehensive system of early intervention services should encompass all appropriate services needed by an eligible child and the child's family, not just those under Part H of the Act.

Discussion: The Secretary believes that the Congress intended that the early intervention program established under this part should encompass activities that extend beyond the provision of discrete early intervention services. He believes that the program should include the total effort in a State that is directed toward meeting the needs of children eligible under this part and their families, including (1) those functions that must be carried out as part of a State's responsibilities under this part (e.g., evaluation and assessment activities, case management, and administrative-coordinative activities related to the development, review, and evaluation of IFSPs, and implementation of the procedural safeguards); (2) specific early intervention services, as defined in § 303.12; and (3) medical and other services that an eligible child and the child's family may need, but which are not required under this part.

Change: A definition of "early intervention program" has been added at § 303.11.

Early intervention services (§ 303.12)

Comment: Several commenters asked for clarification about the sliding fees provision in the definition of early intervention services. Clarification was specifically requested regarding whether some services, such as identification, assessment, and screening, are excluded from the system of payments. Some commenters stated that early intervention services that are presently provided at no cost to parents in States with mandates should continue to be provided at no cost to parents. Another commenter requested that a minimum level of services be established for all eligible children that would be provided at no cost to parents.

Discussion: Since any system of payments, including a schedule of sliding fees, will in part depend on the laws of individual States, the Secretary intends to leave decisions regarding the establishment of applicable criteria to the States. The Secretary believes, however, that there are certain activities and functions (e.g., case management) that are not subject to a system of payments, and must be provided at no cost to parents. Also, to the extent that early identification, screening, and assessment services are required under the identification, location, and evaluation provision of Part B of the Act, those services must be provided at no cost.

In States with mandates to provide free appropriate public education (FAPE) to children from birth, those services included under part B that are applicable to children under Part H (e.g., physical and occupational therapy) must also be provided at no cost under this part.

Change: Section 303.521 has been added to delineate requirements related to the charging of fees.

Comment: Commenters requested that the definition of "early intervention services" be amended to state that early intervention services are designed to meet the needs of the family related to enhancing the child's development and are chosen in collaboration with parents.

Discussion: The Secretary agrees that, because of the nature of the program, the definition of early intervention services should be revised as recommended by the commenters.

Change: A change has been made at § 303.12(a) (1) and (2).

Comment: Many commenters stated that definitions of certain related services in the Part B regulations are not directly applicable to infants and toddlers with handicaps, and recommended that separate definitions of early intervention services be developed for this part. Commenters requested that the lists of early intervention services and personnel be expanded. Some commenters noted that "nutrition" was omitted as an early intervention service in the NPRM, even though the statute included nutritionists in the list of qualified personnel, and they recommended that it be included in the final regulations. Many commenters requested that services relating to identifying and serving children with vision and hearing disorders be added to the regulations. Other commenters requested an expanded list of types of services, such as transportation, transition, and home and family support services.

Discussion: The Secretary agrees that the definitions of related services in the Part B regulations are not directly applicable to this part, and that specific definitions of early intervention services should be added. He believes that these definitions should be based on current definitions used by practitioners. The Secretary also believes that the regulations should specify the general role and responsibilities of service providers that apply to each area of early intervention services (i.e., (1) consulting with parents, other service providers, and representatives of appropriate community agencies to ensure the effective provision of services in that area, (2) training parents and others regarding the provision of those services, and (3) participating in the multidisciplinary team's assessment of a child and the child's family, and in the development of integrated goals and outcomes for the IFSP).

The Secretary believes that nutrition should be added to the list of early intervention services, because of its importance to infants and toddlers with handicaps, and because nutritionists are included in the statute's list of qualified personnel. In addition, he believes that, because of the particular importance of transportation and its impact on access to other services, transportation should be included in the list of early intervention services. The Secretary agrees with commenters that other types of services and personnel are also important, but does not believe that it is necessary to add all potential services and personnel to the list. The lists of early intervention services and personnel are not exhaustive and may include other services and personnel (e.g., vision and hearing services). This is made clear in a note following the sections in both the NPRM and these final regulations.

Change: The following changes have been made: (1) Section 303.16 of the NPRM, which incorporated by reference applicable definitions from the Part B regulations, has been deleted; (2) a paragraph has been added at § 303.12(c) describing the general role of service providers; (3) a definition of each early intervention service in Section 672(2) of the Act has been added at § 303.12(d); (4) nutrition and transportation have also been added; (5) a definition of transportation has been added at § 303.23 and (6) a note has been added following § 303.12 to include examples of other early intervention services and personnel.

Comment: Some commenters were concerned that the Part B definition of "qualified" that was incorporated by reference in the NPRM was not appropriate, because of the reference to special education and State educational agency standards.

Discussion: The Secretary agrees that the Part B definition of "qualified" is not entirely appropriate for this part, and that it should be revised to specifically

address the provision of early intervention services.

Change: The reference to the Part B definition of "qualified" has been deleted. A definition of "qualified" that is appropriate to this part has been added at § 303.21.

Comment: Many commenters (1) Expressed concern that the NPRM did not include a provision related to "least restrictive environment" (LRE) and to the providing of services in integrated settings with children who are not handicapped, and (2) requested that a statement concerning the provision of services in community-based settings be added under the definition of early intervention services.

Discussion: The Secretary agrees with the commenters that the final regulations should address the concept of providing services to infants and toddlers and their families in settings that do not isolate the child or family members from activities or settings in which children without handicaps and their families participate.

Change: Section 303.12(b), which requires services to be provided in an integrated setting, to the extent appropriate, has been added. A note regarding this provision has been added following the section.

Comment: Several commenters recommended that the definition of special instruction in § 303.14 of the NPRM be revised to describe more effectively the services to be provided. A few commenters questioned the appropriateness of "instruction" with infants. One commenter suggested deleting the entire section, because the commenter considered it to be redundant, confusing, and unnecessary. Several commenters recommended that the definition make clear that the community and the home are the preferred settings for special instruction.

Discussion: The Secretary believes that a separate section to define special instruction is not necessary. Since special instruction is one of the early intervention services included in the Act, it should be defined in the section on "Early intervention services." Section 303.12(b) of the final regulations contains provisions on the location of all early intervention services.

Change: The definition of special instruction has been revised and included with the other definitions of early intervention services (see § 303.12(d)(12)).

Health services (§ 303.13)

Comment: A number of commenters requested further guidance regarding what types of services are included as "health services." Commenters recommended specific items and services to be added, such as (1) Presently allowable services under Part B (e.g., clean intermittent catheterization); (2) health management services that accompany surgical or purely medical procedures, including consultations with medical personnel; (3) prescribed devices necessary for the control or treatment of a medical condition such as ventilators and gavage equipment; and (4) services that occur during the actual time a child participates in a center-based early intervention program.

Discussion: The Secretary agrees that needed health services should be made available during the time other early intervention services are provided, so that a child can benefit from the other early intervention services. Examples of necessary health services include tracheostomy care, tube feeding, and the changing of dressings or osteotomy bags. In addition, consultation by medical providers with other early intervention personnel may be necessary, so that a child can benefit from the provision of early intervention services. However, the Secretary does not believe that the costs of medical-health services, such as immunizations and regular "well-baby" care, are allowable under this part, because they are services that are routinely recommended for all children. Though not covered under this part, these medical-health services are essential for all infants and toddlers. The Secretary believes that, to the extent appropriate, these services should be included in the IFSP, along with the funding sources to be used in paying for the services. However, the Secretary does not believe that the provision of a device necessary for the control or treatment of a medical condition can be included as health services, since the statute limits coverage of medical services to those necessary for diagnostic and evaluation purposes only.

Change: Section 303.13 has been expanded to include the following: (1) Language clarifying that "health services" means those services necessary to enable a child to benefit from the other early intervention services the child is receiving under this part during the time that the child is receiving the other services; (2) examples of health services that a State is required to provide; (3) a paragraph regarding allowable consultation services; and (4) examples of medical-health services that are not required. The note following § 303.13 has been revised to clarify that, to the extent appropriate, medical-health services are to be included in the IFSP, along with the funding sources to be used in paying for those services. (See comment on medical-health services on § 303.344 in this Appendix.)

Infants and toddlers with handicaps (§ 303.16)

Comment: Many commenters asked that vision and hearing be included as areas of development in the definition of "infants and toddlers with handicaps". Several other commenters recommended expanding the definition of "physical development" to include other components (e.g., neurological development).

Discussion: The Secretary agrees that vision and hearing should be added to the definition of infants and toddlers with handicaps to highlight the importance of sensory impairments in the development of the child. However, he does not believe that further expansion of this definition is necessary, since neurological development is commonly understood to be a component of physical development.

Change: Vision and hearing have been added to the area of "physical development" in § 303.16 and to other appropriate sections in this part.

Comment: One commenter stated that the term "appropriate diagnostic instruments and procedures" was too vague, and recommended that "standardized instruments" be used instead. Other commenters recommended that informal assessments and professional clinical judgment, including the observations of multidisciplinary assessment teams, should be required, because appropriate standardized instruments do not exist at this time that accurately measure developmental delay in infants and toddlers with handicaps.

Discussion: The Secretary believes that the concerns raised by commenters about the methods used to determine developmental delay in infancy should be addressed. Since standardized diagnostic instruments are generally unavailable for use with infants and toddlers with handicaps, the Secretary believes that the evaluation of children under this part must be based on informed clinical opinion.

Change: No change has been made in § 303.16. However, § 303.300 has been revised to require States to include the procedures that will be used to identify developmental delay in the State definition of "developmental delay." A note has been added following § 303.300 that addresses the use of standardized procedures with infants. A provision requiring evaluations and assessments

to be based on informed clinical opinion has been added at § 303.322(c)(2).

