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Contents

Federal Register
Vol. 54, No. 151
Tuesday, August 8, 1989

Separate Parts In This Issue

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 54, No. 151
Tuesday, August 8, 1989

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 947

[Docket No. FV-89-072]

Oregon-California Potatoes; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order 947 for the 1989–90 fiscal period. Authorization of this budget will allow the Oregon-California Potato Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: July 1, 1989, through June 30, 1990.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–447–5331.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 114 and Marketing Order No. 947 (7 CFR Part 947) regulating the handling of Irish potatoes grown in designated counties in Oregon and California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule 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 50 handlers of Oregon-California potatoes under this marketing order, and approximately 470 potato producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

The budget of expenses for the 1989–90 fiscal year was prepared by the Oregon-California Potato Committee (committee), the agency responsible for local administration of the order, and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of Oregon-California potatoes. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected shipments of potatoes. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses.

The committee met on June 9, 1989, and unanimously recommended a 1989–90 budget of $37,950 and an assessment rate of $0.004 per hundredweight, the same assessment rate as last year's. This year's budget is $775 more than last year's due to increases in expenditures for committee expenses and for preparation of the annual report. The recommended assessment rate, when applied to anticipated fresh market potato shipments of 8,100,000 hundredweight, would yield $32,400 in assessment revenue which, when added to $5,550 from reserve funds, will be adequate to cover budgeted expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was published in the Federal Register on July 12, 1989 [54 FR 29341]. That document contained a proposal to add § 947.242 to authorize expenses and establish an assessment rate for the Oregon-California Potato Committee. That rule provided that interested persons could file comments through July 24, 1989. No comments were received.

It is found that the specified expenses are reasonable and likely to be incurred and that such expenses and the specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

This action should be expedited because the committee needs to have sufficient funds to pay its expenses. The 1989–90 fiscal period began July 1, 1989, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable potatoes handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committee at a public meeting. Therefore, it is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register (54 U.S.C. 553).

List of Subjects in 7 CFR Part 947

Marketing agreements and orders, potatoes, Oregon and California.

For the reasons set forth in the preamble, 7 CFR Part 947 is amended as follows:

PART 947—POTATOES GROWN IN MODOC AND SISKIYOU COUNTIES, CALIFORNIA, AND IN ALL COUNTIES IN OREGON, EXCEPT MALHEUR COUNTY

1. The authority citation for 7 CFR Part 947 continues to read as follows:

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

2. A new section 947.242 is added to read as follows:

Note: This section prescribes the annual expenses and assessment rate and will not be published in the code of Federal Regulations.

§ 947.242 Expenses and assessment rate.

Expenses of $37,950 by the Oregon-California Potato Committee are authorized, and an assessment rate of $0.004 per hundredweight of potatoes is established for the fiscal period ending June 30, 1990. Unexpended funds may be carried over as a reserve.

Dated: August 3, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–18492 Filed 8–7–89; 8:45 am]

BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

[Docket No. 88–172]

9 CFR Part 51

Animals Destroyed Because of Brucellosis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the brucellosis regulations by removing all references to "Deputy Administrator" and replacing them with references to "Administrator." We are also removing certain references to "Veterinary Services" and replacing them with references to "Animal and Plant Health Inspection Service." These changes are warranted so the regulations will accurately reflect that the Administrator of the agency holds the primary authority and responsibility for various decisions under the regulations.

EFFECTIVE DATE: August 8, 1989.

FOR FURTHER INFORMATION CONTACT: Helene R. Wright, Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; 301–436–8682.

SUPPLEMENTARY INFORMATION: Brucellosis, also called Bang's disease, is a contagious bacterial disease affecting cattle, bison, and other animals. It can cause sterility, slow breeding, abortion, and loss of milk production. The regulations in 9 CFR Part 51 concern the destruction of animals because of brucellosis and the compensation of their owners. Prior to the effective date of this document, these regulations indicated that the Deputy Administrator of the Animal and Plant Health Inspection Service (APHIS) for Veterinary Services was the official responsible for various decisions under these regulations. We are revising 9 CFR Part 51 to indicate that the primary authority and responsibility for various decisions under these regulations belongs to the Administrator of the agency. We are making similar revisions in all other APHIS regulations. These revisions will be published in separate **Federal Register** documents.

To clarify the regulations with respect to the Administrator's authority and responsibility, we are making nonsubstantive changes in the regulations. We are removing all references to "Deputy Administrator" and replacing them with references to "Administrator," and removing references to "Veterinary Services" and replacing them with references to "Animal and Plant Health Inspection Service." We are also adding definitions of "Administrator," "Animal and Plant Health Inspection Service," and "APHIS representative" and deleting the definitions of "Deputy Administrator," "Veterinary Services," and "Veterinary Services representative." We are also revising the definition of "Accredited veterinarian" to make it consistent with other parts contained in 9 CFR.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity to comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by Public Law 96–354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

These programs/activities under 9 CFR Part 51 are listed in the Catalog of Federal Domestic Assistance under No. 10.025 and are subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 51

Animal diseases, Bison, Cattle, Hogs, Indemnity payments, Brucellosis.

Accordingly, we are amending 9 CFR Part 51 as follows:

PART 51—ANIMALS DESTROYED BECAUSE OF BRUCELLOSIS

1. The authority citation for Part 51 continues to read as follows:

Authority: 21 U.S.C. 111–113, 114, 114a, 114a–1, 120, 121, 125, 134b; 7 CFR 2.17, 2.51, and 371.2(d).

§ 51.1 [Amended]

2. In § 51.1 the definitions of "Deputy Administrator", "Veterinary Services", and "Veterinary Services representative" are removed and the definition of "Accredited veterinarian" is revised to read as follows:

Accredited veterinarian. A veterinarian approved by the Administrator in accordance with the provisions of Part 161 of this title to perform functions specified in Parts 1, 2, 3, and 11 of Subchapter A, and Subchapters B, C, and D of this chapter, and to perform functions required by cooperative state-federal disease control and eradication programs.

* * * * *

3. In § 51.1, definitions of "Administrator", "Animal and Plant Health Inspection Service", and "APHIS representative" are added, in alphabetical order, to read as follows:

* * * * *

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

Animal and Plant Health Inspection Service. The Animal and Plant Health Inspection Service of the United States Department of Agriculture (APHIS or Service).

APHIS representative. An individual employed by APHIS who is authorized to perform the function involved.

* * * * *

4. In Section 51.1, definition of "Veterinarian in Charge", remove the words "Veterinary Services," and add the word "the" in their place.

§ 51.4 [Amended]

5. In Section 51.4, remove the words "Veterinary Services" and add, in their place, the words "an APHIS".

§§ 51.1, 51.5, and 51.7 [Amended]

6. In addition to the amendments set forth above, in 9 CFR Part 51, remove the words "a Veterinary Services", and add, in their place, the words "an APHIS" in the following places:

(a) Section 51.1, definitions of "Condemn" and "Permit".

(b) Section 51.5, paragraph (b), first and second sentences.

(c) Section 51.7, paragraph (a), third, fourth, and sixth sentences.

§§ 51.3, 51.7, 51.8 and 51.9 [Amended]

7. In addition to the amendments set forth above, in 9 CFR Part 51, remove the words "Veterinary Services" and add, in their place, the word "APHIS" in the following places:

(a) Section 51.3, footnote 2 of paragraph (a)(1).

(b) Section 51.7, paragraph (a), first, second, third, fourth, fifth, and sixth sentences.

(c) Section 51.8, first and second sentences.

(d) Section 51.9, paragraphs (b), (c), and (e).

§§ 51.1, 51.2, 51.3, 51.5, 51.6, 51.7, 51.8 [Amended]

8. In addition to the amendments set forth above, in 9 CFR Part 51, remove the word "Deputy" in the following places:

(a) Section 51.1, definition of "Veterinarian in Charge",

(b) Section 51.2.

(c) Section 51.3, paragraphs (a) and (a)(1) and footnote 1 to paragraph (a)(1), first sentences; paragraph (a)(2), first and third sentences; paragraph (a)(3), first and third sentences; paragraph (b)(1), first sentence; paragraphs (b)(2) and (b)(3), first and third sentences.

(d) Section 51.5, paragraphs (a) and (c).

(e) Section 5.6, paragraphs (b) and (c), footnote 2 to paragraph (c), and paragraph (d).

(f) Section 51.7, paragraphs (a) and (b).

(g) Section 51.8.

Done at Washington, DC, this 3rd day of August 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-18494 Filed 8-7-89; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-ASW-16, Amdt. 39-6276]

Airworthiness Directives; Bell Helicopter Textron, Inc., Model 222, 222B, and 222U Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires inspection of the horizontal stabilizer assembly on the Bell Helicopter Textron, Inc. (BHTI) Model 222, 222B, and 222U helicopters The AD is prompted by two reports of fatigue failure of the horizontal stabilizer. Failure of the horizontal stabilizer, in flight, could result in loss of flight control and possible loss of the helicopter.

EFFECTIVE DATE: August 28, 1989.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 28, 1989.

Compliance: As indicated in the body of the AD.

ADDRESSES: The applicable technical bulletins may be obtained from Bell Helicopter, Textron, Inc., or may be examined at the Regional Rules Docket, Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, Room 158, Building 3B, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Roach, Rotorcraft Certification Office, Federal Aviation Administration, Fort Worth, Texas 76193-0170, telephone (817) 624-5179.

SUPPLEMENTARY INFORMATION: There have been two reports of fatigue failure of the horizontal stabilizer. In both instances the fatigue cracking occurred in the rear spar inside the horizontal stabilizer. This area cannot be visually inspected. Since this condition is likely to exist or develop on other helicopters of the same type design, an AD is being issued which requires a repetitive X-ray inspection of the horizontal stabilizer assembly on the BHTI Model 222, 222B, and 222U helicopters.

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

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

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If it is determined that this emergency regulation would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Regional Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, and Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 89 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

2 Section 39.13 is amended by adding the following new AD:

§ 39.13 [Amended]

Bell Helicopter Textron, Inc.: Applies to Model 222, 222B, and 222U helicopters, certificated in any category, with horizontal stabilizer assembly, Part Number (P/N) 222-035-250-101, -103, or

–105, installed. (Docket No 89–ASW–16)

Compliance is required within the next 50 hours' time in service for horizontal stabilizer assemblies with more than 2,100 hours' time in service; compliance for horizontal stabilizers with less than 2,100 hours' time in service is required prior to the accumulation of 2,150 hours' time in service; and both thereafter at intervals not to exceed 300 hours' time in service.

To prevent failure of the horizontal stabilizer assembly, which could result in loss of the helicopter, accomplish the following:

(a) Perform the Part "A" of the "Accomplishment Instructions" of BHTI Alert Service Bulletin (ASB) No. 222–89–53, dated March 20, 1989, for the Model 222 and 222B; or ASB No. 222U–89–27, dated March 20, 1989, for the Model 222U.

(b) If a crack is detected, remove and replace with a serviceable horizontal stabilizer assembly prior to further flight.

(c) The requirements of this AD do not apply if horizontal stabilizer assembly P/N 222–035–250–107 is installed for the Model 222 or P/N 222–035–250–109 is installed for the Models 222B and 222U.

(d) An alternate method of compliance which provides an equivalent level of safety, may be approved by the Manager, Rotorcraft Certification Office, Southwest Region, Federal Aviation Administration, Fort Worth, Texas 76193–0170.

The inspection procedures shall be done in accordance with part "A" of the "Accomplishment Instructions" of BHTI Alert Service Bulletin (ASB) No 222–89–53, dated March 20, 1989, for the Model 222 and 222B; or ASB No. 222U–89–27, dated March 20, 1989, for the Model 222U. This incorporation by reference of ASB No. 222–89–53 and ASB No. 222U–89–27, both dated March 20, 1989, was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101. Copies may be inspected at the Office of the Assistant Chief Counsel, Southwest Region, 4400 Blue Mound Road, Room 158, Building 3B, Fort Worth, Texas, between 8 a.m. and 4 p.m., weekdays, except Federal holidays or at the Office of the Federal Register, 1100 L Street NW., Room 8301, Washington, DC.

This amendment becomes effective August 28, 1989.

Issued in Fort Worth, Texas, on July 13, 1989.

James D. Erickson,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 89–18464 Filed 8–7–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 89–ANE–05; Amdt. 39–6196]

Airworthiness Directives; CFM International (CFMI) CFM56–2/3/3B/3C Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which establishes a repetitive inspection and removal from service program for certain No. 3B bearings installed in CFM56–2/3/3B/3C series turbofan engines. The AD is needed to prevent failure of the No. 3B bearing, and subsequent engine inflight shutdown.

DATES: *Effective:* August 14, 1989. Comments for inclusion in the docket must be received on or before September 15, 1989.

Compliance: As indicated in the body of the AD.

ADDRESSES: Comments on the amendment may be mailed in duplicate to: Federal Aviation Administration, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 89–ANE–05, 12 New England Executive Park, Burlington, Massachusetts 01803 or delivered in duplicate to Room 311, at the above address.

Comments delivered must be marked: Docket No. 89–ANE–05.

Comments may be inspected at the above location, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable manufacturer's service bulletins (SB's) and maintenance manuals may be obtained from the General Electric Company, Technical Publications Department, 1 Neumann Way, Cincinnati, Ohio 45215, or may be examined in the Regional Rules Docket.

FOR FURTHER INFORMATION CONTACT: Marc J. Bouthillier, Engine Certification Branch, ANE–142, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273–7085.

SUPPLEMENTARY INFORMATION: The FAA has determined that certain No. 3B bearings installed in CFM56–2/3/3B/3C series engines have a high rate of failure in service. Investigations have identified a suspect group of No. 3B bearings, Serial Number series FAFDxxxx and FAFExxxx, as having a higher risk of failure than other No. 3B bearings in the total population. There have been a total of 22 failures of the No. 3B bearings in service. Nine of the 22 failures have occurred in the suspect group of which seven have resulted in an inflight shutdown. Although the investigations have not revealed a definitive cause for all failures, approximately half of the failures could be attributed to contamination (phosphorus and aluminum oxide). Since this condition is likely to exist or develop on other engines of the same type design, an AD is being issued which requires repetitive inspection of the forward sump magnetic plug chip detectors for engines equipped with suspect No. 3B bearings, and also requires affected bearings to be removed from service at next inlet gearbox exposure.

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

Although this action is in the form of a final rule which involves requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedure, comments are invited on the rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above.

All communications received on or before the closing date for comments will be considered by the Agency. This rule may be amended in light of comments received. Comments that provide a factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effectiveness of the AD and determining whether additional rulemaking is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available both before and after the closing date for comments in Room 311, at the Office of Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803, for examination by interested persons. A report summarizing each FAA-public contact concerning the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments

submitted in response to this amendment must submit a self-addressed, stamped postcard on which the following statement is made: Comments to Docket No. 89-ANE-05. The postcard will be date/time stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, and Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends 14 CFR Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

General Electric: Applies to CFM International (CFMI) CFM56-2/3/3B/3C series turbofan engines.

Compliance is required as indicated, unless already accomplished.

To prevent failure of No. 3B bearings, accomplish the following:

(a) For CFM56-3/3B/3C series engines equipped with No. 3B bearing, Part Number (P/N) 9732M10P12, Serial Number (S/N) series FAFDxxxx and FAFExxxx, accomplish the following:

(1) Inspect the forward sump magnetic plug chip detector in accordance with the instructions of Appendix I, Paragraph 5, within the next 50 hours time in service (TIS) after the effective date of this AD. Thereafter, reinspect the forward sump magnetic plug chip detector at intervals not to exceed 50 hours TIS since last inspection (SLI) in accordance with the instructions of Appendix I until accomplishment of paragraph (a)(2) below. Remove from service, prior to further flight, engines which exhibit magnetic plug chip detector metallic debris defined as not serviceable in accordance with the instructions of Appendix I.

(2) Remove from service affected No. 3B bearings in accordance with CFMI CFM56-3/3B/3C Service Bulletin (SB) 72-445, dated February 7, 1989, at the next shop visit, or on or before October 1, 1991, whichever occurs first.

Note: Shop visit is defined as exposure of the inlet gearbox.

(b) For CFM56-2 series engines equipped with No. 3B bearings, P/N 9732M10P12, S/N series FAFDxxxx and FAFExxxx, accomplish the following:

(1) Inspect the forward sump magnetic plug chip detector in accordance with the instructions of Appendix II, Paragraph 6, within the next 50 hours TIS after the effective date of this AD. Thereafter, reinspect the forward sump magnetic plug chip detector at intervals not to exceed 50 hours TIS SLI in accordance with the instructions of Appendix II until accomplishment of paragraph (b)(2) below. Remove from service, prior to further flight, engines which exhibit magnetic plug chip detector metallic debris defined as not serviceable in accordance with the instructions of Appendix II.

(2) Remove from service affected No. 3B bearings in accordance with CFMI CFM56-2 SB 72-578, dated February 7, 1989, at the next shop visit, or on or before October 1, 1991, whichever occurs first.

Note: Shop visit is defined as exposure of the inlet gearbox.

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

(d) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternative method of compliance with the requirements of this AD or adjustments to the compliance times specified in this AD, may be approved by the Manager, Engine Certification Office, ANE-140, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

The repetitive inspection and removal from service program shall be accomplished in accordance with the instructions in Appendix I; CFMI SB 72-445, dated February 7, 1989; and CFMI SB 72-578, dated February 7, 1989, as applicable. Copies may be obtained from CFM International, Technical Publications Department, 1 Neumann Way, Cincinnati, Ohio 45215. Copies may be inspected at the New England Region, Office of the Assistant Chief Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays, or at the office of the Federal Register, 1100 L Street Room 8301, Washington, DC 20591.

This amendment becomes effective on August 14, 1989.

Issued in Burlington, Massachusetts, on April 5, 1989.

Jack A. Sain,

Manager Engine and Propeller Directorate Aircraft Certification Service.

See the "Addressess" section for information on obtaining copies of the material described in Appendixes I and II.

Appendix I

Note: Boeing CFM 737-300/400 Maintenance Manual, Document No. D6-37588-388, dated November 15, 1988, pertain to these inspections.

Appendix II

Note: CFMI CFM56-2 Maintenance Manual, dated February 28, 1989, pertain to these inspections.

[FR Doc. 89-17904 Filed 8-7-89; 8:45 am]
BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-ANE-48; Amdt. 39-6293]

Airworthiness Directives; Textron Lycoming

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD) which requires inspection for, and rework or replacement of, defective rocker arm assemblies on certain serial numbers of specified Lycoming engine models. The amendment is needed to revise serial numbers on certain engine models affected by the AD and provide instructions for correctly conducting the required inspection which determines the serviceability of the installed rocker arm assemblies. The AD is necessary to prevent rocker arm failure and consequent loss of engine power.

DATES: Effective September 1, 1989.

Compliance: As indicated in the body of the AD.

ADDRESSES: The applicable service bulletin may be obtained from Textron Lycoming, 652 Oliver Street, Williamsport, Pennsylvania 17701, Attention: Customer Support, or may be examined in the Regional Rules Docket, Room 311, Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

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

SUPPLEMENTARY INFORMATION: This amendment amends Amendment 39-5604 (52 FR 17749; May 12, 1987), AD-87-10-06, which currently requires inspection, and rework or replacement, of defective rocker arm assemblies. After issuing Amendment 39-5604, the FAA determined that additional model and serial number engines are subject to failure of their rocker arm assemblies. Also, the following engines have been found not to be subject to rocker arm failure and are removed from the applicability list: model number IO-540-C4D5D: serial numbers L-22921-48A and L-22922-48A. It was also reported that certain critical dimensions required in the AD are difficult to measure and are not being measured accurately. Additional instructions to improve detection of defective rocker arms are considered necessary. Therefore, the FAA is amending Amendment 39-5604 by revising engine models and serial numbers, and incorporating instructions to assist in detecting defective rocker arm assemblies. Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

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

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, and Aviation safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

2. Section 39.13 is amended by amending Amendment 39-5604, (52 FR 17749; May 12, 1987), Airworthiness Directive (AD) 87-10-06, as follows:

§ 39.13 [Amended]

(a) Revise the entire applicability statement, up to the compliance schedule paragraph, to read as follows:

"**Textron Lycoming:** Applies to Textron Lycoming (formerly AVCO Lycoming Textron) reciprocating engine series having model and serial numbers as listed herein.

O-320-A & E Series engines with serial numbers L-50154-27A through L-50175-27A, L-50177-27 through L-50188-27A.

O-320-B & D Series engines with serial numbers L-13971-39A, L-13972-39A, L-13975-39A, L-13976-39A, L-13980-39A, L-13983-39A through L-14235-39A, L-14242-39A, L-14243-39A, L-14249-39A through L-14415-39A, L-14421-39A, L-14428-39A.

IO-320 Series engines with serial numbers L-5890-55A through L-5897-55A.

O-360 Series engines with serial numbers L-31144 36A through L-31146-36A, L-31150-36A through L-31357-36A, L-31363-36A through L-31507-36A.

IO-360-B Series engines with serial numbers L-24152-51A, L-24163-51A, L-24170-51A, L-24248-51A, L-24337-51A through L-24344-51A, L-24352-51A.

AEIO-360-B Series engines with serial numbers L-24166-51A, L-24195-51A, L-24337-51A through L-24344-51A, L-24357-51A.

"The O-540 serial numbers that follow may or may not have the letter "A" as part of the suffix of the serial number on the engine dataplate.

O-540 Series engines with serial numbers L-23946-40A, L-23949-40A through L-24059-40A, L-24061-40A.

IO-540-C4B5 engines with serial numbers L-22974-48A, L-22975-48A, L-23010 48A through L-23016-48A, L-23038-48A, L-23039-48A, L-23050-48A through L-23052-48A, L-23118-48A, L-23138-48A, L-23193-48A, L-23195-48A, L-23196-48A, L-23328-48A, L-23331-48A, L-23348-48A, L-23349-48A, L-23352-48A, L-23353-48A, L-23372-48A, L-23375-48A, L-23376-48A.

IO-540-C4D5D engines with serial numbers L-22920-48A, L-22923-48A, L-22924-48A, L-22958-48A through L-22963-48A, L-23022-48A through L-23027-48A, L-23079-48A through L-23082-48A, L-23088-48A, L-23095-48A through L-23099-48A, L-23148-48A through L-23153-48A, L-23165-48A through L-23180-48A, L-23237-48A through L-23239-48A, L-23264-48A through L-23273-48A, L-23307-48A through L-23316-48A, L-23358-48A, L-23359-48A.

IO-540-D4A5 engine with serial number L-23089-48.

IO-540-V4A5D engines with serial numbers L-22943-48A through L-22945-48A, L-22953-48A through L-22957-48A, L-23061-48A through L-23063-48A.

IO-540-W1A5D engines with serial numbers L-22964-48A, L-22965-48A, L-22976-48A through L-22979-48A, L-23020-48A, L-23021-48A, L-23033-48A, L-23034-48A, L-23036-48A, L-23040-48A through L-23042-48A, L-23056-48A, L-23057-48A, L-23067-48A, L-23074-48A, L-23090-48A through L-23094-48A, L-23139-48A, L-23154-48A, L-23181-48A, L-23192-48A, L-23197-48A through L-23199-48A, L-23223-48A, L-23326-48A, L-23327-48A, L-23346-48A, L-23347-48A.

IO-540-W3A5D engines with serial numbers L-22918-48A, L-22966-48A, L-22967-48A, L-23350-48A, L-23351-48A.

AEIO-540-D Series engines with serial numbers L-22927-48A, L-22994-48A, L-22995-48A, L-23035-48A, L-23037-48A, L-23043-48A, L-23044-48A, L-23065-48A, L-23066-48A, L-23075-48A through L-23077-48A, L-23100-48A, L-23101-48A, L-23108-48A through L-23110-48A, L-23114-48A, L-23127-48A, L-23135-48A, L-23143-48A through L-23147-48A, L-23159-48A through L-23164-48A, L-23189-48A through L-23191-48A, L-23200-48A, L-23201-48A, L-23232-48A, L-23233-48A, L-23245-48A, L-23259-48A, L-23260-48A, L-23274-48A through L-23294-48A, L-23329-48A, L-23330-48A, L-23343-48A, L-23344-48A, L-23368-48A, L-23369-48A, L-23373-48A.

TIO-540-AA1AD engines with serial numbers L-8753-61A, L-8782-61A, L-8783-61A, L-8837-61A, L-8845-61A.

TIO-540-AB1AD engines with serial numbers L-8751-61A, L-8752-61A, L-8758-61A, L-8763-61A through L-8765-61A, L-8777-61A through L-8779-61A, L-8784-61A, L-8785-61A, L-8788-61A through L-8790-61A, L-8798-61A through L-8800-61A, L 8803-61A through L-8806-61A, L-8813-61A through L-8816-61A, L-8821-61A through L-8824-61A, L-8833-61A through L-8836-61A.

"Also applies to any of the following parallel valve-type engines regardless of serial number that were remanufactured or overhauled between July 1, 1985, and October 8, 1986, inclusive, or that have had a P/N LW-18790 rocker arm assembly installed (if

the assembly was shipped from Lycoming Textron, Williamsport Division) during this same time period:

Engine Models: 0–320 Series except 0–320–H; IO–320 Series; AIO–320 Series; AEIO–320 Series; LIO–320 Series; 0–340 Series; 0–360 Series except 0–360–E; IO–360–B, –E, –F Series; AEIO–360–B, –H Series; HO–360 Series; HIO–360–B Series; VO–360 Series; IVO–360 Series; 0–540 Series; IO–540–C, –D, –J, –N, –R, –T, –V, –W Series; AEIO–540–D Series; TIO–540 C, –E, –G, –H, –K, –AA, –AB Series, LTIO–540–K."

(b) Add, immediately after the existing paragraph requiring inspection and rework or replacement of the rocker arm assembly and prior to the paragraph permitting aircraft to be ferried, the following new paragraph:

Measure and deburr the rocker arm as follows:

(1) Measure the wall thickness at the specified thinnest point (outer edge) within the indicated circumferential limits using a ball-type micrometer, measuring microscope, or other instrument capable of providing equivalent accuracy.

(2) Deburr the oil drip hole to obtain .030 inch radius at rocker arm wall surface.

(3) If it is not possible to determine the wall thickness or the oil drip hole radius within sufficient accuracy to assure compliance with SB 477A requirements, replace rocker arm with a new or serviceable rocker arm.

Note: Textron Lycoming SB No. 477A, Supplement No. 1, dated October 12, 1988, changes the affected models in accordance with changes in this amendment, but does not change the inspection or rework procedures.

This amendment amends Amendment 39–5604 (52 FR 17749; May 12, 1987), AD 87–10–06, and becomes effective on September 1, 1989.

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

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 89–18460 Filed 8–7–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 89–ASO–20]

Establishment of Transition Area, Fayette, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes the Fayette, AL, transition area to provide additional controlled airspace for protection of instrument flight rules (IFR) operations at the Richard Arthur Field Airport. This action lowers the base of controlled airspace from 1,200 feet to 700 feet above tbe surface in the vicinity of the airport. A nondirectional radio beacon (NDB) standard instrument approach procedure (SIAP) has been developed to serve Richard Arthur Field. Concurrent with publication of the SIAP, the operating status of the airport will change from visual flight rules (VFR) to IFR.

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

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

SUPPLEMENTARY INFORMATION:

History

On June 13, 1989, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish the Fayette, AL, transition area (54 FR 25129). The proposed transition area will provide additional airspace required for protection of IFR aircraft executing a new standard instrument approach procedure (SIAP) to the Richard Arthur Field Airport. The base of controlled airspace will be lowered from 1,200 to 700 feet above the surface in the vicinity of the airport. Concurrent with publication of the SIAP, the operating status of the airport will change from VFR to IFR. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations establishes the Fayette, AL, transition area. Tbe base of controlled airspace will be lowered from 1,200 to 700 feet above the surface in the vicinity of the airport to provide additional controlled airspace for aircraft executing a new SIAP to Richard Arthur Field.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

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

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

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

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

§ 71.181 [Amended]

2. § 71.181 is amended as follows:

Fayette, AL (New)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Richard Arthur Field Airport (latitude 33°43'00" N, longitude 87°48'30" W); within 3.5 miles each side of the 343° bearing of the Fayette NDB (latitude 33°43'05" N, longitude 87°48'40" W), extending from the 6.5-mile radius area to 11.5 miles north of the NDB.

Issued in East Point, Georgia, on July 20, 1989.

Don Cass,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 89–18462 Filed 8–7–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket Number 89–ACE–23]

Alteration of Transition Area—Fulton, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to alter the transition area description at Fulton, Missouri, as reflected in Order 7400.6E, Compilation of Regulations. The Hallsville, Missouri, VORTAC 154° radial should be listed as the 160° radial. The correct radial is indicated on the charts. Accordingly, the transition area description as reflected in Order 7400.6E is being altered to reflect the correct radial.

EFFECTIVE DATE: 0901 u.t.c., November 16, 1989.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106. Telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION:

The Rule

The purpose of this amendment to subpart G of part 71 of the Federal Aviation Regulations (14 CFR 71.181) is to alter the transition area description at Fulton, Missouri, as reflected in Order 7400.6E, Compilation of Regulations. The Hallsville, Missouri, VORTAC 154° radial should be listed as the 160° radial. The correct radial is indicated on the charts. This action does not change the size or shape of the transition area, nor does it require a charting change. Since the amendment will only change the transition area description in Handbook 7400.6E and not the design, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary, because this action is a minor technical amendment in which the public would not be particularly interested.

Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to this authority delegated to me, part 71 of the FAR (14 CFR part 71) is amended as follows:

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

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

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

§ 71.181 [Amended]

2. By amending § 71.181 as follows:

Fulton, MO (Revised)

That airspace extending upward from 700 ft. above the surface within a 5-mile radius of the Fulton Municipal Airport (lat., 38°50'22" N., long. 92°00'17" W.), and within 2 miles each side of the Hallsville, Missouri, VORTAC, 160° radial; extending from the 5-mile radius area to 6 miles northwest of the Fulton Municipal Airport, and within 3 miles each side of the Guthrie, Missouri, NDB (lat. 38°50'34" N., long. 92°00'16" W.), 229° bearing; extending from the 5-mile radius area to 8.5 miles southwest of the NDB, and within 3 miles each side of the NDB facility 065° bearing; extending from the 5-mile radius area to 8.5 miles northeast of the NDB; excluding that portion which overlies the Columbia, Missouri, 700 ft. transition area.

This amendment becomes effective at 0901 u.t.c. November 16, 1989.

Issued in Kansas City, Missouri, on July 24, 1989.

Clarence E. Newbern,

Manager, Air Traffic Division.

[FR Doc. 89-18461 Filed 8-7-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 89-ASO-13]

Revision to Transition Area, Albemarle, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises the Albemarle, NC, transition area. A nondirectional radio beacon (NDB) standard instrument approach procedure (SIAP) has been developed for Runway 22 at the Stanly County Airport. This revision adds an arrival area extension to the existing transition area for protection of instrument flight rules (IFR) aircraft executing the new SIAP. Additionally, a correction has been made to the geographic position coordinates of the Stanly County Airport.

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

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

SUPPLEMENTARY INFORMATION:

History

On June 7, 1989, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Albemarle, NC, transition area (54 FR 24356). This action will add an arrival area extension for protection of IFR aircraft executing a new SIAP to Runway 22 at the Stanly County Airport. Also, a correction will be made to the geographic position coordinates of the airport. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revises the Albemarle, NC, transition area by adding an arrival area extension to provide additional controlled airspace for protection of IFR aircraft executing a new SIAP to Runway 22 at the Stanly County Airport. Also, a correction has been made to the geographic position coordinates of the airport.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

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

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

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

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

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Albemarle, NC [Revised]

That airspace extending upward from 700 feet above the surface within a seven-mile radius of Stanley County Airport (latitude 35°24'54" N, longitude 80°09'04" W); within three miles each side of the 208° and 041° bearings from the Stanly County NDB (latitude 35°24'42" N, longitude 80°09'23" W), extending from the seven-mile radius area to 8.5 miles southwest and northeast of the NDB.

Issued in East Point, Georgia, on July 20, 1989.

Don Cass,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 89–18463 Filed 8–7–89; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 275

[Release No. IA–698A]

Requirements Governing Payments of Cash Referral Fees By Investment Advisers

AGENCY: Securities and Exchange Commission.

ACTION: Correction.

SUMMARY: On July 12, 1979 the Commission issued a release adopting amendments to rule 206(4)–3 (§ 275.206(4)–3). This document corrects typographical errors in two referenced cites in the rule published at 44 FR 42126 (July 18, 1979).

FOR FURTHER INFORMATION CONTACT: Robert Plaze, Office of Disclosure and Investment Adviser Regulation (272–2107).

SUPPLEMENTARY INFORMATION: In § 275.206(4)–3 "Cash payments for client solicitations" the referenced section in the note after paragraph (a)(1)(iii) should read "§ 275.204–2(a)(10)." The referenced section in the note after paragraph (a)(2)(iii)(B) should read "§ 275.204–2(a)(15)."

Dated: August 2, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–18439 Filed 8–7–89; 8:45 am]

BILLING CODE 6010–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–89–76]

Special Local Regulations for Marine Events; Barnegat Bay Classic; Toms River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.502.

SUMMARY: This notice implements 33 CFR 100.502 for the Barnegat Bay Classic, an annual event to be held on August 26, 1989 in Barnegat Bay, between Island Beach and the mainland. These special local regulations are needed to provide for the safety of the participants and spectators on navigable waters during this event. The effect will be to restrict general navigation in the regulated area.

EFFECTIVE DATES: The regulations in 33 CFR 100.502 are effective from 9:00 a.m. to 5:00 p.m., August 26, 1989. In case of inclement weather causing the event to be postponed, the regulation will be effective from 9:00 a.m. to 5:00 p.m., August 27, 1989.