Comment: Several commenters stated that the term "high probability" should not be viewed as a statistical concept and that the term should be more precisely defined. One commenter suggested that conditions resulting in developmental problems, rather than delays, was a more appropriate definition for this population. Some commenters suggested adding examples of conditions that could be included in this category.

Discussion: The Secretary agrees that the term "high probability" should not be viewed as a statistical concept. The presence of a diagnosed condition is the key concept in the phrase "have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay."

Change: Language has been added to the note following § 303.16 to clarify what is meant by the term "high probability."

Comment: A number of comments were received regarding the criteria for "at risk" in the definition of infants and toddlers with handicaps. Several commenters suggested that the "at risk" condition not be viewed as an indicator of developmental delay. Commenters also recommended adding examples of possible "at risk" criteria. Other commenters felt that an "at risk" determination should not be made based upon factors such as socio-economic status, sex, creed, religion, and racial or ethnic background.

Discussion: The criteria for identifying "at risk" children must be developed at the State level, since the serving of these children is at State discretion. However, the Secretary believes that it would be appropriate to provide some guidance about the kinds of conditions that States may want to consider in identifying children at risk for developmental delay.

Change: A note has been added following § 303.16 that describes examples of "at risk" factors that States could consider if they choose to serve infants or toddlers at risk for developmental delay.

Subpart B—State Application for a Grant

Public participation (§§ 303.110 through 303.113)

Comment: A number of commenters stated that a provision in section 678(a)(4)(B) of the Act requiring a summary of public comments and the State's responses had been omitted from the NPRM and should be added to the final regulations. Some commenters wanted the public participation requirements in §§ 303.21 and 303.36 of the NPRM to be grouped together in the final regulations. Some commenters requested more guidance about the public participation requirements. The commenters asked that the regulations specify the length of the comment period and the procedures for providing comments, so as to ensure a fair opportunity for public review and comment. Some commenters felt that, under the notice of hearing requirements in § 303.21(b) of the NPRM, the term "sufficiently in advance of the hearing" is too vague, and that the States need definitive timelines in order for the requirements to be effectively implemented. Several commenters recommended a 30-day timeline.

Discussion: The provision on public comments and State responses was included under § 303.36 in the NPRM. However, based on the comments received, the Secretary believes that this provision, and all other substantive requirements on public participation, should be grouped together in the final regulations. He also agrees that further guidance is needed regarding the public participation requirements, including specifying the length of the period for public review and comment on State applications and policies required under this part. The Secretary believes that while a definitive timeline requirement, in general, could be helpful to States, States should have some flexibility with regard to public notice and comment periods in order to respond to unforeseen circumstances in their jurisdictions.

Change: A new subheading on "public participation" has been added to Subpart B. All substantive requirements on public participation have been included under that subheading at §§ 303.110 through 303.113. Additional guidance has been added concerning the procedures for use in ensuring that the general public has an opportunity to review and comment on appropriate required documents. Language has been added at § 303.113(a)(2) that enables the lead agency to make any modifications it deems necessary in the application or policy after public review. A provision has been added at § 303.110(a)(3) to require that notice of public hearings be provided at least 30 days before the dates that the hearings are conducted. A provision has been added at § 303.110(b) to permit States to request exemptions from the timeframes when circumstances warrant.

Comment: One commenter requested that the regulations require only one public hearing, in order to be consistent with the hearing requirements under other Federal programs.

Discussion: Section 678(a)(4)(A) of the Act requires "hearings." Moreover, the public hearing provisions under the EDGAR regulations also require "hearings." Although the number of hearings may vary from State to State, depending on geographical and demographical considerations, every State must hold at least two.

Change: A provision has been added at § 303.112 requiring each State to hold a sufficient number of public hearings at times and places to afford interested parties throughout the State a reasonable opportunity to participate.

Comment: Several commenters requested that a provision be added requiring the lead agency to give written notice about the State application and public hearings to advocacy associations, parent groups, and service providers who are interested in early intervention services.

Discussion: Based upon experience with Part B of the Act, the Secretary believes that effective notice can be given without requiring written notice to specific groups.

Change: None.

Statement of Assurances

General (§ 303.120)

Comment: Some commenters were concerned that the provision requiring statements of assurances to be submitted only once would not allow States to amend the information under the assurances.

Discussion: States are required to submit statements of assurances only once. The Secretary agrees, however, that States should be able to revise their statements of assurances, as long as the revisions are consistent with this part.

Change: A new provision has been added to permit States to submit a revised statement of assurances, as long as the revised statement is consistent with the requirements of this part (see § 303.120).

Reports and records (§ 303.121)

Comment: A commenter requested that more guidance be provided on the types of information and records that must be maintained.

Discussion: The Secretary agrees that additional guidance should be provided to ensure that appropriate information is maintained.

Change: A change has been made in § 303.121 to require that records be maintained to demonstrate compliance with the requirements of this part.

Control of funds and property (§ 303.122)

Comment: A commenter asked for guidance regarding the use and

administration of funds under this part by the lead agency and State Interagency Coordinating Council.

Discussion: The Secretary agrees that guidance is needed on the use of funds under this part by the lead agency and the Council to facilitate the administration of the program.

Change: Two new sections have been added to the regulations: § 303.560 (Use of funds by the lead agency), and § 303.602 (Use of funds by the Council).

Comment: A commenter requested that the provision on public control of funds and property be clarified regarding the use of those funds by private agencies.

Discussion: The statutory provision in Part H regarding public control of funds and property is common to most formula grant programs in the Department of Education. Procedures for implementing that provision are contained in the EDGAR regulations at 34 CFR Parts 76 and 80. Thus, the Secretary does not believe that additional guidance is necessary.

Change: None.

Prohibition against commingling (§ 303.123)

Comment: One commenter stated that the provision dealing with the prohibition against commingling could be confusing to providers, given the multiple sources of funds that are used by States to provide early intervention services. The commenter suggested that a note be added providing additional guidance.

Discussion: Because the statute requires that funds from a variety of Federal, State, local and private sources be used to implement the program, the Secretary agrees that guidance would be helpful. The Secretary believes that it is appropriate for funds from various sources to be consolidated, as long as there is a clear audit trail for each source.

Change: A note has been added following § 303.123 to provide additional guidance.

Prohibition against supplanting (§ 303.124)

Comment: Several commenters requested additional clarification and guidance on the prohibition against supplanting provision. Some commenters recommended that the fiscal year beginning October 1, 1986, be used as the base year for establishing maintenance of effort.

Discussion: The Secretary agrees that guidance should be provided on the non-supplanting requirement. With respect to the use of 1986 as the base year, maintenance of effort is always dependent upon the most recent previous year for which the fiscal data are available. Therefore, it would not be appropriate to use any given year as a permanent "base year" for meeting this requirement.

Change: Section 303.124 has been revised to provide additional guidance, and a note describing the application of the provision has been added.

Assurance regarding use of funds (§ 303.127)

Comment: Several commenters stated that the language in this section was vague and confusing. They recommended that the section incorporate language from section 679 of the Act.

Discussion: The assurance in § 303.127 (§ 303.30 in the NPRM) is based on section 678(b)(1) of the Act, which provides that a State must "assure that funds paid to the State under section 673 will be expended in accordance with this part." Although the language in section 678(b)(1) is broad enough to encompass the use of funds provision in section 679 of the Act, the Secretary (1) believes that it is important to give specific emphasis to that provision, and (2) agrees with commenters that the assurance in § 303.127 should be amended by adding a reference to section 679 (i.e., § 303.3 of these regulations).

In the NPRM, §§ 303.30 and 303.34 were inadvertently given the same title ("Assurance regarding use of funds"). This has been corrected in these final regulations.

Change: Section 303.127 has been amended by (1) changing the title to "Assurance regarding expenditure of funds," and (2) adding a reference to section 679 of the Act (i.e., § 303.3).

Description of use of funds (§ 303.144)

Comment: One commenter felt that this section did not directly reflect the statutory language and that further guidance was needed. Another commenter requested that "children and families" be added to the paragraph regarding direct services.

Discussion: Given the variety of agencies that could be potential recipients of the funds, the Secretary agrees that this section needs to be more precise, in order to help States account for and make the most effective use of funds. The Secretary also believes that providing additional guidance will assist States in avoiding future audit problems. The Secretary agrees that the phrase "children and families" should be added under direct services.

Change: Section 303.144 has been revised to reflect the need for greater precision and to add "children and their families" to paragraph (d)(1).

Specific Requirements for the Years One Through Five and Thereafter

Comment: Several commenters requested that the sections on application requirements be reorganized, so that they include a complete listing of the requirements for each year.

Discussion: The Secretary recognizes that the way the requirements were organized in the NPRM made it unnecessarily difficult for States to determine what all the application requirements are for each year of participation. Therefore, he agrees that the changes proposed by the commenters should be made.

Change: Section 303.148 and §§ 303.150 through 303.151, regarding applications for years three through five, have been revised to list the requirements for each year. All application requirements related to the components of the statewide system, as included under Subpart D in the NPRM, have been moved to Subpart B and grouped together under a new subheading (see §§ 303.160 through 303.175).

Equitable distribution of resources (§ 303.146)

Comment: One commenter recommended that incidence of handicapping condition be considered in the determination of an equitable distribution of resources in addition to geographical considerations. Other commenters asked that public agencies allow public scrutiny of the methods to ensure that funds are distributed equally to all service providers and that participation on the Council should include representatives from "resource poor" areas.

Discussion: The Secretary believes that the basis for determining an equitable distribution of resources should include a consideration of relative need within the geographical areas of a State. Provisions to ensure an opportunity for public comment on the State's application under this part are in § 303.110 of these regulations. The statute does not require provisions requiring representation on the Council beyond those in section 682(2)(b).

Change: Language has been added to this section specifying that a State must take into account the need for services across all geographic areas within the State.

Third year applications (§ 303.148)

Comment: Several commenters asked for clarification about what constitutes a "policy" in the requirements for third year applications.

Discussion: The Secretary agrees with commenters that clarification is needed regarding the meaning of "policy," as that term is used in this section and in other provisions under this part. A definition of "policies" was included under the public participation requirements in § 303.21 of the NPRM. However, the definition included only a partial listing of required policies under this part, and did not appropriately clarify the meaning of the term. Therefore, the Secretary believes that the definition of "policies" in the NPRM should be replaced with a new definition that includes a more comprehensive list of applicable policies under this part. This definition is consistent with the term "policy", as used in the Part B regulations. The Secretary believes that the definition should be included with the other definitions of general applicability that are in Subpart A of these regulations.

Change: A new definition of "policies," which replaces the definition that was in the NPRM, has been added at § 303.19.

Fourth year applications (§ 303.150)

Comment: Commenters asked that requirements for fourth year applications be amended to include an assurance that the statewide system is in effect in the State, except for full implementation of IFSPs for children.

Discussion: Section 675(b)(1) of the Act requires that a State include in its third and fourth year applications information and assurances that, except for full implementation of IFSPs, the statewide system will be in effect no later than the beginning of the fourth year. The Secretary agrees with the commenters that specific information and assurances should be required in the fourth year applications to demonstrate that the statewide system is in effect, or will be in effect no later than the beginning of the fourth year of the State's participation under this part.

The phrases "before the beginning", "by the beginning", and "no later than the beginning" of a specific year are used interchangeably in the statute to specify the timeliness for phasing-in a statewide comprehensive early intervention system. For purposes of clarity, the Secretary believes that using the phrase "no later than the beginning" uniformly in the regulations will avoid confusion.

Change: Section 303.150 has been amended to include the requested assurance that the statewide system is in effect. The phrase "no later than the beginning" has been uniformly used throughout the regulations.

States with mandates as of September 1, 1986 to serve children with handicaps from birth (§ 303.151)

Comment: A commenter requested that a note be added to this section urging States with mandates from birth (who are exempt from submitting substantive requirements until the fifth year) to meet the same requirements for the third and fourth year that other States must meet, in order to guarantee their compliance at the beginning of the fifth year.

Discussion: The Secretary expects that, as required by the Act, States with mandates from birth, will carry out planning and development activities to ensure that the statewide system is in effect no later than the beginning of the fifth year of their participation. Therefore, a note is not necessary. Further, the note following this section in the NPRM restates requirements that are included in another section in the regulations and is not needed.

Change: The note that accompanied this section in the NPRM has been deleted.

Applications for year five and each year thereafter (§ 303.152)

Comment: Some commenters pointed out that the provision requiring a description of the appropriate early intervention services that will be provided before the beginning of the fifth year was omitted in the requirements for the fifth year application. Commenters also requested that the regulations clarify that the provision requiring the availability of appropriate early intervention services to "all" eligible children is not limited to those children who receive Part H funded services, but includes all children who meet the definition under § 303.16.

Discussion: The provision requiring a description of services to be provided in the fifth year was inadvertantly omitted from the NPRM, and is included in these final regulations. The Secretary agrees that these provisions require States to make available appropriate early intervention services to all eligible children and their families, not just children and families receiving services funded under this part. The determination of what services are appropriate for an individual child is made through the IFSP process.

Change: Section 303.152 has been revised to require (1) a description of the services to be provided no later than the beginning of the fifth year, and (2) a policy that appropriate early intervention services will be available to all children in the State who are eligible under this part and their families.

Comment: A commenter requested further clarification regarding what States must do to meet the requirements for the fifth year. The commenters asked, "If all agencies refuse to pay for a service and parents can't afford the cost, must the service be paid for by the lead agency and what is the ultimate responsibility?" The commenter also asked for the meaning of the terms "appropriate" and "make available," as used in the section (i.e., "make available appropriate services for all infants and toddlers with handicaps") and "in effect," as used in the fifth year application (i.e., "that the State has in effect the statewide system * * *").

Discussion: The legislative history of Pub. L. 99-457 makes clear (1) that the responsibility for the provision of early intervention services rests with the lead agency, not the parents, and (2) that no child is to be denied services because the family cannot afford to pay. As used in the requirement for the fifth year, "in effect" means that (1) all components of the statewide system are being implemented, and (2) each eligible child and the child's family are receiving early intervention services in accordance with a currenty IFSP.

Change: No change has been made in § 303.152. However, in a new section on "Policies related to payment for services" (§ 303.520), a provision has been added that requires a State's funding policies to include an assurance that the inability of the parents of an eligible child to pay will not result in the denial of services to the child or the child's family.

Subpart C—Procedures for Making Grants to States

Formula for State allocations (§ 303.200)

Comment: A commenter recommended that the allocation formula reflect the additional children to be served if the State includes "at risk" in its definition.

Discussion: The formula for State allocations, which uses the number of children from birth through age two in the general population as the basis for determining State allotments, is statutory. There is no basis for a change.

The special definition of "infants and toddlers" from section 684(c)(2)(A) of the Act, which is used for determining

State allocations, was inadvertantly omitted from the NPRM.

Change: No change was made in the formula. However, the statutory definition of "infants and toddlers" that is to be used for determining allocations under this part has been added at § 303.200(b)(2).

Distribution of allotments from non-participating States (§ 303.201)

Comment: A number of commenters were concerned about what action the Secretary might take in distributing funds not awarded to a State if that State did not participate in the program. The commenters recommended that the language in the regulations be changed from "may allot" (as stated in the NPRM) to "shall allot," to be consistent with section 684(d) of the Act.

Discussion: The use of "may" in the NPRM was not intended to imply that reallotment of funds under this part is a decision left to the discretion of the Secretary.

Change: The regulations have been amended by replacing "the Secretary may allot," with "the Secretary reallots" (see § 303.201).

Payments to the jurisdictions (§ 303.204)

Comment: One commenter recommended that the amount allocated to the jurisdictions should be 1.25 percent instead of "up to 1 percent."

Discussion: The maximum percentage that may be allocated to the jurisdictions is established by section 684(a) of the Act. The Secretary does not have the authority to increase the percentage of funds allocated to the jurisdictions.

Change: None.

Subpart D—Program and Service Components of a Statewide System of Early Intervention Services

State definition of developmental delay (§ 303.300)

See comments on § 303.16 in this Appendix (Infants and toddlers with handicaps).

Central directory (§ 303.301)

Comment: Several commenters requested that additional resources, such as professional associations, parent support groups, and advocacy associations, be included in the regulations. Commenters requested that the central directory be made the responsibility of the lead agency and that it describe the nature and scope of early intervention services. Some commenters also stated that the regulations should require that the directory be available on a regional basis and in language other than English.

Discussion: The Secretary agrees that it is appropriate to add "professional and other groups * * *" to the text of the regulations, and to retain, in the note following the section, the examples from the NPRM. The Secretary also agrees that further guidance is necessary to ensure that the directory is accessible to all members of the general public, and that it describes the nature and scope of the early intervention program under this part.

Change: "Professional and other groups" has been added to § 303.301. That section also has been revised to provide guidance on how to make the central directory accessible to the general public.

Identification and Evaluation

Public awareness program (§ 303.320)

Comment: Many commenters asked that the regulations contain more guidance on the public awareness program, including the purpose and scope of the program, and the methods that should be used to inform the public about the statewide system of early intervention services.

Discussion: The Secretary believes that an effective public awareness program is critical to the successful implementation of the State's statewide system of early intervention services. However, he believes that the regulations should focus on the provisions that must be addressed by a State's public awareness program.

Change: Section 303.320 has been revised to add provisions that must be addressed by the public awareness program. Notes have been added to describe effective methods to implement the public awareness program.

Comprehensive child find system (§ 303.321)

Comment: Many commenters asked that the final regulations (1) stress the importance of the child find system being coordinated with all other child find efforts in the State that are conducted under other Federal and State programs, and (2) include more guidance about the system.

Discussion: The Secretary recognizes that Federal and State agencies may have overlapping responsibilities in this area. For example, under Part B, State educational agencies have the responsibility to "identify, locate, and evaluate" children with handicaps from birth through age 21; and the Maternal and Child Health Services Block Grant (Title V of the Social Security Act) requires States to "locate and identify" children with special health care needs. The Secretary believes that the child find system cannot be successful without interagency collaboration and the expansion of present efforts (e.g., the use of newborn screening and tracking systems). The Secretary agrees with commenters that, in order to develop and implement an effective child find system under this part, the system must effectively coordinate with all other child find efforts in the State.

Change: A paragraph on coordination has been added at § 303.321 that requires the lead agency, with the assistance of the Council, to ensure that the child find system under this part is coordinated with all other major child find efforts conducted by other State agencies. A note has been added concerning coordination with other child find systems.

Comment: Several commenters requested (1) that additional referral sources be added to this section (e.g., local educational agencies, and parent education and family support programs) and (2) that more information be provided about procedures and timelines for making referrals. Many commenters expressed concern about the note dealing with the timelines for acting on a referral. Because these comments also concerned the timeline for evaluation and assessment, they are addressed in the discussion concerning § 303.322.

Discussion: The Secretary agrees (1) that examples of other primary referral sources would be helpful, and (2) that more specific information is needed about making a timely referral under this part. Because of the rapidly changing needs of infants and toddlers, the Secretary believes that it is important to establish a very short timeline for referring a child for evaluation or services.

Change: New provisions have been added at § 303.321(d) to (1) include additional referral sources, and (2) require procedures for referring a child to the appropriate public agency within two working days after the child has been identified as needing an evaluation or early intervention services.