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

SUPPLEMENTARY INFORMATION:

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

Discussion of Regulations: The Barnegat Bay Powerboat Racing Association, Toms River, New Jersey, submitted an application on March 7, 1989 to hold the Barnegat Bay Classic in Barnegat Bay between Island Beach and the mainland. The event will consist of approximately 50 powerboats, ranging from 20 to 36 feet in length, racing on a designated course within the regulated area. Because this event is of the type contemplated by these regulations, the safety of the participants will be enhanced by the implementation of the special local regulations. Waterborne traffic should not be severely disrupted at any given time, because closure of the Intracoastal Waterway is not anticipated.

These regulations are implemented by publication of this notice in the **Federal Register** and in the Fifth District Local Notice to Mariners.

Dated: July 28, 1989.

P.A. Welling,

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

[FR Doc. 89–18446 Filed 8–7–89; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 100

[CGD 05–89–13]

Special Local Regulations for Marine Events; Barnegat Bay Classic; Toms River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Special Local Regulations 33 CFR 100.502 for the Barnegat Bay Classic have been amended by changing the size of the regulated area and by reformatting the regulations to conform to other permanent special local regulations for areas within the Fifth Coast Guard District.

The Coast Guard is removing the regulations in 33 CFR 100.503, which essentially duplicate the regulations in 33 CFR 100.502. The regulations in 33 CFR 100.502 are needed to provide for the safety of participants and spectators on the navigable waters during this annual event. They will restrict general navigation in the regulated area.

EFFECTIVE DATE: This rule becomes effective August 8, 1989.

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

SUPPLEMENTARY INFORMATION: The Coast Guard published a notice of proposed rulemaking concerning these regulations in the **Federal Register** on May 2, 1989 (54 FR 18668). Interested persons were requested to submit comments. No comments were received. Nevertheless an error was discovered in § 100.502(b)(2)(ii). The requirement stated in this paragraph should have

been limited to persons on board vessels displaying the Coast Guard ensign, as in § 100.502(b)(2)(i). A small editorial change has been made to § 100.502(a)(2).

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

Discussion of Comments and Final Regulations: No comments were received in response to the notice of proposed rulemaking. The annual Barnegat Bay Classic is sponsored by the Barnegat Bay Powerboat Racing Association. The location, name, and effective period of the regulations have not been changed, but the Coast Guard is amending 33 CFR 100.502 by changing the regulated area, and by reformatting the regulations to conform to the other permanent special local regulations for areas within the Fifth Coast Guard District.

Because the present regulated area is unnecessarily large, making it more difficult to regulate, the Coast Guard is establishing a smaller regulated area encompassing the race course and a 500-yard buffer zone around it. This change will provide the Coast Guard Patrol Commander with a more easily controlled regulated area, will permit waterborne traffic to transit the Intracoastal Waterway without needing the permission of the Patrol Commander, and will allow spectators to anchor closer to the race course while still remaining outside the regulated area. The amended regulations will apply to the Barnegat Bay Classic scheduled from 10:00 a.m. to 4:00 p.m., August 26, 1989. Marine traffic should not be inconvenienced because closure of the marked waterway is not anticipated.

Economic Assessment and Certification: These proposed regulations are not considered major under Executive Order 12291 on Federal Regulation nor significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Since the 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 Assessment: This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Impact: A Categorical Exclusion Determination statement was approved in 1987 for the Barnegat Bay Classic and is part of the Barnegat Bay Classic file.

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:

§ 100.502 Barnegat Bay Classic, Barnegat Bay, Toms River, New Jersey.

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. Section 100.502 is amended by revising it to read as follows:

PART 100—[AMENDED].

(a) *Definitions.* (1) Regulated Area. The waters of Barnegat Bay bounded by a line connecting the following points:

Latitude	*Longitude*
39°49'16.0" N.	74°08'43.0" W.
39°49'16.0" N.	74°06'10.0" W.
39°53'15.0" N.	74°06'10.0" W.
39°53'15.0" N.	74°07'19.0" W.
39°50'59.0" N.	74°07'19.0" W.

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

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

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

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

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

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

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

§ 100.503 [Removed].

3. Section 100.503 is removed.

Dated: July 28, 1989.

P.A. Welling,

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

[FR Doc. 89-18447 Filed 8-7-89; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD 05-89-75]

Special Local Regulations for Marine Events; U.S. Marine Corps Insertion/Extraction Demonstration; Severn River, Annapolis, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.511.

SUMMARY: This notice implements 33 CFR 100.511 for the U.S. Marine Corps Insertion/Extraction Demonstration, an annual event to be held August 11, 1989 on the Severn River, Annapolis Maryland. These special local regulations are needed to provide for the safety of the participants and spectators on navigable waters during this event. They will restrict general navigation in the regulated area.

EFFECTIVE DATES: The regulations in 33 CFR 100.511 are effective from 8:30 to 1:00 p.m., August 11, 1989.

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

SUPPLEMENTARY INFORMATION:

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

Discussion of Regulations: The U.S. Naval Academy, Annapolis, Maryland, submitted an application on June 12, 1989 to hold the U.S. Marine Corps Insertion/Extraction Demonstration. The demonstration will be held in that portion of the Severn River bounded on the south by Dungan Basin and to the north by the State Route 450 Bascule Bridge. It will consist of four marines parachuting from one H-46 Helicopter at various altitudes ranging from 2,500 to 10,000 feet. The marines will be lifted

from the water by small craft and helicopter. Since this event is of the type contemplated by these regulations, the safety of the participants will be enhanced by the implementation of the special local regulations. Commercial traffic should not be severely disrupted.

These regulations are implemented by publication of this notice in the **Federal Register** and in the Fifth District Local Notice to Mariners.

Dated: July 28, 1989.

P.A. Welling,

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

[FR Doc. 89-18448 Filed 8-7-89; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[COTP Portland, Oregon, Regulation 89-05]

Safety Zone Regulations; Willamette River, Portland, OR

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone for all waters of the Willamette River within 500 yards of both the old and new spans of the Burlington Northern Railroad Bridge 5.1 at River Mile 6.9 of the Willamette River while these spans are in transit to and from the bridge site. This zone is needed to protect vessels from the hazards associated with moving such large structures with limited maneuverability. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective at 0800 on 8 August 1989. It terminates at 0800 on 11 August 1989, unless terminated sooner by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: CDR W. L. Loveland, (503) 240-9300.

SUPPLEMENTARY INFORMATION: In accordance with 5 USC 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than thirty (30) days after **Federal Register** publication. The request from Riedel/Tokola for the Coast Guard to establish this safety zone was not made until 29 June 1989, and the requested dates of the closure were not established until 7 July 1989, only thirty-one (31) days prior to the scheduled closure. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent the danger and hazard to navigation to both commercial and pleasure craft posed by the movement of the existing swing span of the Burlington Northern Railroad Bridge 5.1 to a temporary storage location and the subsequent movement of the new lift span from its present location at Riedel International facilities to the bridge site. However, the Coast Guard has notified and solicited comments from the local maritime industry and the boating public by letters, phone calls and press releases.

Drafting Information: The drafters of this regulation are CDR W. L. Loveland, project officer for the Captain of the Port, and LT Deborah K. Schram, project attorney, Thirteenth Coast Guard District Legal Office.

Discussion of Regulation: The circumstances requiring this regulation will begin at 0800 on 8 August 1989 and conclude by 0800 on 11 August 1989. During this period, a contractor will be replacing the swing span of the Burlington Northern Railroad Bridge 5.1 at River Mile 6.9 of the Willamette River with a lift span which is intended to enhance river navigation. The replacement of the span will require the location of barges, anchors, anchor cables and other construction equipment across much of the river. The existing swing span is to be removed and towed to a temporary storage location. The new lift span will be towed from its present location at the Riedel facilities and lifted into position. No wake can be tolerated during either transit phase of the operation and the hazards associated with the movement of these structures would pose a danger to both commercial and pleasure craft. Therefore, since such a situation would pose a danger and hazard to navigation to all vessels, the area within 500 yards of either span will be closed to all traffic during their respective transits.

This regulation is issued pursuant to 33 USC 1225 and 1231 as set out in the authority citation for all of Part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, Subpart C of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5, 49 CFR 1.46.

2. A new 165.T1305 is added to read as follows:

§ 165.T1305 Moving Safety Zone: In the vicinity of Willamette River Mile 6.9.

(a) *Location.* The following areas are safety zones:

(1) All waters of the Willamette River within 500 yards of the old swing span of the Burlington Northern Railroad Bridge 5.1 while it is in transit to its temporary storage site at Willamette River Mile 7.5.

(2) All waters of the Willamette River within 500 yards of the new lift span of the Burlington Northern Railroad Bridge 5.1 while it is in transit from the Riedel International facilities at River Mile 7.5 to the bridge site.

(b) *Regulations:* In accordance with the general regulations in Sec. 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

(c) *Effective date.* This regulation becomes effective at 0800, 8 August 1989. It terminates at 0800, 11 August 1989, unless terminated sooner by the Captain of the Port.

Dated: July 24, 1989.

J.W. Calhoun,

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

[FR Doc. 89-18443 Filed 8-7-89; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[COTP Portland, OR, Regulation 89-04]

Safety Zone Regulations; Willamette River, Portland, OR

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone in the vicinity of the Burlington Northern Railroad Bridge 5.1 at River Mile 6.9 of the Willamette River. This zone is needed to allow a contractor, Riedel/Tokola, to replace the swing span of the bridge with a lift span. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective at 0800 on 8 August 1989. It terminates at 0800 on 11 August 1989, unless terminated sooner by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: CDR W. L. Loveland, (503) 240-9300.

SUPPLEMENTARY INFORMATION: In accordance with 5 USC 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than thirty (30) days after **Federal Register** publication. The request from Riedel/

Tokola for the Coast Guard to establish this safety zone was not made until 29 June 1989, and the requested dates of the closure were not established until 7 July 1989, only thirty-one (31) days prior to the scheduled closure. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent the danger and hazard to navigation to both commercial and pleasure craft posed by the location of barges, anchors, anchor cables and other construction equipment across much of the river during the replacement of the bridge span. However, the Coast Guard has notified and solicited comments from the local maritime industry and the boating public by letters, phone calls and press releases. Also, no wake can be tolerated during certain phases of the installation.

Drafting Information. The drafters of this regulation are CDR W. L. Loveland, project officer for the Captain of the Port, and LT Deborah K. Schram, project attorney, Thirteenth Coast Guard District Legal Office.

Discussion of Regulation. The circumstances requiring this regulation will begin at 0800 on 8 August 1989 and conclude by 0800 on 11 August 1989. During this period, a contractor will be replacing the swing span of the Burlington Northern Railroad Bridge 5.1 at River Mile 6.9 of the Willamette River with a lift span which is intended to enhance river navigation. The replacement of the span will require the location of barges, anchors, anchor cables and other construction equipment across much of the river. The existing swing span is to be removed and towed to a temporary storage location. The new lift span will be towed from its present location at the Riedel facilities and lifted into position. No wake can be tolerated during certain phases of the installation. Therefore, since such equipment would pose a danger and hazard to navigation to both commercial and pleasure craft, and traffic would interfere with the span installation, the river will be closed to all traffic at mile 6.9 for some or all of the 72-hour period.

This regulation is issued pursuant to 33 USC 1225 and 1231 as set out in the authority citation for all of Part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, Subpart C of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5, 49 CFR 1.46

2. A new § 165.T1304 is added to read as follows:

§ 165.T1304 Safety Zone: Willamette River Mile 6.9.

(a) *Location.* The following area is a safety zone: The Willamette River in the vicinity of River Mile 6.9 from a position 200 yards downstream of the Burlington Northern Railroad Bridge 5.1 to a position 200 yards upstream of the Burlington Northern Railroad Bridge 5.1.

(b) *Regulations.* In accordance with the general regulations in Sec. 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

(c) *Effective date.* This regulation becomes effective at 0800, 8 August 1989. It terminates at 0800, 11 August 1989, unless terminated sooner by the Captain of the Port.

Dated: July 24, 1989.

J.W. Calhoun,

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

[FR Doc. 89–18444 Filed 8–7–89; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 61

[FRL–3526–9]

Addenda to Delegation Agreements for New Source Performance Standards (NSPS) Program; the States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This notice announces addition of certain addenda to the delegation agreements of the States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas for implementation and enforcement of New Source Performance Standards (NSPS). The addenda explain that these States do not have delegated authority to implement and enforce Subpart AAA—Standards of Performance for New Residential Wood Heaters, even though they have otherwise received automatic authority (either full or partial) with respect to the NSPS program. The Environmental Protection Agency (EPA) also revises 40 CFR Part 60, § 60.4 and 40 CFR Part 61, § 61.04 to reflect the correct addresses for the EPA Region 6 Office and the State and local agencies named above.

EFFECTIVE DATE: July 27, 1989.

ADDRESSES: The related materials in support of this action may be requested by writing to the following address: Chief, SIP New Source Section (6T–AN), Air Programs Branch, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: Mr. J. Behnam, P.E. SIP New Source Section, Air Programs Branch, United States Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, telephone (214) 655–7214.

SUPPLEMENTARY INFORMATION: Under section 111(c)(1) of the Clean Air Act, any state may develop and submit to the Administrator a procedure for implementing and enforcing standards of performance for new sources located in such state. If the Administrator determines that the procedures for implementing and enforcing the standards are adequate, the Federal authority may be delegated to the State. To facilitate this process, the EPA Region 6 Office has entered into agreements with certain states for "automatic" delegation of authority for new subparts of the NSPS. The automatic delegation mechanism allows the States to assume the responsibility for the NSPS without a written request and further qualification approval from the EPA.

The EPA promulgated Subpart AAA—Standards of Performance for New Residential Wood Heaters on February 26, 1988 (53 FR 5860). Under this rulemaking, the EPA decided that a centralized program operated by EPA's staff in Washington, D.C., and Research Triangle Park, North Carolina, is the most efficient and effective way to meet the Agency's responsibilities for certifying wood heater testing laboratories, conducting emission audit testing, and making applicability determinations. However, this rulemaking indicated that the EPA is amenable to delegate to the State and local agencies the authority to conduct inspections at retail outlets to verify that appliances affected by this regulation are in compliance. This includes, but not necessarily is limited to, inspections to ensure that the labeling requirements have been met and that all wood heaters in a given model line conform to the dimensions (for specified parameters within stated tolerances) and materials of the wood heater submitted for

certification testing as required in § 60.533(k).

The Region 6 States have notified the Regional Office that they do not wish to receive delegated authority for implementation and enforcement of the applicable portion of Subpart AAA as discussed above. After reviewing the States' requests, the EPA has decided to exclude NSPS Subpart AAA from the States' delegation agreements. Therefore, this notice notifies the public that the States located in Region 6 do not have authority (either partial or full) to implement and enforce Subpart AAA—Standards of Performance for New Residential Wood Heaters. The affected States are Arkansas, Louisiana, New Mexico, Oklahoma, and Texas. The EPA has retained authority for implementation and enforcement of this subpart.

This notice also advises the public that the EPA is amending 40 CFR Part 60, § 60.4 and 40 CFR Part 61, § 61.04. These amendments are necessary to correct and update the mailing addresses for the EPA Region 6 Office and the State and local agencies named in this notice.

Any inquiries or questions concerning implementation and enforcement of NSPS Subpart AAA for the sources located in the States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas should be directed to the EPA Region 6 Office, 1445 Ross Avenue, Dallas, Texas 75202. The telephone inquiries should be directed to (214) 655–7220 for technical and enforcement questions, and (214) 655–7214 for delegation of authority issues.

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

This delegation addendum is issued under the authority of section 111(c) of the Clean Air Act, as amended [42 U.S.C. 7411(c)].

List of Subjects in 40 CFR Parts 60 and 61

Air pollution control, Carbon monoxides, Particulate matter and sulfur dioxides.

Dated: July 27, 1989.

Joseph D. Winkle,

Acting Regional Administrator.

PART 60—[AMENDED]

Title 40, Parts 60 and 61 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7601.

2. Section 60.4 is amended by revising the Region VI address in paragraph (a), by revising paragraphs (b)(E), (b)(T), (b)(GG) and (b)(LL)(i) to read as follows:

§ 60.4 Address.

(a) * * *

Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, Texas): Director; Air, Pesticides, and Toxics Division; U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

* * * * *

(b) * * *

(E) State of Arkansas: Chief, Division of Air Pollution Control, Arkansas Department of Pollution Control and Ecology, 8001 National Drive, P.O. Box 9583, Little Rock, Arkansas 72209.

* * * * *

(T) State of Louisiana: Program Administrator, Air Quality Division, Louisiana Department of Environmental Quality, P.O. Box 44096, Baton Rouge, Louisiana 70804.

* * * * *

(GG) State of New Mexico: Director, New Mexico Environmental Improvement Division, Health and Environment Department, 1190 St. Francis Drive, Santa Fe, New Mexico 87503.

* * * * *

(LL) * * *

(i) Oklahoma City and County: Director, Oklahoma City-County Health Department, 921 Northeast 23rd Street, Oklahoma City, Oklahoma 73105.

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PART 61—[AMENDED]

1. The authority citation for Part 61 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7601.

2. Section 61.04 is amended by revising the Region VI address in paragraph (a),and by revising paragraphs (b)(E), (b)(T), (b)(GG), and (b)(LL)(i) to read as follows:

§ 61.04 Address.

(a) * * *

Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, Texas): Director; Air, Pesticides, and Toxics Division; U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

* * * * *

(b) * * *

(E) State of Arkansas: Chief, Division of Air Pollution Control, Arkansas Department of Pollution Control and Ecology, 8001 National Drive, P.O. Box 9583, Little Rock, Arkansas 72209.

* * * * *

(T) State of Louisiana: Program Administrator, Air Quality Division, Louisiana Department of Environmental Quality, P.O. Box 44096, Baton Rouge, Louisiana 70804.

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(GG) State of New Mexico: Director, New Mexico Environmental Improvement Division, Health and Environment Department, 1190 St. Francis Drive, Santa Fe, New Mexico 87503.

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(LL) * * *

(i) Oklahoma City and County: Director, Oklahoma City-County Health Department, 921 Northeast 23rd Street, Oklahoma City, Oklahoma 73105.

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[FR Doc. 89–18496 Filed 8–7–89; 8:45 am]

BILLING CODE 6560–50–M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–47

Disposal of Surplus Federal Real Property

AGENCY: Federal Property Resources Service, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration is amending the illustration referenced in § 101–47.4911 of the regulations concerning the disposal of surplus Federal real property to incorporate the provisions of Pub. L. 100–77 as amended by Pub. L. 100–628, with regard to congressional oversight of negotiated sales. Public Sales 100–77, as amended by Pub. L. 100–628, amends the Federal Property and Administrative Services Act of 1949, as amended.

EFFECTIVE DATE: August 8, 1989.

FOR FURTHER INFORMATION CONTACT: Majorie L. Lomax, Director, Policy and Planning Division, Office of Real Estate Policy and Sales, Federal Property Resources Service, GSA, (202) 535–7052.

Authority: (Sec. 205(c), 6s Stat. 390 (40 U.S.C. 480(c))

Dated: July 28, 1989.

Earl E. Jones,

Commissioner, Federal Property Resources Service.

[FR Doc. 89–18501 Filed 8–7–89; 8:45 am]

BILLING CODE 6820–96–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 50

RIN 0905-AB91

Responsibilities of Awardee and Applicant Institutions for Dealing With and Reporting Possible Misconduct in Science

AGENCY: Public Health Service, DHHS.

ACTION: Final rule.

SUMMARY: To implement section 493 of the Public Health Service (PHS) Act (and also section 501(f) of the PHS Act as amended by section 2056(a)(2)(C) of the Anti-Drug Abuse Act of 1988), this Final Rule adds a new Subpart A to 42 CFR part 50. The new Subpart A sets forth the responsibilities of PHS awardee and applicant institutions for dealing with and reporting alleged or suspected misconduct in science involving research, research training, applications for support of research or research training, or related activities for which PHS funds have been provided or requested.

EFFECTIVE DATE: November 8, 1989.

FOR FURTHER INFORMATION CONTACT: Brian Kimes, PhD, Acting Director, Office of Scientific Integrity, Bldg. 31-Room B1-C34, National Institutes of Health, Bethesda, Maryland 20892—telephone (301) 496-2624. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Reported instances of scientific misconduct appear to represent only a small fraction of the total number of research and research training awards funded by the PHS. Nevertheless, even a small number of instances of scientific misconduct is unacceptable and could threaten the continued public confidence in the integrity of the scientific process and in the stewardship of Federal funds. The PHS has adopted interim policies to provide guidance for dealing with allegations and investigations, based on experience with a number of cases. These interim policies were published for the information of the public in the July 18, 1986, issue of the "NIH Guide for Grants and Contracts" and became part of the PHS Grants Administration Manual on September 1, 1988.

The PHS also recently established two new offices for dealing with scientific misconduct (see 54 FR 11080, March 16, 1989). The Office of Scientific Integrity Review (OSIR), established in the Office of the Assistant Secretary for Health, is responsible for establishing overall PHS policies and procedures for dealing with misconduct in science, overseeing the activities of PHS research agencies to ensure that these policies and procedures are implemented, and reviewing all final reports of investigations to assure that any findings and recommendations are sufficiently documented. The OSIR also makes final recommendations to the Assistant Secretary for Health on whether any sanctions should be imposed and, if so, what they should be in any case where scientific misconduct has been established. When necessary, OSIR may conduct independent investigations.

In addition, the Office of Scientific Integrity (OSI), established in the Office of the Director, National Institutes of Health (NIH), oversees the implementation of all PHS policies and procedures related to scientific misconduct; monitors the individual investigations into alleged or suspected scientific misconduct conducted by institutions that receive PHS funds for biomedical or behavioral research projects or programs; and conducts investigations as necessary.

The PHS Grants Administration Manual will be revised to accommodate the establishment of the these offices.

The PHS Act directs the Secretary to establish procedures requiring that entities receiving funds from the PHS for the conduct of biomedical and behavioral research submit assurances on an annual basis that:

(1) These entities have established (based upon regulations prescribed by the Secretary) an administrative process to review reports of scientific misconduct in biomedical or behavioral research, and (2) they will report to the Secretary any investigation of alleged scientific misconduct that appears substantial. The Secretary also has authority to respond to information received with respect to possible scientific misconduct involving projects under the PHS Act and to take appropriate action in response to such misconduct.

The provisions of section 493 of the PHS Act contemplate that there will be a close working relationship between the awardee institutions and the Department in resolving allegations of scientific misconduct. Section 493 envisions that the awardee institutions will have the primary responsibility for preventing, detecting, investigating, reporting and resolving allegations of scientific misconduct. The Department, however, retains the ultimate responsibility and authority for monitoring such investigations and becoming involved in those investigations if appropriate or necessary.

In order to carry out his formal responsibilities under section 493, the Secretary published a Notice of Proposed Rule making on September 19, 1988 (53 FR 36347). That document set forth for public comment proposed responsibilities of applicant and awardee institutions, including requirements that they establish policies and procedures for investigating and reporting allegations of scientific misconduct involving research, research training, or related activities for which PHS funds have been awarded or requested. Proposed § 50.104 specified an appropriate time and method for notifying the PHS of instances of possible misconduct. Proposed § 103 specified that, if there is a reasonable indication of a criminal violation, the Department's Office of Inspector General would be notified within 24 hours.

This final rule applies only to institutions applying for or receiving financial assistance from the PHS. A separate proposed rule amending 48 CFR part 3 will be published in the **Federal Register** to cover entities applying for contracts.

Institutions are urged to develop, as soon as possible, policies and procedures for dealing with and reporting possible misconduct in science within their institution. After the effective date of this Rule, each institution must have in place an assurance for dealing with scientific misconduct, as outlined by this rule. Updated information with respect to assurances will be due each year, on a date to be specified by OSI. Assurances should be submitted for approval to the Director, Office of Scientific Integrity, at the above-cited address.

As stated, this final rule implements section 493 requiring the Department to issue regulations concerning investigation and reporting of "scientific fraud". (See subsequent text in this preamble regarding use of the terms "fraud" and "misconduct" in this context.) Consequently, the rule does not contain specific measures to foster scientific integrity. Other issues remain to be addressed, including: retention of laboratory data, authorship practices, the role of grantee institutions and funding agencies in the performance of audits or studies to prevent the occurrence of scientific misconduct, and the consistency of such policies across federal agencies. HHS will continue to monitor institutions' responses and propose policies as may be necessary in the future. Such action may be based in

part on the advance notice of proposed rulemaking published in the **Federal Register** on September 19, 1988 (53 FR 36344). In addition, consistency of policies in this area across Federal agencies will be monitored by the Office of Management and Budget in cooperation with the Office of Science and Technology Policy.

Summary of Comments

As noted, the Secretary published a proposed rule in the **Federal Register** on September 19, 1988 (53 FR 36347) for public comment. The comment period was open through November 18, 1988. One hundred thirty-nine responses were received that addressed a wide spectrum of issues concerning the proposed rule and scientific misconduct in general. The respondents included 60 institutional representatives, 37 individual staff or faculty members, 20 representatives of professional associations, 16 representatives of research institutes or faculty groups, three individuals from Federal offices, two private citizens, and one representative of a scientific journal. The responses were generally supportive of the PHS's efforts and of the proposed rule. Most respondents emphasized that the main responsibility for investigating or preventing cases of scientific misconduct should remain with the institution.

The following is a summary of other main points contained in the comments on the proposed rule, and the Departmental responses.

Applicability and Definition of "Misconduct in Science."

The proposed rule defined "misconduct in science" to mean (1) fabrication, falsification, plagiarism, deception or other practices that seriously deviate from those that are commonly accepted within the scientific community for proposing, conducting, or reporting research; or (2) material failure to comply with federal requirements that uniquely relate to the conduct of research." The comments and suggestions received were particularly helpful in refining this proposed definition. A number of respondents pointed out that, to the extent the second clause in the definition was largely intended to deal with violations of human and animal experimentation requirements, these areas are already covered by existing regulations and policies. Other commenters requested that honest error be excluded from the definition. Still others urged omission of the word "deception" inasmuch as deception can be an acceptable component of specific types of research. Some commenters disagreed with the section of the definition that addressed "other practices that seriously deviate from those that are commonly accepted within the scientific community for proposing, conducting, or reporting research" and proposed that this portion of the definition be deleted. On the other hand, some commenters suggested expanding the definition to include duplicate publication and intellectual piracy. Some commenters preferred the term "fraud" rather than "misconduct."

Response. The definition has been modified considerably in light of the comments. The term "deception" has been deleted. The second clause, referring to material failure to comply with federal requirements that uniquely relate to the conduct of research, has also been deleted in order to avoid duplicative reporting of violations of human and animal experimentation requirements. Further, a sentence has been added to make it clear that the definition does not include "honest error or honest differences in interpretations or judgments of data." At the same time, the language "other practices that seriously deviate" has been retained to assure coverage of any serious misconduct that might not technically be considered "fabrication, falsification, or plagiarism." With regard to the comments preferring "fraud" over "misconduct," the word "misconduct" is coming into increasing use because it avoids confusion with common law fraud, which contains certain unique characteristics that have no applicability to what has commonly come to be known as scientific misconduct. For this reason, the term "misconduct" is being retained.

Assurances. The notice of proposed rulemaking stated that an institution applying for or receiving PHS support must have an assurance satisfactory to the Secretary regarding procedures for dealing with misconduct in science. Most respondents agreed with the assurance mechanism. This final rule, in § 50.103, specifies that the assurance, on a form prescribed by the Secretary, must be submitted to the OSI as soon as possible after November 8, 1989, and no later than January 1, 1990, and be updated thereafter on an annual basis. This will enable PHS to ensure that institutions are establishing procedures that are consistent with the requirements of 42 CFR part 50. The assurance will consist of a series of affirmative statements, to be provided on the form prescribed by the Secretary. The OSI will also review annually a sample of institutions, policies and procedures.

Investigations and Reporting. Most of the respondents agreed with the overall proposed timing for completion of the inquiry and investigation phases. However, the need for flexibility was stressed in recognition of the complex and heterogeneous nature of individual cases. Five respondents said the proposed time schedule was too short, and three others suggested following the National Science Foundation's timetable. The need to request formally an extension was questioned, and there were two suggestions to include "Inquiries" in the title of this section.

Response. After considering all the comments, the PHS believes the proposed timetable for conducting inquiries and investigations is reasonable. The PHS agrees that a certain degree of flexibility also is appropriate but disagrees with the contention that institutions should not be required to request an extension if the investigation cannot be completed within the specified time period. Therefore, the proposed language for this purpose in § 50.104(a) is retained.

PHS expects that as institutions refine and enhance their policies and procedures and gain collective experience in conducting investigations, the quality and timeliness of such investigations will improve. Where institutions fail to carry out their responsibilities as specified in the rule, the Department will use whatever remedies may be available under the circumstances. If problems persist, PHS will consider rulemaking to establish additional sanctions, such as restrictions on or reductions in indirect-cost funding going to an institution, or charges for the costs of investigations that have to be performed by the OSI.

The term "Inquiries" has been added to the title of this section, since the rule includes a specified time period for this activity. This section also has been expanded to give more specific guidance regarding the scope of inquiries, investigations, and reports.

Reporting Requirements. Most of the concerns expressed by respondents with respect to the reporting requirements were related to the issue of confidentiality and to possible damage to the reputations of innocent individuals. They were concerned about the treatment of both the accused and accuser, although eight respondents specifically called for the identification of the accuser. Twenty-one respondents were concerned about the due process rights of the accused during an institutional inquiry and/or investigation, as well as the responsibilities of the PHS to protect

individuals' privacy and the need to maintain information confidential. Many respondents stated that a report should be made to the PHS only if substantial evidence is found, and some respondents stated that only essential information should be reported.

Response. After considering the comments received regarding the reporting requirements, the PHS has concluded that these requirements should be retained as originally proposed, with the addition that the reports be made part of the assurance review process. The PHS understands, and agrees with, the need for the confidential handling of information relevant to investigations. The PHS accepts and pursues anonymous allegations, so long as sufficient information is provided to be able to initiate an inquiry. No information, other than that which ordinarily is available, for example under the Freedom of Information Act, is released by the Department while an investigation is under way, except to Department personnel on a need-to-know basis.

The reporting requirements also have been changed to reflect the establishment of the OSI, which now is the focal point for all of the PHS for dealing with allegations of scientific misconduct involving research, research training, or related activities supported under the PHS Act. All reports shall be sent to the OSI, rather than to PHS as was stated in the Proposed Rule.

The PHS strongly encourages institutions to adopt procedures that will provide due process to the accused. Section 50.104 sets forth basic due process procedures to be followed during the investigation, such as assuring that the accused is interviewed and has an opportunity to comment on the findings of the investigation.

The PHS believes the reporting requirements are not unduly burdensome and that they are necessary in order for the Department to carry out its responsibility under the statute for the stewardship of Federal funds. As recipient institutions gain experience in the conduct of investigations and the preparation of the reports of those investigations, the PHS will continue to evaluate its monitoring function. However, at this initial stage of implementation, the PHS believes that an active monitoring role is important and that the reports required under the regulation are essential to that role.

Impact Analyses

Executive Order 12291 requires that a regulatory impact analysis be prepared for "major" rules which are defined in the Order as any rule that has an annual effect on the national economy of $100 million or more, or certain other specified effects.

The PHS does not believe that this regulation will have an annual economic impact of $100 million or more or the other effects listed in the Order. For this reason, the PHS has determined that this regulation is not a major rule within the meaning of the Order.

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires that, for each rule with a "significant economic impact on a substantial number of small entities," an analysis be prepared describing the rule's impact on small entities and identifying any significant alternatives to the rule that would minimize the economic impact on small entities.

The Secretary certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This final rule contains information collections that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting and record-keeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Responsibilities of PHS Awardee and Applicant Institutions for Dealing with and Reporting Possible Misconduct in Science.

Description: As required by the PHS Act, the Secretary shall require that applicant and awardee institutions receiving PHS funding investigate and report any allegations of misconduct in science.

Description of Respondents: Non-profit institutions, small businesses or organizations, for-profit organizations.

ESTIMATED ANNUAL REPORTING AND RECORD-KEEPING BURDEN

Applicable section of policy	No. of respondents	Hours per response	Total hours
Reporting:			
103(b)(1)	2,500	7	17,500
103(b)(2)	(2,500)	3.5	8,750
103(c)(4)/(d)(4)	(20)	0.2	4
103(d)(5)	(2)	0.5	1
103(d)(12)	(20)	0.5	10
103(d)(15)	(20)	0.5	10
104(a)(3)	(5)	0.5	2.5
104(a)(4)	(20)	0.2	4
104(a)(5)	(4)	1	4
104(b)	(2)	0.5	1
Total			17,534
Record-Keeping:			
103(d)(1)	(40)	4	160
(103(d)(6)	(40)	0.5	20
103(d)(7)	(20)	40	800
103(d)(10)	(20)	0.2	4
Total			984
Disclosure:			
103(c)(2)	2,500	1.0	2,500
103(d)(1)	(40)	0.5	20
103(d)(7)	(20)	0.5	10
Total			2,530
Total burden			21,048

As required by section 3504(h) of the Paperwork Reduction Act of 1980, the Department will submit for review by the Office of Management and Budget (OMB) the above-cited information collection requirements. As OMB control numbers are assigned, we will publish a Notice in the Federal Register announcing them. Organizations and individuals desiring to submit comments on the information-collection requirements should direct such comments to the above-cited information address, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington DC 20503 (ATTN: Richard A. Eisinger).

Catalog of Federal Domestic Assistance

This rule affects a great many PHS research programs. It would be wasteful and cumbersome to include a multi-page listing of them all here. Questions about this rule should be directed to the information address above where individual programs listed in the Catalog of Federal Domestic Assistance are affected.

List of Subjects in 42 CFR Part 50

Administration practice and procedure, American Samoa, Drugs, Family Planning, Grant programs in health, Guam, Northern Mariana Island, Pacific Islands Territory, Virgin Islands.