Evaluation and Assessment (§ 303.322)

Comment: A large number of comments were received regarding the 30 calendar day timeline in the NPRM (i.e., in the second note following § 303.64, and in § 303.65(d)). Most of the commenters asked that the timeline be extended. They cited the following factors that make the completion of an evaluation within 30 days difficult: (1) Frequent illness among eligible children,

(2) scheduling delays for evaluations from primary referral sources, (3) large distances for travel in rural areas, (4) the need to hold several meetings over time to adequately assess the strengths and needs of families, and (5) 30 "calendar" days translates to 20 "working" days. Suggested timelines ranged from 45 to 90 days. A small number of commenters requested that the timeline *not* be extended, because of the potential harm that might result from delaying the completion of the evaluation process and the provision of early intervention services.

Discussion: The Secretary recognizes that, because the needs of infants and toddlers change so rapidly, a timeline that extends the evaluation and assessment process beyond 30 days must be examined carefully. However, as the factors raised by commenters indicate, a 30-day timeline for completing the evaluation and assessment process may not be realistic. The Secretary believes that a 45 calendar day timeline would provide the best balance between the need for a timely evaluation and the factors that need to be taken into consideration in the evaluation and assessment process. Because there may be exceptional circumstances that could mitigate against the completion of the evaluation and assessment, and preparation of the IFSP within 45 days, the Secretary believes that special procedures should be developed in order to ensure that an eligible child would not be denied needed services as a result of a delay in completion of the full evaluation and assessment process.

Change: The following changes have been made: (1) The second note under § 303.64 in the NPRM has been deleted; (2) § 303.321(e) has been added, which establishes a 45-day timeline for a public agency to act on a referral (i.e., to complete the initial evaluation and assessment activities and hold the initial IFSP meeting); (3) § 303.322(e), which replaces the timeline in § 303.65 of the NPRM and includes a reference to the 45-day timeline in § 303.321(e), has been added; (4) a requirement has been added at § 303.322(e)(2) to ensure that the lead agency adopts procedures for developing an interim IFSP in exceptional circumstances when public agencies cannot complete the evaluation and assessment process within 45 days; and (5) the term "days" has been defined as calendar days (see § 303.9).

Comment: Several commenters recommend that "interdisciplinary" or "transdisciplinary" be used instead of "multidisciplinary," when referring to evaluation and assessment requirements, because the former terms imply greater interaction and coordination among team members than "multidisciplinary." Other commenters recommended that "multidisciplinary" be used, because that term appears in the statute.

Discussion: The Secretary agrees that teams providing evaluations and assessments and developing IFSPs should function in a coordinated, integrated, and comprehensive manner consistent with the overall purpose of the program. However, he believes (1) that the term "multidisciplinary" should be used, since it is the statutory term, and (2) that a definition of "multidisciplinary" would assist States in understanding how the term is used under this part.

Change: A definition of "multidisciplinary" has been added at § 303.17.

Comment: A number of commenters addressed the issue of participation by families of eligible infants and toddlers in the evaluation and assessment process. The commenters (1) recommended that parental consent be required at all stages, (2) stated that it would be appropriate to base the assessment of families on information provided by the families themselves, and (3) suggested that requirements be added to ensure that the family assessment is conducted by trained personnel utilizing appropriate methods and procedures, and that a family's participation in the assessment be voluntary.

Discussion: The Secretary is committed to ensuring that the families of children eligible under this part are able to assume a full and active role in the provision of early intervention services to their children. The Secretary believes that consent requirements, like those under Part B, afford important protections to parents and their children. The Secretary is also committed to ensuring that family assessments involve the actual participation of the families.

Change: A provision has been added at § 303.322(d) that clarifies the purpose of, and procedures for, the family assessment requirements. A new section on parental consent has been added at § 303.404.

Comment: Some commenters requested that clarification be provided regarding what is meant by a one and two step process in the note following § 303.65 in the NPRM. Other commenters asked for more information about the meaning of the terms, "evaluation" and "assessment," pointing out that the terms were used interchangeably by Congress. Another commenter favored the use of the term "assessment" for families rather than "evaluation", because the latter term connotes a value judgment being made by a professional about the family.

Discussion: The Secretary recognizes that the terms "evaluation" and "assessment" are sometimes used interchangeably in the Act. However, "evaluation" is most often used in the context of conducting a multidisciplinary evaluation to determine if a child is entitled to services, and "assessment" is generally used in the context of planning services for the IFSP. Therefore, the Secretary believes that it is important to distinguish between the meanings of these terms. The Secretary agrees that the use of the term "family assessment" is more appropriate, because determining family needs and strengths is meant to identify the family services necessary for the child to benefit from early intervention services. The Secretary recognizes that there are many steps in the evaluation and assessment process, and agrees that explanatory notes describing this effort as a one or two step process may be confusing.

Change: The terms "evaluation" and "assessment" have been defined at § 303.322(b). The discussion of the one or two step process has been deleted.

Comment: Several commenters requested that specific areas, including hearing, vision, and health status, be included in the requirements for evaluation and assessment.

Discussion: Vision and hearing have been included as part of physical development in the list of required developmental areas, as a result of comments to this and other sections. Since a child's health status can affect all other areas of development, the Secretary agrees that obtaining information about the child's health status should be part of the evaluation.

Change: The five areas of development referenced in the NPRM have been specifically listed in § 303.322(c)(3)(ii), and vision and hearing have been added to physical development in that list. A requirement that the child's evaluation and assessment include a review of all pertinent medical and health records has been added at § 303.322(c)(3)(i).

Comment: A number of commenters recommended that a provision be added to (1) require that all evaluation and assessment procedures be nondiscriminatory, and (2) stress the importance of using culturally appropriate methods and procedures.

The commenters were concerned that without such protections children would be improperly labeled as handicapped.

Discussion: The Secretary agrees that a provision on non-discriminatory evaluation procedures should be added. Experience with Part B has demonstrated the importance of these protections in avoiding misclassification.

Change: A new section on nondiscriminatory procedures in evaluation has been added at § 303.323.

Individualized Family Service Plans

General (§ 303.340)

Comment: Several commenters asked that the role of the family in the development of the IFSP be more explicit. A few commenters recommended that a definition of "family" be added to the revised regulations.

Discussion: The Secretary agrees that more precise information is needed about the role of the family in the development of the IFSP. However, he does not believe that it is appropriate to include a definition of "family" in the regulations, because to do so could limit the authority of participating States to respond to diverse familial patterns as the States may find necessary to further the provision of early intervention services to infants and toddlers eligible under this part.

Change: A provision stating that IFSPs must be developed jointly by the agency and the family has been added (see § 303.340(b)).

Meeting the IFSP requirements for years four and five (§ 303.341)

Comment: Several commenters responded to the note discussing the timing of the IFSP meeting (see § 303.66 in the NPRM) by suggesting that there be one timeline for completing the evaluation and assessment and another for holding the IFSP meeting.

Discussion: The Secretary believes that it is preferable to require a single timeline for both completing the evaluation and assessment process and conducting the initial IFSP meeting (i.e., the 45-day timeline in §§ 303.321 and 303.322).

Change: The note in the NPRM regarding the timing of the IFSP has been deleted. A single timeline of 45 days has been established for completing the evaluation and assessment process for conducting the initial IFSP meeting.

Comment: Several commenters asked that the regulations provide specific guidance regarding who should and can participate in IFSP meetings.

Discussion: The Secretary agrees that more information should be provided regarding the participants in IFSP meetings.

Change: Section 303.343, which lists the participants in IFSP meetings and describes the circumstances under which information from an absentee participant is obtained, has been added.

Procedures for IFSP development, review, and evaluation (§ 303.342)

Comment: A number of commenters asked for more guidance on the periodic review and annual evaluation of the IFSP. They asked how the meetings would be conducted, who should participate, and whether meetings should be held if a child or family's needs change.

Discussion: The Secretary believes that the IFSP review and evaluation process should provide opportunities for all necessary participants to review or revise the IFSP, if appropriate, based upon child and family needs. The six-month interval is a minimum requirement, since the needs of some children may require more frequent meetings. The Secretary agrees that more guidance is needed about this process.

Change: Section 303.342 has been revised to specify the procedures for IFSP development, review, and evaluation. A note has been added to clarify that the annual review meeting incorporates the periodic review.

Content of IFSP (§ 303.344)

Comment: A number of commenters requested that additional aspects of physical development be included in the IFSP (e.g., vision and hearing, and a statement of the child's health status).

Discussion: The Secretary agrees that the child's health status (which can directly affect the child's development) and vision and hearing should be included in the IFSP.

Change: The requested changes have been added at § 303.344(a).

Comment: A number of comments were received about the provision requiring the IFSP to include a "statement of the family's strengths and needs." Some commenters recommended a more explicit role for family members in the determination of the family's strengths and needs. Commenters recommended incorporating the following concepts: (1) That the family's level of participation should not be the basis for services, (2) that families should be able to elect to receive some services and not others, and (3) that the regulations should be flexible enough to permit families to participate to different degrees according to their own needs.

Discussion: The Secretary is sensitive to the many issues raised by the commenters regarding the rights of parents and other family members in the process of conducting the family assessment and developing the IFSP, and believes that the regulations should be amended to reflect those rights. In addition, the Secretary believes that more guidance should be given to the variety of roles that family members play in enhancing their child's development.

Change: New provisions that stress the "concurrence" of the family in determining its strengths and needs related to enhancing the development of the child have been added at § 303.322(d) and § 303.344(b). A note has been added following § 303.344 to emphasize that public agencies should be sensitive to the variety of roles that family members play in enhancing the development of the child.

Comment: Some commenters felt that agencies should not be responsible for family needs that extend beyond those that pertain to an eligible child's handicapping condition. Other commenters stated that a family's socio-economic status, social support networks, and cultural norms are important considerations in planning for services.

Discussion: The Secretary believes that agencies are not responsible for family needs that are not related to the needs of the child as identified in the IFSP. The Secretary recognizes that it is important for public agencies to consider any area related to the family's ability to enhance the development of the eligible child in planning services.

Change: None.

Comment: Several commenters stated that medical and other services that are not required under this part may be important to enable a child to benefit from the provision of early intervention services. The commenters recommended that, to the extent appropriate, those services be identified in the child's IFSP, even though they will be paid for from other funding sources (e.g., private insurance, and Titles V and XIX of the Social Security Act).

Discussion: The Secretary agrees that, to the extent appropriate, the IFSP should include the medical and other services that a child needs but that are not required under this part. The Congress recognized the importance of coordinating all health and medical services when it stated in the House Report that one function of case management is to "cooordinate the

provision of early intervention services with other services (e.g., medical services for other than diagnostic and evaluation purposes)."

Change: The following changes have been made: (1) A note has been added following § 303.13 (Health services) to encourage States to identify all of the services that the child needs, including funding sources for these services; (2) a provision regarding coordination of early intervention services with other services has been added to the definition of case management in § 303.6; and (3) section 303.344 has been amended to require that the IFSP include a list of "other services" that may be needed.

Comment: Commenters recommended adding various requirements about the statement of major outcomes in the IFSP. These ranged from adding statement about strategies and options for procuring services to using descriptive or narrative approaches rather than traditional objective criteria. One commenter stated that family goal statements could be misinterpreted if families were told by professionals that they needed to meet certain goals.

Discussion: The Secretary recognizes that there are various ways of projecting outcomes in the IFSP to meet the unique needs of an eligible child and the child's family. The Secretary does not believe it is appropriate to specify particular methods for projecting outcomes, since no one method would apply in all circumstances.

Change: None.

Comment: Some commenters asked for further guidance about the meaning of the terms "frequency," "intensity," and "method," and requested that a provision be added requiring the IFSP to include a description of where services are to be provided.

Discussion: The Secretary agrees that more information is needed about the meaning of the terms, "frequency," "method," and "intensity," and that the location of services should be added.

Change: The term "location" has been added to "frequency," "intensity," and "method," at § 303.344(d)(i). Definitions of these terms have been added at § 303.344(d)(2).

Comment: A number of comments were received about the provision requiring that the IFSP include "the name of the case manager from the profession most immediately relevant to the child's or family's needs * * *" Some commenter stated that the case manager should be a person employed by the lead agency. Other commenters suggested that case managers be independent from agencies providing early intervention services. One commenters stated that case management could be considered a profession.

Discussion: The Secretary believes that case management can be carried out in a variety of ways that are consistent with the provisions of this part and existing State law, including the designation of case management as a profession.

Change: The following changes have been made: (1) A paragraph has been added to § 303.6(c), which states that case managers may be appointed in any way permitted under State law, so long as it is consistent with the requirements of this part; and (2) a new provision has been added at § 303.344(g)(3) to clarify that "profession" includes case management.

Comment: Many commenters requested further guidance on the steps required in the IFSP to support the transition of children upon reaching age three to preschool services under Part B or other services. Some commenters called for a formal transition plan that would include parental education, support networks, and specification of the services necessary to facilitate the transition into a preschool program where the child is integrated with non-handicapped peers. Other commenters asked that additional consideration be given to transitions to other services in typical child care settings, and for services to ensure continuity for "the child who experiences frequent hospitalizations."

Discussion: The Secretary agrees that more guidance should be provided regarding the steps to be taken to facilitate the transition of a child from Part H to Part B upon turning three years of age, or to other appropriate placements. The IFSP requirements in the Act specifically call for the identification of steps to be taken to support the transition of a toddler with handicaps to services provided under Part B to the extent that such services are considered appropriate. The Secretary recognizes, however, that some children who are eligible for services under this part might not be found to be "handicapped" under the definition of handicapping conditions under Part B. Therefore, it is important to plan transitions for children who will not be entering the Part B program.

Change: Additional guidance has been added at § 303.344(h) regarding the steps to be taken to support the transition of a child from early intervention services to preschool services under Part B or other appropriate placements. A note has been added to that section stressing the importance of a coordinated effort during the transition period.

Comment: Many of the comments that were received on the NPRM for the Preschool Grants program (section 619 of the EHA) requested more information about the requirements for transition when a child moves from services under Part H to Part B. Commenters recommended that provisions be added to ensure that a child turning three years of age during a school year would not have to wait until the beginning of the following year to receive services under Part B. Commenters asked that guidelines be provided for the transition period, in order to eliminate disruptions in services and properly assign financial responsibility to appropriate agencies prior to and after a child turns three years of age.

Discussion: The Secretary agrees that a smooth transition from the Part H to the Part B program is very important. Since the statute limits the use of Part H funds to children birth through two, the Secretary cannot authorize the use of Part H funds after a child turns three. States are encouraged to take steps to facilitate a smooth transition of children from Part H to Part B.

Change: A note has been added following § 303.344 that provides information regarding the use of interagency agreements to help ensure the smooth transition of children from services under Part H to services under Part B.

Provision of services before evaluation and assessment are completed (§ 303.345)

Comment: Many commenters supported the provision that services could be initiated before the evaluation and assessment process is completed. One commenter suggested that evaluation and assessment be considered a part of the services offered, and therefore, services could be planned while the evaluation and assessment are in progress. Some commenters, however, were concerned about the provision of services without the benefit of a comprehensive evaluation and assessment. The commenters suggested that, if services are provided before the evaluation and assessment process is completed, consent be obtained from the parents, and an interim IFSP be developed. Commenters requested that more guidance be provided regarding implementation of this provision.

Discussion: The Secretary agrees that more guidance is needed regarding the conditions under which services may be provided if the evaluation and assessment process is delayed. If services are initiated, the evaluation and

assessment process must continue in a timely fashion.

Change: Section 303.345 has been revised to clarify what conditions must be met if services are to be provided before the evaluation and assessment is completed. The note following that section has been revised to clarify the intent of the section.

Personnel Training and Standards

Comprehensive system of personnel development (§ 303.360)

Comment: Several commenters expressed concern about incorporating provisions from the Part B comprehensive system of personnel development (CSPD) under this part unless requirements related to training early intervention personnel can be clearly met. One commenter suggested that this section include an additional requirement to ensure that training under the Part H CSPD be specifically related to the interrelated psychosocial, health, developmental, and educational needs of eligible children, and to the continuing role of the family. Several commenters recommended inservice and preservice strategies to meet the provisions requiring that training occur on an interdisciplinary basis and include parents, professionals from a variety of disciplines, and paraprofessionals.

Discussion: The Secretary agrees that the content of the training provided under the Part H CSPD should be related to the specialized training needs of all personnel providing early intervention services, and that training should be provided on an interdisciplinary basis.

Change: A new provision has been added at § 303.360(b)(3) to require that training provided under this part be designed to (1) meet the interrelated psychosocial, health, developmental and educational needs of infants and toddlers with handicaps, and (2) assist families in enhancing the development of their eligible children.

Personnel standards (§ 303.361)

Comment: A significantly large number of comments were received on the personnel standards provision. Most of the commenters requested that the "alternative standards" provision in the NPRM be deleted, in order to ensure that early intervention personnel would meet the "highest requirements" in the State applicable to their given profession or discipline. Some commenters stated that standards must be related specifically to competencies needed to serve children eligible under this part and their families. Commenters from several different disciplines stated that a field, such as "psychology", is too broad to be treated as one profession or discipline (e.g., the "highest requirements" may be different for school psychologists than for clinical psychologists).

Discussion: The statutory provision on personnel standards is virtually the same under both Parts B and H. Because of this, most of the comments related to personnel standards that were received on each NPRM apply to both programs. The Part H NPRM, which was published on November 18, 1987, included an alternative standards provision. On the basis of extensive public comment calling for deletion of the alternative standards provision, that provision was not included in the Part B NPRM published on March 14, 1988. A large number of comments were received on the personnel standards provision in the Part B NPRM. An analysis of those comments and the changes made since publication of that NPRM are included in the preamble to the final regulations for Part B published on April 27, 1989 (54 FR 18248 through 18256). The provision on personnel standards in the final regulations for both Part B and Part H are virtually identical. The Secretary agrees with commenters that, in a broad occupational field, such as psychology, there may not be one "highest requirement". Thus, the Secretary recognizes that school psychologists are members of a specific occupational category who have training requirements appropriate for their responsibilities under Part B and Part H of the Act.

Change: The personnel standards requirements in the Part B final regulations have been incorporated into these regulations, but have been modified to apply to the program under this part.

Subpart E—Procedural Safeguards

General responsibility of lead agency for procedural safeguards (§ 303.400)

Comment: Many commenters stated that the Safeguards under Part H and Part B should be identical. Commenters were concerned that the safeguards in the NPRM were inadequate and did not offer the same degree of protection as those under Part B, expecially in terms of general rights in the redress of grievances. Some commenters felt that it would be confusing for parents to have to adapt to a new set of safeguards when their children changed programs at age three. In addition, many commenters requested that the requirements from Part B related to parental consent and other parental rights be incorporated into the procedural safeguards under this part. A few commenters felt that the Part B due process procedures did not allow for the quick resolution of disputes necessary for infants and toddlers.

Discussion: The Report of the House of Representatives on Pub. L. 99-457 states that it is "* * * the Committee's intent that the procedures developed by a State result in speedy resolution of complaints because an infant's development is rapid and therefore undue delay could be relatively harmful." However the Report adds that the Secretary may approve any system that includes the full set of safeguards contained in Part B.

In the NPRM, the Department of Education attempted to balance the congressional intent for streamlined procedures under this program with the need to protect the rights of parents and children. The provision in the NPRM gave the States the option of adopting the Part B safeguards, adopting selected parts of the Part B safeguards and developing new procedures for the remaining safeguards required under Part H, or establishing new safeguards.