Dated: March 22, 1989.

Ralph R. Reed,

Acting Assistant Secretary for Health.

Approved: April 3, 1989.

Louis W. Sullivan,

Secretary.

For the reasons set out in the preamble, Title 42, Subchapter D, of the Code of Federal Regulations is amended to add Subpart A to part 50, consisting of §§ 50.101 through 50.105 to read as set forth below.

PART 50—POLICIES OF GENERAL APPLICABILITY

Subpart A—Responsibility of PHS Awardee and Applicant Institutions for Dealing With and Reporting Possible Misconduct in Science

Sec.

Subpart A—Responsibility of PHS Awardee and Applicant Institutions for Dealing With and Reporting Possible Misconduct in Science

Authority: Sec. 493, Public Health Service Act, as amended, 99 Stat. 874–875 (42 U.S.C. 289b); Sec. 501(f), Public Health Service Act, as amended, 102 Stat. 4213 (42 U.S.C. 290aa(f)).

§ 50.101 Applicability.

This subpart applies to each entity which applies for a research, research-training, or research-related grant or cooperative agreement under the Public Health Service (PHS) Act. It requires each such entity to establish uniform policies and procedures for investigating and reporting instances of alleged or apparent misconduct involving research or research training, applications for support of research or research training, or related research activities that are supported with funds made available under the PHS Act. This subpart does not supersede and is not intended to set up an alternative to established procedures for resolving fiscal improprieties, issues concerning the ethical treatment of human or animal subjects, or criminal matters.

§ 50.102. Definitions.

As used in this subpart:

"Act" means the Public Health Service Act, as amended, (42 U.S.C. 201 *et seq.*).

"Inquiry" means information gathering and initial factfinding to determine whether an allegation or apparent instance of misconduct warrants an investigation.

"Institution" means the public or private entity or organization (including federal, state, and other agencies) that is applying for financial assistance from the PHS, e.g., grant or cooperative agreements, including continuation awards, whether competing or noncompeting. The organization assumes legal and financial accountability for the awarded funds and for the performance of the supported activities.

"Investigation" means the formal examination and evaluation of all relevant facts to determine if misconduct has occurred.

"Misconduct" or "Misconduct in Science" means fabrication, falsification, plagiarism, or other practices that seriously deviate from those that are commonly accepted within the scientific community for proposing, conducting, or reporting research. It does not include honest error or honest differences in interpretations or judgments of data.

"OSI" means the Office of Scientific Integrity, a component of the Office of the Director of the National Institutes for Health (NIH), which oversees the implementation of all PHS policies and procedures related to scientific misconduct; monitors the individual investigations into alleged or suspected scientific misconduct conducted by institutions that receive PHS funds for biomedical or behavioral research projects or programs; and conducts investigations as necessary.

"OSIR" means the Office of Scientific Integrity Review, a component of the Office of the Assistant Secretary for Health, which is responsible for establishing overall PHS policies and procedures for dealing with misconduct in science, overseeing the activities of PHS research agencies to ensure that these policies and procedures are implemented, and reviewing all final reports of investigations to assure that any findings and recommendations are sufficiently documented. The OSIR also makes final recommendations to the Assistant Secretary for Health on whether any sanctions should be imposed and, if so, what they should be in any case where scientific misconduct has been established.

"PHS" means the Public Health Service, an operating division of the Department of Health and Human Services (HHS). References to PHS include organizational units within the PHS that have delegated authority to award financial assistance to support scientific activities, e.g., Bureaus, Institutes, Divisions, Centers or Offices.

"Secretary" means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved may be delegated.

§ 50.103 Assurance—Responsibilities of PHS awardee and applicant institutions.

(a) *Assurances.* Each institution that applies for or receives assistance under the Act for any project or program which involves the conduct of biomedical or behavioral research must have an assurance satisfactory to the Secretary that the applicant:

(1) Has established an administrative process, that meets the requirements of this Subpart, for reviewing, investigating, and reporting allegations of misconduct in science in connection with PHS-sponsored biomedical and behavioral research conducted at the applicant institution or sponsored by the applicant; and

(2) Will comply with its own administrative process and the requirements of this Subpart.

(b) *Annual Submission.* An applicant or recipient institution shall make an annual submission to the OSI as follows:

(1) The institution's assurance shall be submitted to the OSI, on a form prescribed by the Secretary, as soon as possible after November 8, 1989, but no later than January 1, 1990, and updated annually therefter on a date specified by OSI. Copies of the form may be requested through the Director, OSI.

(2) An institution shall submit, along with its annual assurance, such aggregate information on allegations, inquiries, and investigations as the Secretary may prescribe.

(c) *General Criteria.* In general, an applicant institution will be considered to be in compliance with its assurance if it:

(1) Establishes, keeps current, and upon request provides the OSIR, the OSI, and other authorized Departmental officials the policies and procedures required by this subpart.

(2) Informs its scientific and administrative staff of the policies and procedures and the importance of compliance with those policies and procedures.

(3) Takes immediate and appropriate action as soon as misconduct on the part of employees or persons within the organization's control is suspected or alleged.

(4) Informs, in accordance with this Subpart, and cooperates with the OSI with regard to each investigation of possible misconduct.

(d) *Inquiries, Investigations, and Reporting—Specific Requirements.* Each

applicant's policies and procedures must provide for:

(1) Inquiring immediately into an allegation or other evidence of possible misconduct. An inquiry must be completed within 60 calendar days of its initiation unless circumstances clearly warrant a longer period. A written report shall be prepared that states what evidence was reviewed, summarizes relevant interviews, and includes the conclusions of the inquiry. The individual(s) against whom the allegation was made shall be given a copy of the report of inquiry. If they comment on that report, their comments may be made part of the record. If the inquiry takes longer than 60 days to complete, the record of the inquiry shall include documentation of the reasons for exceeding the 60-day period.

(2) Protecting, to the maximum extent possible, the privacy of those who in good faith report apparent misconduct.

(3) Affording the affected individual(s) confidential treatment to the maximum extent possible, a prompt and thorough investigation, and an opportunity to comment on allegations and findings of the inquiry and/or the investigation.

(4) Notifying the Director, OSI, in accordance with § 50.104(a) when, on the basis of the initial inquiry, the institution determines that an investigation is warranted, or prior to the decision to initiate an investigation if the conditions listed in § 50.104(b) exist.

(5) Notifying the OSI within 24 hours of obtaining any reasonable indication of possible criminal violations, so that the OSI may then immediately notify the Department's Office of Inspector General.

(6) Maintaining sufficiently detailed documentation of inquiries to permit a later assessment of the reasons for determining that an investigation was not warranted, if necessary. Such records shall be maintained in a secure manner for a period of at least three years after the termination of the inquiry, and shall, upon request, be provided to authorized HHS personnel.

(7) Undertaking an investigation within 30 days of the completion of the inquiry, if findings from that inquiry provide sufficient basis for conducting an investigation. The investigation normally will include examination of all documentation, including but not necessarily limited to relevant research data and proposals, publications, correspondence, and memoranda of telephone calls. Whenever possible, interviews should be conducted of all individuals involved either in making the allegation or against whom the allegation is made, as well as other individuals who might have information regarding key aspects of the allegations; complete summaries of these interviews should be prepared, provided to the interviewed party for comment or revision, and included as part of the investigatory file.

(8) Securing necessary and appropriate expertise to carry out a thorough and authoritative evaluation of the relevant evidence in any inquiry or investigation.

(9) Taking precautions against real or apparent conflicts of interest on the part of those involved in the inquiry or investigation.

(10) Preparing and maintaining the documentation to substantiate the investigation's findings. This documentation is to be made available to the Director, OSI, who will decide whether that Office will either proceed with its own investigation or will act on the institution's findings.

(11) Taking interim administrative actions, as appropriate, to protect Federal funds and insure that the purposes of the Federal financial assistance are carried out.

(12) Keeping the OSI apprised of any developments during the course of the investigation which disclose facts that may affect current or potential Department of Health and Human Services funding for the individual(s) under investigation or that the PHS needs to know to ensure appropriate use of Federal funds and otherwise protect the public interest.

(13) Undertaking diligent efforts, as appropriate, to restore the reputations of persons alleged to have engaged in misconduct when allegations are not confirmed, and also undertaking diligent efforts to protect the positions and reputations of those persons who, in good faith, make allegations.

(14) Imposing appropriate sanctions on individuals when the allegation of misconduct has been substantiated.

(15) Notifying the OSI of the final outcome of the investigation.

§ 50.104 Reporting to the OSI.

(a)(1) An institution's decision to initiate an investigation must be reported in writing to the Director, OSI, on or before the date the investigation begins. At a minimum, the notification should include the name of the person(s) against whom the allegations have been made, the general nature of the allegation, and the PHS application or grant number(s) involved. Information provided through the notification will be held in confidence to the extent permitted by law, will not be disclosed as part of the peer review and Advisory Committee review processes, but may be used by the Secretary in making decisions about the award or continuation of funding.

(2) An investigation should ordinarily be completed within 120 days of its initiation. This includes conducting the investigation, preparing the report of findings, making that report available for comment by the subjects of the investigation, and submitting the report to the OSI. If they can be identified, the person(s) who raised the allegation should be provided with those portions of the report that address their role and opinions in the investigation.

(3) Institutions are expected to carry their investigations through to completion, and to pursue diligently all significant issues. If an institution plans to terminate an inquiry or investigation for any reason without completing all relevant requirements under § 50.103(d), a report of such planned termination, including a description of the reasons for such termination, shall be made to OSI, which will then decide whether further investigation should be undertaken.

(4) The final report submitted to the OSI must describe the policies and procedures under which the investigation was conducted, how and from whom information was obtained relevant to the investigation, the findings, and the basis for the findings, and include the actual text or an accurate summary of the views of any individual(s) found to have engaged in misconduct, as well as a description of any sanctions taken by the institution.

(5) If the institution determines that it will not be able to complete the investigation in 120 days, it must submit to the OSI a written request for an extension and an explanation for the delay that includes an interim report on the progress to date and an estimate for the date of completion of the report and other necessary steps. Any consideration for an extension must balance the need for a thorough and rigorous examination of the facts versus the interests of the subject(s) of the investigation and the PHS in a timely resolution of the matter. If the request is granted, the institution must file periodic progress reports as requested by the OSI. If satisfactory progress is not made in the institution's investigation, the OSI may undertake an investigation of its own.

(6) Upon receipt of the final report of investigation and supporting materials, the OSI will review the information in order to determine whether the investigation has been performed in a timely manner and with sufficient objectivity, thoroughness and

competence. The OSI may then request clarification or additional information and, if necessary, perform its own investigation. While primary responsibility for the conduct of investigations and inquiries lies with the institution, the Department reserves the right to perform its own investigation at any time prior to, during, or following an institution's investigation.

(7) In addition to sanctions that the institution may decide to impose, the Department also may impose sanctions of its own upon investigators or institutions based upon authorities it possesses or may possess, if such action seems appropriate.

(b) The institution is responsible for notifying the OSI if it ascertains at any stage of the inquiry or investigation, that any of the following conditions exist:

(1) There is an immediate health hazard involved;

(2) There is an immediate need to protect Federal funds or equipment;

(3) There is an immediate need to protect the interests of the person(s) making the allegations or of the individual(s) who is the subject of the allegations as well as his/her co-investigators and associates, if any;

(4) It is probable that the alleged incident is going to be reported publicly.

(5) There is a reasonable indication of possible criminal violation. In that instance, the institution must inform OSI within 24 hours of obtaining that information. OSI will immediately notify the Office of the Inspector General.

§ 50.105 Institutional compliance.

Institutions shall foster a research environment that discourages misconduct in all research and that deals forthrightly with possible misconduct associated with research for which PHS funds have been provided or requested. An institution's failure to comply with its assurance and the requirements of this subpart may result in enforcement action against the institution, including loss of funding, and may lead to the OSI's conducting its own investigation.

[FR Doc. 89-18437 Filed 8-7-89; 8:45 am]
BILLING CODE 4160-17-M

Proposed Rules

Federal Register
Vol. 54, No. 151
Tuesday, August 8, 1989

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-ASO-32]

Proposed Designation of Transition Area, Booneville, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to designate the Booneville, MS, transition area to accommodate instrument flight rules (IFR) operations at the Booneville-Baldwyn Airport. This action will lower the base of controlled airspace from 1,200 feet to 700 feet above the surface in the vicinity of the airport. A standard instrument approach procedure (SIAP) is being developed to serve the airport and the controlled airspace is required for protection of IFR operations. Concurrent with publication of the SIAP, the operating status of the airport will change from visual flight rules (VFR) to IFR.

DATES: Comments must be received on or before: September 11, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO-530, Manager, Airspace and Procedures Branch, Docket No. 89-ASO-32, P.O. Box 20636, Atlanta, Georgia 30320.

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-ASO-32." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received.

All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to designate the Booneville, MS, transtion area. This action will provide controlled airspace for aircraft executing a new SIAP to the Booneville-Baldwyn Airport. If the proposed designation of the transition area is found acceptable, the operating status of the airport will be changed to IFR. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6E dated January 3, 1989.

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

List of Subjects in 14 CFR Part 71

Aviation Safety, Transition Areas.

The Proposed Amendment

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

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

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

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Booneville, MS [New]

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Booneville-Baldwyn Airport (latitude 34°35'32" N, longitude 88°38'50" W).

Issued in East Point, Georgia, on July 20, 1989.

Don Cass,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 89-18465 Filed 8-7-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS-001-89]

RIN 1545-AM88

Limitations on Passive Activity Losses and Credits—Definition of Activity

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to the definition of "activity" for purposes of applying the limitations on passive activity losses and passive activity credits.

DATES: The public hearing will be held on Tuesday, November 28, 1989, and continuing, if necessary, at the same time on Wednesday, November 29, 1989, beginning at 10:00 a.m. Outlines of oral comments must be delivered by Tuesday, November 7, 1989.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (PS-001-89) Room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Angela Wilburn telephone (202) 566-3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations appearing in the **Federal Register** for Friday, May 12, 1989, (54 FR 20606).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit, not later than Tuesday, November 7, 1989, an outine of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers thereto.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 89-18431 Filed 8-7-89; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 1

[EE-44-87]

RIN 1546-AK46

Minimum Participation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to minimum participation standards under section 401(a)(26) of the Internal Revenue Code of 1986.

DATES: The public hearing will be held on Monday, October 30, 1989, and continuing, if necessary, at the same time on Tuesday, October 31, 1989, beginning at 10:00 a.m. Outlines of oral comments must be delivered by Friday, October 6, 1989.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (EE-44-87) Room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Angela Wilburn, telephone (202) 566-3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations appearing in the **Federal Register** for Tuesday, February 14, 1989 (54 FR 6710).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit, not later than Friday, October 6, 1989, an outline of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers thereto.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 89-18430 Filed 8-7-89; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05-89-49]

Special Local Regulations for Marine Events; Trump Castle World Championships; Atlantic Ocean, off Atlantic City, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing special local regulations for the Trump Castle World Championships to be held off the southern New Jersey coast between Margate City at Great Egg Harbor Inlet and Brigantine Shoal on October 17, 19 and 21, 1989. These special local regulations are necessary to control vessel traffic in the immediate vicinity of this event. The effect will be to restrict general navigation in the regulated area for the safety of spectators and participants.

DATES: Comments must be received on or before September 22, 1989.

ADDRESSES: Comments should be mailed or hand carried to Commander (bb), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004. The comments will be available for inspection and copying at Room 209 of this address. Normal office hours are between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

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

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD 05–89–49) and the specific section of the proposal to which their comments apply. Reasons should be given for each comment. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process. The receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

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

Discussion of Proposed Regulations: The New York Offshore Powerboat Racing Association will sponsor this year's Trump Castle World Championships. The race will consist of between 100 to 150 powerboats, from 24 to 50 feet in length, racing approximately 150 nautical miles over a 30 nautical mile course. This year's event will be a three-day event instead of the one-day event held last year. Race headquarters will be located in Trump Castle, Atlantic City, New Jersey. Coast Guard patrol vessels will be positioned at both inlets to direct vessels to temporary spectator anchorages and to instruct transiting vessels on how to proceed safely around the race course.

The sponsor will provide committee boats to lead the race vessels in a procession to and from the race course. The sponsor also will provide more than 70 vessels to assist the Coast Guard and local government agencies in patrolling this event.

The race course has been altered slightly from the one used in 1988. It still remains a flattened, elongated triangle, but the course has been moved 200 yards farther seaward at the end nearest Great Egg Harbor Inlet. The change was made in order to relocate the Great Egg Harbor Inlet Spectator Anchorage Area between the shoreline at Ventnor City and the inshore leg of the race course.

Generally, the race course is the same as last year, extending along the New Jersey coastline from Great Egg Harbor Inlet to Brigantine Shoal Inner Buoy 4BS (LL 40), thence three nautical miles east, thence southwestward to Great Egg Harbor Inlet. The regulated area includes the waters of the Atlantic Ocean from the shoreline at Great Egg Harbor Inlet to the tank at Brigantine, New Jersey, and extends approximately 1000 yards beyond the outer leg of the race course, except where the course exceeds the three-mile territorial sea limit. The portion of the race course that exceeds the three-mile is not regulated by the Coast Guard. Nevertheless, vessel operators are advised to remain clear of the advisory area designated in Section 2.(a)(2) of this rule. To provide for the safety of participants, spectators, and vessels transiting the area, the Coast Guard will restrict vessel movement in the regulated area and has established two temporary spectator anchorages (at Great Egg Harbor Inlet and Absecon Inlet) for what is expected to be a large spectator fleet.

In order to publicize these regulations, the Coast Guard will publish details in the Local Notice to Mariners and the **Federal Register**, and members of the Coast Guard Auxiliary will be present in the vicinity of the race site to inform vessel operators of these regulations and other applicable laws.

Economic Assessment and Certification: These proposed regulations are not considered major under Executive Order 12291 on Federal Regulation nor significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Since the 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 Assessment: This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Proposed Regulations

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

PART 100—[AMENDED]

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

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

2. A temporary § 100.35–0549 is added to read as follows:

§ 100.35–0549 Atlantic Ocean, New Jersey Seacoast, Off Atlantic City, New Jersey.

(a) *Definitions:* (1) *Regulated area.* The waters of the Atlantic Ocean bounded by the shoreline and a line drawn across the outermost points of land on either side of Absecon Inlet, and by a line drawn from the shoreline at Longport, New Jersey, at latitude 39°18.20′ North, longitude 74°32.30′ West; thence to latitude 39°17.80′ N., longitude 74°31.65′ W.; thence northeastward to latitude 39°21.25′ N., longitude 74°20.50′ W.; thence along the three-mile territorial sea limit to latitude 39°24.30′ North, longitude 74°13.80′ West; and thence to the shoreline at latitude 39°25.8′ North, longitude 74°21.5′ West.

(2) *Advisory area.* The waters of the Atlantic Ocean enclosed by lines connecting the following points:

Latitude	Longitude
39°21.25' N.	74°20.50' W.
39°23.30' N.	74°13.80' W.
39°24.15' N.	74°13.60' W.
39°24.35' N.	74°16.65' W.

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

(4) *Spectator Anchorage Areas.* (i) *Absecon Inlet Spectator Area.* The waters off the New Jersey seacoast bounded by a line connecting the following points:

Latitude	Longitude
39°22'24.0" N.	74°24'00.0" W.
39°22'00.0" N.	74°23'43.0" W.
39°22'25.0" N.	74°22'54.0" W.
39°22'48.0" N.	74°23'12.0" W.

(ii) *Great Egg Inlet Spectator Area.* The waters off the New Jersey seacoast bounded by a line connecting the following points:

Latitude	Longitude
39°18'48.0" N.	74°31'18.0" W.
39°18'42.0" N.	74°31'12.0" W.
39°21'00.0" N.	74°26'24.0" W.
39°21'06.0" N.	74°26'30.0" W.

(b) *Special Local Regulations.* (1) Except for participants in the Trump, Castle World Championships and vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area without the permission of the Patrol Commander.

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

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

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

(3) Spectator vessels may anchor in the spectator anchorage areas specified in paragraphs (a)(4)(i) and (a)(4)(ii) of these regulations.

(4) The Coast Guard Patrol Commander may allow vessels to transit the regulated area whenever a race heat is not being run.

(5) Vessel operators are advised to remain clear of the advisory area during the effective periods of this regulation.

(c) *Effective periods:* The regulations are effective for the following periods:
8:00 a.m. to 3:30 p.m., October 17, 1989.
6:30 a.m. to 3:30 p.m., October 19, 1989.
6:30 a.m. to 3:30 p.m., October 21, 1989.

Dated: July 28, 1989.

P.A. Welling,

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

[FR Doc. 89-18445 Filed 8-7-89; 8:45 am]

BILLING CODE 4910-14-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1206

RIN 3095-AA43

National Historical Publications and Records Commission; Grant Program Procedures

AGENCY: National Archives and Records Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Archives and Records Administration (NARA) proposes to revise its regulations in 36 CFR Part 1206 relating to the National Historical Publications and Records Commission (NHPRC) grant programs to ensure greater clarity, as well as conformance with the new common rules governing administrative procedures and suspension and debarment procedures, 36 CFR Parts 1207 and 1209 respectively. The rule will affect NHPRC applicants and grantees.

NARA also proposes in this rule to require applicants to submit a NARA-developed budget form in place of Standard Form 424A, Budget Information—Non-Construction Programs. The proposed collection of information requirements have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act. Public comments on this proposed collection of information should be directed to OMB at the address listed in the ADDRESSES section of the preamble.

DATES: Comments must be received by October 10, 1989.

ADDRESSES: Comments on the proposed rule and the collection of information should be sent to Director, Policy and Program Analysis Division (NAA), National Archives and Records Administration, Washington, DC 20408.

Comments on the collection of information also should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: John Constance or Nancy Allard at 202-523-3214 (FTS 523-3214).

SUPPLEMENTARY INFORMATION:

Background

The purpose of the National Historical Publications and Records Commission (NHPRC) is to promote the preservation, conservation and use of historically significant documents. The Archivist of the United States awards grants recommended by the NHPRC. The publications program grants are made for the preparation (compiling, edition and publishing) of printed and microfilm publications. Subvention program grants are made to nonprofit presses to help support publication costs of sponsored editions. The records program grants are made for the preservation, arrangement and description of historical records. Education programs sponsored by NHPRC include an institute to train scholars in documentary editing and fellowships in the fields of documentary editing and archival administration.

Collection of Information

NARA is proposing that applicants for NHPRC grants submit a NARA-developed form, NA Form 17001, Budget Form, instead of the Standard Form 424A, Budget Information—Non-Construction Programs, used in many other Federal grant programs. The form is completed once at the time of submission of the grant application. Use of the NARA form will allow NARA to evaluate competing applications equitably.

NARA estimates that approximately 200 NHPRC grant applicants each year would submit the form. The public reporting burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to NARA at the address indicated in the ADDRESSES section of the preamble and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for NARA, Washington, DC 20503.

Provisions of the Proposed Rule

The proposed rule updates, clarifies and reorganizes the procedures governing the operations of the programs of the NHPRC. Some of the procedures formerly covered in 36 CFR part 1206 are now contained in 36 CFR parts 1207 and 1209 which over the common rules governing uniform administrative procedures and

suspension and debarment procedures. In addition stylistic changes have been made throughout. Following is a discussion of significant changes made by the proposed rule.

Definitions of "State projects," "regional projects," and "national projects" have been added to § 1206.2, and the definition of "State" has been clarified.

Section 1206.4 reflects two changes in NHPRC grant authority made by Pub. L. 100-365: Federal agencies are deleted and individuals added as a category of grantees.

Reference to adivsory committees have been deleted in §§ 1206.14 and 1206.34. Authorization to appoint committees is given in 44 U.S.C. 2505 and is superfluous in this Part.

Section 1206.16 has been changed to include the provisions of publication projects of papers and documents as well as microform.

Section 1206.18 has been rewritten and the amount of subvention has been changed from $10,000 to $12,000 per volume.

In § 1206.36, a procedure is added for designating and/or continuing the term of the State historical records coordinator when the governor has not made a timely appointment. A new § 1206.37 is added to authorize the designation of a deputy State historical records coordinator to assist in carrying out the coordinator's responsibilities.

Experience in administration of government records has been added to § 1206.38 in order to broaden State historical records advisory board membership to include custodians of government records and government records managers. A reference is also added to establish procedures for continuation of State board members' terms and other membership matters. Commission policy on appointment of state boards has changed in § 1206.54. Governors appoint board members with no requirement for NHPRC approval of nominations.

Section 1206.56 has been modified to include the frequency with which the NHPRC meets to consider grant applications and to note that some State historical advisory boards have established pre-submission review deadlines for proposals under the records program.

Section 1206.58, "How to apply," gives some specific NHPRC guidelines to potential applicants for the publication and records programs. These include contact with NHPRC staff, application forms, assurances and certifications, and lists the program guideline pamphlets.

Section 1206.66, "Review and evaluation of grant proposals," is now divided into records grant proposals, publications grant proposals and subvention grant applications. The new format allows each type of grant request to be discussed in more specific terms.

This rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on small business entities.

List of Subjects in 36 CFR Part 1206

Grant programs–Archives and records, Grant administration.

For the reasons set forth in the preamble, NARA proposes to amend Part 1206 of Title 36 of the Code of Federal Regulations as follows:

PART 1206—NATIONAL HISTORICAL PUBLICATIONS AND RECORDS COMMISSION

1. The authority citation for part 1206 continues to read as follows:

Authority: 44 U.S.C. 2104(a); 44 U.S.C. 2501–2506.

2. Subparts A, B, and C are redesignated as subparts B, C, and D, and existing §§ 1206.1 through 1206.6 are designated "Subpart A—General." The table of contents is revised to read as follows:

Subpart A—General

Sec.
1206.1 Scope of part.
1206.2 Definitions.
1206.4 Purpose of the Commission.
1206.6 Programs of the Commission.

Subpart B—Publications Program

1206.10 General.
1206.12 Scope and purpose.
1206.14 Organization.
1206.16 Publication projects.
1206.18 Subsidies for printing costs.
1206.20 Microform publication standards.

Subpart C—Records Program

1206.30 General.
1206.32 Scope and purpose.
1206.34 Organization.
1206.36 State historical records coordinator.
1206.37 Deputy State historical records coordinator.
1206.38 State historical records advisory board.

Subpart D—Grant Procedures

1206.50 Types of grants.
1206.52 Grant limitations.
1206.54 Who may apply.
1206.56 When to apply.
1206.58 How to apply.
1206.66 Review and evaluation of grant proposals.
Sec.
1206.68 Grant administration responsibilities.
1206.70 Grant instrument.
1206.78 Grant reports.
1206.80 Safety precautions.
1206.82 Acknowledgement.
1206.94 Compliance with Governmentwide requirements.

3. Section 1206.2 is amended by revising paragraphs (b) and (c) and adding paragraphs (d) through (f) to read as follows:

§ 1206.2 Definitions.

* * * * *

(b) The term "historical records" means record material having permanent or enduring value regardless of physical form or characteristics, including but not limited to manuscripts, personal papers, official records, maps, and audiovisual materials.

(c) In §§ 1206.36 and 1206.38, the term "State" means all 50 States of the Union, plus the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Northern Mariana Islands, and the Trust Territories of the Pacific.

(d) The term "State projects" means records program projects directed by organizations operating within and involving records or activities within one State. Records or activities of such projects will typically be under the administrative control of the organization applying for the grant. The records or activities need not relate to the history of the State.

(e) The term "regional projects" means records program projects involving records or activities in more than one State in a region. Regional projects include those undertaken by regional archival groups of consortia.

(f) The term "national projects" means records program projects involving records or activities in several regions or in widely separated States. In general, the location of the records and/or the site of grant-funded activities will determine the category of submission.

4. Section 1206.4 is revised to read as follows:

§ 1206.4 Purpose of the Commission

The National Historical Publications and Records Commisson makes plans, estimates, and recommendations regarding the preservation and use of historical records that may be important for an understanding and appreciation of the history of the United States. It also cooperates with and encourages appropriate Federal, State, and local agencies and nongovernmental institutions in collecting and preserving and, when it considers it desirable, in

editing and publishing the records of outstanding citizens, groups, or institutions and other important documents. On recommendation of the Commission, the Archivist of the United States makes grants to State and local agencies and to non-profit organizations and institutions and to individuals in support of these programs.

5. Section 1206.6 is revised to read as follows:

§ 1206.6 Programs of the Commission

The Commission operates primarily through a publications program (subpart B) and a records program (subpart C).

6. Redesignated Subpart B is revised to consist of §§ 1206.10 through 1206.20 and to read as follows:

Subpart B—Publications Program

§ 1206.10 General.

This subpart describes the scope, purpose, and organization of the publications program and prescribes requirements applicable to book and microform publication projects. Grant application and administration procedures are given in subpart D of this part.

§ 1206.12 Scope and purpose.

The publications program is intended to ensure the dissemination and accessibility of documentary source material important to the study and understanding of U.S. history. Projects should therefore be based upon material of widespread interest among scholars, students, and informed citizens. Documents should have historical value and interest that transcend local and State boundaries.

§ 1206.14 Organization.

The Executive Director, the Director of the Publications Program, and the staff of the Commission administer the program under the guidance of the Commission and the immediate administrative direction of its chairman, the Archivist of the United States.

§ 1206.16 Publication projects.

(a) Each publication project shall include either the papers of a U.S. leader in a significant phase of life in the United States or documents relating to some outstanding event or to some topic or theme of national significance in U.S. history. These projects shall consist of collecting, compiling, editing, and publishing, either selectively or comprehensively, the papers or documents. Publication may be in the form of book or microform. One copy of each book publication should be deposited with the National Historical Publications and Records Commission (NP), Washington, DC 20408.

(b) For microform projects, the grantee shall make positive prints and all finding aids available to institutions, scholars, or students through interlibrary loan and for purchase. Ten complimentary copies of guides and indexes produced by the projects shall be sent to the Commission.

§ 1206.18 Subsidies for printing costs

(a) The Commission will consider grant applications from university and other nonprofit presses for the subvention of part of the costs of manufacturing and disseminating volumes that have been formally endorsed by the Commission. Grants not exceeding $12,000 per volume are awarded by NARA upon recommendation of the Commission to promote the widest possible use of Commission-sponsored documentary editions.

(b) The granting of a subvention shall be used to encourage the highest standards in the production of volumes, particularly the quality of paper and ink.

(c) The Commission shall receive 15 complimentary copies of each published volume for which a subvention grant is made.

§ 1206.20 Microform publication standards.

Technical standards for NHPRC-sponsored microform projects are stated in the brochure "National Historical Publications and Records Commission: Microform Guidelines (1986), which will be supplied to applicants upon request and to grantee institutions at the time a grant is made for a microform project. The Commission may, from time to time, revise these standards, but any changes to the standards will not apply to microform projects already in progress at the time revision is issued.

7. Redesignated subpart C consisting of §§ 1206.30 through 1206.38 is revised to read as follows:

Subpart C—Records Program

§ 1206.30 General

This subpart describes the scope, purpose, and organization of the records program. Grant application and administration procedures are given in subpart D of this part.

§ 1206.32 Scope and purpose.

Through its records programs, the National Historical Publications and Records Commission encourages a greater effort at all levels of government and by private organizations to preserve and make available for use those records, generated in every facet of life, that further an understanding and appreciation of U.S. history. In the public sector, these historical records document significant activities of State, county, municipal, and other units of government. In the private sector, historical records include manuscripts, personal papers, and family or corporate archives that are maintained by a variety of general repositories as well as materials in special collections relating to particular fields of study, including the arts, business, education, ethnic and minority groups, immigration, labor, politics, professional services, religion, science, urban affairs, and women. In addition to supporting projects relating directly to a body of records, the Commission may also support projects to advance the state of the art, to promote cooperative efforts among institutions and organizations, and to improve the knowledge, performance, and professional skills of those who work with historical records.

§ 1206.34 Organization.

The Executive Director, Director of the Records Program, and the staff of the Commission administer the records program under the guidance of the Commission and the immediate administrative direction of its chairman, the Archivist of the United States.

§ 1206.36 State historical records coordinator.

(a) The governor of each State desiring to participate in the program shall appoint a State historical records coordinator (coordinator), who shall be the full-time professional official in charge of either the State archival agency or the State-funded historical agency. If the State has both agencies, the official in charge who is not appointed coordinator shall be a member of the State historical records advisory board. The coordinator is appointed to a four year term with the possibility of renewal. The coordinator shall serve as chairman of the State historical records advisory board and shall be the central coordinating officer for the historical records grant program in the State. The person appointed will not be deemed to be an official or employee of the Federal Government and will receive no Federal compensation for such service. The pamphlet " Guidelines for State Historical Records Coordinators and State Historical Records Advisory Boards", which is available from the Commission and from State historical records coordinators, provides further

information on the role of the coordinator.

(b) In the absence of instructions of the contrary, the NHPRC may continue to recognize the coordinator for a period of six months beyond the expiration of his/her term. After six months, if the governor has not made an appointment, the NHPRC shall recognize an acting coordinator selected by the State board until the governor appoints a coordinator. In the event of the resignation of the coordinator or other inability to serve, a deputy coordinator, if one has been designated, will serve as acting State coordinator until the governor makes an appointment or for six months, whichever is shorter. After six months or in the absence of a deputy coordinator, the NHPRC will recognize an acting coordinator in order to conduct the necessary business of the board.

§ 1206.37 Deputy State historical records coordinator.

A deputy State historical records coordinator may be designated to assist in carrying out the duties and responsibilities of the coordinator and to serve as an acting coordinator at the coordinator's direction or upon the coordinator's resignation or other inability to serve.

§ 1206.38 State historical records advisory board

(a) The governor of each State desiring to participate in the program shall appoint a State historical records advisory board (board) consisting of at least seven members, including the State historical records coordinator, who chairs the board. A majority of the members shall have recognized experience in the administration of government records, historical records, or archives. The board should be as broadly representative as possible of the public and private archives, records offices, and research institutions and organizations in the State. Board members will not be deemed to be officials or employees of the Federal Government and will receive no Federal compensation for their service on the board. They are appointed for three years with the possibility of renewal; terms are staggered so that one-third of the board is newly appointed or reappointed each year. If the board is not established in State law, members' terms continue until replacements are appointed. The board may adopt standards for attendance and may declare membership positions open if those standards are not met.

(b) The board is the central advisory body for historical records planning and for projects developed and carried out within the State. Specifically, the board may perform such duties as sponsoring and publishing surveys of the conditions and needs of historical records in the State; soliciting or developing proposals for projects to be carried out in the State with NHPRC grants; reviewing records proposals by institutions in the State and making recommendations about these to the Commission; developing, revising, and submitting to the Commission State priorities for historical records projects following guidelines developed by the Commission; and reviewing, through reports and otherwise, the operation and progress or records projects in the State financed by NHPRC grants.

7. Redesignated subpart D consisting of §§ 1206.50 through 1206.94 is revised to read as follows:

Subpart D—Grant Procedures

§ 1206.50 Types of grants.

(a) *General.* The Archivist of the United States, after considering the advice and recommendations of the Commission, may make three types of NHPRC grants: Outright grants, matching grants, and combined grants.

(b) *Outright grants.* An application for an outright grant requests an NHPRC grant for the entire cost of a project, minus the share of the cost borne by the applicant. The maximum possible cost sharing is encouraged in every proposal, and the level of cost sharing will be an important factor in the Commission's recommendation of most types of proposals.

(c) *Matching grants.* An application for a matching grant should be made when an applicant has prospects of securing financial support from a third party or, in the case of a State or local government agency, new funds from the institution's own appropriation source are provided expressly for the project proposed in the application. Upon NARA approval of a matching grant request, the applicant shall present written documentation certifying that matching funds have been provided for the project by the non-Federal source. In the case of a State or local government agency, the matching requirement may also be met through matching funds from the State or local government provided that it can be demonstrated to the Commission's satisfaction that the matching amount has been provided above and beyond funds previously allocated or planned for the agency's budget and that the funds are set aside exclusively to support the project proposed for an NHPRC grant. Applicants need not, however, have money in hand to make a matching grant request; they need only assure the Commission that they have reasonable prospects of obtaining the needed amounts. Federal matching funds may be released only after the proposal is recommended by the Commission and approved by NARA and after documentation has been submitted to the Commission demonstrating that the matching funds have been obtained from the non-Federal source.

(d) *Combined grants.* A combined grant comprises both outright funds and matching funds. When the funds an applicant can raise plus the equivalent amount of an NHPRC grant do not equal the required budget, the difference is requested in outright funds. For example, if the applicant needs $75,000 and is able to raise $25,000 in gifts or in a new appropriation for the project, a combined grant of $25,000 outright and $25,000 in matching funds for a total of $50,000 should be requested from the Commision. Rules governing the release of matching funds in matching grants also govern the release of matching funds in combined grants.

§ 1206.52 Grant limitations

Grant limitations are described in publications and records program guidelines pamphlets available on request from the Commission.

§ 1206.54 Who may apply

The Commission will consider applications from State and local government agencies, nonprofit organizations and institutions, and, under certain conditions, from individuals. Proposals under the records program for State projects will be accepted only from applicants in States in which a State historical records coordinator and a State historical records advisory board have been appointed. This requirement does not apply to regional or national projects.

§ 1206.56 When to apply

Grant proposals are considered during Commission meetings held three times during the year. For current applications deadlines contact the staff of the appropriate Commission program or State historical records coordinators (for records grant proposals). Some State boards have established pre-submission review deadlines for proposals under the records program; further information is available from State coordinators.

§ 1206.58 How to apply.

(a) *Contact with NHPRC staff.* The Commission encourages applicants to discuss proposals through correspondence, by phone, or in person

with Commission staff and/or, in the case of records proposals, with the appropriate State historical records coordinator before the proposal is submitted and at all stages of development of the proposal.

(b) *Application forms.* Applicants for NHPRC grants shall use Standard Form 424, Application for Federal Assistance, and NA Form 17001, Budget Form (OMB Control Number xxxx–xxxx). Both forms are available from the Commission. Project proposals and related correspondence should be sent to the National Historical Publications and Records Commission (NP), Washington, DC 20408.

(c) *Assurances and certifications.* All grant applications to the Commission must include the following assurances and certifications signed by an authorized certifying official of the applicant: Standard Form 424B, Assurance: Non-Construction Programs; the Certification Regarding Suspension, Debarment, and Other Responsibility Matters specified in part 1209, appendix B; and the Certification Regarding Drug-free Workplace Requirements specified in part 1209, appendix C, of this chpater. Assurance and certification language is included in the program pamphlets.

(d) *Program guidelines pamphlets.* Supplementary information for applicants is contained in the pamphlets, "Records Program Guidelines and Procedures: Applications and Grants," and "Publications Program Guidelines and Procedures: Applications and Grants," which are available from the Commission upon request. The records program guidelines pamphlet is also available from State historical records coordinators. These pamphlets include copies of the application form and certifications, guidelines on the preparation of project budgets and program narrative statements, and other guidance on applying for and administering NHPRC grants.

§ 1206.66 Review and evaluation of grant proposals

(a) *Records grant proposals.* For records grant proposals, State historical records advisory boards review and evaluate proposals for State projects and forward recommendations for action to the Commission. Boards may decide that certain proposals are incomplete or require further development; in these instances proposals may be returned to the applicant by the board with a recommendation for revision and resubmission in a future funding cycle. The Commission staff shall be informed of the recommendations. All records grant proposals for which recommendations for Commission action are received from State boards and regional, national, and State board-sponsored proposals received directly by the Commission are reviewed by the Commission staff for completeness, conformity with application requirements and relevance to the objectives of the grant program. Regional and national proposals and proposals submitted by boards on their own behalf may also be referred by the Commission staff to selected State historical records coordinators, members of boards, or others for appropriate review and evaluation of the projects. Following review and evaluation, proposals are referred to the Commission at regular meetings.

(b) *Publications grant proposals.* The Commission staff reviews publication grant proposals for completeness, conformity with application requirements, and relevance to the objectives of the grant program. Proposals are sent to specialists in American history for review and recommendations. The recommendations are considered by the full Commission at regular meetings.

(c) *Subvention grant applications.* Applications for subvention grants are reviewed by a panel of persons knowlegeable in the publishing field, which reports to the Commission its findings and recommendations.

§ 1206.68 Grant administration responsibilities.

Primary responsibility for the administration of grants is shared by the grantee institution and the project director designated by the institution. Grants shall be administered in conformance with the regulations in Parts 1207 and 1209 of this chapter.

§ 1206.70 Grant instrument.

The grant award instrument is a letter from the Archivist of the United States to the grantee. The letter and attachments specify terms of the grant.

§ 1206.78 Grant reports.

Financial status reports and narrative progress reports are required for all grants. Standard Form 269 or 269A, Financial Status Report, shall be used for all financial reports. Reports are due 30 days after the end of each six-month period. Final reports are due within 90 days after the expiration or termination of the grant period. Grants with a duration of six months or less require a final report only. Grant projects that have been funded continuously for three years or more shall report annually. All other grant projects shall report semiannually. Additional rules on financial and performance reports are found in § 1207.40 and § 1207.41 of this chapter.

§ 1206.80 Safety precautions.

NARA and the Commission cannot assume any liability for accidents, illnesses, or claims arising out of any work undertaken with the assistance of the grant.

§ 1206.82 Acknowledgment.

Grantee institutions, grant directors, or grant staff personnel may publish results of any work supported by an NHPRC grant without review by the Commission. Publications or other products resulting from the project, shall, however, acknowledge the assistance of the NHPRC grant.

§ 1206.94 Compliance with Governmentwide requirements.

In addition to the grant application and grant administration requirements outlined in this Part 1206, grantees are responsible for complying with applicable Governmentwide requirements contained in Parts 1207 and 1209 of this chapter.

Dated: July 10, 1989.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 89–18352 Filed 8–7–89; 8:45 am]

BILLING CODE 7515-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 5

RIN 0905–AC68

Criteria for Designation of Health Manpower Shortage Areas

AGENCY: Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes an amendment to the existing regulations governing the criteria for designation of health manpower shortage areas (HMSAs) under section 332 of the Public Health Service Act (the Act). Specifically, this amendment would revise the existing criteria for designation of HMSAs having shortages of psychiatric manpower, transforming them into criteria for designation of HMSAs having shortages of mental health manpower, to take into account not only psychiatrists but also "core" mental health service providers other than psychiatrists, defined to include clinical or health-service-provider

psychologists, clinical social workers, and psychiatric nurse specialists. It would also create a new minimum size-of-shortage criterion for primary care, dental and mental health HMSAs.

DATE: Comments must be received no later than October 10, 1989.

ADDRESS: Written comments may be addressed to Mr. William H. Aspden, Jr., Acting Director, Bureau of Health Care Delivery and Assistance (BHCDA), Health Resources and Services Administration, Room 7–05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. All comments received will be available for public inspection and copying at the above address weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Richard C. Lee, Director, Office of Shortage Analysis, Bureau of Community Health Delivery and Assistance (BHCDA), Health Resources and Services Administration, Room 8–57, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857 (telephone: 301–443–6932).

SUPPLEMENTARY INFORMATION: Section 332 of the Public Health Service Act, as amended by Pub. L. 94–484, the Health Professions Educational Assistance Act of 1976, requires the Secretary to establish, by regulation, criteria for the designation of Health Manpower Shortage Areas (HMSAs). The regulations setting forth these criteria are codified at 42 CFR Part 5. This notice proposes changes to Appendix C of the existing regulations, now entitled "Criteria for Designation of Areas having Shortages of Psychiatric Manpower", which is organized in three parts: Part I—Geographic Areas, Part II—Population Groups, and Part III—Facilities. This notice would revise these criteria to include clinical (or "health-service-provider") psychologists, clinical social workers and psychiatric nurse specialists, as well as psychiatrists, in the designation of mental health manpower shortage areas. The proposed changes are discussed below.

Background

When the original (interim-final) regulations for HMSA designation were published in 1978, the inclusion of other-than-psychiatrist providers of mental health services in defining mental health manpower shortage areas was considered. However, neither sufficient data nor an acceptable methodology for including such providers was then available. Therefore, the mental health component of the HMSA criteria, as finalized in 1980, was based solely on the services of psychiatrists; the presence or absence of other practitioners providing mental health services was not taken into account.

However, various developments since then have increased the focus on other-than-psychiatrist mental health service providers. Their numbers have increased; certification and licensure of these professionals has increased, as well as the number of States requiring licensure and/or certification; and many have achieved direct reimbursement status. Increasing emphasis on cost containment has resulted in higher utilization of these other mental health service providers. Managed care facilities such as health maintenance organizations and outpatient clinics have increasingly used psychologists, clinical social workers and/or psychiatric nurse specialists in the provision of mental health services, including both diagnosis and treatment. In addition, more data on the various mental health service providers are available now than when the original HMSA criteria were developed, together with the results of additional studies of the mental health service system.

Since 1981, the Department's Health Resources and Services Administration (HRSA) has conducted and/or reviewed the results of various relevant surveys and research studies in order to develop a methodology for designation of mental health manpower shortage areas. These included a national survey of psychologists, research on the relative roles of psychiatrists and primary care physicians, a series of research and development studies of possible mental health manpower shortage criteria (conducted by Mathematica Policy Research, Inc.), review of other relevant research literature and extensive in-house analysis. In these efforts, HRSA worked closely with the Department's Alcohol, Drug Abuse and Mental Health Administration, and particularly its National Institute of Mental Health; with the associations representing members of the four core provider disciplines involved, namely the American Psychiatric Association, the American Psychological Association, the National Association of Social Workers, and the American Nursing Association; and with consultants from all four disciplines.

Definitions of Mental Health Service Providers

The Department is proposing to use the following definitions of "core" mental health service providers, consistent with the definitions of the most highly-trained mental health service providers as recognized by the various associations involved:

(1) "Core mental health service providers" includes those psychiatrists, clinical (or health-service-provider) psychologists, clinical social workers and psychiatric nurse specialists who meet the definitions below.

(2) "Psychiatrist" means a doctor of medicine (M.D.) or doctor of osteopathy (D.O.) who (a) is certified as a psychiatrist or child psychiatrist by the American Medical Specialties Board of Psychiatry and Neurology or by the American Osteopathic Board of Neurology and Psychiatry, or, if not certified, is "board-eligible", i.e. has successfully completed an accredited program of graduate medical or osteopathic education in psychiatry or child psychiatry, and (b) practices patient care psychiatry or child psychiatry and is licensed to do so, if required by the State of practice.

(3) "Clinical (or health-service-provider) psychologist" means an individual (normally with a doctorate in psychology) who is practicing as a clinical or counseling psychologist and is licensed (or certified) to do so by the State of practice; or, if licensure (or certification) is not required in the State of practice, an individual with a doctorate in psychology and two years of supervised clinical or counseling experience. (School psychologists are not included here because they are not available directly to the general population.)

(4) "Clinical social worker" means an individual who (a) has a master's degree in social work and two years of supervised clinical experience (including those individuals certified as a clinical social worker by the American Board of Examiners in Clinical Social Work and/or listed on the National Association of Social Workers' Clinical Register), and (b) is licensed to practice as a social worker, if required by the State of practice.

(5) "Psychiatric nurse specialist" means a registered nurse (R.N.) who (a) has a master's degree in nursing with a specialization in psychiatric/mental health and two years of supervised clinical experience (including those certified by the American Nurses Association as a "psychiatric and mental health clinical nurse specialist"), and (b) is licensed to practice, if required by the State of practice.

Less data are available on the numbers and functions of psychiatric nurse specialists than for the other core mental health service providers. However, this lack of data does not pose a major problem because of their relatively small numbers, particularly in relation to geographic designations.

Substantial portions of master's level psychiatric nurses work in State and county mental hospitals, or in teaching or administrative positions which are excluded by the criteria.

With regard to master's degree psychologists, there are little or no national data comparing their detailed activities with those of doctorate clinical psychologists and the other providers. The data on the number of master's psychologists are also more limited than those for the other provider groups, which would make it difficult to develop and apply a numerical standard which specifically includes them. Master's psychologists also have less standardized training and practicum than those in the other disciplines. Thus, while many master's psychologists are undoubtedly well qualified, many others have had more limited training than the other disciplines. Requiring licensing as a criterion to identify qualified master's psychologists partially remedies this problem, but providers in institutional settings often do not need to be licensed.

Primary care physicians, a group which clearly provides some mental health services, were omitted for several reasons. First, the mental health work of primary care physicians is only a small part of their diverse functions. They typically see less severely afflicted patients and see them for shorter and less numerous visits than do the mental health specialists. The "core" mental health providers identified above provide approximately two-thirds of all mental health visits. Moreover, needs for primary care physicians are already addressed by the primary care HMSA criteria, based on the entire spectrum of activities of primary care physicians.

Methodology

Ideally, mental health needs would be determined by combining measures of the prevalence of specific mental disorders in diverse types of geographic areas or population groups with information on the mental health manpower mix required to treat these disorders and its availability in the geographic areas involved. This could probably best be done using the so-called "modular" approach. In this approach, various "modules" or functional groupings of mental health service needs would be computed from prevalence measures applied to population data for the area involved. Recognizing that certain types of services can be supplied by only one discipline (or by fewer than all four), or are more commonly supplied by one or more disciplines, while others can be provided by any of the four, it then would develop estimated requirements ranges for each type of provider based on the needs modules for the area. Gaps as compared with the existing supply of mental health providers in the area would then be computed.

Unfortunately, sufficiently accurate small-area epidemiological data is not available to calculate the needs modules for the diverse types of areas which comprise the potential mental health manpower shortage areas. Data on the exact degree of functional overlap among the various mental health provider types is also not available; results of HRSA-sponsored studies mentioned above, which recommended the "modular" approach, also indicated that additional surveys of sample populations drawn from all four provider types would be necessary to define the relevant matrices for determination of the manpower ranges for the different provider types required to meet the different modular needs of different areas and populations.

However, the research reviewed by HRSA also indicates that, despite their significant differences, the four core mental health service provider types often perform similar roles, especially in the provision of verbal psychotherapy and the treatment of less severe conditions. The research results available also suggest that the different disciplines make similar diagnoses and have similar therapeutic results. Published reports on mental health indicate that the degree of functional similarity among the core mental health service providers is generally greater in less well-served rural areas and outside of State and county mental hospitals (where severe cases predominate).

At the same time, psychiatrists are the only mental health professionals who can prescribe medication. (Although other core mental health service providers also deal to some extent with patients on psychotropic medication prescribed by physicians with whom they are linked.) Psychiatrists also have more patients with schizophrenia and major affective disorders, more cases of higher severity, and more patients on major psychotropic medication than do the other core mental health service providers. Thus, it is important that a mental health service area should have some psychiatrist coverage, at least a portion of a full-time-equivalent.

In the criteria used until now for designation of HMSAs having shortages of psychiatric manpower, as in the criteria for other HMSA types, population-to-practitioner ratios have been the major variable. Despite their shortcomings, population-to-practitioner ratios have been selected for continued use as the primary measure of health manpower shortage, consistent with the recommendations of HRSA's 1983 "Report to Congress on the Evaluation of Health Manpower Shortage Area Criteria." The use of population-to-practitioner ratios also has the advantage of placing less burden on applicants than more complex methods.

In order to consider at the same time both the unique services performed by psychiatrists and the partial interchangeability of the four core mental health service providers in performing many functions, joint criteria have been developed which use both the population-to-psychiatrist ratio and the population-to-all-core-mental-health-service-provider ratio. To determine shortages, threshold ratios were chosen based on data on the total number of patient care providers in the various core mental health service professions. The following table shows the latest available national data on numbers of U.S. non-Federal patient care full-time-equivalent (FTE) core mental health providers, together with the "adequate" and "shortage" ratios they suggest.

LATEST ESTIMATES FOR TOTAL U.S. FULL-TIME-EQUIVALENT (FTE) NON-FEDERAL CORE MENTAL HEALTH SERVICE PROFESSIONALS IN PATIENT CARE AND FOR POPULATION-TO-CORE-PROVIDER RATIOS

1988

Discipline	U.S. total estimated number of FTEs	Mean U.S. population-to-FTE provider ratio	Suggested "adequate" pop-to-FTE ratio	Suggested "shortage" ratio criterion
Psychiatrists[1]	26,099	[5]9,326:1	10,000:1	15–20,000:1
Clinical Psychologists[2]	29,100			
Clinical Social Workers[3]	31,800			
Psych/MH Nurse Specialists[4]	1,320			

LATEST ESTIMATES FOR TOTAL U.S. FULL-TIME-EQUIVALENT (FTE) NON-FEDERAL CORE MENTAL HEALTH SERVICE PROFESSIONALS IN PATIENT CARE AND FOR POPULATION-TO-CORE-PROVIDER RATIOS—Continued

1988

Discipline	U.S. total estimated number of FTEs	Mean U.S. population-to-FTE provider ratio	Suggested "adequate" pop-to-FTE ratio	Suggested "shortage" ratio criterion
1+2+3+4 (all)	88,319	[5]2,756:1	3,000:1	4,500–6,000:1

[1] 31,070 (1987 American Medical Association data for non-Federal patient care psychiatrists plus child psychiatrists) x .84 (representing 48 hours per week x 70% of time in direct patient care)*.
[2] 48,500 (1985 estimate of Stapp et. al. updated with unpublished May 1988 growth estimate from the American Psychological Association) x .60 (42 hours per week x 57% of time in direct patient care)*.
[3] 60,000 (1988 National Association of Social Workers unpublished estimate) x .53 (37 hours per week x 57% of time in direct patient care)*.
[4] 1500 (1988 NIMH unpublished estimate) x .88 (35 hours per week, according to the 1984 Survey of Nurses).
[5] 243,400,000 (June 1987 U.S. Bureau of the Census provisional estimate for the U.S. Population) divided by previous column.
*Professional hours per week and percent time in direct patient care from Knesper et al., "Similarities and Differences Across Mental Health Services Providers and Practice Settings in the United States," in "American Psychologist", December 1985, p. 1356.

As the last column of the preceding table indicates, the "adequate" ratio chosen by rounding up from the national mean would be 10,000:1 if psychiatrists were considered alone, and 3,000:1 if all core mental health providers were counted. These are the levels which the proposed new criteria use for measuring overutilization in contiguous areas—i.e., contiguous areas with ratios above these levels cannot be considered to have excess capacity usable by residents of the area requested for shortage designation.

For purposes of HMSA designation, an area is generally considered to have a shortage when its population-to-provider ratio is 1.5 to 2.0 times the national mean. Thus the basic shortage threshold ratios proposed here are 15–20,000:1 for psychiatrists alone and 4,500–6,000:1 for all core mental health providers. The lower levels would be used in the criteria for areas with unusually high needs indicated; the higher levels for areas without unusually high needs.

Degree-of-Shortage Groups. A table has been constructed (see below) which illustrates how the two ratio variables can be used together in the determination of shortage. Areas with no core mental health service providers are considered to have the greatest shortage and are therefore shown in Group 1. Second are those areas having some core providers, but no psychiatrists, and a core provider ratio worse than the basic core provider shortage criterion. Third would be all those areas which meet both the basic core provider shortage criterion and the basic psychiatric shortage criterion.

The fourth and last group would consist of all other areas which meet a more stringent criterion (2–3 times the national mean) on either one ratio or the other. The threshold levels proposed for this group are 20–30,000:1 for psychiatry alone (the same as the previous psychiatric shortage criterion) and 6–9,000:1 for all core providers.

The following table summarizes the degree-of-shortage groups, in terms of the ratio (R_C) of population to number of FTE core-mental-health-service providers (FTE_C), the ratio (R_p) of population to number of FTE psychiatrists (FTE_p), and the presence or absence of high needs.

DEGREE-OF-SHORTAGE GROUPS FOR MENTAL HEALTH MANPOWER SHORTAGE

High Needs Not Indicated			
Group 1	$FTE_C=0$	and	$FTE_p=0$.
Group 2	R_C gte* 6,000:1	and	$FTE_p=0$.
Group 3	R_C gte 6,000:1	and	R_p gte 20,000.
Group 4(a)	For psychiatrists placements only: Regardless of R_C, all other areas with $FTE_p=0$ or R_p gte 30,000		
Group 4(b)	For other mental health service practitioner placements only: All other areas with R_C gte 9,000:1 regardless of R_p		
High Needs Indicated			
Group 1	$FTE_C=0$	and	$FTE_p=0$.
Group 2	R_C gte 4,500:1	and	$FTE_p=0$.
Group 3	R_C gte 4,500:1	and	R_p gte 15,000.
Group 4(a)	For psychiatrists placements only: Regardless of R_C, all other areas with $FTE_p=0$ or R_p gte 20,000		
Group 4(b)	For other mental health service practitioner placements only: All other areas with R_C gte 6,000:1 regardless of R_p		

*NOTE: In the above, "gte" means "greater than or equal to".

Rational Service Areas. The geographic areas to be considered for designation are the mental health service or catchment areas recognized in current State mental health systems and plans. In most cases, these are derived from the mental health catchment areas developed in the 1970's by the States in conjunction with the National Institute of Mental Health. As before, in some cases a portion of a catchment area or a county which includes more than one catchment area can be considered.

Determination of Unusually High Need for Mental Health Services. In the criteria for psychiatric shortage areas, special consideration (i.e., lower shortage threshold ratios and higher degree-of-shortage groupings) has been given to areas of unusually high need for mental health services. Such areas were identified as those with two or more of the following "high need" indicators: poverty, high proportion of elderly or youth, or high prevalence of alcoholism. In the amended criteria, we propose to use only poverty. The poor obviously have financial barriers to service and often transportation barriers as well. The age-related indicators are being dropped because more recent data (from the NIMH Epidemiological Catchment Areas study) do not support the proposition that either youths or elderly persons have a higher relative prevalence of mental illness or use of mental health services. We also propose to drop the use of alcoholism as a high need indicator, since the alcoholism index originally referenced in the criteria is no longer maintained nationally, nor is any other national alcohol index readily available, making it difficult for applicants to provide comparable data. Other demographic and social environmental indicators are being explored in mental health needs assessment studies, but specific ones for which data are now available have not yet been identified.

Population Groups. The criteria for designation and population groups with mental health service shortages (within geographic areas where the general population is adequately served) would also be revised to consider all four core mental health services providers; the numerical threshold levels and degree-of-shortage groups proposed are the same as those discussed above for high-need geographic areas. (The population groups which may be considered here are the same as those defined in the

"Guidelines on Designation of Population Groups with Health Manpower Shortages" published in the **Federal Register** on November 5, 1982.)

Facilities. This notice also proposes to revise the methodology for determining a facility's capacity to meet the psychiatric needs of the population it serves by allowing for consideration of visits to all core mental health service providers, not just to psychiatrists. Community mental health centers and other public or nonprofit private facilities will thus be considered to have insufficient capacity to meet the psychiatric needs of the designated area or population group it serves if there are more than 1,000 patient visits per year per FTE core mental health service provider on staff of the facility, or more than 3,000 patient visits per year per FTE psychiatrist, or if no psychiatrists are on the staff and this is the only facility providing (or responsible for providing) services to the designated area or population.

In addition to the above proposed changes, this notice would replace the term "psychiatric" with the term "mental health" throughout Appendix C, where appropriate, along with other changes of a clarifying and technical nature.

Minimum Size of Shortage. One problem with the methodology used up until now for primary care, dental and psychiatric HMSA designations was that it resulted in designation of areas which meet minimum ratio requirements but would require placement of less than one full-time practitioner to remove the area from the list. This result is appropriate for those "frontier" and other remote rural areas having no practitioners and small populations but needing some coverage; but it also resulted in the inclusion of areas and population groups which already had at least one practitioner and really did not need additional ones. This is even more of a problem given the declining numbers of practitioners now available for placement through the National Health Service Corps; areas which have some practitioners and require less than one additional should not be competing with those areas which have none and/or need at least one additional practitioner.

Therefore, a minimum computed need for at least 1.0 additional FTE core mental health service providers (and a minimum computed need for at least 1.0 psychiatrists in the case of psychiatrist placements), has been added as a shortage criterion for those otherwise designatable areas (and population groups) which already have at least 0.2 FTE core providers available to them. For consistency, the analogous change has also been made to the primary care and dental HMSA criteria; i.e., a minimum computed need for at least 1.0 additional FTE primary care physician (or dental practitioner) in those otherwise designatable primary care (or dental) HMSAs which already have at least 0.2 FTE primary care physicians (or dental practitioners) available to them.

Regulatory Flexibility Act and Executive Order 12291

The Secretary certifies that this amendment to the regulations does not have a significant economic impact on a substantial number of small entities. Most areas designatable under the previous criteria will also be designatable under the revised criteria, although their degree-of-shortage group may change. Some previously-designated primary care and dental HMSAs will no longer be designatable as a result of the new minimum size-of-shortage criterion; however, these will generally be former HMSAs which had very low priorities for placement and thus were not likely to receive NHSC personnel. When both psychiatrists and other core mental health service providers are considered, some new mental health HMSAs will be designatable. However, since the number of National Health Service Corps (NHSC) obligated psychiatrists (or other core mental health service providers) available for placement in mental health HMSAs is limited, only a few placements will occur in newly-designated areas. The data on designated mental health HMSAs and information on changes to existing HMSA designations resulting from this amendment will be available to the States for their use in carrying out State loan repayment programs. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980 is not required.

Further, this rule will not exceed the threshold level of $100 million established in section (b) of Executive Order 12291. For these reasons, the Secretary has determined that the rule is not a major rule under Executive Order 12291 and a regulatory impact analysis is not required.

Paperwork Reduction Act of 1980

There are no information collection requirements in this regulation.

List of Subjects in 42 CFR Part 5

Mental health, Health, Health professions, Psychiatrists, Clinical psychologists, Clinical social workers, Psychiatric nurses, Primary care physicians, Dentists.

Accordingly, 42 CFR Part 5 is proposed to be amended as set forth below:

Dated: February 23, 1989.

Robert E. Windom,

Assistant Secretary for Health.

Approved: April 10, 1989.

Louis W. Sullivan,

Secretary.

PART 5—DESIGNATION OF HEALTH MANPOWER SHORTAGE AREAS

1. The authority citation for 42 CFR part 5 continues to read as follows:

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690 (42 U.S.C. 216); sec. 332 of the Public Health Service Act, 90 Stat. 2770–2772 (42 U.S.C. 254e).

2. The heading for Appendix C of part 5 is revised to read as follows:

Appendix C—Criteria for Designation of Areas Having Shortages of Mental Health Manpower

3. Part I.A of Appendix C is revised to read as follows:

Part I—Geographic Areas

A. Criteria A geographic area will be designated as having a shortage of mental health manpower if the following four criteria are met:

1. The area is a rational area for the delivery of mental health services.

2. One of the following conditions prevails within the area:

(a) The area has (i) a population-to-core-mental-health-service-provider ratio greater than or equal to 6,000:1 and a population-to-psychiatrist ratio greater than or equal to 20,000:1; or

(ii) a population-to-core-provider ratio greater than or equal to 9,000:1; or

(iii) a population-to-psychiatrist ratio greater than or equal to 30,000:1.

(b) The area has usually high needs for mental health services and has:

(i) a population-to-core-mental-health-service-provider ratio greater than or equal to 4,500:1 and a population-to-psychiatrist ratio greater than or equal to 15,000:1; or

(ii) a population-to-core-provider ratio greater than or equal to 6,000:1; or

(iii) a population-to-psychiatrist ratio greater than or equal to 20,000:1.

3. Mental health manpower in contiguous area are overutilized, excessively distant or inaccessible to residents of the area under consideration.

4. If the area already has 0.2 or more full-time-equivalent (FTE) core mental health service providers, it must also have a computed core provider shortage

of at least 1.0 FTE core providers; and, for psychiatrist placement, must have a computed psychiatrist shortage of at least 1.0 FTE psychiatrists.

4. In Part I.B, *Methodology*, the term "psychiatric" in the heading of paragraph 1 and the text of paragraph 1(a) and 1(a)(ii) is changed to "mental health". Paragraphs 3, 4, and 5 are revised to read as follows, and a new paragraph 6 is added:

3. *Counting of Mental Health Service Providers.* (a) All non-Federal core mental health service providers (as defined below) providing mental health patient care (direct or other, including consultation and supervision) in ambulatory or other short-term care settings to residents of the area will be counted. Data on each type of core provider should be presented separately, in terms of the number of full-time-equivalent (FTE) practitioners of each provider type represented. (b) Definitions of provider categories:

(i) "Core mental health service providers" or "core providers" includes those psychiatrists, clinical psychologists, clinical social workers and psychiatric nurse specialists who meet the definitions below.

(ii) "Psychiatrist" means a doctor of medicine (M.D.) or doctor of osteopathy (D.O.) who (a) is certified as a psychiatrist or child psychiatrist by the American Medical Specialties Board of Psychiatry and Neurology or by the American Osteopathic Board of Neurology and Psychiatry, or, if not certified, is "board-eligible", i.e. has successfully completed an accredited program of graduate medical or osteopathic education in psychiatry or child psychiatry, and (b) practices patient care psychiatry or child psychiatry and is licensed to do so, if required by the State of practice.

(iii) "Clinical psychologist" means an individual (normally with a doctorate in psychology) who is practicing as a clinical or counseling psychologist and is licensed or certified to do so by the State of practice; or, if licensure or certification is not required in the State of practice, an individual with a doctorate in psychology and two years of supervised clinical or counseling experience. (School psychologists are not included.)

(iv) "Clinical social worker" means an individual who (a) is certified as a clinical social worker by the American Board of Examiners in Clinical Social Work, or is listed on the National Association of Social Workers' Clinical Register, or has a master's degree in social work and two years of supervised clinical experience, and (b) is licensed to practice as a social worker, if required by the State of practice.

(v) "Psychiatric nurse specialist" means a registered nurse (R.N.) who (a) is certified by the American Nurses Association as a psychiatric and mental health clinical nurse specialist, or has a master's degree in nursing with a specialization in psychiatric/mental health and two years of supervised clinical experience, and (b) is licensed to practice, if required by the State of practice.

(c) Practitioners who provide patient care to the population of an area only on a part-time basis (whether because they maintain another office elsewhere, spend some of their time providing services in a facility, are semi-retired, or operate a reduced practice for other reasons), will be counted on a partial basis through the use of full-time-equivalency calculations based on a 40-hour work week. Every 4 hours (or ½ day) spent providing patient care services in ambulatory or inpatient settings will be counted as 0.1 FTE, and each practitioner providing patient care 40 or more hours a week as 1.0 FTE. Hours spent on research, teaching, vocational or educational counseling, and social services unrelated to mental health will be excluded; if a provider is located wholly or partially outside the service area, only those services actually provided within the area are to be counted.

(d) In some cases, providers located within an area may not be accessible to the general population of the area under consideration. Providers working in restricted facilities will be included on an FTE basis based on time spent outside the facility. Examples of restricted facilities include correctional institutions, youth detention facilities, residential treatment centers for emotionally disturbed or mentally retarded children, school systems, and inpatient units of State or county mental hospitals.

(e) In cases where there are mental health facilities or institutions providing both inpatient and outpatient services, only those FTEs providing mental health services in outpatient units or other short-term care units will be counted.

(f) Adjustments for the following factors will also be made in computing the number of FTE providers:

(i) Practitioners in residency programs will be counted as 0.5 FTE.

(ii) Graduates of foreign schools who are not citizens or lawful permanent residents of the United States will be excluded from counts.

(iii) Those graduates of foreign schools who are citizens or lawful permanent residents of the United States, and practice in certain settings, but do not have unrestricted licenses to practice, will be counted on a full-time-equivalency basis up to a maximum of 0.5 FTE.