Based upon the weight of the comments, the Secretary has determined that parental consent and certain of the parent and child rights specified in the Part B regulations are basic procedural safeguards that should apply to all children, including those eligible under this part, with appropriate modifications for the Part H program.

Because many of the procedural safeguards in the Part B regulations have been adapted and added to this part, the provision in the NPRM regarding State options related to procedural safeguards has been changed to limit the options to either (a) adopting the due process procedures in the Part B regulations (34 CFR 300.506 through 300.513), or (b) developing new impartial procedures for resolving individual child complaints, as required in §§ 303.420 through 303.424. Even within these options there is considerable overlap. The main distinctions between the two are that the provisions in §§ 303.420 through 303.424 of this part (1) are less formal, and (2) are designed to result in a more streamlined, time-saving resolution of an individual child complaint (e.g., a 30-day timeline versus 45 days under Part B, and no administrative appeal procedures).

Change: The provisions on procedural safeguards in the new Subpart E have been reorganized and expanded. They include additional requirements concerning parental rights, and incorporate certain provisions from the Part B regulations, with appropriate modifications for the Part H program.

including (1) the definitions of consent, native language, and personally identifiable information at § 303.401, (2) parental consent at § 303.404 and (3) parental rights in administrative proceedings at § 303.422.

Language has also been added to § 303.402 to make clear that requirements related to the opportunity to examine records is in accordance with the confidentiality procedures under Part B, and that those parent rights with regard to records extend to all areas under this part that involve records about the child and the child's family.

A change has been made at § 303.420 to give States the option of (1) adopting the due process procedures in 34 CFR 300.506 through 300.512, or (2) developing procedures that meet requirements in §§ 303.421 through 303.425 and provide parents an easy and simple means of filing a complaint.

Comment: Several commenters felt that the regulations should add a provision to clarify that the lead agency is ultimately responsible for ensuring implementation of the procedural safeguards, even though the lead agency may designate another agency to conduct hearings and implement the requirements.

Discussion: The lead agency is statutorily responsible for ensuring the effective implementation of all provisions under the statewide system of early intervention services, including procedural safeguards in Subpart E. However, the Secretary agrees that the regulations should specifically state that the lead agency remains responsible for procedural safeguards.

Change: A provision has been added to clarify the lead agency's responsibility. (See § 303.400)

Prior notice; native language (§ 303.403)

Comment: With respect to the requirement that the notice be written in the native language of the family, some commenters requested that the qualifying phrase "unless it is clearly not feasible to do so" be deleted.

Discussion: The qualifying phrase was intended to apply in situations where it is not possible to find someone with the knowledge or skills needed to translate a notice, or where there is no written language. The provisions on prior notice and native language in the Part B regulations describe the steps to be taken should such a situation occur. The Secretary believes that the addition of the Part B language in these regulations would clarify what action should be taken where it is not feasible to provide written notice.

Change: Language from the Part B regulations, regarding the steps to take where it is not feasible to provide notice in the native language, has been added at § 303.403(c).

Surrogate parents (§ 303.405)

Comment: Several commenters expressed concern about the prohibition against a surrogate parent being an employee of "a State agency providing services to the child." They recommended that "State" be deleted from the requirement, so that the prohibition would include employment in any agency providing services to the child. Other commenters felt that a surrogate parent should only be chosen by the biological parents of a child. Some commenters requested more clarification on the surrogate parent role.

Discussion: The Secretary agrees that there is a potential for conflict-of-interest if a surrogate parent is an employee of any agency providing services to the child. A provision requiring only the biological parent to designate the surrogate parent would not be appropriate because the purpose of the surrogate parent provision is to ensure that the child has an adult to represent the child's interests when the parents are unknown or unavailable. The Secretary agrees that more guidance is needed to ensure the effective implementation of this provision.

Change: The Part B procedures, which include the role of a surrogate parent, have been adapted and added at § 303.405. A provision has been added to those procedures that prohibits a surrogate parent from being an employee of any agency involved in the provision of early intervention or other services to the child.

Comment: A commenter requested that language be added to clarify the criteria and procedures for an agency to follow in determining that a child's parents are "unavailable."

Discussion: The Secretary's experience under Part B is that additional guidance is not necessary.

Change: None.

Administrative resolution of individual child complaints by an impartial decision-maker (§ 303.420)

Comment: A number of commenters stated that the note on mediation following § 303.76 of the NPRM should be revised to ensure that mediation is not used to deny or delay the resolution of a complaint or the provision of early intervention services. Commenters recommended (1) that the regulations clarify that parents are not required to participate in mediation, and (2) that agencies be held to the 30-day timeline for resolving complaints.

Discussion: The Secretary believes that mediation is often a helpful tool for quickly resolving many complaints and that it should be retained as an option for parents. However, he agrees with commenters that mediation cannot be used to delay or deny the resolution of a complaint or the provision of services, and that the participation by parents must be voluntary.

Change: The second note following § 303.420 has been revised to include the requested changes.

Comment: Some commenters requested that the provisions relating to the payment of attorneys' fees under Part B of the Act be incorporated in this part, in order to ensure greater legal protection for parents.

Discussion: The attorneys' fees provision in section 615 of the Act applies only to those rights established under Part B. In those cases where a child is eligible under both Part B and Part H, if a child's parent chooses to use the Part B procedures under section 615, the attorneys' fees provision would apply. An example of an item that would be covered under both Part B and Part H is evaluation. In States that have a mandate to serve children from birth, any rights covered by that mandate can be the subject of a due process hearing under section 615 of the Act.

Change: None.

Comment: Several commenters requested that complaint procedures, similar to the EDGAR complaint procedures, be added. Commenters were particularly concerned about having procedures for systemic complaints.

Discussion: The Secretary agrees that it is important to have procedures for resolving complaints. The NPRM incorporated by reference the EDGAR complaint procedures (34 CFR 76.780 through 76.782). However, since the publication of this NPRM, the Department has published an NPRM on the EDGAR regulations that proposes to remove the complaint procedures from Part 76. The complaint procedures that have been included in this part conform to the procedures that have been proposed for inclusion in the Part B regulations.

Change: Complaint procedures have been added at §§ 303.510 through 303.512.

Comment: One commenter noted that the NPRM did not include procedures, similar to those under Part B, that allow agencies to use the due process procedures to override a parent's refusal

to consent to an initial evaluation of any potentially handicapped child.

Discussion: Regulations under Part B of the Act contain procedures to enable a public agency to initiate a due process hearing or use other procedures to override a parent's refusal to consent to an initial evaluation of the infant or toddler. Because of the unique nature of Part H, and the fact that the Part B override procedures may be used for initial evaluations, the Secretary does not believe that a specific consent override should be included in this part.

Change: A note has been added to § 303.404 (Parent Consent) indicating that the Part B override procedures for initial evaluations apply to eligible children under this part.

Appointment of an impartial person (§ 303.421)

Comment: One commenter asked for additional information on the meaning of the "record of the proceedings."

Discussion: The Secretary's experience under Part B of the Act, which uses the same phrase, is that the meaning is clear. Therefore, additional guidance in these regulations is not necessary.

Change: None.

Comment: Some commenters requested that the phrase "to the child involved in the complaint" be deleted from the requirement that an impartial person not be "an employee of any agency involved in providing early intervention services to the child involved in the complaint."

Discussion: To ensure objectivity in the complaint resolution process, the Secretary believes that the impartial person should not be an employee of any agency or program involved in the provision of early intervention services or the care of the child, especially since the entire Part H program is a State-run program under the responsibility of the lead agency.

Change: The phrase "to the child involved in the complaint" has been deleted, and a prohibition against the use of an employee of any agency or program involved in the provision of early intervention services or in the care of the individual child has been added at § 303.421(b)(1)(i).

Convenience of proceedings; timelines (§ 303.423)

Comment: A commenter requested clarification about whether a State that adopts the Part B safeguards must follow the 30-day timeline in Part H, or the 45-day timeline in Part B. One commenter stated that States should be allowed 60 days.

Discussion: A State that develops new procedures under this part must follow the 30-day timeline under § 303.423. States that adopt the due process procedures under Part B are permitted 45 days to conduct a due process hearing. However, because the needs of infants and toddlers with handicaps change so quickly, the Secretary encourages those States that elect to use the Part B due process procedures to accelerate the timeline to 30 days.

Change: A note has been added following § 303.423 to (1) clarify that States adopting the Part B due process hearing procedures have 45 days to complete a hearing, and (2) encourage those States to meet the 30-day timeline under this part.

Comment: A few commenters requested that "reasonably" be deleted in the phrase referring to times and places to hold administrative proceedings. One commenter stated that, in order to ensure that proceedings are convenient for parents, agencies must be willing to meet in the evening or on weekends.

Discussion: The Secretary agrees with commenters that public agencies must attempt to conduct administrative proceedings at times and places that enable parents to participate. The Secretary believes that this goal can be accomplished within the existing language in this section.

Change: None.

Status of child during proceedings (§ 303.425)

Comment: A commenter asked what would happen if the parent and public agency were unable to agree on any initial services.

Discussion: If all services are in dispute, then no services can be initiated. However, if there is agreement about one or more service, the service or services agreed upon can be initiated.

Change: None.

Confidentiality of information (§ 303.460)

Comment: Many commenters stressed the importance of having strong confidentiality protections for children and families under this part. Some commenters requested that the regulations that implement the Family Education Rights and Privacy Act (FERPA) (34 CFR Part 99), or regulations similar to those in Part B, be incorporated in the requirements under this part. One commenter recommended that parents have the right to exclude information from the records that they feel is not pertinent to development of the IFSP.