(g) Providers suspended for a period of 18 months or more under provisions of the Medicare-Medicaid Anti-Fraud and Abuse Act will not be counted.

4. *Determination of Unusually High Need for Mental Health Services.* Area with a high proportion of poverty have been shown to have restricted access to mental health services. Thus, an area will be considered to have unusually high need for psychiatric services if 20 percent of the population (or of all households) have incomes below the poverty level.

5. *Contiguous Area Considerations.* Mental health service providers in area contiguous to an area being considered for designation will be considered excessively distant, overutilized or inaccessible to the population of the area under consideration if one of the following conditions prevails in each contiguous area:

(a) Core mental health service providers in the contiguous area are more than 40 minutes travel time from the closest population center of the area being considered for designation (measured in accordance with paragraph B.1(b) of this part).

(b) The population-to-core-mental-health-service-provider ratio in the contiguous area is in excess of 3,000:1 and the population-to-psychiatrist ratio there is in excess of 10,000:1, indicating that core mental health service providers in the contiguous areas are overutilized and cannot be expected to help alleviate the shortage situation in the area for which designation is being considered. (If data on core mental health providers other than psychiatrists are not available for the contiguous area, a population-to-psychiatrist ratio there in excess of 20,000:1 may be used to demonstrate overutilization.)

(c) Mental health manpower in contiguous areas are inaccessible to the population of the requested area due to geographic, cultural, language or other barriers or because of residency restrictions of programs or facilities providing such manpower.

6. *Determination of Size of Shortage.* Size of Shortage (in number of FTE providers needed) will be computed using the following formulas:

(a) For areas without unusally high need:

Core provider shortage = area population/6,000 − number of FTE core providers.

Psychiatrist shortage = area population/20,000 − number of FTE psychiatrists.

(b) For areas with unusually high need:

Core provider shortage-area population/4,500 − number of FTE core providers.

Psychiatrist shortage/area population/15,000 − number of FTE psychiatrists.

5. Part I.C is revised to read as follows:

C. Determination of Degree of Shortage

Designated areas will be assigned to degree-of-shortage groups accordings to the following table, depending on the ratio (R_C) of population to number of FTE core-mental-health-service providers (FTE_C); the ratio (R_p) of population to number of FTE psychiatrists (FTE_p); and the presence or absence of high needs:

High Needs Not Indicated

Group 1: $FTE_C = 0$ and $FTE_p = 0$.
Group 2: R_C gte* 6,000:1 and $FTE_p = 0$.
Group 3: R_C gte 6,000:1 and R_p gte 20,000.
Group 4(a): For psychiatrist placements only:
Regardless of R_C, all other areas with $FTE_p = 0$ or R_p gte 30,000.
Group 4(b): For other mental health service practitioner placements only:
All other areas with R_C gte 9,000:1, regardless of R_p.

High Needs Indicated

Group 1: $FTE_c = 0$ and $FTE_p = 0$.
Group 2: R_C gte 4,500:1 and $FTE_p = 0$.
Group 3: R_C gte 4,500:1 and R_p gte 15,000.
Group 4(a): For psychiatrist placements only:
Regardless of R_C, all other areas with $FTE_p = 0$ or R_p gte 20,000
Group 4(b): For other mental health service practitioner placements only:

*Note: in the above, "gte" means "greater than or equal to".

All other areas with R_c gte 6,000:1, regardless of R_p.

6. Part II is revised to read as follows:

Part II—Population Groups

A. Criteria

Population groups within particular rational mental health service areas will be designated as having a mental health manpower shortage if the following three criteria are met:

1. Access barriers prevent the population group from using the core mental health service providers which are present in the area.

2. One of the following conditions prevails:

(a) the ratio of the numbers of persons in the population group to the number of FTE core mental health service providers serving the population group is greater than or equal to 4,500:1 and the ratio of the number of person in the population group to the number of FTE psychiatrists serving the population group is greater than or equal to 15,000:1; or,

(b) the ratio of the number of persons in the population group to the number of FTE core mental health service providers serving the population group is greater than or equal to 6,000:1; or,

(c) the ratio of the number of persons in the population group to the number of FTE psychiatrists serving the population group is greater than or equal to 20,000:1.

3. If the population group is already served by 0.2 or more FTE core mental health service providers, it must also have a computed core provider shortage of at least 1.0 FTE core providers; and, for psychiatrist placement, must have a computed psychiatrist shortage of at least 1.0 FTE psychiatrists.

B. Determination of Degree of Shortage

Designated population groups will be assigned to the same degree-of-shortage groups defined in Part I.C. of this Appendix for areas with unusually high needs for mental health services, using the computed ratio (R_c) of the number of persons in the population group to the number of FTE core mental health service providers (FTE_c) serving the population group, and the ratio (R_p) of the number of persons in the population group to the number of FTE psychiatrists (FTE_p) serving the population group.

C. Determination of Size of Shortage

Size of shortage will be computed as follows:

Core provider shortage = number of person in population group/4,500 − number of FTE core providers.

Psychiatrist shortage = number of persons in population group/15,000 − number of FTE psychiatrists.

7. Part III, section C, *Community Mental Health Facilities and Other Public or Nonprofit Private Facilities*, is amended by changing "psychiatric shortage" to "mental health manpower shortage" in paragraph 2.(a)(ii) and "psychiatric" to "mental health" wherever else it occurs, by revising paragraphs 2.(c) (i) and (ii) to read as follows, and by adding a new paragraph 2.(c)(iii):

(c) *Insufficient Capacity to meet Mental Health Service Needs*

A facility will be considered to have insufficient capacity to meet the mental health service needs of the area or population it serves if:

(i) there are more than 1,000 patient visits per year per FTE core mental health service provider on staff of the facility, or

(ii) there are more than 3,000 patient visits per year per FTE psychiatrist on staff of the facility, or

(iii) no psychiatrists are on the staff and this facility is the only facility providing (or responsible for providing) services to the designated area or population.

8. Appendix A, Criteria for Designation of Areas Having Shortages of Primary Care Manpower, Part I.A, *Criteria*, is revised by changing "three criteria" to "four criteria" and adding a new paragraph 4, as follows:

4. If the area already has 0.2 or more full-time-equivalent (FTE) primary care physicians, it must also have a computed primary care physician shortage of at least 1.0 FTE primary care physicians.

9. Appendix A, Part I.B, *Methodology*, is revised by adding new paragraph 6, as follows:

6. *Determination of Size of Primary Care Physician Shortage*

Size of Shortage (in number of FTE primary care physicians needed) will be computed using the following formulas:

(a) For areas without unusually high need: Primary care physician shortage = area population/3,500 − number of FTE primary care physicians.

(b) For areas with unusually high need: Primary care physician shortage = area population/3,000 − number of FTE primary care physicians.

10. Appendix A, Part II, *Population Groups*, is revised by changing "three criteria" to "four criteria" and adding new paragraphs A.3 and C, as follows:

A.3. If the population group is already served by 0.2 or more FTE primary care physicians, it must also have a computed primary care physician shortage of at least 1.0 FTE primary care physicians.

C. *Determination of Size of Primary Care Physician Shortage*

Size of shortage (in number of primary care physicians needed) will be computed as follows: Primary care physician shortage = number of persons in population group/3,000 − number of FTE primary care physicians.

11. Appendix B, Criteria for Designation of Areas Having Shortages of Dental Manpower, Part I.A, *Criteria*, is revised by changing "three criteria" to "four criteria" and ading a new paragraph 4, as follows:

4. If the area already has 0.2 or more full-time-equivalent (FTE) dental practitioners, it must also have a computed dental shortage of at least 1.0 FTE dental practitioners.

12. Appendix B, Part I.B, *Methodology*, is revised by adding new paragraph 6, as follows:

6. *Determination of Size of Dental Shortage.*

Size of Dental Shortage (in number of FTE dental practitioners needed) will be computed using the following formulas:

(a) For areas without unusually high need: Dental shortage = area population/5,000 − number of FTE dental practitioners.

(b) For areas with unusually high need: Dental shortage = area population/4,000 − number of FTE dental practitioners.

13. Appendix B, Part II, *Population Groups*, is revised by changing "three criteria" to "four criteria" and adding new paragraphs A.3 and C, as follows:

A.3. If the population group is already served by 0.2 or more FTE dental practitioners, it must also have a computed dental shortage of at least 1.0 FTE dental practitioners.

C. *Determination of size of Dental Shortage*

Size of dental shortage will be computed as follows: Dental shortage = number of persons in population group/4,000 − number of FTE dental practitioners.

[FR Doc. 89-18436 Filed 8-7-89; 8:45 am]

BILLING CODE 4160-16-M

Notices

Federal Register
Vol. 54, No. 151
Tuesday, August 8, 1989

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV-89-093]

Emergency Request for OMB Approval of Information Collection on Ballots Relating to Continuance Referendum for Almonds Grown in California

AGENCY: Agricultural Marketing Service, USDA

ACTION: Notice.

SUMMARY: Notice is hereby given that the Agricultural Marketing Service (AMS) has requested emergency review and approval of an information collection request from the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB). The requirement is needed in order to conduct a continuance referendum for the marketing order which regulates almonds grown in California.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2522-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5120.

SUPPLEMENTARY INFORMATION: A continuance referendum is scheduled to be conducted August 7-21 to determine producer support for the marketing order and agreement for almonds grown in California. The Almond Board of California (Board), the agency responsible for local administration of the order, is considering possible amendments to the marketing order. However, before an amendatory hearing is requested, the Board would like to determine the level of grower support for the marketing order. Therefore, the Board unanimously voted at its May 11, 1989, meeting to request the Secretary to conduct a continuance referendum.

In order to conduct the continuance referendum, OMB approval of information collection on the official producer ballot must be obtained. The referendum will be conducted during the period from August 7 through August 21, 1989. The representative production period for the purpose of establishing grower eligibility to vote in the referendum is from July 1, 1988, through June 30, 1989.

Following is a copy of APHIS Form 71 reflecting the burdens which will be imposed during this process:

BILLING CODE 3410-02-M

INSTRUCTIONS: Use this form when a single information collection document involves multiple reporting and recordkeeping requirements. The totals of the figures in cols. (D), (F), (H), (I) and (K) should be entered in items 17 & 18 of SF 83. For cols. (E), (G), and (J), the averages of the totals shall be computed, as follows, and then entered on the SF 83

(F) Total / (D) Total = (E) Average (H) Total / (F) Total = (G) Average (K) Total / (I) Total = (J) Average

TITLE OF INFORMATION COLLECTION DOCUMENT: Continuance Referendum for Marketing Order and Agreement for Almonds Grown in California, Marketing Order 981

OMB NO. 0581- 0071

DATE PREPARED: July 1989

PAGE 1 OF 1

IDENTIFICATION OF REPORTING OR RECORDKEEPING REQUIREMENT			ANNUAL BURDEN							
			REPORTS					RECORDS		
SECTION OF REGS. (A)	DESCRIPTION (B)	FORM NO(S). (If "none" so state) (C)	NO. OF RESPONDENTS (D)	NO. OF RESPONSES PER RESPONDENT (E)	TOTAL ANNUAL RESPONSES (Col. D x E) (F)	HOURS PER RESPONSE (G)	TOTAL HOURS (Col. F x G) (H)	NO. OF RECORDKEEPERS (I)	ANNUAL HOURS PER RECORDKEEPER (J)	TOTAL RECORDKEEPING HOURS (Col. I x J) (K)
7 U.S.C. et. seq. 8(c)(19)	Official Producer Ballot	None	Approx. 7,500	1	7,500	.17	1,275			

The 1937 Agricultural Marketing Agreement Act authorizes a producer continuance referendum to determine industry support for the proposed order. Termination of the order would be considered if less than two-thirds of the growers of almonds voting in the referendum and growers of less than two-thirds of the volume represented in the referendum favor continuance.

APHIS FORM 71 (AUG 83) SUMMARY OF INFORMATION COLLECTIONS USDA-APHIS

BILLING CODE 3410-02-C

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

Dated: August 3, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–18493 Filed 8–7–89; 8:45 am]

BILLING CODE 3410-02-M

Forest Service

Teton Village Land Exchange, Bridger-Teton National Forest, Teton County, WY

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service will prepare an environmental impact statement on a proposal to exchange National Forest land on the Jackson Ranger District for private land. The federal tract is located in Teton County, Wyoming described as: T42N. R117W, Sixth P.M., section 24, Lot 1 (40.42 acres), Lot 2 (40.31 acres). All or a part of the above described land may be included in the proposed exchange.

DATE: Comments concerning the scope of the analysis should be received in writing by September 1, 1989.

ADDRESSES: Send written comments to Forest Superivsor, Bridger-Teton National Forest, P.O.Box 1888, Jackson, WY 83001.

FOR FURTHER INFORMATION CONTACT: Al Koschmann, Engineering Staff Officer, 307–733–2752.

SUPPLEMENTARY INFORMATION: The proposal is described as whether or not to exchange the federal 80.78 acres which is located at the base of the Jackson Hole Ski Area at Teton Village, Wyoming for one of seven tracts of offered private land.

The federal lands to be exchanged are encumbered with Special Use Permits authorizing occupancy for various purposes associated with the operation of the Jackson Hole Ski Resort. These include a maintenence shed, gun ammo and explosives buildings, electrical sub-station, cemetery and corrals. Two permits dated 11/02/83 are 30-year permits. The proposal must recognize the continuance of the Special Use Permits or provide evidence that the permittee has agreed to relinquish the Special Use Permit.

The tracts of private land were submitted as bids on the federal land and the determination must now be made as to which tract of private land best meets the needs of the public and natural resource needs.

Preliminary issues which have been expressed include: 1. Potential development that might occur on the 80.78 acre tract; 2. Possible scenic quality impacts; 3. The federal tract should remain in federal ownership because of obligations to special use permittee; 4. Possible exchange of only part of the 80.78 acres of federal land.

The analysis is expected to take about 3 months. The draft environmental impact statement should be available for public review by November 1, 1989. The final environmental impact statement is scheduled to be completed by January 31, 1990.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**. It is very important that those interested in this proposed action participate at that time. To be the most helpful, comments on the draft environmental impact statement should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel* (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

Dated: August 1, 1989.

Bian E. Stout,

Forest Supervisor, Bridger-Teton National Forest.

[FR Doc. 89–18524 Filed 8–7–89; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcing a Meeting of Computer System Security and Privacy Advisory Board

AGENCY: National Institute of Standards and Technology.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Computer Systems Security and Privacy Advisory Board will meet Wednesday, September 13 and Thursday, September 14, 1989 from 8:30 a.m. to 5:00 p.m. This is the third meeting of the Advisory Board which was established by the Computer Security Act of 1987 (Pub. L. 100–235) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to Federal computer systems. Two sessions will be closed to discuss out-year budget matters, including NIST and other agency computer security budgets. These closed sessions are tentatively scheduled to be held from 9:00 a.m. to 10:30 a.m. on September 13 and from 8:30 a.m. to 9:30 a.m. on September 14, 1989. All other sessions will be open to the public.

DATES: The meeting will be held on September 13 and 14, 1989, from 8:30 a.m. to 5:00 p.m. Closed sessions will be held from 9:00 a.m. to 10:30 a.m. on September 13, 1989 and from 8:30 a.m. to 9:30 a.m. on September 14, 1989.

ADDRESS: The meeting will take place at the Sheraton Reston Hotel, 11810 Sunrise Valley Drive, Reston, Virginia.

Agenda:

1. Introduction and Review of Board Progress
2. Review of Selected Agency Computer Projects
3. Review of NIST Computer Security Strategic Plan
4. Discussion of Federal Government Computer Security Issues
5. Pending Board Matters and Public Participation

Public Participation: The Board agenda will include a period of time, not to exceed thirty minutes, for oral comments and questions from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the Board Secretariat at the telephone number indicated below. In addition, written statements are invited and may be submitted to the Board at

any time. Written statements should be directed to the Computer Systems Security and Privacy Advisory Board, National Computer Systems Laboratory, Building 225, Room B–154, National Institute of Standards and Technology, Gaithersburg, Maryland, 20899. It would be appreciated if fifteen copies of written material could be submitted for distribution to the Board.

Approximately fifteen seats will be available for the public, including three seats reserved for the media. Seats will be available on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Mr. Lynn McNulty, Associate Director for Computer Security and Advisory Board Secretary, National Computer Systems Laboratory, National Institute of Standards and Technology, Building 225, Room B–154, Gaithersburg, Maryland 20899, telephone: (301) 975–3240.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on May 15, 1989, that the portion of this meeting which involves examination of out-year computer security budgets may be closed pursuant to Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, as amended by Section 5(c) of the Government in Sunshine Act, Pub. L. 94–409. Those portions of the meeting, which involve discussions of future budget requests, may be closed to the public in accordance with Section 552(b)(9)(B) of Title 5, United States Code, since those portions of the meeting are likely to divulge matters that may significantly frustrate implementation of proposed agency action. All other portions of the meeting will be open to the public.

Dated: August 1, 1989.

Raymond G. Kammer,

Acting Director.

[FR Doc. 89–18485 Filed 8–7–89; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF DEFENSE

Office of the Secretary

DOD Advisory Group on Electron Devices Advisory Committee Meeting

SUMMARY: Working Group A (Mainly Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Wesnesday, 23 August 1989.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, Suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Harold Summer, AGED Secretariat, 201 Varick Street, New York 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave, electronic warfare devices, millimeter wave devices, and passive devices. The review will include classified program details throughout.

In accordance with section 10(d) of Public Law No. 92–463, as amended, (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Dated: August 1, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–18510 Filed 8–7–89; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGEMCY: Department of Education.

ACTION: Notice of proposd information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATE: Interested persons are invited to submit comments on or before September 7, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: August 3, 1989.

Carlos U. Rice,

Director, for Office of Information Resources Management.

Office of Postsecondary Education

Type of Review: Extension
Title: Applicaton for the Comprehensive Program of the Fund for the Improvement of Postsecondary Education (New Grant Awards, and Continuations)
Frequency: Annually
Affected Public: State or local governments; Non-profit institutions; Small business or organizations
Reporting Burden:
Responses: 2,265
Burden Hours: 27,300
Recordkeeping Burden:
Recordkeepers: 0

Burden Hours: 0
Abstract: This form will be used by postsecondary educational institutions and agencies to apply for funding under the fund for Improvement of Postsecondary Education. The Department uses the information to make grant awards.

Office of Postsecondary Education

Type of Review: Revision
Title: Student Aid Report
Frequency: Annually
Affected Public: Individuals or households; Businesses or other for-profit
Reporting Burden:
Responses: 11,457,272
Burden Hours: 1,582,249
Recordkeeping Burden:
Recordkeepers: 7,300
Burden Hours: 483,494
Abstract: The Student Aid Report (SAR) is used to notify applicants of their eligibility to receive Federal financial aid. The form is submitted by eligible students to the participating institution of their choice. The institution submits part 3 of the SAR to the Department to receive funds for the applicant.

[FR Doc. 89-18511 Filed 8-7-89; 8:45 am]
BILLING CODE 4000-01-M

Office of Educational Research and Improvement

Library Services and Construction Act; Intent to Repay Funds Recovered as a Result of a Final Audit Determination to the Indiana State Library

AGENCY: Department of Education.

ACTION: Notice of intent to award grantback funds.

SUMMARY: Pursuant to Section 456 of the General Education Provisions Act, as amended (GEPA) (20 U.S.C. 1234e), the Secretary intends to repay to the Indiana State Library Agency (State Agency), under a grantback arrangement, an amount equal to 75 percent of funds recovered by the Department of Education (Department). The recovery of funds follows an audit debt payment wherein the State Agency remitted a total of $80,568.75 ($79,637 plus interest) to the Department. The audit debt originally arose as a result of a final audit determination issued by the Assistant Secretary for Educational Research and Improvement (Assistant Secretary) on July 31, 1986, regarding the use of $79,637 in Federal funds awarded under Title I of the Library Services and Construction Act, as amended (LSCA) (20 U.S.C. 351 et seq.). This notice describes the State Agency's plans for the use of the funds that the Secretary intends to repay and the terms and conditions under which the Secretary intends to make these funds available to the State Agency.

DATE: All written comments should be received by the Department of Education on or before September 7, 1989.

ADDRESS: All written comments should be submitted to Mr. Robert Klassen, Director, Public Library Support Staff, Library Programs, U.S. Department of Education, 555 New Jersey Avenue, NW. (Suite 402), Washington, DC 20208-5571.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Klassen at (202) 357-6303.

SUPPLEMENTARY INFORMATION:

A. Background

In an audit report dated January 21, 1986, the Office of Inspector General of the U.S. Department of Education issued the results of an audit of the State Agency's obligation and expenditure of LSCA Titles I and III funds. The audit covered the period July 1, 1983, through June 30, 1985. The purpose of the audit was to express an opinion on the financial statements of the Indiana State Library. The auditors found that the State Library had failed to keep time and attendance records to support $79,637 in charges to the LSCA Title I grant, for salaries and related fringe benefits of two employees of the Indiana State Library. In a final audit determination letter dated July 31, 1986, the Assistant Secretary determined that the full amount of $79,737 was owed to the Department, and requested the payment of this amount by the State of Indiana. The State appealed the determination to the Department's Education Appeal Board. The Education Appeal Board's Initial Decision supported the Assistant Secretary's Determination, and on December 19, 1987, the Education Appeal Board's Initial Decision became the Department's Final Decision due to the fact that the Secretary neither modified nor reversed the Initial Decision within the 60 days allotted by Section 452(d) of GEPA. The State Agency remitted to the Department two checks (one for $80,101.52 on March 9, 1988, and another for $467.23 on May 3, 1988) totalling $80,568.75 ($79,637 plus interest) in payment of its audit debt.

B. Authority for Awarding a Grantback

Section 456(a) of GEPA (20 U.S.C. 1234e) amendments to section 456, which went into effect on October 25, 1988, do not apply to this audit or to this grantback provides that whenever the Secretary has recovered funds following a final audit determination with respect to an applicable program, the Secretary may consider those funds to be additional funds available for that program and may arrange to repay to the State Agency affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this "grantback" arrangement if the Secretary determines that:

(1) The practices or procedures of the State Agency that resulted in the audit determination have been corrected, and that the State Agency is, in all other respects, in compliance with requirements of the program;

(2) The State Agency has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement which meets the requirements of the program, and to the extent possible, benefits the population that was affected by the failure to comply or by the misexpenditures that resulted in the audit exception; and

(3) The use of funds to be awarded under the grantback arrangement in accordance with the State Agency's plan would serve to achieve the purposes of the program under which the funds were originally granted.

C. Plan for Use of Funds Awarded Under a Grantback Arrangement

In accordance with Section 456(a)(2) of GEPA, in its March 28, 1988, request for a grantback, the State Agency submitted a plan for the proposed use of the requested funds. The State proposes to use the grantback funds to extend public library services to populations in the State with access to less than adequate public library services through projects that would:

(1) Support the improvement of inadequate public library services through strengthening the State Library Agency;

(2) Provide training opportunities for librarians and Library trustees and additional resources for the consultant staff; and

(3) Provide grants to public libraries to initiate services to the hearing impaired and illiterate.

D. The Secretary's Determination

The Secretary has carefully reviewed the State Agency's request for the repayment of funds, the State Agency's plan, and other information submitted by the State Agency. Based upon that review, the Secretary has determined that the conditions contained in section 456 of GEPA have been met.

These determinations are based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action.

E. Notice of the Secretary's Intent to Enter Into a Grantback Arrangement

Section 456(d) of GEPA requires that, at least thirty days prior to entering into an arrangement to award funds under a grantback, the Secretary must publish in the Federal Register a notice of intent to do so, and the terms and conditions under which the payment will be made. In accordance with the requirement of section 456(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to the Indiana State Library Agency under a grantback arrangement, as authorized by section 456. The grantback award will be in the amount of $59,728. This amount is 75 percent—the maximum percentage authorized by section 456—of the amount of the audit debt principal recovered by the Department. The Secretary's intention to award the maximum amount of grantback funds possible under section 456 is based upon the determinations outlined in section D of this notice.

F. Terms and Conditions Under Which Payments Under a Grantback Arrangement Will be Made

Section 456(b) of GEPA provides that any payments made under a grantback arrangement shall be subject to terms and conditions which the Secretary deems necessary to accomplish the purposes of the affected programs, including the submission of periodic reports on the use of the repaid funds and evidence that the State Agency has consulted with parents or representatives of the population that benefits from the grantback award.

The State Agency agrees to comply with the following terms and conditions under which payments under a grantback arrangement will be made:

(1) The State Agency will expend the funds awarded under the grantback in accordance with:

(a) All applicable statutory and regulatory requirements, including those relating to the sole purposes for which LSCA Title I funds (i.e., for the sole benefit of public libraries and public library clientele) may be used;

(b) The plan that was submitted in conjunction with the March 28, 1988, request for grantback which has been approved by the Secretary.

(2) Pursuant to section 456(c) of GEPA, all funds received under this grantback must be obligated not later than September 30, 1991 which is three fiscal years following the fiscal year in which the Department's Final Decision on the audit appeal was rendered (in this case, Fiscal Year 1988).

(3) The State Agency must, not later than January 1, 1992 submit a report to the Secretary that—

(a) Indicates how the funds awarded under the grantback have been used;

(b) Shows that the funds awarded under the grantback have been liquidated;

(c) Describes the results and effectiveness of the project for which the funds were spent; and

(d) Describes the consultation with parents or representatives of the population that will benefit from the grantback payments.

(4) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangement.

(Catalog of Federal Domestic Assistance Number (CFDA) 84.034 (Library Services))

Dated: July 13, 1989.

Lauro F. Cavazos,

Secretary of Education.

[FR Doc. 89-18441 Filed 8-7-89; 8:45 am]

BILLING CODE 4000-01-M

[CFDA NO.: 84.004C]

Invitation of Applications for New Awards Under Desegregation of Public Education; State Educational Agency Desegregation Program for Fiscal Year 1990

PURPOSE OF PROGRAM: Provides grants to State Educational Agencies (SEAs) to enable them to provide technical assistance (including training) at the request of school boards and other responsible governmental agencies, in the preparation, adoption, and implementation of plans for the desegregation of public schools and in the development of effective methods of coping with special educational problems occasioned by desegregation.

DEADLINE FOR TRANSMITTAL OF APPLICATIONS: October 16, 1989

DEADLINE FOR INTERGOVERNMENTAL REVIEW: December 18, 1989

APPLICATIONS AVAILABLE: September 8, 1989

AVAILABLE FUNDS: The Administration has requested $23,443,000 for this program in FY 1990, of which $15,243,000 would be for grants to SEAs. However, the actual level of funding is contingent upon final congressional action.

ESTIMATED RANGE OF AWARDS: $100,000 to $750,000

ESTIMATED AVERAGE SIZE OF AWARDS: $287,604

ESTIMATED NUMBER OF AWARDS: 53

PROJECT PERIOD: 12 Months

Note: The Department is not bound by any estimates in this notice.

APPLICABLE REGULATIONS: (a) The Education Department General Administrative Regulations, 34 CFR parts 75, 77, 79, 80, 81, and 85, except that 34 CFR 75.200 through 75.217 (relating to the evaluation and competitive review of grants) do not apply to grants awarded under 34 CFR Part 271; and (b) The regulations for this program in 34 CFR Parts 270 and 271.

FOR APPLICATIONS OR INFORMATION, CONTACT: Sylvia Wright, U.S. Department of Education, 400 Maryland Avenue SW., Room 2067, Washington, DC 20202-6440. Telephone: (202) 732-4358.

PROGRAM AUTHORITY: U.S.C. 2000c-2000c-2; 2000c-5.

Dated: August 1, 1989.

Daniel F. Bonner,

Acting Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 89-18440 Filed 8-7-89; 8:45 am]

BILLING CODE 4000-01-M

National Commission on Drug-Free Schools; Meeting

AGENCY: National Commission on Drug-Free Schools.

ACTION: Notice of partially closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Commission on Drug-Free Schools (Commission). This notice also describes the functions of the Commission. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATE: August 24, 1989.

ADDRESS: Room 562, Dirksen Senate Office Building, Washington D.C.

FOR FURTHER INFORMATION CONTACT: William Modzeleski, Acting Executive Director, National Commission on Drug-Free Schools, 400 Maryland Ave, SW., Washington DC 20202. (202) 732-3599.

SUPPLEMENTARY INFORMATION: The National Commission on Drug-Free Schools is established under section 5051 of the Anti-Drug Abuse Act of 1988 (Pub. L. 100-690; 20 U.S.C. 3172 note). The Commission was established to advise on drug prevention in schools

and to recommend strategies and criteria for achieving drug-free schools. Under the provision of 20 U.S.C. 3172 (f) the Commission is to: develop recommendations of criteria for identifying drug-free schools and campuses; develop recommendations for identifying model programs to meet such criteria; make such other findings, recommendations and proposals as the Commission deems necessary to carry out the provisions of the 20 U.S.C. 3172; and prepare and submit a final report in accordance with the provisions of subsection (i) of 20 U.S.C. 3172.

The Commission will meet in Washington DC in open session from 9:00 a.m. to approximately 12:00 p.m. and from approximately 12:30 p.m. until the conclusion of the meeting at approximately 1:00 p.m. The proposed agenda for the open sessions of the Commission meeting include:

—Swearing in of Commission members.
—Comments of the CoChairs.
—Discussion of Commission workplan.
—Discussion of the operation of the Commission.
—Discussion of administrative issues related to the operation of the Commission.
—Discussion of Commission member salaries.
—Comments of the Commission members.

A portion of the meeting will be closed to the public. From approximately 12:00 p.m. until 12:30 p.m., the meeting will be closed under the authority of Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. Appendix I) and under exemption (6) of Section 552b(c) of the Government in the Sunshine Act [Pub. L. 94–409; 5 U.S.C. 552b (c)(6)]. During the closed portion of the meeting the Commission will discuss a candidate for the position of Executive Director. Such discussion relates to the internal personnel rules and practices of the agency and would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session and is protected by exemption (6) of section 552b(c) of Title 5 U.S.C.

A summary of the activities of the closed session and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b will be available to the public within fourteen days of the meeting.

Records are kept of all Commission proceedings, and are available for public inspection at the office of the Commission, 400 Maryland Ave, SW., Washington DC from the hours of 9:00 a.m. to 5:00 p.m.

Dated: August 1, 1989.

Ted Sanders,

Under Secretary.

[FR Doc. 89–18413 Filed 8–7–89; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Cooperative Agreement Award; Allied Signal, Inc.

AGENCY: Department of Energy.

ACTION: Intent to negotiate with and award a cooperative agreement to Allied-Signal, Inc.

SUMMARY: The U.S. Department of Energy, Idaho Operations Office, intends to negotiate with Allied-Signal, Inc., Engineered Materials Research Center, 50 East Algonquin Road, Des Plaines, IL 60017–5016, on a noncompetitive basis for award of a cooperative agreement. In response to DOE Notice of Program Interest No. NPI 88–34630, published in the Commerce Business Daily on June 16, 1988 and entitled "Research and Development to Overcome Fouling of Membranes", Allied-Signal submitted an unsolicited proposal entitled "Fouling Control in Membranes". The work proposed consists of research to investigate surface fluorination of ultrafiltration membranes in order to reduce the tendencies of such membranes to foul. Allied-Signal will perform initial screening of candidate membrane materials and fluorination processes, perform fouling evaluations of the screened candidate membranes in a flow test facility, run pilot plant tests on the most promising membranes and evaluate the economics and energy saving potential of the concept. The Allied-Signal proposal has been evaluated and accepted for support pursuant to the DOE Financial Assistance Rules 10 CFR Part 600.14 in that: (a) the proposal is considered meritorious based on an evaluation against published general criteria, and (b) the proposed project represents an innovative approach for which a competitive solicitation has been deemed inappropriate.

The project period of the proposed award will be about 18 months at an estimated cost of $220,000. The financial support of the project will be shared 80% DOE and 20% Allied-Signal.

Contact: U.S. Department on Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, Idaho 83402, Elizabeth M. Bowhan, Contract Specialist (208) 526–1229.

Issued this 13th day of July at Idaho Falls, Idaho.

Dated: July 11, 1989

J. Roger Gonzales,

Director, Contracts Management Division.

[FR Doc. 89–18451 Filed 8–7–89; 8:45 am]

BILLING CODE 6450–01–M

Award on a Noncompetitive Basis to American Wind Energy Association

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The Department of Energy (DOE), Chicago Operations Office through its SERI Area Office (SAO), announces that pursuant to the DOE Financial Assistance Rules 10 CFR 600.7 (b)(2), it intends to award a grant renewal on a noncompetitive basis to the American Wind Energy Association (AWEA). The objective of the work to be supported by this grant is to support the export efforts of the US wind energy industry.

FOR FURTHER INFORMATION CONTACT: Dr. Stephen L. Sargent, U.S. Department of Energy, SERI Area Office, 1617 Cole Boulevard, Golden, CO 80401, (303) 231–1366.

SUPPLEMENTARY INFORMATION: The AWEA is composed primarily of companies in the wind energy business. For some time, AWEA has been actively promoting the export of equipment manufactured by the U.S. wind energy industry. AWEA is the only organization known to DOE that is engaged in this specific export promotion activity. Therefore, the grant renewal application is being accepted by DOE because it knows of no other organization which is conducting or planning to conduct this type of activity. Under this grant extension, AWEA will conduct two main activities: A second Wind Energy Applications and Training Symposium, and a Trade Mission. The overall objective of the symposium is to organize and conduct the second Wind Energy Applications and Training Workshop for energy policy planners and decision-makers from developing countries. The Workshop will further the objective of the Committee on Renewable Energy Commerce and Trade (CORECT) to increase export sales by the U.S. renewable energy industry. The Trade Mission effort will include planning, organizing, and carrying out a trade mission during 1989 to a country as yet to be identified by AWEA in conjunction with the CORECT. AWEA's role will be: to develop the mission agenda, to select

and invite industry participants, to solicit co-sponsors, and to coordinate logistics for mission participants.