Discussion: The Secretary agrees with the commenters' concerns about the need for strong safeguards to protect the privacy of families and the need to incorporate these requirements in this part. The Secretary has determined that the Part B standards should be adopted for the program. Part B standards address parents' rights to exclude information from their child's records.

Change: The confidentiality requirements under Part B of the Act (34 CFR 300.560 through 300.576) have been incorporated by reference in these final regulations. The Part B requirements reference the FERPA requirements. Thus, both the Part B and FERPA requirements in Part 99 apply to this part.

Comment: One commenter felt that the confidentiality provision should be deleted. Another commenter recommended that direct service agencies be exempt from the confidentiality requirements, because the requirements "have been a major deterrent to team delivery of services, cause delays in essential services, and often lead to duplicative efforts among agencies."

Discussion: The Secretary believes that the rights of families must be fully protected; therefore, it would be inappropriate either to delete the confidentiality provisions or to exempt service providers from those provisions. If there are problems in effectively implementing the confidentiality provisions at either the State or local level, it would be appropriate for corrective actions to be initiated on an interagency basis.

Change: None.

Subpart F—State Administration

Lead agency establishment or designation (§ 303.500)

Comment: Many commenters requested that the provision stating that the lead agency is responsible for the general administration, supervision, and monitoring of programs and activities receiving assistance under this part be revised to specifically encompass all programs and activities within the statewide system of early intervention services, regardless of whether they receive funds under this part.

Discussion: Section 300.500 incorporates language from section 676(b)(9)(A) of the Act. Therefore, the Secretary had determined that no change should be made. However, it is clear from the other duties and responsibilities included under section 676(b)(9) that the lead agency has a broad coordinative role that applies to

all public agencies in the State that are involved in the early intervention program, regardless of whether those agencies receive funds under this part.

The Report of the House of Representatives on Pub. L. 99-457 states the following regarding the need for final responsibility to be in a lead agency:

> Without this critical requirement, there is an abdication of responsibility for the provision of early intervention services for handicapped infants and toddlers. Although the bill recognizes the importance of interagency responsibility for providing or paying for appropriate services, it is essential that ultimate responsibility remain in a lead agency so that buck passing among State agencies does not occur to the deteriment of the handicapped infant or toddler. (House Report No. 99-860, 14 (1986).)

Change: None.

Comment: A number of commenters asked that the regulations provide guidance concerning the authority and responsibility of the lead agency and other State agencies in the establishment of interagency agreements and in the resolution of disputes.

Discussion: The Secretary agrees that it is important for the regulations to provide additional guidance on interagency agreements and the responsibilities of the lead agency in resolving disputes, in order to enable agencies to develop and implement effective interagency agreements. The Secretary believes that, with respect to intra-agency disputes, the lead agency must ensure that interagency agreements include a process that (1) permits each agency to resolve its own internal disputes, and (2) provides a mechanism for the lead agency to follow in the event that an agency is unable to resolve its own dispute in a timely manner. In this case, the lead agency may use any mechanism permitted under State law to ensure that the intra-agency dispute is resolved.

Change: Two sections have been added to address the above concerns: (1) section 303.523 (Interagency agreements), and (2) § 303.524 (Resolution of disputes).

Comment: Several commenters requested that the regulations clarify that the State Interagency Coordinating Council can serve as the lead agency.

Discussion: The statute makes it clear that a State must have two separate and distinct entities: (1) A lead agency that is responsible for the general administration of the program under this part (section 676(b)(9)), and (2) a State Interagency Coordinating Council that is responsible for advising and assisting the lead agency in the performance of its responsibilities. Thus, it is not possible, under the Act, for the Council to serve as the lead agency.

Change: None.

Policies and Procedures Related to Financial Matters

Policies related to payment for services (§ 303.520)

Comment: Many commenters requested that the regulations provide specific guidance about the conditions under which agencies can charge families for services under this part. Some commenters were concerned that the sliding fees provision would be used to deny services to families. Another commenter stated that States will need assistance and guidance in deciding how to utilize funds most appropriately from various sources in supporting early intervention programs. Other commenters recommended that the regulations specify that early intervention services "are provided at no cost, unless Federal or State laws existing prior to enactment of Pub. L. 99-457 provides for a system of payments by families including a schedule of sliding fees."

Discussion: The Secretary recognizes that the question of payment for early intervention services is one of the most critical implementation issues under this part. The Secretary agrees with commenters that additional guidance is needed regarding policies and procedures related to financial matters. He believes that, among other things, a State's policies must include (1) a list of those functions and activities that must be carried out at public expense (see § 303.521(b)), (2) a statement consistent with congressional intent that no children are to be denied service because of their parents' inability to pay (see § 303.520(b)(3)(ii)), and (3) a list of services that may be subject to a system of payments, including a schedule of sliding fees (see §§ 303.12(a)(3)(iv) and 303.521(a)).

The legislative history of the Act contains several statements about the "sliding fees" provision in §§ 303.12(a)(3)(iv) and 303.521(a), including the following:

> This [provision] is not intended to signal congressional toleration of undue financial burdens on parents. States participating in this program accept responsibility for providing early intervention services. This legislation recognizes that universal access to services gives the States—not the parents—the chief responsibility for the provision of services required by the Act. The services * * * must be made available to handicapped infants and toddlers on the basis of their need and not on the basis of a family's ability to pay. It must be understood that the act bars the reliance on such laws if they create a financial barrier to infants receiving the required services. (Cong. Rec. S. 13504, Senator Weicker (September 24, 1986))
>
> [T]his provision should not be construed as permitting a State to charge a parent for particular services if such services must be provided to them free of charge under a separate federal or state law. That is, this law is not designed to supersede provisions included in other laws. (Cong. Rec. H. 7903, Congressman Williams (September 23, 1986))

The Secretary believes that (1) any system of payments must conform to the laws of individual States, and (2) while there are only certain activities for which fees can be charged, States should have the ability within those limitations to develop fee systems that are responsive to their own needs. Therefore, the Secretary believes that a State's ability to develop such a fee system should not be limited solely to those statutes that were in place prior to the enactment of Pub. L. 99-457.

The Secretary agrees with commenters that specific guidance is also needed concerning the identification and coordination of funding resources from Federal, State, local and private sources.

Change: The information concerning policies related to financial matters in §§ 303.83 through 303.85 of the NPRM has been reorganized and expanded, including the addition of sections to provide guidance concerning: (1) Policies related to payment for services (§ 303.520), (2) the charging of fees (§ 303.521), and (3) lead agency responsibility for the identification and coordination of resources (§ 303.522).

Policy for contracting or otherwise arranging for services (§ 303.526)

Comment: Many commenters requested that (1) a provision be added to ensure that contracted services meet State standards, and (2) a note be added to clarify the intent of Congress that existing public and private early intervention programs and services be used to the extent possible. Another commenter asked that the policies by which contracts for services are awarded be made available to providers. Other commenters asked for the inclusion of procedures to challenge the adequacy of lead agency funding of service providers.

Discussion: The Secretary believes that it would be helpful to state specifically in § 303.526 that all services provided by contract or other means must meet State standards. The Secretary believes that the policy for contracting or otherwise arranging for services should describe how the awarding process works. He also agrees

with commenters on the importance of clarifying congressional intent that lead agencies use existing sources of early intervention services to the extent possible. However, the Secretary believes that the language of the NPRM needs to be revised to correct implications in the NPRM that, because of the use of the words "application" and "apply," lead agencies have the authority to make subgrants under this program. In contrast to many other Federal special education laws, the statute for this program neither specifically authorizes subgrants nor does it identify any eligible subgrantees. The Secretary also believes that each lead agency must have reasonable flexibility to enter into contractual or other arrangements that are responsive to the variety of services that may be needed and the diversity of situations and needs throughout the State. The ambiguous language of the NPRM could be read as requiring absolute uniform contract terms or requirements for other arrangements across all situations in a State. The Secretary believes that the State's policy with regard to contracting or otherwise arranging for early intervention services should describe the methods and processes used to make awards or other arrangements and the general provision or conditions or terms that would have to be met by any provider seeking to provide early intervention services for the lead agency. Service providers should not be entitled to any special mechanism to challenge lead agency funding decisions under this part, outside of those otherwise available to a potential or actual participant in a contract or other arrangements.

Change: Section 303.526 has been revised to provide that a State's policy must include (1) a requirement that all early intervention services must meet State standards and be consistent with the provisions of this part, (2) the mechanisms used and the processes followed for awarding funds or making other arrangements for the provision of early intervention services, and (3) the basic requirements that must be met by any service provider in order to receive funds available under this part. A note has been added following the section regarding congressional intent that existing services be utilized by the lead agencies to the extent possible.

Payor of last resort (§ 303.527)

Comment: Commenters asked for guidance on how the lead agency responsibilities for identifying and coordinating all funding sources and assigning financial responsibility related to the payor of last resort provision. One commenter pointed out that because of the importance of using all existing funding sources, including those under other Federal programs, it is essential that the regulations provide guidance as to how this is to be accomplished. Some commenters thought that certain provisions regarding the "payor of last resort" in section 681 of the Act, had been omitted and should be addressed. They requested that a provision be added allowing States to use funds under this part to prevent a delay in the provision of services.

Discussion: It is clear from the statute and the legislative history of the Act that successful implementation of a statewide system is dependent upon (1) the coordinated use of funds from a variety of Federal, State, and other sources, and (2) the measures taken to ensure that agencies will not reduce the amount of funds that they had been spending for services to this target population, because of the enactment of Part H. Thus, several provisions in the Act are directed toward ensuring that these two funding issues are appropriately addressed. The Secretary agrees with commenters on the need for more guidance on the payor of last resort provision, including specification of the kinds of services that may be covered and those that are not covered. Further, the Secretary believes that the statutory provisions requiring the lead agency to ensure that services are provided in a timely manner, pending the resolution of disputes among public agencies or service providers, and to have a procedure for securing the timely reimbursement of funds should be included in the regulations.