The project period for the cooperative agreement renewal is two years, expected to begin in July, 1989, with two one-year budget periods. DOE plans to provide the first year's funding in the amount of $49,874.

Issued in Chicago, Illinois, on July 18, 1989.

Edwin H. Hendricks,

Deputy Assistant Manager for Administration.

[FR Doc. 89-18450 Filed 8-7-89; 8:45 am]

BILLING CODE 6450-01-M

Bartlesville Project Office; Grant With the State of Texas

AGENCY: Department of Energy, Bartlesville Project Office.

ACTION: Notice of intent to negotiate a grant with the State of Texas (Annex IV).

SUMMARY: "Oil recovery Enhancement from Fractured, Low Permeability Reservoirs." The U.S. Department of Energy (DOE), Bartleville Project Office, through the DOE, Idaho Operations Office, intends to negotiate on a noncompetitive basis an cost-share grant with the State of Texas. All technical and scientific aspects will be conducted by Texas A&M University, Petroleum Engineering Department, through a subgrant. The action is prompted by the consummation of Annex IV to the Memorandum of Understanding between the DOE and the State of Texas which defines the research proposal and the participants, and specifies cost sharing. The grant will be utilized by Texas A&M University, Petroleum Engineering Department, to develop and advance new concepts and technology to enhance and increase oil and possibly gas recovery from an essentially underdeveloped resource base. The participant shall, (1) use and amalgamate the geophysics, geology and petroleum engineering disciplines to provide adequate criteria for developing multi-faceted and comprehensive reservoir description methods, (2) perform laboratory and mathematical studies to develop and establish a new enhanced oil recovery (EOR) method to increase recovery from dual porosity, low matrix permeability oil reservoirs, (3) use mathematical modeling studies to identify the effects of vertical as opposed to horizontal drilling through fault zones, (4) identify industrial sponsors to work in a cooperative manner with the university to field test these applications, (5) perform field tests to determine the usefulness of the carbonated water imbibition, EOR method, (6) perform field carbonated water imbitition, EOR method, (6) perform field tests to determine the relative merits of vertical versus horizonal well producing methods, and (7) transfer the learned technologies to oil operators through publications and workshops. Texas A&M University, Petroleum Engineering Department, will make available to this research project the state well records, geological data archives, well samples, and computer resources. The authority and justification for determination of noncompetitive financial assistance (DNCFA) is DOE Financial Assistance Rules 10 CFR § 600.7(b)(2)(i), (B) (C) and (D). The activities proposed in Annex IV to the agreement between the U.S. Department of Energy and the State of Texas are in support of a public purpose and are as directed by the Agreement. This activity would be conducted by the State of Texas using their own resources, however, DOE support of the activity would enhance public benefits to be derived by allowing further interpretation of reservoir architecture. DOE knows of no other entity which is conducting or planning to conduct such an activity. The applicant is a unit of Government and the activity to be supported is related to performance of a governmental function within the subject jurisdiction, thereby precluding DOE provision of support to another entity. The Sate of Texas, through its subgrantee, Texas A&M University, has exclusive domestic capability to perform the activity successfully based on unique equipment, proprietary data, technical expertise or other such unique qualifications. The applicant has access to data relative to the proposed activities that will be identified and structured and made available to developers, decision-makers, and researchers. The grant term is for three years at an estimated value of $1,450,000 which will be cost shared equally by DOE and the State of Texas. Public response may be addressed to the contract specialist stated below.

CONTACT: U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, Idaho 83402, Trudy A. Thorne, Contract Specialist (208) 526-9519.

Dated: July 20, 1989.

J. Roger Gonzales,

Director, Contracts Management Division.

[FR Doc. 89-18536 Filed 8-7-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP89-1871-000, et al.]

Tennessee Gas Pipeline Company, et al.; Natural Gas Certificate Filings

August 1, 1989.

Take notice that the following filings have been made with the Commission:

1. Tennessee Gas Pipeline Company

[Docket No. CP89-1871-000]

Take notice that on July 27, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-1871-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Kerr McGee Corporation (Kerr McGee), a producer of natural gas, under Tennessee's blanket certificate issued in Docket No. CP87-115, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated June 22, 1989, it proposes to transport natural gas for Kerr McGee from points of receipt located Offshore Texas, Offshore Louisianna, and in the state of Louisianna to Kerr McGee Chemical Plant in Monroe County, Mississippi. Tennessee further states that the volumes to be delivered are 50,000 dt equivalent on a peak day, 50,000 dt equivalent on an average day, and 18,250,000 dt equivalent on an annual basis, and that service under § 284.223 (a) commenced July 1, 1989, as reported in Docket No. ST89-4264 (filed July 24, 1989).

Comment date: September 15, 1989, in accordance with Standard Paragraph G at the end of this notice.

Panhandle Eastern Pipe Line Company

[Docket No. CP89-1843-000]

Take notice that on July 20, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1843-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a storage service provided to Kohomo Gas and Fuel Company (Kokomo), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Panhandle states that Kokomo, an existing jurisdictional gas sales customer of Panhandle, is served

pursuant to Panhandle's Rate Schedule TS–3 and a gas storage and transportation agreement (storage agreement) dated May 29, 1984. It is stated that pursuant to a cancellation agreement dated June 1, 1989, Kokomo and Panhandle have mutually agreed to terminate this service effective March 31, 1989. It is indicated that as a result of changes on the Panhandle and Kokomo systems, off-site storage is no longer useful or necessary, and also no longer possible for Kokomo to justify the expense to their State Commission. It is further indicated that on March 31, 1989, all of Kokomo's gas in storage had been removed and redelivered to Kokomo. Panhandle states that it would use the storage capacity made available by the termination of this storage agreement to facilitate its own operations.

Comment date: August 22, 1989 in accordance with Standard Paragraph F at the end of the notice.

3. Williams Natural Gas Company

[Docket No. CP89–1854–000]

Take notice that on July 24, 1989, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89–1854–000 a request pursuant to § 157.205 of the Commission's Regulations for permission and approval to abandon in place and by reclaim cetain pipeline facilities located in Barton and Rice Counties, Kansas and Nowata County, Oklahoma and the transportation of gas through these facilities under Williams' blanket certificate issued in Docket No. CP82–479–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to abandon by reclaim regulating, measuring and appurtenant facilities serving (1) Riverside Petroleum Company's (Riverside), formerly National Cooperative Refinery Association, Langfield lease operation in Barton County, Kansas; (2) Jayhawk Pipeline Corporation's (Jayhawk), formerly Mobil Pipe Line Company, Chase pump station in Rice County, Kansas; and (3) abandon by reclaim and in place approximately 0.3 miles of 4-inch lateral pipeline in Nowata County, Oklahoma originally installed to serve the Sinclair refinery.

Williams states that Riverside and Jayhawk have requested that their facilities be reclaimed and that the customers currently being served by the 4-inch pipeline in Nowata County have agreed to service by KPL Gas Service Company. Williams further states that the estimated cost of the abandonment of these facilities is approximately $8,090 with an estimated salvage value of $1,581.

Comment date: September 15, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Tennessee Gas Pipeline Company

[Docket No. CP89–1859–000]

Take notice that on July 24, 1989, Tennessee Gas Pipeline Company (Applicant), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89–1859–000 a request, pursuant to §§ 157.205 and 284.223 of the Commission's Regulations, for authorization to provide a transportation service for Equitable Resources Marketing Company (Equitable), a marketer, under Applicant's blanket certificate issued in Docket No. CP87–115–000 on June 18, 1987, pursuant to section 7(c) of the Natural Gas Act, all as more fully set out in the request on file with the Commission and open to public inspection.

Applicant further states that pursuant to a transportation agreement dated May 19, 1989, it proposes to transport natural gas for Equitable, from points of receipt located offshore Lousiana, offshore Texas, and the states of Louisiana, Mississippi, Texas, and Alabama for redelivery to various delivery points off Tennessee's system located in multiple states.

The applicant further states that the maximum daily quantity is 307,500 dekatherms under the contract. Service under § 284.223(a) commenced June 1, 1989, as reported in Docket No. ST89–4076 (filed June 30, 1989).

Comment date: September 15, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Trancontinental Gas Pipe Line

[Docket No. CP89–1870–000]

Take notice that on July 27, 1989, Transcontinental Gas Pipe Line Corporation (Transco) Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP89–1870–000 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 Texaco Gas Marketing, Inc. (TGMI), under its blanket authorization issued in Docket No. CP88–328–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transco would perform the proposed interruptible transportation service for TGMI, pursuant to an interruptible transportation service agreement dated May 15, 1989. The term of the transportation agreement is from the date of the contract and shall continue for a primary term ending June 14, 1989, and thereafter until terminated by thirty days prior notice by either party. Transco proposes to transport on a peak day up to 107,200 Dekatherms (dt) per day; on an average day 10,000 dt; and on an annual basis 3,650,000 dt of natural gas for TGMI. Transco further states that consistent with its Rate Schedule IT, Transco may agree to accept for transportation additional quantities of gas. Transco proposes to receive the subject gas at Brazos Block A 133A and will deliver the gas at existing delivery points located in Brazos Blocks A 76 and 538. Transco avers that no new facilities are 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. Transco commenced such self-implementing service on June 1, 1989, as reported in Docket No. ST89–4222–000.

Comment date: September 15, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Panhandle Eastern Pipe Line Company

[Docket No. CP89–1865–000]

Take notice that on July 25, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas, 77251, filed in Docket No. CP89–1865–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to partially abandon sales service to United Cities Gas Company (United), formerly Great River Gas Company (Great River), an existing jurisdictional sales customer, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle states that Panhandle and Great River entered into a sales agreement dated October 1, 1988, providing for a reduction of sales contract demand (CD) level corresponding to volumes converted to firm transportation service. Panhandle explains that United has elected under § 284.10 of the Commission's regulations to convert a portion of its (Great River's) daily contract demand to firm transportation. Panhandle states that the firm transportation service is being rendered under the terms and conditions of its Rate Schedule PT-Firm.

Accordingly, Panhandle proposes to reduce United's current sales contract demand quantity, to be effective October 1, 1988, by the daily amount in Column No. 2, as shown below.

Month	Current CD Mcf/d (1)	Reduction Mcf/d (2)	Resulting CD Mcf/d (3)
January	22,801	1,329	21,472
February	22,801	1,329	21,472
March	22,801	1,329	21,472
April	15,671	1,329	14,342
May	10,111	1,329	8,782
June	6,511	1,329	5,182
July	4,951	1,329	3,622
August	4,951	1,329	3,622
September	8,671	1,329	7,342
October	13,351	1,329	12,022
November	22,801	1,329	21,472
December	22,801	1,329	21,472

Panhandle further states that the proposed abandonment would reduce the annualized total CD from 5,402,825 Mcf to 4,917,740 Mcf.

Commend date: August 22, 1989, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraph

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date filed with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-18442 Filed 8-7-89; 8:45 am]

BILLING CODE 6717-01-M

[FE Docket No. 89-17-NG]

Cascade Natural Gas Corp.; Application To Amend Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application to amend blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on July 3, 1989, of an application filed by Cascade Natural Gas Corporation (Cascade) to amend DOE/FE Opinion and Order No. 316 (Order 316) granting blanket authorization to import up to 56 Bcf of natural gas from Canada over a two-year period. Under the original proposal, the imported gas would enter the U.S. at Sumas, Washington, and be transported from that point via the existing pipeline facilities of Northwest Pipeline Corporation. Cascade requests that Order 316 be amended to add the existing interconnection facilities on the international border at Kingsgate, British Columbia (Kingsgate), as an additional point of entry for the imported volumes.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notice of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than September 7, 1989.

FOR FURTHER INFORMATION:

Larine A. Moore, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667

SUPPLEMENTARY INFORMATION: The decision reached in Order 316 Cascade blanket authority to import over a two-year term through facilities at Sumas was made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served was the primary consideration in determining whether it was in the public interest (49 FR 6684, February 22, 1984). No party opposed that requested import authority. In this proceeding, Cascade requests only that the FE amend Order 316 to add an additional point of import for the authorized volumes at Kingsgate which is an interconnection point with the facilities of Pacific Gas Transmission Company. The FE does not expect the requested amendment to affect the public interest findings made in Order 316. Comments, especially by parties that may oppose this amendment, should be limited to the impact of the proposed additional, existing import point on the consistency of Cascade's import with DOE policy guidelines.

NEPA Compliance

The DOE has determined that compliance with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.*, can be accomplished by means of a categorical exclusion. On March 27, 1989, the DOE published in the **Federal Register**, (54 FR 12474) a notice of amendments to its guidelines for compliance with NEPA. In that notice, the DOE added to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion

in any particular case raises a rebuttable presumption that the DOE's action is not a major Federal action under NEPA. Unless the DOE receives comments indicating that the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs, Fossil Energy, Room 3F–056, FE–50, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. They must be filed no later than 4:30 p.m., e.d.t., September 7, 1989.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Cascade's application for amendment is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–56 at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 28, 1989.

Constance L. Buckley,

Acting Deputy Assistant Secretary for Fuels Programs, Fossil Energy.

[FR Doc. 89–18539 Filed 8–7–89; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[FE Docket No. 89–42–NG]

Panhandle Trading Co.; Application To Import Natural Gas From and Export Natural Gas to Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of Application for Blanket Authorizations To Import Natural Gas From and Export Natural Gas to Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on July 11, 1989, of an application filed by Panhandle Trading Company (PCT) for blanket authorizations to import up to 100 Bcf of Canadian natural gas and export up to 100 Bcf of domestic natural gas to Canada. The applications requests that the authorizations be approved for separate two-year terms beginning on the dates that the first import and the first export commence. PTC intends to utilize existing pipeline facilities for transportation of the volumes to be imported and exported, and indicates it will submit quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, requests for additional procedures and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than September 7, 1989.

FOR FURTHER INFORMATION CONTACT:

William C. Daroff, Office of Fuels Programs, Office of Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–094, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9516

Diane J. Stubbs, natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6667

SUPPLEMENTARY INFORMATION: PTC, a Delaware corporation, with its principal place of business in Houston, Texas, proposes to import and export natural gas, either for its own account or as an agent for the account of others, for short-term, spot sales to either United States or Canadian customers, including, but not limited to, gas distribution companies, pipelines, and commercial and industrial end-users. According to the application, the authority requested by PTC contemplates the importation of supplies of Canadian natural gas for consumption in U.S. markets, and the exportation of domestically produced natural gas for consumption in Canadian markets. According to PTC, the specific terms of each import and export transaction would be negotiated on an individual basis to reflect market conditions. PTC requests authority to import and export gas using existing facilities at any point on the international boundary of the United States and Canada.

In support of its application, PTC asserts that no present national need for the gas to be exported exists and that the short term nature of the authorization ensures that the gas would be available should the current conditions change. In addition, the applicant states that the proposed exports would reduce the current U.S. trade deficit. PTC also asserts that the proposed imports would be consistent with the public interest because it would allow consumers expanded access to competitively priced Canadian gas.

PTC requests that an authorization be granted on an expedited basis. A decision on PTC's request for expedited treatment will not be made until all responses to this notice are received and evaluated.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 CFR 6684, February 22, 1984). In reviewing natural gas export applications, the domestic need for the gas to be exported is considered, and any other issues determined to be appropriate in a particular case, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment in their responses on these matters as they relate to the requested import and export authority. The applicant asserts that this import/export arrangement will be competitive and in the public interest. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The DOE has determined that compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 et seq., can be accomplished by means of a categorical exclusion. On March 27, 1989, the DOE published in the **Federal Register** (54 FR 12474) a notice of amendments to its guidelines for compliance with NEPA. In that notice, the DOE added to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the DOE's action is not a major Federal action under NEPA. Unless the DOE receives comments indicating that the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs, Fossil Energy, Room 3F-056, FE-50, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. They must be filed no later than 4:30 p.m., e.d.t., September 7, 1989.

It is intended that a decisonal record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice to all parties will be provided. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties under this notice, in accordance with 10 CFR 590.316.

A copy of PTC's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 27, 1989.

Constance L. Buckley,

Acting Deputy Assistant Secretary for Fuels Programs Fossil Energy.

[FR Doc. 89-18452 Filed 8-7-89; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Change in Filing Deadline In Special Refund Proceeding No. KEF-0044 Involving Crown Central Petroleum Corp.

AGENCY: Office of Hearings and Appeals Department of Energy.

ACTION: Notice of change of Final Deadline for Filing Applications for Refund in Special Refund Proceeding KEF-0044, Crown Central Petroleum Corporation.

SUMMARY: The Office of Hearings and Appeals of the Deparment of Energy hereby announces a change and re-sets the final deadline for filing Applications for Refund from the Crown Central Petroleum Corporation escrow account. That account was established pursuant to a consent order between the Department of Energy and the Crown Central Petroleum Corporation, *Special Refund Proceeding No.* KEF-0044. The final deadline is extended from July 31, 1989 to November 15, 1989.

FOR FURTHER INFORMATION CONTACT: Gary Comstock, Staff Attorney, Department of Energy, Office of Hearings and Appeals, HG-30, 1000 Independence Avenue SW., Washington, DC 20024, (202) 586-6602.

SUPPLEMENTARY INFORMATION: On December 5, 1988, the Office of Hearings and Appeals of the Department of Energy issued a Decision and Order setting forth final refund procedures to distribute the monies in the escrow account established in accordance with the terms of a Consent Order entered into by the Department of Energy and the Crown Central Petroleum Corporation. *See Crown Central Petroleum Corporation*, 18 DOE ¶ 85,326, 53 FR 49915 (December 12, 1988). That Decision established July 31, 1989 as the filing deadline for the submission of refund applications for direct restitution by purchasers of Crown Central's refined petroleum products. 18 DOE at 88,530, 53 FR at 49919.

As the filing deadline date approaches, we have noted that fewer applications have been filed in this proceeding than expected. We believe that expanding the application period by three and one-half months will give eligible applicants ample opportunity to file their claim for refund. We have

therefore determined to extend the time for filing a refund application in the *Crown Central* proceeding to November 15, 1989. In accordance with our usual practice, applications postmarked after that date are subject to summary dismissal. Any unclaimed funds remaining after all pending claims are resolved will be made available for indirect restitution pursuant to the Petroleum Overcharge Distribution and Restitution Act of 1986, 15 U.S.C. 4501.

Dated: July 28, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 89-18453 Filed 8-7-89; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OA-FRL-3526-3]

Grants, State and Local Assistance; Municipal Wastewater Treatment Works Construction Programs; Correction

AGENCY: Environmental Protection Agency.

ACTION: Waiver of section 109, Pub. L. 100-202, for Wayne County Department of Public Works, Wayne County, Michigan, wastewater treatment construction grant, C-262391-10; and for the City and County of San Francisco, wastewater treatment construction grant, C-061253-710; correction.

SUMMARY: This notice publishes the waiver memorandum for Wayne County Department of Public Works referred to in the April 20, 1989, **Federal Register** (54 FR 15991); and the waiver memorandum for the City and County of San Francisco referred to in the April 24, 1989, **Federal Register** (54 FR 16403). In order to fully comply with the requirements of section 109, EPA is publishing the waiver memoranda and republishing the notices of waiver for both of these recipients. The waiver memorandum was inadvertently omitted in the April 20 and April 24 **Federal Registers.** The waiver request for Wayne County, Michigan, allows EPA to participate in the cost of a construction contract awarded by the Wayne County Department of Public Works to a joint venture firm which includes a Japanese firm. The waiver request for San Francisco allows EPA to participate in the cost of three Japanese made steel beams.

Dated: August 8, 1989.

Charles L. Grizzle,

Assistant Administrator for Administration and Management.

April 7, 1989.

Memorandum

Subject: Waiver of section 109, Public Law 100-202 (Brooks-Murkowski Amendment), for Wayne County Department of Public Works, Michigan, Project Number C262391-10

To: Valdas K. Adamkus Regional Administrator, Region V

I am respoading to Mr. Todd Cayer's request for a waiver of the Brooks-Murkowski amendment requirements of section 109, Public Law 100-202, for Wayne County Department of Public Works, Michigan, project number C26239l-10. Section 109 prohibited the use of Federal funds for certain public works contracts awarded under grants made in FY l988 to firms of countries which deny fair and equitable market opportunities for United States products and services in major foreign construction projects. The only country affected by the Brooks-Murkowski amendment is Japan.

Section 109 allows me to waive this provision if I determine that it is in the public interest to do so.

Action

Based on the circumstances in this case, I have determined it is in the public interest to waive the provisions of Section 109 to allow EPA to participate in the cost of the construction contract that the Wayne County Department of Public Works, Wayne County, Michigan anticipates making to C.J. Rogers/Kajima joint venture.

Background

When the grantee prepared the bid specifications, they were told by the delegated State agency administering the project that the Brooks-Murkowski amendment did not apply to this procurement action because the contracts were to be awarded after September 30, 1988. The State was relying on EPA's interpretation of the Brooks-Murkowski amendment. On January 25, 1989, the Office of Management and Budget (OMB) informed the Federal agencies that the Brooks-Murkowski amendment continues to apply to all contracts awarded under grants or contracts using funds obligated in FY 1988, regardless of when the contracts are awarded.

The grantee opened bids on January 10, 1989, and the low bid—C.J. Rogers/Kajima joint venture—was $9,591,000 and the next low bid was $11,430,390, a difference of about $1.8 million. The low bidder also intends to use innovative, state of the art technology for tunneling in unstable soil conditions. The grantee stated that this innovative technique is the basis for the low bid.

In addition, the grantee is under a State Consent Order to award contracts by April 1, 1989. Failure to award the contract based on the bids received will delay the start of construction.

In this case, I have determined that it is appropriate to approve a waiver for the following reasons:

- The bidding process was initiated and completed before OMB issued its decision that the Brooks-Murkowski amendment continues to apply to all contracts using grant funds obligated in FY 1988, regardless of when the contract is awarded.
- An award to the low bid will result in a cost savings of approximately $1.8 million.
- Not allowing the bids will place the grantee in a position of potentially violating their Consent Order and will require the grantee to rebid the job, both of which will result in project delays and higher costs.

If you have any questions, please call Harvey Pippen, Director, Grants Administration Division, on FTS 382-5240.

Sincerely,

William K. Reilly

April 13, 1989.

Memorandum

Subject: Waiver of Section 109, Pub. L. 100-202 (Brooks Murkowski Amendment), for the City and County of San Francisco, California, Project Number C-061253-710

To: Daniel L. McGovern, Regional Administrator, Region IX

I am responding to your request for a waiver of the "Brooks-Murkowski amendment" requirements of Section 109, Pub. L. 100-202. Section 109 generally prohibited the use of Federal funds for public works contracts awarded during Federal fiscal year 1988 to firms of countries which denied fair and equitable market opportunities for U.S. products and services in major foreign construction projects. The only such country identified was Japan.

Section 109 allows me to waive this provision if I determine that it is in the public interest to do so.

Action

On March 17, 1988, the Office of Management and Budget issued guidance on the Brooks-Murkowski amendment, including factors to consider in determining when waivers may be appropriate. Based on that guidance and the circumstances in this case, I have determined it is in the public interest to waive the provisions of Section 109 for the City and County of San Francisco's contract to Monterey Mechanical Company, under wastewater treatment construction grant C-061253-710.

The waiver will allow EPA to participate in the cost of three Japanese made steel beams ($6,733.08) bought under the contract with the Monterey Mechanical Company.

Background

The City and County of San Francisco advertised for bids for constructing the project on September 10, 1987, and opened bids on October 28, 1987. The grantee awarded the contract on March 29, 1988. The contractor initiated construction on April 4, 1988, and the steel beams have already been installed.

The State of California notified Region IX that the contractor had attempted to buy

American-made steel beams and that he then tried to have the beams manufactured by American mills. The contractor's supplier could not find any available American steel beams and was told by several American steel mills that:

(1) This would require a special order.

(2) The minimum special order quantity is 40,000 lbs.

(3) It would take 6 months for delivery.

The amount of the order required for the project was 17,000 lbs. and the Japanese-made product was in stock and could be delivered in two days.

The estimated cost of the contract is $2,747,222, the subcontract is $25,000 and the amount of the order for the three Japanese-made steel beams is $6,733.08.

The OMB guidance provides that factors for approval of waivers include whether—

- The contract was awarded before guidance implementing the provision was issued;
- Products are of limited availability from other than Japanese sources; and
- Costs will significantly exceed the costs of cancelling the contract and awarding another for similar products or services.

In this case, I have determined that it is appropriate to approve a waiver for the following reasons:

- The contractor's supplier found that American steel beams were of limited availability.
- The installation of the beams was on the project's critical path (first step for the sludge Control Building Modification), and waiting until American-made steel beams could be purchased would have caused a six-month delay in the project.
- The cost of cancelling the contract and ordering 40,000 lbs. of beams would significantly exceed the cost of the contract for 17,000 lbs. of beams.

If you have any questions, please call Harvey Rippen on 8–382–5240.

William K. Reilly.

[FR Doc. 89–18498 Filed 8–7–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL ELECTION COMMISSION

[Notice 1989–12]

Voluntary Standards for Computerized Voting Systems

AGENCY: Federal Election Commission.

ACTION: Notice of proposed voluntary standards for computerized voting equipment.

SUMMARY: The Federal Election Commission (the "FEC") requests comments on the proposed voluntary standards for computerized voting systems and three associated plans: One for states implementing the standards; another for the escrow of related voting system software documentation and other proprietary information; and the third for the evaluation of the independent test authorities that will examine voting systems for compliance with the standards.

Please note that these draft standards and three companion plans do not represent a final decision by the Commission. The FEC will publish another notice in the **Federal Register** when the final model standards and three plans are available, following consideration of comments received. The text of the final documents will not become part of the Code of Federal Regulations because they are intended only as guidelines for states and voting system vendors. States may mandate the specifications and procedures through their own statutes, regulations, or administrative rules. Voting system vendors may voluntarily adhere to the standards to ensure the reliability, accuracy, and integrity of their products. Further information is provided in the supplementary information that follows.

DATE: Comments must be received on or before September 7, 1989.

ADDRESSES: Copies of the standards, implementation plan, escrow plan, and test authority evaluation plan may be received by contacting: National Clearinghouse on Election Administration, Federal Election Commission, 999 E Street NW., Washington, DC 20463.

Comments on these documents must be made in writing and addressed to Ms. Penelope S. Bonsall, Director; National Clearinghouse on Election Administration; Federal Election Commission; 999 E Street, NW., Washington, DC 20463.

FOR FURTHER INFORMATION CONTACT: Ms. Penelope S. Bonsall, Director, (202) 376–5670 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The objective of the standards project is to help ensure the accurate and reliable functioning of computerized ballot tabulation systems. The model standards do not cover mechanical lever or paper ballot systems. The standards also do not incorporate specifications for mainframe computer hardware, since it is assumed that other engineering and performance criteria already govern their operation. Recommended requirements for ballot tally software installed on mainframes, however, are included.

The Commission initiated the development of model standards for computerized systems in September 1984. This action followed the submission to Congress in 1983 of a statutorily mandated report entitled "Voting System Standards: A Report of the Feasibility of Developing Voluntary Standards for Voting Equipment". The feasibility report detailed the desirability of developing engineering and procedural performance standards to provide guidance to election officials in their testing and certification of voting systems. Congress subsequently appropriated funds for the Commission that permitted the agency to contract for the development of engineering standards.

The task of developing standards for the targeted systems was divided into three phases. The initial phase focused on developing hardware standards for punchcard and marksense voting methods, the most widely used systems. The FEC began this phase in 1984, ultimately incorporating hardware test requirements to assess compliance with the proposed standards. In 1986, the Commission initiated the second phase to develop software standards and related test requirements for these systems. The third phase, begun in 1987, involved the concomitant development of hardware and software standards and test requirements for direct recording electronic systems, the newest voting systems on the market.

The FEC then integrated the products of these three phases into one document combining the functional, hardware, and software standards and related qualification and acceptance test requirements for the three systems. This document, entitled "Performance and Test Standards for Punchcard, Marksense, and Direct Recording Electronic Voting Systems", includes performance standards and test requirements deemed necessary to help ensure the accuracy, integrity, and reliability of computerized voting systems. They are intended as a model for states invoking their own standards for voting systems used by local election administrators. They are also a guide for developers and manufacturers of voting systems in ensuring their products meet the demands of accurate, safe, and secure elections.

As the standards project progressed, both vendors and election officials indicated a need for guidance in several areas related to the implementation of the standards. They requested that options and considerations attendant with the states, adoption of the standards be addressed. They needed a description of the escrow plan that was suggested as a method of protecting the voting system vendors, proprietary information, while ensuring that state or local election officials have access when necessary. They also requested that procedures be established to ensure the independence and proficiency of test authorities evaluating voting systems. The Commission, therefore, drafted "A

Plan for Implementing the FEC Voting Systems Standards", the "System Escrow Plan", and "A Process for Evaluating Independent Test Authorities".

The first companion document, "A Plan for Implementing the FEC Voting Systems Standards", offers information and advice to states on the process of adopting and applying the FEC standards. The second document, the "System Escrow Plan", proposes a means of controlling access to voting system software documentation and other proprietary information. Vendors are inclined to protect this information, which includes trade secrets, but state and local election officials may need occasional access to it for system maintenance or in cases of alleged computer tampering. The third companion document, entitled "A Process for Evaluating Independent Test Authorities", outlines a plan for assessing the expertise of the potential test authorities that will examine voting systems for compliance with the standards. This was needed partly to reassure states that the test results were likely to be reliable, and that the tests would not have to be repeated prior to state approval. The FEC developed this plan in consultation with the National Voluntary Laboratory Accreditation Program of the National Institute of Standards and Technology, which will assist in its implementation.

Over the course of the project, the FEC circulated drafts of the standards and the three supporting documents to affected vendors, computer consultants, programmers, state and local election officials, and any other persons who indicated an interest in the subject. The FEC's National Clearinghouse on Election Administration convened several public meetings between August 1985 and December 1988 to present the latest drafts, receive comments, and discuss various matters related to the implementation of the standards. The Commission reviewed and, where appropriate, incorporated verbal and written comments received from all interested persons.

The Federal Election Commission is now making the latest drafts of the standards, the implementation plan, the escrow plan, and the test authority evaluation plan available for final comment. The Commission will evaluate all comments received to determine if any revisions to the documents are warranted. Following this process, a notice will be published in the **Federal Register** announcing the availability of the final documents.

Dated: August 2, 1989.

Danny Lee McDonald,

Chairman, Federal Election Commission.

[FR Doc. 89-18433 Filed 8-7-89; 8:45 am]

BILLING CODE 6715-01-M

FEDERAL MARITIME COMMISSION

Performance Review Board; Membership

AGENCY: Federal Maritime Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the members of the Performance Review Board.

FOR FURTHER INFORMATION CONTACT: William J. Herron, Jr., Director of Personnel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

Francis J. Ivancie,

Commissioner.

The members of the Performance Review Board are:

1. Francis J. Ivancie, Commissioner
2. Edward J. Philbin, Commissioner
3. Charles E. Morgan, Chief Administrative Law Judge
4. Norman D. Kline, Administrative Law Judge
5. Joseph N. Ingolia, Administrative Law Judge
6. Edward P. Walsh, Managing Director
7. Robert D. Bourgoin, General Counsel
8. John Robert Ewers, Director, Bureau of Administration
9. Wm. Jarrel Smith, Jr., Director, Bureau of Investigations
10. Robert A. Ellsworth, Director, Bureau of Economic Analysis
11. Seymour Glanzer, Director, Bureau of Hearing Counsel
12. Robert G. Drew, Director, Bureau of Domestic Regulation
13. Joseph C. Polking, Secretary
14. Bruce A. Dombrowski, Deputy Managing Director
15. Austin L. Schmitt, Director, Bureau of Trade Monitoring.

[FR Doc. 89-18434 Filed 8-7-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

JSB Bancorp, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considerd in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 25, 1989.

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *JSB Bancorp*, Jasper, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of Jasper State Bank, Jasper, Indiana.

2. *Rodgers Family Bancshares, Inc.*, Waldron, Arkansas; to become bank holding company by acquiring at least 80 percent of the voting shares of Bank of Waldron, Waldron, Arkansas, which engages in the sale, as agent, of credit related insurance sold in connection with extensions of credit made by the bank in Waldron, Arkansas, a town with a population that does not exceed 5,000.

Board of Governors of the Federal Reserve System, August 2, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-18471 Filed 8-7-89; 8:45 am]

BILLING CODE 6210-01-M

Ernest Andrew Karandjeff; 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 August 22, 1989.

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Ernest Andrew Karandjeff*, Clayton, Missouri; to acquire an additional 16.56 percent of the voting shares of Central Banc System, Inc., Fairview Heights, Illinois, and thereby indirectly acquire Central Bank—Fairview Heights, Fairview Heights, Illinois, and Farmers and Merchants Bank of Carlinville, Carlinville, Illinois.

B. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Roderick Matthew Nugent*, Carthage, Texas; to acquire 7.32 percent of the voting shares of Carthage Bancshares Inc., Carthage, Texas, and thereby indirectly acquire The First National Bank of Carthage, Carthage, Texas.

Board of Governors of the Federal Reserve System, August 2, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-18470 Filed 8-7-89; 8:45 am]

BILLING CODE 6210-01-M

Oesterreichische Laenderbank Aktiengesellschaft; 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 August 30, 1989.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Oesterreichische Laenderbank Aktiengesellschaft*, Vienna, Austria; to acquire LB Financial Corporation, successor to Wells Fargo Leasing Corp., San Francisco, California, and thereby engage in leasing personal or real property or acting as agent, broker or adviser in leasing such property, pursuant to § 225.25(b)(5); making, acquiring or servicing loans or other extensions of credit (including issuing letters of credit and accepting drafts), for LB Financial's account or for the account of others, such as would be made, for example, by companies engaged in consumer finance, credit card, mortgage, commercial finance and factoring, pursuant to § 225.25(b)(1); and providing to others data processing and data transmission services, facilities (including data processing and data transmission hardware, software, documentation, or operating personnel), data bases, or access to such services, facilities, or data bases by any technological means pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 2, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-18473 Filed 8-7-89; 8:45 am]

BILLING CODE 6210-01-M

Teton Bancshares, Inc.; Fairfield, MT; Acquisition of Voting Shares of Choteau Bancorporation, Inc.; Choteau, MT; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 89-13680), published at page 24749 of the issue for Friday, June 9, 1989.

Under the Federal Reserve Bank of Minneapolis, the entry for Teton Bancshares, Inc. is amended to read as follows:

A. **Teton Bancshares, Inc.**, Fairfield, Montana; to acquire 99.7 percent of the voting shares of Choteau Bancorporation, Inc., Choteau, Montana, and thereby indirectly acquire The Citizens State Bank of Choteau, Choteau, Montana.

Comments regarding this application must be received at the Federal Reserve Bank of Minneapolis or the offices of the Board of Governors not later than August 21, 1989.

Board of Governors of the Federal Reserve System, August 1, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-18469 Filed 8-7-89; 8:45 am]

BILLING CODE 6210-01-M

WB&T Bankshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding

company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, indentifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW, Atlanta, Georgia 30303:

1. *WB&T Bankshares, Inc.*, Waycross, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Waycross Bank & Trust, Waycross, Georgia.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Commercial Financial Corp.*, Storm Lake, Iowa; to become a bank holding company by acquiring at least 84.13 percent of the voting shares of The Commercial Trust & Savings Bank, Storm Lake, Iowa.

C. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Union Planters Corporation*, Memphis, Tennessee; to acquire 100 percent of the voting shares of Steiner Bank, Birmingham, Alabama.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Investors Financial Corporation*, Sedalia, Missouri; to become a bank holding company by acquiring 98.41 percent of the voting shares of Community Bank of Pettis County, Sedalia, Missouri.

2. *Livingston Southwest Corporation*, Chicago, Illinois, and Livingston & Company Southwest, L.P., Chicago, Illinois; to acquire up to 76.62 percent of the voting shares of First National Bank of North County, Carlsbad, California, which engages in credit-related life and disability insurance activities.

Board of Governors of the Federal Reserve System, August 2, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-18472 Filed 8-7-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[IOA-20-N]

Medicare and Medicaid Programs; Meeting

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the 1989 Advisory Council on Social Security.

This meeting is being held at the earliest possible date to allow for a quorum of Council members, and to complete organizational tasks and expedite the business of the Council.

DATE: The meeting will be held on August 10, 1989, from 8 a.m. to 4 p.m., and on August 11, 1989, from 9 a.m. to 2 p.m. The meeting will be open to the public.

ADDRESS: The meeting will be held in the Hubert H. Humphrey Building, Room 800, 200 Independence Avenue SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Deborah Chollet, Executive Director, Advisory Council on Social Security, (202) 245-0217.

SUPPLEMENTARY INFORMATION:

I. Purpose

Under section 706 of the Social Security Act, the Secretary of Health and Human Services appoints an Advisory Council on Social Security every four years. The Advisory Council examines issues affecting the Social Security retirement, disability and survivors insurance programs, as well as the Medicare and Medicaid programs, which were created under the Social Security Act.

In addition, Secretary Sullivan has asked the 1989 Advisory Council specifically to address the following:

—The adequacy of the Medicare program to meet the health and long-term care needs of our aged and disabled populations, the impact on Medicaid of the curent financing structure for long-term care, and to make recommendations for more stable health care financing for the aged, the disabled, the poor, and the uninsured;

—Major Old-Age, Survivors, and Disability Insurance (OASDI) financing issues, including the long-range financial status of the program, relationship of OASDI income and outgo to budget-deficit reduction efforts under the Balanced Budget and Emergency Deficit Control Act of 1985, and projected buildups in the OASDI trust funds; and

—Broad policy issues on Social Security, such as the role of Social Security in overall U.S. retirement income policy.

The Council is composed of 12 members: John T. Dunlop, Phillip Briggs, Paul O'Neill, James R. Jones, John J. Sweeney, Robert M. Ball, Theodore Cooper, Lonnie R. Bristow, Don C. Wegmiller, G. Lawrence Atkins, A.L. "Pete" Singleton, and Karen Ignani; and the Chair, Deborah Steelman. The Council is to report to the Secretary and Congress by January 1, 1991.

II. Agenda

Agenda items for the meeting will include the presentation of background information and general discussion related to health care financing for the elderly and nonelderly populations, including Medicare benfits and financing, employer-sponsored health insurance benefits, and Medicaid eligibility and benefits.

Agenda items are subject to change as priorities dictate.

(Catalog of Federal Domestic Assistance Program Nos. 13.714 Medical Assistance Program; 13.733 Medicare—Hospital Insurance; 13.774 Medicare—Supplementary Medical Insurance)

Dated: August 3, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 89-18603 Filed 8-4-89; 2:17 pm]

BILLING CODE 4120-01-M

Privacy Act of 1974; System of Records

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of proposed modification of routine use for the Quality and Effectiveness of Care MEDPAR (QC/MEDPAR) File for the existing system of records.

SUMMARY: The Health Care Financing Administration (HCFA) is proposing to revise the system notice for the Medicare Bill File (Statistics), System No. 09-70-0005.

EFFECTIVE DATES: The proposed modification of the routine use for the QC/MEDPAR File shall take effect without further notice September 7, 1989 unless comments received on or before that date would warrant changes.

ADDRESS: Please address comments to Mr. Richard A. DeMeo, HCFA Privacy Act Officer, Office of Budget and Administration, Health Care Financing Administration, Room G–M–1 East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207. We will make comments received available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: Mrs. Rose Ellen Connerton, Office of Statistics and Data Management, Bureau of Data Management and Strategy, HCFA, Room 1–F–2 Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone (301) 966–8067.

SUPPLEMENTARY INFORMATION: The Medicare Bill File (Statistics), System No. 09–70–0005, contains records on bills for services furnished to persons enrolled in Part A (hospital insurance) and/or Part B (supplementary medical insurance) of the Medicare program. The systems notice for this system was most recently published at 53 FR 52792; December 29, 1988. Data in this system are used primarily for statistical and research purposes related to evaluating the operation and effectiveness of the Medicare program. A principal subfile in the system is the Medicare Provider Analysis and Review (MEDPAR) File. The MEDPAR File contains data from hospital bills of Medicare beneficiaries discharged from hospitals participating in the Medicare program, including data on beneficiary demographics, medical diagnosis and surgery, and utilization of hospital resources. HCFA developed the Quality and Effectiveness of Care MEDPAR (QC/MEDPAR) File from the MEDPAR File to increase the amount of data available for quality and effectiveness of care research and development and application of improved measures for determining the quality and effectiveness of care furnished in hospitals participating in the Medicare program. To this end, HCFA prepared and published a new routine use permitting the release of the QC/MEDPAR File for qualified research. This routine use was published May 3, 1988 in the **Federal Register** and became effective June 2, 1988. Since publication of the QC/MEDPAR routine use, HCFA has received suggestions from the health care industry that use of the data should be broadened to include releases for evaluation of the quality and effectiveness of care in hospitals. Many research projects also include an evaluation of care component, but many worthwhile evaluations of care projects could not be considered research. Evaluations may include or be limited to monitoring and feedback on a continuing basis. QC/MEDPAR data will be available for such monitoring and feedback under the proposed modifications for approved projects. Research and evaluation of health care must be encouraged because of the expected improvement in the quality and effectiveness of care that would result from application of the process itself apart from new findings.

HCFA is committed to the improvement of the quality of health care of Medicare beneficiaries and the general public. We believe that making the QC/MEDPAR File available for quality and effectiveness of health care evaluations, as well as research, will assist in this effort and is compatible with the purpose for which the data in the File were collected. Disclosure of data such as that in the QC/MEDPAR File can be made under a routine use only when justified by a substantial public interest (*Andrews* v. *Veterans Administration of the United States*, 613 F. Supp. 1404, (D.C. Wyo. 1985)). We believe that the criteria and conditions under which disclosure of the QC/MEDPAR File for research or evaluation would be made provide assurance that substantial public interest will be involved with each disclosure.

Research and evaluation plans submitted under section c.(1) of the routine use (as modified) for the QC/MEDPAR File should be in sufficient detail to permit HCFA to make a determination that the purposes cited in the plan are likely to be accomplished and that the public interest would be served in a substantial way. This does not require, however, the development and submission of a detailed work plan with a discussion of all of the technical components. This requirement can be met by a statement of the goals of the project; methods for achieving those goals, principal investigators; overview of analyses to be undertaken; and any other relevant components of the project such as feedback of information to providers (if applicable).

HCFA usually will require that a recipient of the File submit a copy of its plans for publication of any data (or aggregation of data) from the File prior to publication. A copy of each proposed statistical table shall be submitted, but HCFA will not need to see each completed table with all of the numbers in place. The purpose of requiring review before publication is to determine whether or not a beneficiary's identity could be deduced from detailed information in the proposed table and sensitive information revealed. For example, publication of information by individual zip code could be a problem since there are many zip codes in which there is only one Medicare beneficiary. Usually, examination of publication plans with table shells will permit a determination of whether or not beneficiary privacy would be at risk. In other cases, a statement of the data elements in the File that would be deleted would be sufficient to determine that the proposed publication would pose no risk to beneficiary privacy.

We are proposing that the routine use for the QC/MEDPAR File (routine use number (7) in the system notice for the Medicare Bill File (Statistics), System No. 09–70–0005), be modified to read as follows:

(7) With respect to the QC/MEDPAR File, to entities with a legitimate need for data for the purpose of conducting research or evaluation on the quality and effectiveness of care provided in hospitals. Research or evaluation under this routine use must focus on the improvement of health care or measures for determining, validating, and monitoring the quality and effectiveness of hospital care in such areas as access to care, outcomes of care, and effectiveness of care in improving, restoring, or maintaining the independence and functioning of Medicare beneficiaries. Information disclosed under this routine use will be limited to the data elements described in Appendix A.

The QC/MEDPAR File may be released to an entity in HCFA determines:

a. That the use or disclosure does not violate legal limitations under which the data were provided, collected, or obtained.

b. That the purpose for which the disclosure is to be made:

(1) Cannot reasonably be accomplished unless the data are provided in the detailed form described in Appendix A:

(2) Is reasonably likely to be accomplished in view of the capabilities of the requesting entity and other factors; and

(3) Is of sufficient importance to warrant the possible effect on the privacy of the individual that the disclosure of the data might bring.

c. In order for HCFA to determine that the requirements in section (b) are met, the entity must submit and HCFA must approve:

(1) A research or evaluation plan specifying the objectives of the research or evaluation, the manner in which the data will be used, the financial support for the plan, and the date the research or evaluation will be completed. Evaluation plans designed to assist specific providers must be supported by letters of commitment to the evaluation by the providers. Values or differences in values that would trigger provider action must be addressed in the evaluation plan as well as the action the provider intends to take; and

(2) A copy of any report by a panel of recognized experts reviewing the research or evaluation plan (when such review has been performed).

(d) The entity and its contractors, if any, must sign a statement acknowledging that section 1106(a) of the Social Security Act, which prohibits the disclosure of confidential information and imposes criminal penalties, may apply. They must also agree to the following:

(1) Not to link the data to other beneficiary-specific records nor to use the data to identify individual beneficiaries;

(2) Not to use the data for purposes that are not related to HCFA-approved research or evaluation of the quality and effectiveness of hospital inpatient care. Prohibited uses include but are not limited to: marketing (for example, identification and targeting of under or over-served health service markets primarily for the purposes of commercial benefit), insurance (for example, redlining areas deemed to offer bad health insurance or underwriting risks), and adverse selection (for example, identifying patients with high-risk diagnoses). The data must not be made available by the entity or its contractor for an activity not approved by HCFA, even if carried on within the entity or its contractor;

(3) Not to disclose the data to any persons or organizations unless the data are in aggregated form as described in paragraph 5. The data may be disclosed to a contractor for data processing if:

(a) The entity has specified in the research plan submitted to HCFA that the contractor would receive the data for that purpose, or the entity has obtained written authorization from HCFA to make the disclosure to the contractor, and

(b) The contractor has signed a confidentiality statement with HFA:

(4) Not to publish or otherwise disclose the data in a form raising unacceptable possibilities that beneficiaries could be identified (i.e., the data must not be beneficiary-specific and must be aggregated to a level where no data cells have ten or fewer beneficiaries);

(5) To submit a copy of its plans for any aggregation of the data intended for publication to HCFA for approval prior to publication;

(6) To establish appropriate administrative, technical, procedural and physical safeguards to protect the confidentiality of the data and to prevent unauthorized access to it;

(7) To return all files to HCFA, and destroy any copies that may have been made, at the completion of the research or evaluation plan.

This modification of the routine use for the QC/MEDPAR File is consistent with the Privacy Act, 5 U.S.C. 552a(a)(7), since, as previously noted, it is compatible with the purpose for which the information is collected. Because this modification of the routine use will not change the purposes for which the information is to be used or otherwise significantly alter the system, we are not preparing a report of altered system of records under 5 U.S.C. 552a(o). We are publishing the notice in its entirety below for the convenience of the reader.

Date: July 31, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

09-70-0005

SYSTEM NAME:

Medicare Bill File (Statistics) HHS, HCFA, BDMS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

HCFA DATA CENTER, Lyon Building, 7131 Rutherford Road, Baltimore, Maryland 21207.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons enrolled in hospital insurance or supplemental medical benefits parts of the Medicare program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Bill data, demographic data on the beneficiary; diagnosis and surgery codes; provider characteristics and identifying number (including physicians).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 1875 of the Social Security Act (42 U.S.C. 13950).

PURPOSE(S):

To study the operation and effectiveness of the Medicare program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made: (1) To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

(2) To the Bureau of Census for use in processing research and statistical data directly related to the administration of Social Security programs.

(3) To the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when

(a) HHS or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components.

is party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records were collected.

(4) To an individual or organization for a research evaluation, or epidemiological project related to the prevention of disease or disability, or the restoration or maintenance of health if HCFA:

a. Determines that the use or disclosure does not violate legal limitations under which the record was provided, collected, or obtained:

b. Determines that the purpose for which the disclosure is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form.

(2) is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring, and

(3) There is reasonable probability that the objective for the use would be accomplished;

c. Requires the information recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project unless the recipient presents an adequate justification of a research or health nature of retaining such information, and

(3) Make no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual.

(b) For use in another research project, under these same conditions, and with written authorization of HCFA.

(c) For disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit or

(d) When required by law:

d. Secures a written statement attesting to the information recipient's understanding of and willingness to abide by these provisions.

(5) To entities with a legitimate need for data for statistical analyses bearing on Medicare payment policies for inpatient hospital services. Information disclosed for this purpose will not include a beneficiary's health insurance claim number, race, or Medicare status code; the beneficiary's age will be identified only by age intervals; the beneficiary's residence will be identified only to the extent of stating whether he or she resides in the same State as the provider, the admission and discharge dates will be identified only by calendar quarter; and the date of surgery will be identified only as the number of days after admission.

Each of the Medicare Provider Analysis and Review (MEDPAR) file—short-stay hospital services file, long-term hospital services file, skilled nursing facility services file, and other provider services file—will be modified in accordance with the foregoing provisions for release. The entity must agree:

(a) Not to try to identify individual beneficiaries.

(b) Not to disclose raw data to any persons except contractors for data processing and storage (and it must agree to require any such contractor not to release any data and not to retain any data after performing the contract).

(c) Not to link this information to other beneficiary-specific records.

(d) Not to publish or otherwise disclose data in a form raising unacceptable possibilities that beneficiaries could be identified, and

(e) To safeguard the confidentiality of the data and to try to prevent unauthorized access to it.

(6) To a contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system or for developing, modifying and/or manipulating ADP software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for an ADP or telecommunications systems containing or supporting records in the system.

(7) With respect to the QC/MEDPAR File, to entities with a legitimate need for data for the purpose of conducting research or evaluation on the quality and effectiveness of care provided in hospitals. Research or evaluation under this routine use must focus on the improvement of health care or measures for determining, validating, and monitoring the quality and effectiveness of hospital care in such areas as access to care, outcomes of care, and effectiveness of care in improving, restoring, or maintaining the independence and functioning of Medicare beneficiaries. Information disclosed under this routine use will be limited to the data elements described in Appendix A.

The QC/MEDPAR File may be released to an entity if HCFA determines:

a. That the use or disclosure does not violate legal limitations under which the data were provided, collected, or obtained.

b. That the purpose for which the disclosure is to be made:

(1) Cannot reasonably be accomplished unless the data are provided in the detailed form described in Appendix A:

(2) Is reasonably likely to be accomplished in view of the capabilities of the requesting entity and other factors; and

(3) Is of sufficient importance to warrant the possible effect on the privacy of the individual that the disclosure of the data might bring.

c. In order for HCFA to determine that the requirements in section (b) are met, the entity must submit and HCFA must approve:

(1) A research or evaluation plan specifying the objectives of the research or evaluation, the manner in which the data will be used, the financial support for the plan, and the date the research or evaluation will be completed. Evaluation plans designed to assist specific providers must be supported by letters of commitment to the evaluation by the providers. Values or differences in values that would trigger provider action must be addressed in the evaluation plan as well as the action the provider intends to take; and

(2) A copy of any report by a panel of recognized experts reviewing the research or evaluation plan (when such review has been performed).

(d) The entity and its contractors, if any, must sign a statement acknowledging that section 1106(a) of the Social Security Act, which prohibits the disclosure of confidential information and imposes criminal penalties, may apply. They must also agree to the following:

(1) Not to link the data to other beneficiary-specific records nor to use the data to identify individual beneficiaries;

(2) Not to use the data for purposes that are not related to HCFA-approved research or evaluation of the quality and effectiveness of hospital inpatient care. Prohibited uses include but are not limited to: marketing (for example, identification and targeting of under or over-served health service markets primarily for the purposes of commercial benefit), insurance (for example, redlining areas deemed to offer bad health insurance or underwriting risks), and adverse selection (for example, identifying patients with high-risk diagnoses). The data must not be made available by the entity or its contractor for an activity not approved by HCFA, even if carried on within the entity or its contractor.;

(3) Not to disclose the data to any persons or organizations unless the data are in aggregated form as described in paragraph 5. The data may be disclosed to a contractor for data processing if:

(a) The entity has specified in the research plan submitted to HCFA that the contractor would receive the data for that purpose, or the entity has obtained written authorization from HCFA to make the disclosure to the contractor, and

(b) The contractor has signed a confidentiality statement with HCFA:

(4) Not to publish or otherwise disclose the data in the form raising unacceptable possibilities that beneficiaries could be identified (i.e., the data must not be beneficiary-specific and must be aggregated to a level where no data cells have ten or fewer beneficiaries);

(5) To submit a copy of its plans for any aggregation of the data intended for publication to HCFA for approval prior to publication;

(6) To establish appropriate administrative, technical, procedural and physical safeguards to protect the confidentiality of the data and to prevent unauthorized access to it;

(7) To return all files to HCFA, and destory any copies that may have been made, at the completion of the research or evaluation plan.

(8) To an agency of a State Government, or established by State law, for purposes of determining, evaluating and/or assessing cost, effectiveness, and/or the quality of health care services provided in the State, if HCFA:

a. Determines that the use or disclosure does not violate legal limitations under which the data were provided, collected, or obtained;

b. Establishes that the data are exempt from disclosure under the State and/or local Freedom of Information Act;

c. Determines that the purpose for which the disclosure is to be made:

(1) Cannot reasonably be accomplished unless the data are provided in individually identifiable form;

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individuals that additional exposure of the record might bring, and;

(3) There is a reasonable probability that the objective for the use would be accomplished; and

d. Requires the recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record;

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the request, unless the recipient presents an adequate justification for retaining such information;

(3) Make no further use or disclosure of the record except;

(a) In emergency circumstances affecting the health or safety of any individual;

(b) For use in another project under the same conditions, and with written authorization of HCFA;

(c) For disclosure to a properly identified person for the purpose of an audit related to the project, if information that would enable project subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or

(d) When required by law; and

(4) Secure a written statement attesting to the recipient's understanding of and willingness to abide by these provisions. The recipient must agree to the following:

(1) Not to use the data for purposes that are not related to the evaluation of cost, quality, and effectiveness of care;

(2) Not to publish or otherwise disclose the data in a form raising unacceptable possibilities that beneficiaries could be identified (i.e., the data must not be beneficiary-specific and must be aggregated to a level when no data cells have ten or fewer beneficiaries); and

(3) To submit a copy of any aggregation of the data intended for publication to HCFA for approval prior to publication.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM

STORAGE:

All records are stored on magnetic tape.

RETRIEVABILITY:

All records are indexed by health insurance claim number and by hospital provider number.

SAFEGUARDS:

For computerized records, safeguards established in accordance with Department standards and National Bureau of Standards guidelines (e.g., security codes) will be used, limiting access to authorized personnel.

RETENTION AND DISPOSAL:

Records are maintained with identifiers as long as needed for program research.

SYSTEM MANAGERS AND ADDRESS:

Director, Bureau of Data Management and Strategy, Room 1–A–11, Security Office Park, Baltimore, Maryland 21207.

NOTIFICATION PROCEDURE:

For purpose of access, write the systems manager, who will require name of system, health insurance claim number and for verification purposes, name (women's maiden name, if applicable), social security number, address, date of birth and sex; and to ascertain whether the individual's record is in the system, utilization and date of utilization under Part A or Part B of Medicare services, home health agency, hospital (inpatient), hospital (outpatient) or skilled nursing facility.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought (These access procedures are in accordance with the Department Regulations (45 CFR 5b.5(a)(2).)

CONTESTING RECORD PROCEDURES:

Contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department Regulations (45 CFR 5b.7).)

RECORD SOURCE CATEGORIES:

Medicare enrollment records: Medicare bill records: Medicare provider records for a sample of persons treated as hospital patients (inpatient and outpatient) and skilled nursing facility patients.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

APPENDIX A.—DATA ELEMENTS CONTAINED IN THE QUALITY OF CARE MEDPAR FILE

Data element	Description	Function
1. HI Claim Number	Encrypted to protect the identity of the beneficiary	To determine the number of stays for a beneficiary.
2. Day of Admission	1—Sunday 2—Monday 3—Tuesday 4—Wednesday 5—Thursday 6—Friday 7—Saturday	To facilitate analysis of admission patterns.

APPENDIX A.—DATA ELEMENTS CONTAINED IN THE QUALITY OF CARE MEDPAR FILE—Continued

Data element	Description	Function
3. Sex	—male —female —unknown	To measure sex-based differences.
4. Medicare Status Code	Code to show reason for beneficiary's entitlement —aged without ESRD —aged with ESRD —disabled without ESRD —disabled with ESRD —ESRD only	To examine effectiveness of care for different categories of Medicare beneficiaries.
5. Discharge Destination	—To home, self care —To short-term hospital —To SNF —To other type facility —To home health service —Left against medical advice —Died —Still a patient	To group stays into Diagnois Related Groups (DRGs).
6. Medicare Provider Number	Identification number of hospital	To allow for review of care on an institution-specific basis.
7. Date of Admission	Date, plus/minus 1 to 20 days*	To measure intervals between hospital episodes.
8. Date of Discharge	Date, plus/minus 1 to 20 days*	To measure intervals between hospital episodes.
9. Length of Stay	Numer of days in hospital stay	To examine days of care.
10. Intensive Care and Coronary Care Days	Days in special care units of hospitals	To measure outcomes in and use of special care units.
11. Total Charges 12. Routine Accommodation Charges 13. Intensive Care and Coronary Care Charges 14. Total Departmental (Ancilliary) Charges 15. Operating Room Charges 16. Pharmacy Charges 17. Laboratory Charges 18. Radiology Charges 19. Supplies Charges 20. Anesthesia Charges 21. Inhalation Therapy Charges	All charge fields (fields 11–21) are in whole dollars	Charge fields 11–21 are included to measure relative resource use across cases.
22. Principal and Other Diagnosis Codes	Five ICD–9–CM Codes	Fields 22–23 are included to identify diagnostic/surgical information and to group stays into DRGs.
23. Surgical Codes	Three ICD–9CM Volume 3 codes	
24. Date of Surgery	Date plus/minus 1 to 20 days*	To measure intervals between admission/discharge and surgery.
25. Blood Furnished	Number of points	To measure outcomes.
26. Diagnosis Related Group	DRG1–DRG475	To define diagnostic groups used in the Prospective Payment System.
27. Date of death	Date, plus/minus 1 to 20 days*	To determine mortality rates.
28. Urban/rural residence	1=urban 2=rural	To examine variations in care in urban and rural areas.
29. Zip-Code	5 digit zip	To examine variations in care in small areas.
30. Special Unit Code	S—Psychiatric Unit T—Rehabilitation Unit U—Swing-bed Hospital V—Alcohol/Drug Unit Blank	Distinguishes PPS-exempt unit records.
31. Beneficiary State of Residence	Two-position SSA numeric code	To facilitate seasonal migration studies.
32. Source of Admission	Admission Type 1, 2, or 3: 1—Physician Referral 2—Clinic Referral 3—HMO Referral 4—Transfer from Hospital 5—Transfer from SNF 6—Transfer from Another Health Care Facility 7—Emergency Room 8—Court/Law Enforcement 9—Unknown Admission Type 4: 1—Normal Delivery 2—Premature Delivery 3—Sick Baby 4—Extramural 5—Unkown	To allow analysis of admissions and episodes of care.
33. Type of Admission	1—Emergency 2—Urgent 3—Elective 4—Newborn 9—Urknown	To allow analysis of admissions and episodes of care.
34. Number of Diagnosis Codes	1 through 5	Enable search of diagnosis fields.
35. Number of Surgical Codes	1 through 3	Enable search of surgical procedures fields.
36. Actual Age	Three-position age of beneficiary based on the date of admission.	To measure age-based differences.

*The *same* random number will be added to all dates in every discharge record occurring for a beneficiary during the year. The random number will range from ±1 through 20.

The following subsets will be available (no combinations): one to five States; one to five DRGs; one to five ICD–9–CM codes; and standardized subsamples (5, 10, or 20 percent).

[FR Doc. 89–18500 Filed 8–7–89; 8:45 am]
BILLING CODE 4120–03

Public Health Service

Office of the Assistant Secretary for Health; Title XXIII of the Public Health Service Act; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of authority to the Assistant Secretary for Health on January 27, 1989, by the Secretary for Health and Human Services, the Assistant Secretary for Health has delegated all of the authorities under Sections 2320(d) and 2341(b) of the Public Health Service Act, as amended hereafter. The delegation excludes the authorities to promulgate regulations and submit reports to Congress.

Redelegation

These authorities may be redelegated.

Effective Date

This delegation became effective on July 28, 1989. In addition, the Assistant Secretary for Health ratified and affirmed any actions taken by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, or subordinates which involved the exercise of the authorities delegated herein prior to the effective date of the delegation.

Dated: July 28, 1989.

James O. Mason,

Assistant Secretary for Health.

[FR Doc. 89–18486 Filed 8–7–89; 8:45 am]
BILLING CODE 4160–20–M

Social Security Administration

Privacy Act of 1974; Report of New Routine Use

AGENCY: Social Security Administration (SSA), Department of Health and Human Services (HHS).

ACTION: New routine use.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(11)), we are issuing public notice of our intent to establish a new routine use of information in the system of records 09–60–0059—Earnings Recording and Self-Employment Income System (Earnings Record), HHS/SSA/OSR. The proposed routine use will permit SSA to disclose information to the Office of Personnel Management (OPM) for the purpose of administering the Civil Service and Federal Employee's Retirement System.

We invite public comments on this publication.

DATES: The proposed routine use will become effective as proposed without further notice on September 7, 1989, unless we receive comments on or before that date which would result in a contrary determination.

ADDRESSES: Interested individuals may comment on this proposal by writing to the SSA Privacy Officer, 3–D–1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235. All comments received will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Anita Cohen, Social Insurance Systems Specialist, Office of Pre-Claims Requirements, Office of Systems Requirements, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone 301–965–7145.

SUPPLEMENTARY INFORMATION:

I. Discussion

A. Background of the Proposed Routine Use

SSA maintains information pertaining to the amount of wages or self-employment income earned by individuals. This information constitutes tax return information subject to the Internal Revenue Code (IRC) and is maintained in the Earnings Record system or records. The IRC (26 U.S.C. 6103(e)(11) requires the Commissioner of Social Security, upon written request, to disclose tax return information to OPM for the purpose of administering the Civil Service and Federal Employees' Retirement Systems in accordance with Chapters 83 and 84 of Title 5, U.S.C. To meet the requirements of the Privacy Act before disclosing any information to OPM, we are establishing a routine use. The routine use provides for the following disclosure:

Disclosure of tax return information will be made to OPM, upon OPM's written request, for the purpose of administering the Civil Service and Federal Employees' Retirement Systems in accordance with Chapters 83 and 84 of Title 5, United States Code.

B. Compatibility of the Proposed Routine Use

We are proposing the routine use in accordance with the Privacy Act (5 U.S.C. 552a(b)(3)) and our disclosure regulation (20 CFR Part 401). Section 401.310 of the regulation permits us to disclose information for a routine use where the information will be used for a purpose which is compatible with the purpose of which we collected the information. We consider a disclosure required by Federal law as a disclosure for a compatible purpose. Since 26 U.S.C. 6103(e)(11) requires the Commissioner of Social Security to disclose the information to OPM, the above statement of routine use is appropriate.

C. Effect of the Proposed Routine Use on Individuals

We will disclose information under the proposed routine use to OPM for the purpose of administering the Civil Service and Federal Employees' Retirement Systems as authorized by the IRC. Thus, we do not anticipate that the disclosures to OPM would have any unwarranted adverse effect on the rights of individuals.

II. Minor Revisions to the Earnings Record Notice

Section	Change
System location	In each instance where "Maryland" is mentioned the accepted abbreviation, "MD" is substituted. Delete "Office of Central Operations".
Categories of Individuals covered by the system.	Add "(SSN)" following "Social Security number".
Categories of records in the system.	Delete "Social Security number" and substitute "SSN".
Purpose(s)	Delete "Social Security number" and substitute "SSN". Add "Department of Health and Human Services" and place parentheses around the acronym "HHS". Add "the Social Security Administration" and place parentheses around the acronym "SSA".

Section	Change
Routine uses of records maintained in the system, including categories of users and the purpose of such uses.	Add "(DOJ)" in item 4. Delete "the Social Security Administration" and substitute "SSA" in item 5. Delete "Social Security number" and substitute "SSNs" in item 16. Add "(OPM)" in item 21. Substitute "DOJ" for full title in item 22. Substitute "OPM" for full title in item 24.
Storage Safeguards, Retention and Disposal.	Change spelling of "disks" to "discs".
Retrievability	Substitute "SSN" for full title.
System manager(s) and address.	Add "Social Security Administration". Delete "Maryland" and substitute "MD".
Notification procedures.	Substitute "SSN" for full title.
Record Access procedures.	Delete second "also".
Record source categories.	Substitute "DOJ" for full title.

Dated: July 31, 1989.

Dorcas R. Hardy,

Commissioner of Social Security.

09-60-0059

SYSTEM NAME:

Earnings Recording and Self-Employment Income System, HHS/SSA/OSR.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Social Security Administration, Office of Systems, 6401 Security Boulevard Baltimore, MD 21235.

Social Security Administration, Office of System Requirements, 6401 Security Boulevard, Baltimore, MD 21235.

Social Security Administration, Office of Central Records Operations, Metro West Building, 300 North Greene Street, Baltimore, MD 21201.

Records also may be located at contractor sites (contact the system manager at the address below for contractor addresses).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any person who has been issued a Social Security number (SSN) and who may or may not have earnings under Social Security or self-employment income; or any person requesting, reporting, changing, and/or inquiring about earnings information; or any person having a vested interest in a private pension fund.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records of every SSN holder, his/her name, date of birth, sex, and race and a summary of his/her yearly earnings and quarters of coverage; special employment codes (i.e., self-employment, military, agriculture, and railroad); benefit status information; employer identification (i.e., employer identification numbers and pension plan numbers); minister waiver forms (i.e., forms filed by the clergy for the election or waiver of coverage under the Social Security Act); correspondence received from indiviudals pertaining to the above-mentioned items; the replies to such correspondence; and pension plan information (i.e., nature, form, and amount of vested benefits).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 205(a) and 205(c)(2) of the Social Security Act, the Federal Records Act of 1950 (64 Stat. 583), and the Employee Retirement Income Security Act of 1974 (Pub. L. 93-406).

PURPOSE(S)

This system is used for the following purposes:

- As a primary working record file of all SSN holders;
- As a quarterly record detail file to provide full data in wage investigation cases;
- To provide information for determining amount of benefits;
- To record all incorrect or incomplete earnings items;
- To reinstate incorrectly or incompletely reported earnings items;
- To record the lastest employer of a wage earner;
- For statistical studies;
- For identification of possible overpayments of benefits;
- For identification of individuals entitled to additional benefits;
- To provide information to employers/former employers for correcting or reconstructing records and for Social Security tax purposes;
- To provide workers and self/employed individuals with earning statements or quarters of coverage statements;
- To provide information to the Department of Health and Human Services (HHS) Audit Agency for auditing benfit payments under Social Security programs;
- To provide information to the National Institute for Occupational Safety and Health for epidemiological research studies required by the Occupational Health and Safety Act of 1974;
- To assist the Social Security Administration (SSA) in responding to general inquiries about Social Security, including earnings or adjustments to earnings, and in preparing responses to subsequent inquiries; and
- To sort minister waivers, thus preventing erroneous payment of Social Security benefits.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure my be made for routine uses as indicated below:

1. To employers or former employers, including State Social Security Administratiors, for correcting and reconstructing State employee earnings records and for Social Security purposes.