New legislation containing a specific provision relating to other early intervention funding sources (i.e., the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100–360)) will affect this provision.

Change: The section in the NPRM on "Timely reimbursement; nonsubstitution" has been reorganized and renamed, as follows: The section, now titled "Payor of last resort," includes (1) revised provisions on nonsubstitution of funds and non-reduction of benefits, and (2) a new paragraph on "Interim payments; reimbursement." That paragraph specifies the kinds of services covered under the payor of last resort provision.

A note has been added that describes (1) congressional intent regarding the payor of last resort provision, as evidenced by the Report of the House of Representatives on Pub. L. 99–457, and (2) a provision in the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100–360) that addresses the use of Medicaid funds for covered services furnished to an infant or toddler with handicaps under an IFSP. A reference to § 303.527 has been added to § 303.3, which addresses activities that can be supported with Part H funds, to reinforce the "payor of last resort" limitation.

Two new sections have been added related to the "Payor of last resort" provision: § 303.525 (Delivery of services in a timely manner) and § 303.528 (Reimbursement procedure).

Data collection (§ 303.540)

Comment: A number of commenters requested that the data collection requirements in the final regulations be more specific. Several commenters stated that a requirement should be added regarding the collection of information on the location in which early intervention services are delivered.

Discussion: The Secretary believes that § 303.540, which requires the lead agency to provide data required under section 618 and section 676(b)(4) of the Act and such other information as the Secretary may require, provides sufficient authority for the Secretary to collect information on the location of services. However, he believes that the most appropriate place for providing detailed information and guidance about the data requirements under this part would be in the reporting forms and instructions, and not in these final regulations.

Change: No change has been made in response to the comments. A technical change has been made by cross referencing the requirements in section 676(b)(4) of the Act instead of listing them in the regulations.

Subpart G—State Interagency Coordinating Council

Establishment of Council (§ 303.600)

Comment: Many commenters expressed concern about limiting the number of members on the Council to 15, and requested that the regulations permit a State to include as many members as necessary to ensure that the Council is appropriately representative.

Discussion: The number of members on a State's Council is established by statute. Section 682(a) of the Act provides that "Any State which desires to receive financial assistance under section 673 shall establish a State Interagency Coordinating Council composed of 15 members." Although the 15 member requirement cannot be changed, the Secretary believes that

guidance should be provided regarding how States could broaden participation.

Change: A note has been added following § 303.600 that includes suggestions that States might use to provide broader participation, while meeting the 15 member Council requirement.

Composition (§ 303.601)

Comment: A number of commenters requested changes in this section. One commenter asked that the personnel preparation representative on the Council have expertise in early intervention. Some commenters requested that advocacy associations be represented. Other commenters asked that a note be added stating that "parent representatives should not be employees of early intervention agencies to prevent conflict of interest." Several commenters asked that a note be added which suggests that persons representing State agencies should have sufficient authority to make decisions for their agencies.

Discussion: The Secretary agrees with commenters that the personnel preparation representative on the Council should have expertise in early intervention. The Secretary also agrees that (1) parent representative should not be employees of agencies providing early intervention services, in order to prevent a conflict of interest, and (2) the Council representatives from key State agencies should have the authority to effectively represent their agencies.

Change: A note has been added to § 303.601 that provides guidance regarding the composition of the Council, the expertise which should be required of Council members representing personnel preparation, and the authority to be expected of State agency representatives. A note has been added to § 303.600 concerning conflicts of interest specific to parent representation.

Use of funds by the Council (§ 303.602)

Comment: A commenter asked that the final regulations provide that Council members who are parents be permitted to receive "necessary expenses and reimbursements, including public transportation costs, mileage, parking, tolls, and child care expenses." Other commenters stated that parents should receive compensation for participating in Council activities, since they are not paid for their participation from other sources.

Discussion: The Secretary believes that all Council members should be reimbursed for appropriate expenses incurred in the performance of their Council duties. However, he believes that, in general, Council members should serve without compensation from funds available under this part, except under special circumstances (i.e., if a member is not employed, or must forfeit wages in order to perform Council functions).

Change: A new section on "Use of funds by the Council" has been added (see § 303.602). The section includes (1) the provision from section 682(d) of the Act regarding the use of funds for employing staff and consultants, and (2) a new paragraph regarding "Compensation and expenses of Council members."

Meetings (§ 303.603)

Comment: Commenters recommended changes that would make Council meetings more accessible to the general public, including (1) deleting the phrase "to the extent appropriate" that was in the NPRM, and (2) requiring that adequate notice be provided to the public before a Council meeting.

Discussion: The term "to the extent appropriate" is included in section 682(c) of the Act. However, the Secretary believes that there should be few, if any, instances in which it would not be appropriate to have meetings open and fully accessible to the public. Therefore, the Secretary believes that the regulations should address the concerns of commenters related to making the meetings accessible.

Change: Section 303.603 has been expanded to clarify the requirements for public access to Council meetings.

Functions of the Council (§§ 303.650 through 303.653)

Comment: Several commenters requested that a note be added reflecting congressional intent that the Council play a central role in accomplishing the goal of a statewide system of early intervention services. Some commenters recommended that the regulations specify that the Council's role is more active than that of advising and assisting the lead agency.

Discussion: The legislative history of the Act makes it clear that the Congress intended for the Council to play an important role in the implementation of a State's early intervention program. The Secretary believes that the Council's role is critical to achieving the full participation and cooperation of all appropriate agencies in the State and to carrying out on-going planning and oversight regarding the State's early intervention program.

Change: Additional information has been added under a new subheading ("Functions of the Council") to describe more fully the various responsibilities of the Council. (See §§ 303.650 through 303.653.)

Comment: Some commenters requested that the planning activities and functions of the Council be expanded to include children aged three through five years. One of the commenters suggested that this could be accomplished by using some of the funds under the Preschool Grants program (Section 619 of the Act) to support the functions of the Council.

Discussion: The Council can be assigned additional functions beyond the scope of its responsibilities under this part, so long as those functions (1) are supported by funds from other programs, and (2) do not interfere with the Council's ability to carry out its obligations under this part. If a State chooses to have the Council carry out additional functions, it must make sure that appropriate financial records are maintained.

Change: None.

Note.—This appendix will not appear in the Code of Federal Regulations.

APPENDIX B—REDESIGNATION TABLE

(This appendix shows sections of the Notice of Proposed Regulations and comparable sections of the Final Regulations.)

Part 303—Early Intervention Program for Infants and Toddlers with Handicaps

Subpart A—General

PURPOSE, ELIGIBILITY, AND OTHER GENERAL PROVISIONS

Old sec.	Title	New sec.
303.1	Purpose of the early intervention program for infants and toddlers with handicaps.	303.1
303.2	Eligible applicants for an award.	303.2
303.3	Activities that may be supported under this part.	303.3
303.4	Applicable regulations	303.4
	Definitions	
303.5	Act	303.5
303.6	Case Management	303.6
303.7	Children	303.7
303.8	Council	303.8
	Days	303.9
303.9	Developmental Delay	303.10
	Early intervention program.	303.11
303.10	Early intervention services.	303.12
303.11	Health services	303.13
303.12	IFSP	303.14
	Include; including	303.15
303.13	Infants and toddlers with handicaps.	303.16

PURPOSE, ELIGIBILITY, AND OTHER GENERAL PROVISIONS—Continued

Old sec.	Title	New sec.
	Multidisciplinary	303.17
	Parent	303.18
	Policies	303.19
	Public agency	303.20
	Qualified	303.21
	State	303.22
	Transportation	303.23
303.15	EDGAR definitions that apply.	303.24
	Subpart B—State Application for a Grant	
	General Requirements	
303.20	Conditions of assistance.	303.100
303.22	How the Secretary disapproves a State's application or statement of assurances.	303.101
	Public Participation	
303.21(a)(1)	General requirements and timelines for public participation.	303.110
303.21(b)(2)	Notice of public hearings and opportunity to comment.	303.111
303.21(a)(1)	Public hearings	303.112
303.36(a)	Reviewing and reporting on public comments received.	303.113
	Statement of Assurances	
303.23	General	303.120
303.24	Reports and records	303.121
303.25	Control of funds and property.	303.122
303.26	Prohibition against commingling.	303.123
303.27	Prohibition against supplanting.	303.124
303.28	Fiscal control	303.125
303.29	Payor of last resort	303.126
303.30	Assurance regarding expenditure of funds.	303.127
	General Requirements for a State Application	
303.31	General	303.140
303.32	Information about the Council.	303.141
303.33	Designation of lead agency.	303.142
303.34	Assurance regarding use of funds.	303.143
303.35	Description of use of funds.	303.144
303.36(a)	Information about public participation.	303.145
303.37	Equitable distribution of resources.	303.146
	Specific Application Requirements for Years One Through Five and Thereafter	
303.38	Application requirements for first and and second years.	303.147

PURPOSE, ELIGIBILITY, AND OTHER GENERAL PROVISIONS—Continued

Old sec.	Title	New sec.
303.39	Third year applications	303.148
303.40	Waiver of the policy adoption requirement for the third year.	303.149
303.41	Fourth year applications.	303.150
303.42	States with mandates as of September 1, 1986 to serve children with handicaps from birth.	303.151
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H.J. Res. 274/Pub. L. 101-38

To designate the week beginning June 11, 1989, as "National Scleroderma Awareness Week". (June 19, 1989; 103 Stat. 78; 1 page) Price: $1.00

S.J. Res. 63/Pub. L. 101-39

Designating June 14, 1989, as "Baltic Freedom Day", and for other purposes. (June 19, 1989; 103 Stat. 79; 2 pages) Price: $1.00

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