2. To the Department of the Treasury for:

(a) Investigating the alleged forgery, or unlawful negotiation of Socal Security checks; and

(b) Tax administration as defined in 26 U.S.C. 6103 of the Internal Revenue Code.

3. To the Railroad Retirement Board for administering provisions of the Railroad Retirement and Social Security Acts relating to railroad employment.

4. To the Department of Justice (DOJ) (Federal Bureau of Investigation and United States Attorneys) for investigating and prosecuting violations of the Social Security Act.

5. To a contractor for the purpose of collating, evaluating, analyzing, aggregating SSA or otherwise refining records when SSA contracts with a private firm. (The contractor shall be required to maintain Privacy Act safeguards with respect to such records.)

6. To the Department of Energy for their study of low-level radiation exposure.

7. To a congressional office in response to an inquiry from the congressional office made at the request of the subject of a record.

8. To the Department of State for administering the Social Security Act in foreign countries through services and facilities of that agency.

9. To the American Institute on Taiwan for administering the Social Security Act on Taiwan through services and facilities of that agency.

10. To the Veterans Administration, Philippines Regional Office, for administering the Social Secuirty Act in the Philippines through services and facilities of that agency.

11. To the Department of Interior for administering the Social Security Act in the Trust Territory of the Pacific Islands through services and facilities of that agency.

12. To State Audit agencies for auditing State supplementation payments and Medicaid eligibility considerations.

13. To DOJ, a court or other tribunal, or another party before such tribunal when:

(a) The SSA, any component thereof; or

(b) Any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where SSA determines that the litigation is likely to affect the operations of SSA or any of its components,

is a party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, the court, or other tribunal is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

14. In response to legal process or interrogatories relating to the enforcement of an individual's child support or alimony obligations, as required by sections 459 and 461 of the Social Security Act.

15. Information necessary to adjudicate claims filed under an international Social Security agreement that the United States has entered into pursuant to section 233 of the Social Security Act may be disclosed to a foreign country which is a party to that agreement.

16. To Federal, State, or local agencies (or agents on their behalf) for the purpose of validating SSNs used in administering cash or noncash income-maintenance programs or health-maintenance programs (including programs under the Social Security Act).

17. Information pertaining to wages and self-employment income may be disclosed in response to requests from State welfare agencies under sections 402(a)(29) and 411 of the Social Security Act for determining an individual's eligiblity for aid or services under State plans for Aid to Families with Dependent Children and the amount of such aid or services.

18. Tax return information (e.g., information with respect to net earnings from self-employment, wages, payments of retirement income which have been disclosed to SSA and business and employment addresses) may be disclosed, upon request, to officers and employees of the Department of Agriculture for purposes of, and to the extent necessary in determining

(a) An individual's eligibility for benefits, or

(b) The amount of benefits under the food stamp program established under the Food Stamp Act of 1977.

19. Tax return information (e.g., information with respect to net earnings from self-employment, wages, payments of retirement income which have been disclosed to SSA and business and employment addresses) may be disclosed, upon written request, to officers and employees of a State food stamp agency for purposes of, and to the extent necessary in determining

(a) An individual's eligibility for benefits, or

(b) The amount of benefits

under the food stamp program established under the Food Stamp Act of 1977.

20. Tax return information (e.g., information with respect to net earnings from self-employment, wages, payments of retirement income which have been disclosed to SSA and business and employment addresses) may be disclosed, upon written request, to appropriate officers and employees of a State or local child support enforcement agency for purposes of, and to the extent necessary in

(a) Establishing and collecting child support obligations from individuals who owe such obligations, and

(b) Locating those individuals

Under a program established under title IV–D of the Social Security Act (42 U.S.C. 651ff).

21. The fact that a veteran is or is not eligible for Retirement Insurance benefits under the Social Security program may be disclosed to the Office of Personnel Management (OPM) for its use in determining that veteran's eligibility for a civil service retirement annuity and the amount of such annuity.

22. Employee and employer name and address information may be disclosed to DOJ (Immigration and Naturalization Service) for the purpose of informing that agency of the identities and locations of aliens who appear to be illegally employed.

23. Information may be disclosed to contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs. We contemplate disclosing information under this routine use only in situations in which SSA may enter into a contractual or similar agreement with a third party to assist in accomplishing an agency function relating to this system of records.

24. Information derived from this system may be disclosed to OPM for the purpose of computing civil service annuity offsets of civil service annuitants with military service or the survivors of such individuals pursuant to provisions of section 307 of Public Law 97–253.

25. Nontax return information which is not restricted from disclosure by Federal law maybe disclosed to the General Services Administration and the National Archives and Records Administration for the purpose of conducting records management studies with respect to their duties and repsonsibilities under 44 U.S.C. 2904 and 2906, as amended by the National Archives and Records Administration Act of 1984.

26. Disclosure of tax return information will be made to OPM, upon OPM's written request, for the purpose of administering the Civil Service and Federal Employees with Chapters 83 and 84 of Title 5, United States Code.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this sytem are maintained as paper forms, correspondence in manila folders on open shelving, paper lists, punchcards, microfilm, magnetic tapes, and discs with on-line access files.

RETRIEVABILITY:

Records in this system are indexed by SSN, name, and employer identification number.

SAFEGUARDS:

Safeguards for automated records have been established in accordance with the HHS Automated Data Processing Manual, "Part 6, ADP System Security." This includes maintaining the magnetic tapes and discs within an enclosure attended by security guards. Anyone entering or leaving this enclosure must have a special badge issued only to authorized personnel.

For computerized records electronically transmitted between Central Office and field office locations (including organizations administering SSA programs under contractual agreements), safeguards include a lock/unlock password system, exclusive use of leased telephone lines, a terminal-oriented transaction matrix, and an audit trail. All microfilm and paper files are accessible only by authorized personnel who have a need for the information in the performance of their official duties.

Expansion and improvement of SSA's telecommunications sytsems has resulted in the acquisition of terminals equipped with physical key locks. The terminals also are fitted with adapters to permit the future installation of data encryption devices and devices to permit theidentification of terminal users. (See Appendix J in this publication for additional information relating to safeguards SSA employs to protect personal information.)

RETENTION AND DISPOSAL:

All paper forms and cards are retained until they are filmed or are entered on tape and their accuracy is verified. Then they are destroyed by shredding. All tapes, discs, and microfilm files are updated periodically. The out-of-date magnetic tapes and discs are erased. The out-of-date microfilm is shredded.

SSA retains correspondence 1 year when it concerns documents returned to an individual, denials of confidential information, release of confidential information to an authorized third party, and undeliverable material; for 4 years when it concerns information and evidence pertaining to coverage, wage, and self-employment determinations, or when the statute of limitations is involved; and permanently when it affects future claims development especially coverage, wage, and self-employment determinations. Correspondence is destroyed, when appropriate, by shredding.

SYSTEM MANAGER(S) AND ADDRESSES:

Director, Office of Pre-Claims Requirements, Social Security Administrator, 6401 Security Boulevard, Baltimore, MD 21235.

NOTIFICATION PROCEDURE:

An individual can determine if this sytem contains a record pertaining to him or her by providing his/her name, signature, and SSN or, if the SSN is not known, name, signature, date and place of birth, mother's maiden name, and father's name to the address shown under system manager and referring to this system. (Furnishing the SSN is voluntary, but it will make searching for an individual's record easier and avoid delay.) (See Appendix K to this publication for documentation individuals may be required to furnish to establish their identity when requesting information pertaining to themselves from SSA.) These procedures are in accordance with HHS Regulations 45 CFR Part 5b.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Also, requesters should reasonably specify the record contents they are seeking. These procedures are in accordance with HHS Regulations 45 CFR Part 5b.

CONTESTING RECORD PROCEDURES:

Same as notification procedures. Also, requesters should reasonably identify the record, specify the information they are contesting, and state the corrective action sought and the reasons for the correction with supporting justification. These procedures are in accordance with HHS Regulations 45 CFR Part 5b.

RECORD SOURCE CATEGORIES:

SSN applicants, employers and self-employed individuals; DOJ (Immigration and Naturalization Service); the Department of Treasury (Internal Revenue Service); an existing system of records maintained by SSA, the Master Beneficiary Record (09-60-0090); correspondence, replies to correspondence, and earnings modifications resulting from SSA internal processes.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 89-18490 Filed 8-7-89; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-89-2028]

Privacy Act of 1974; Proposed Amendment to a System of Records

AGENCY: Department of Housing and Urban Development.

ACTION: Notification of a proposed amendment to an existing system of records.

SUMMARY: The Department is given notice that it intends to amend the following Privacy Act system of records: HUD/DEPT-71 Employee Identification File.

EFFECTIVE DATE: This amendment shall become effective without further notice in 30 calendar days (September 7, 1989) unless comments are received on or before that date which would result in a contrary determination.

ADDRESS: Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: John T. Murphy, Acting Departmental Privacy Act Officer, Telephone (202) 755-6374. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: HUD/DEPT-71 is a system which consists of identification cards for employees currently employed with the Department of Housing and Urban Development (HUD) and former employees who have been separated for 3 months or less. The information contained in the system included employee photograph, name and signature, Social Security Number, identification card issuance date, type of appointment, date of birth, sex, height, weight, color of hair, color of eyes, and may include requisition for employee identification card.

The Department intends to provide HUD retirees with identification cards. These identification cards will vary slightly in appearance from current employees' cards. This new procedure will expand the categories of individuals covered by the system to include former employees who have retired from HUD. The categories of records will be expanded to include the date the employee separated as a retiree from the Department and the expiration date of the card. These revisions will provide HUD retirees with a viable form of identification, as well as make their access to the HUD building easier.

The amended portion of the system notice is set forth below. Previously, the system and a prefatory statement containing the general routine uses applicable to all of the Department's systems of records were published in the "Federal Register Privacy Act Issuances, 1987 Compilation, Volume II."

Authority: 5 U.S.C. 552a, 88 Stat. 1896: Section 7(d) Department of HUD Act (42 U.S.C. 3535(d)).

Issued at Washington, DC, July 20, 19089.

Donald J. Keuch, Jr.,

Deputy Assitant Secretary for Administration.

HUD/DEPT-71

SYSTEM NAME:

Employee Identification File.

CATEGORIES OF INDIVIDUAL COVERED BY THE SYSTEM:

Current Departmental employees, former employees who have retired from the Department, and other employees who have been separated for three months or less.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in the system include employee photograph, name and signature, Social Security Number, identification card issuance date, identification card expiration date and

separation date for retirees, type of appointment, date of birth, sex, height, weight, color of hair, color of eyes, and may include requisition for employee identification card.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Personnel and Training, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

[FR Doc. 89–18467 Filed 8–7–89; 8:45 am]

BILLING CODE 4210–01–M

Office of Administration

[Docket No. N–89–2029]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 2, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Mortgagee's Application For Insurance Benefits (Multifamily Mortgage).

Office: Administration.

Description of the Need for the Information and its Proposed Use: This report collects data required for cancellation of insurance contracts and payments of mortgage insurance premiums. It affects any lenders (mortgagees) filing a claim for Multifamily insurance benefits.

Form Number: HUD–2747.

Respondents: State or Local Governments, Businesses or Other For-Profit, and Federal Agencies or Employers.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Application	433		1		.08		36

Total Estimated Burden Hours: 36.

Status: Extension.

Contact: Monroe Herndon, HUD, (202) 755–6449; John Allison, OMB, (202) 395–6880.

Date: August 2, 1989.

Proposal: Requirement for Repurchase Agreements for Public Housing Agencies (PHAs) and Indian Housing Authorities (IHAs).

Office: Public and Indian Housing.

Description of the Need for the Information and its Proposed Use: This information collection requests that Public Housing Agencies/Indian Housing Authorities(PHAs/IHAs) provide written certification to HUD on repurchase agreements. PHAs/IHAs are permitted to invest funds or deposit in the General Fund in repurchase agreements.

Form Number: None.

Respondents: State or Local Governments.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Survey	30		1		2		60

Total Estimated Burden Hours: 60.
Status: Extension.
Contact: Stephanie Avery-Boyd, HUD, (202) 755–7920; John Allison, OMB, (202) 395–6880.

Date: August 2, 1989.

[FR Doc. 89–18468 Filed 8–7–89; 8:45 am]
BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–010–09–4322]

Meeting; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Boise District will hold a public meeting to discuss the proposed Wild Horse Gathering in the Cascade, Jarbidge, and Owyhee Resource Areas. The meeting will take place Tuesday, August 22, 1989, beginning at 1:00 p.m., in the Boise District Conference Room.

FOR FURTHER INFORMATION CONTACT: Fred Schley, BLM Boise District Office, 3948 Development Avenue, Boise, Idaho, 83705, 208–334–9303.

Rodger E. Schmitt,
Associate District Manager.

[FR Doc. 89–18480 Filed 8–7–89; 8:45 am]
BILLING CODE 4310-GG-M

[UT–020–4320–02; 1784]

Salt Lake District; Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given in accordance with Pub. L. 92–463 that the Salt Lake District Grazing Advisory Board will be meeting on September 19, 1989.

The Board will meet at 9:00 a.m. at the Salt Lake District Bureau of Land Management office, at 2370 South 2300 West, Salt Lake City, Utah. The purpose of the meeting will be to: (1) Review the status of range improvement projects constructed in FY–89, and (2) review range improvement projects proposed for construction in FY–90 and FY–91.

The meeting is open to the public and interested persons may make oral statements to the Board between 9:30 and 10:00 a.m., or file a written statement for the Board's consideration. Persons wishing to make statements to the Board are requested to contact Glade Anderson at (801) 524–5348 prior to September 15 so that adequate time can be included on the agenda.

FOR FURTHER INFORMATION CONTACT: Glade Anderson, Range Conservationist, Bureau of Land Management, Salt Lake District Office, 2370 South 2300 West, Salt Lake City, Utah 84119, (801) 524–5348.

Deane H. Zeller,
Salt Lake District Manager.

[FR Doc. 89–18489 Filed 8–7–89; 8:45 am]
BILLING CODE 4310-DQ-M

[OR–030–09–4320–02: GP9–298]

Vale District Multiple-Use Advisory Council; Meeting

AGENCY: Vale District, Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is given in accordance with Public Law 92–463 that a meeting of the Vale District Multiple-Use Advisory Council will be held September 7–8, 1989.

The agenda for the meeting will incldue: The Vale district's noxious weed control program, an update on activities and allotment management planning in the Trout Creek Mountains, activities and plans related to the National Historic Oregon Trail Interpretive Center and other portions of the Oregon National Historic Trail in the Vale District, management and planning activities related to the Wild and Scenic River designations on river segments in the Vale District, an update on activites in wilderness study areas and status of the wilderness EIS, and mining issues on public lands in Malheur County, Oregon.

The meeting is open to the public. Interested persons may make oral statements to the Board or may file written statements for the Board's consideration. Anyone wishing to make oral statements may do so at 2:30 p.m. on September 7 in the portion of the meeting held in the Vale District office.

Summary minutes of the Board's meeting will be maintained in the district office and will be available during regular business hours for public inspection, or personal copies may be purchased for the cost of duplication, within 30 days following the meeting.

DATES: The in-office meeting will begin at 1:00 p.m. September 7, 1989. The meeting will resume at 8:00 a.m., September 8, as a field trip to the Love Reservoir and Grassy Mountain areas to observe mineral exploration.

ADDRESSES: The meeting will be held in the conference room of the District Office, 100 Oregon Street, Vale, OR 97918. The field trip the following day will originate from the Vale District office.

FOR FURTHER INFORMATION CONTACT: Gerard Hubbard, Bureau of Land Management, Vale District, P.O. Box 700, Vale, OR 97918. (Telephone 503 473–3144.)

William C. Calkins,
District Manager.

[FR Doc. 89–18527 Filed 8–7–89; 8:45 am]
BILLING CODE 4310-33-M

[AZ 020–41–5410–10–ZAGD; AZA–23806]

Receipt of Conveyance of Mineral Interest Application

Notice is hereby given that pursuant to section 209 of the Act of October 21, 1976, 90 Stat. 2757, Yavapai Hills, Inc., has applied for conveyance of the mineral estate described as follows:

Gila and Salt River Meridian, Arizona

T. 14 N., R. 1 W.,
Sec. 21, E½SE¼SW¼SE¼, W½SW¼S E¼SE¼.

Containing approximately 10 acres.

Additional information concerning this application may be obtained from the Area Manager, Phoenix Resource Area, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Upon publication of this notice in the **Federal Register**, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application or two years from the date of filing of the application, June 23, 1989, whichever occurs first.

Charles R. Frost,
Associate District Manager.

Dated: July 26, 1989.

[FR Doc. 89–18478 Filed 8–7–89; 8:45 am]
BILLING CODE 4310-32-M

[AZ 020–41–5410–10–ZAFK; AZA–23415]

Receipt of Conveyance of Mineral Interest Application

Notice is hereby given that pursuant to section 209 of the Act of October 21, 1976, 90 Stat. 2757, Carrow Company, Inc. has applied for conveyance of the mineral estate described as follows:

Gila and Salt River Meridian, Arizona

T. 20 S., R. 9 E.,
Sec. 25, N½NE¼, SE¼NE¼.

T. 20 S., R. 10 E.
Sec. 13, W½;
Sec. 14, N½, SW¼, N½SE¼, SW¼SE¼;
Sec. 15, NE¼, N½NW¼;
Sec. 23, N½, W½SW¼, SE¼SW¼, SE¼;
Sec. 24, N½NW¼, S½SW¼;
Sec. 28, SW¼SW¼;
Sec. 29, all;
Sec. 30, lots 1, 2, 3, 4, 10, 11, E½;
Sec. 32, all;
Sec. 36, E½.
Containing 4,219.90 acres, more or less.

Additional information concerning this application may be obtained from the Area Manager, Phoenix Resource Area, Phoenix District Office, 2015 West Dear Valley Road, Phoenix, Arizona 85027.

Upon publication of this notice in the **Federal Register**, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application or two years from the date of filing of the application, July 21, 1988, whichever occurs first.

Charles R. Frost,

Associate District Manager.

Dated: July 26, 1989.

[FR Doc. 89-18476 Filed 8-7-89; 8:45 am]

BILLING CODE 4310-32-M

[NM-040-09-4212-11]

Public Land Sale in Blaine, Caddo, Canadian, Cleveland, Grady, Lincoln, Oklahoma, Pottawatomie, and Texas Counties

August 2, 1989.

AGENCY: Bureau of Land Management.

Realty Action: Sale of Public Lands in Oklahoma.

ACTION: Notice of Realty Action, Sale of Public Lands in Blaine, Caddo, Canadian, Clevenland, Grady, Lincoln, Oklahoma, Pottawatomie, and Texas Counties.

SUMMARY: The Bureau of Land Management (BLM) has determined that the lands described below are suitable for public sale under the authority of section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976 (90 Stat. 2750; 43 U.S.C. 1713), at no less than the appraised fair market value as shown below. Any bid for less than fair market value will be rejected. The BLM may accept or reject any and all offers, or withdraw any land or interest in the land for sale if the sale would not be consistent with FLPMA or other applicable law, or if in the opinion of the Authorized Officer, consummation of the sale would not be in the best interest of the United States.

INDIAN MERIDIAN, OKLAHOMA

[Parcels]

Tract	Legal description	Acres	Value
Blaine County (BL)			
BL-2	T. 13N., R. 11W., Sec. 36: lot 7.	0.15	$10.00
BL-4	T. 13N., R. 13W., Sec. 3: lot 1.	0.25	25.00
BL-7	T. 14N., R. 13W., Sec. 21: lots 6 & 7.	18.74	3,750.00
Caddo County (CD)			
CD-1	T. 7N., R. 10W., Sec. 15: lot 9.	0.67	10.00
CD-2	T. 7N., R. 11W., Sec. 15: lot 5.	1.46	50.00
Cleveland County (CL)			
CL-9	T. 8N., R. 3W., Sec. 11: lot 7.	0.08	50.00
Canadian County (CN)			
CN-2	T. 10N., R. 7W., Sec. 11: lot 8.	14.72	2,950.00
CN-9	T. 12N., R. 7W., Sec. 2: lot 23.	0.22	25.00
Grady County (GR)			
GR-1	T. 6N., R. 8W., Sec. 17: Tract in NE¼SW¼.	8.91	2,675.00
GR-2	T. 6N., R. 8W., Sec. 18: Tract in N½ SE¼SE¼.	2.07	620.00
Lincoln County (LC)			
LC-3	T. 14N., R. 3E., Sec. 13: lot 8.	0.21	10.00
LC-6	T. 14N., R. 2E., Sec. 14: lot 4.	0.15	10.00
Oklahoma County (OK)			
OK-11	T. 14N., R. 1E., Sec. 22: lot 12.	1.23	50.00
OK-16	T. 14N., R. 1E., Sec. 30: lot 20.	1.47	150.00
OK-17	T. 14N., R. 1E., Sec. 30: lot 21.	0.30	25.00
OK-18	T. 14N., R. 1E., Sec. 30: lot 22.	2.11	50.00
OK-20	T. 12N., R. 3W., Sec. 31: lot 20.	0.18	25.00

INDIAN MERIDIAN, OKLAHOMA—Continued

[Parcels]

Tract	Legal description	Acres	Value
Pottawatomie County (PO)			
PO-1	T. 6N., R. 3E., Sec. 35: lot 13.	11.80	2,350.00
PO-2	T. 6N., R. 3E., Sec. 35: lot 5.	15.00	3,000.00

CIMARRON MERIDIAN, OKLAHOMA

Tract	Legal description	Acres	Value
Texas County (TX)			
TX-50	T. 1S., R. 12E., Sec. 5: Blk. 4, lots 6 &7.	.161	$200.00
TX-51	Blk. 4, Lot 27	.067	100.00
TX-52	Blk. 9, lot 13 and N. 7.9 feet of lot 14.	.106	125.00
TX-53	Blk. 11, lot 13 and N. 9 feet of lot 14.	.109	125.00

The subject lands are part of the remaining public land holdings in Oklahoma scattered throughout the state. The lands are being offered for sale since the Bureau of Land Management (BLM) can not economically or feasibly manage the subject lands. No other federal agency or department was interested in managing these lands. Area residents favor the transfer of the lands into private ownership. The sale is consistent with the Bureau planning for the lands involved and has been discussed with governmental units and local officials. The public interest would be served by offering the lands for sale.

The lands, when patented, will be subject to the following terms, reservations and restrictions:

1. A reservation to the United States for ditches and canals for tracts TX-50, TX-51, TX-52, and TX-53.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals. A more detailed description of this reservation which will be incorporated in the patent document, is available for review at this BLM office.

3. Title will be issued by a patent subject to all prior valid existing rights.

4. Title will be issued by a patent with restrictions under Executive Orders 11990 and 11988 for the protection and

management of wetlands and floodplain on tracts BL–2, BL–4, BL–7, CD–1, CD–2, CL–9 CN–2, CN–9, GR–1, GR–2, LC–3, LC–6, OK–1, OK–16, OK–17, OK–18, OK–20, PO–1, and PO–2.

The sale will be conducted by sealed bidding. The minimum acceptable bid is listed above. Bids must be received by the Oklahoma Resource Area Headquarters, 200 NW. Fifth Street, Room 548, Oklahoma City, Oklahoma, 73102, by 10:00 a.m. October 11, 1989. Federal law requires that bidders be United States citizens or, in the case of a corporation, subject to the laws of any state of the United States. Proof of citizenship shall accompany the bid. Bids sent by mail must be in sealed envelopes accompanied by a certified check, postal money order, bank draft, or cashiers check for not less than twenty percent of the amount bid, made payable to the Department of Interior-BLM. A separate written bid must be submitted for each tract desired. The sealed bid envelopes must be marked on the front lower left hand corner (Example, "October 1989, Land Sale, Tract Number BL–2"). All sealed bids will be opened at 10:00 a.m. October 11, 1989. If two or more qualified sealed bids for the same amount are received, then the apparent successful bidder will be determined by drawing. The successful high bidder will be required to submit the remainder of the payment by cash, certified check, bank draft, money order, or combination thereof, within 180 days after receipt of the decision accepting the highest bid. Failure to pay the full bid price within 180 days shall result in the cancellation of the sale of the tract, and the deposit shall be forfeited and disposed of as other receipts of sale.

If no acceptable bids are received on or before the date of sale, the lands will be offered for sale on an over the counter basis at the Oklahoma Resource Area Headquarters until May 4, 1990.

Publication of this notice will segregate the land from all appropriation under the public land laws, including the mining laws, for 270 days, or until issuance of patent, whichever occurs first.

DATE: For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of Interior.

ADDRESS: Comments and suggestions should be sent to: District Manager, Bureau of Land Management, Tulsa District Office, 9522H E. 47th Place, Tulsa, Oklahoma 74145.

FOR FURTHER INFORMATION: Contact Jacqueline Gratton, (405) 231–5491.

Jim Sims,

District Manager.

[FR Doc. 89–18512 Filed 8–7–89; 8:45 am]

BILLING CODE 4310–FB–M

[OR–943–09–4214–10; GP9–297; OR–32978]

Conveyance of Public Land; Order Providing for Opening of Lands; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 7,309.94 acres of public lands out of Federal ownership. This action will also open approximately 2,320.78 acres of reconveyed lands to surface entry, mining and mineral leasing.

EFFECTIVE DATE: September 11, 1989.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503–231–6905.

SUPPLEMENTARY INFORMATION:

Notice is hereby given that in an exchange of lands made pursuant to Section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, a patent has been issued transferring 7,309.94 acres of lands in Harney County, Oregon, from Federal to private ownership.

In the exchange, the following described lands have been reconveyed to the United States:

Willamette Meridian

T. 30 S. R. 32 E.,
- sec. 4, lots 2 and 3, SE¼NW¼, SW¼NE¼, W½SE¼, and E½SW¼.

T. 30 S. R. 34 E.,
- sec. 1, lot 3, SW¼, SE¼NW¼, and SW¼SE¼;
- sec. 12, W½, W½E½, and NE¼NE¼;
- sec. 13, E½W½, W½E½ and E½NE¼;
- sec. 24, NE¼.

T. 30 S., R. 35 E.,
- sec. 5, S½SW¼;
- sec. 6, lot 7 and SE¼SE¼;
- sec. 7, lot 1, E½NW¼, NE¼, NE¼SW¼, and NW¼SE¼;
- sec. 8, N½NW¼, and SW¼NW¼.

The areas described aggregate approximately 2,320.78 acres in Harney County.

At 8:30 a.m., on September 11, 1989, the above described lands will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on September 11, 1989, will be considered as simultaneously filed at that time. These received thereafter will be considered in the order of filing.

At 8:30 a.m., on September 11, 1989, the above described lands will be open to location and entry under the United States mining laws. Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federl law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

At 8:30 a.m., on September 11, 1989, the above described lands will be open to applications and offers under the mining leasing laws.

Catherine H. Crawford,

Acting Chief, Branch of Lands and Minerals Operations.

Dated: July 28, 1989.

[FR Doc. 89–18479 Filed 8–7–89; 8:45 am]

BILLING CODE 4310–33–M

[CO–942–09–4520–12]

Colorado: Filing of Plats of Survey

July 31, 1989.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 a.m., July 31, 1989.

The supplemental plat creating new lot 1 in the SE¼SW¼ of section 34, T. 14 S., R. 87 W., Sixth Principal Meridian, Colorado was accepted July 17, 1989.

The plat representing the dependent resurvey of the east boundary of section 36 and the metes-and-bounds survey of Tract 37, T. 41 N., R. 5 W., New Mexico Principal Meridian, Colorado, Group No. 890, was accepted July 17, 1989.

These surveys were executed to meet certain administrative needs of the Forest Service.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850

Youngfield Street, Lakewood, Colorado, 80215.

Jack A. Eaves,

Chief, Cadastral Surveyor for Colorado.

[FR Doc. 89-18477 Filed 8-7-89; 8:45 am]

BILLING CODE 4310-JB-M

Fish and Wildlife Service

Availability of a Draft Recovery Plan for the Jesup's Milk-Vetch for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a Draft Recovery Plan for the Jesup's Milk-Vetch. The plant occurs on private lands along the Connecticut River in New Hampshire and Vermont. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be reviewed on or before September 20, 1989 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting Susi von Oettingen, USFWS, 22 Bridge St., Concord, NH 03301, (603)225-1411 or FTS 834-4411. Written comments and materials regarding the plan should be addressed to Susi von Oettingen. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Susi von Oettingen, (See Addresses).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, criteria for recognizing the recovery levels for downlisting or delisting them, and initial estimates of times and costs to implement the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The document for review is the draft recovery plan for the Jesup's milk-vetch (*Astragalus robbinsii* var. *jesupi*), and is submitted for a combined technical and agency review. The Jesup's milk-vetch, a member of the pea family, has been recognized as one of the rarest plants in New England, known from only three locations along the Connecticut River in New Hampshire and Vermont. The primary objective for recovery of the Jesup's milk-vetch is to prevent extinction of the species by protecting and maintaining the known populations and their essential habitat. Protection and maintenance would be established through: conservation easements; management rights and/or acquisition of the known populations; ensuring the continuation of present-day dynamics of the Connecticut River system; information and education activities; location of additional suitable habitat for possible future establishment of populations; and studies on the life history, habitat requirements and the relationship of river ecosystem to plant populations.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: August 1, 1989.

Robert E. Lambertson,

Regional Director.

[FR Doc. 89-18526 Filed 8-7-89; 8:45 am]

BILLING CODE 4310-55-M

Availability of a Draft Recovery Plan for the Flattened Musk Turtle for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft recovery plan for the Flattened Musk Turtle. It occurs in the Black Warrior River system, Alabama, upstream from Bankhead Dam. The Service solicits review and comment from the public on this draft plan.

DATE: Comments on the draft recovery plan must be received on or before October 10, 1989 to receive consideration by the Service.

ADDRESSES: Written comments and materials regarding the plan should be addressed to Complex Field Supervisor, U.S. Fish and Wildlife Service, Jackson Mall Office Center, 300 Woodrow Wilson Avenue, Suite 316, Jackson, Mississippi 39213 (601/965-4900). The plan is available for public inspection, by appointment, during normal business hours at the above address and at the Ecological Services Field Office, Daphne East Office Plaza on Highway 98, Daphne, Alabama 36526 (205/690-2181). Persons wishing to purchase the draft recovery plan may do so from the Fish and Wildlife Reference Service, 5430 Grosvenor Lane, Suite 110, Bethesda, Maryland 20814 (301/492-6403 or 1-800/582-3421).

FOR FURTHER INFORMATION CONTACT: Complex Field Supervisor, Jackson Field Office or Sandy Tucker, Daphne Ecological Services Field Office (see Addresses above).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, criteria for recognizing the recovery levels for downlisting or delisting them, and initial estimates of times and costs to implement the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988 requires that public notice and an

opportunity for public review and comments be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The objective of this agency draft recovery plan is to delist the flattened musk turtle (Sternotherus depressus) when there is evidence of stable or increasing populations compared to past surveys. The major threats to the flattened musk turtle are water pollution, collecting, disease, and hybridization. These threats should be alleviated by monitoring the populations to determine the significance of these threats, establishing a work group to address the water quality problem, and implementing any protective measures that are warranted. The area of emphasis for recovery actions is the upper Black Warrior River system, upstream from Bankhead Dam where suitable habitat occurs.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 31, 1989.

Robert G. Bowker,

Complex Field Supervisor.

[FR Doc. 89-18475 Filed 8-7-89; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Application for Permit

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR Part 18).

Applicant: Alaska Fish & Wildlife Research Center, File no. PRT-740507, 1011 E. Tudor Road, Anchorage, AK 99503.

Principal Investigator: Anthony R. DeGange, Project Leader.

Type of Permit: Scientific Research.

Name and Number of Animals: 650 Alaska sea otters (*Enhydra lutris*).

Summary of Activity to be Authorized: The applicant proposes to take these animals for the purpose of evaluating the long-term effects of the Exxon Valdez oil spill on sea otter movements, dispersal, survival and reproduction. Up to 650 animals may be captured, drugged, tagged, blood sampled and injected with subcutaneous transponder chip. Up to 275 of these may be surgically implanted with a radio transmitter, and a biopsy of visceral fat will be taken for toxicity analysis. Instrumented animals will be monitored year-around.

Source of Marine Mammals: Southcentral Alaska, principally the Prince William Sound.

Period of Activity: At least 2 years.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, P.O. Box 3507, Arlington, VA 22203-3507, within 30 days of the publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents submitted in connection with the above application are available for review during normal business hours (7:45 am to 4:15 pm) in the office of Management Authority, Room 432, 4401 N. Fairfax Drive, Arlington, VA.

Dated: August 2, 1989.

Susan M. Lawrence,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 89-18458 Filed 8-7-89; 8:45 am]

BILLING CODE 4310-AN-M

National Park Service

Environmental Impact Statements; Availability; Big Cypress National Preserve, Florida

AGENCY: National Park Service.

ACTION: Availability of draft Environmental Impact Statement/General Management Plan/Minerals Management Plan (EIS/GMP/MMP) for Big Cypress National Preserve, Florida.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the National Park Service, U.S. Department of the Interior, has prepared a Draft Environmental Impact Statement on the General Management Plan/Minerals Management Plan for Big Cypress National Preserve. The GMP/MMP presents a basic management philosophy that meets the legislative requirements for resource protection and for public use and enjoyment of the preserve, it guides the National Park Service in addressing issues and achieving management objectives over a 10- to 15-year period.

DATES: Comments on the Draft EIS/GMP/MMP will be accepted for a period of 90 days after publication of this notice.

ADDRESSES: Comments should be sent to the Regional Director, Southeast Region, National Park Service, 75 Spring Street, SW, Atlanta, Georgia 30303. Copies of the EIS/GMP/MMP are available for review at the following locations:

National Park Service, Southeast Regional Office, 75 Spring Street, SW., Atlanta, Georgia

Broward County Public Library, 1301 West Companys Road, Fort Lauderdale, Florida

Homestead Public Library, 700 North Homestead, Homestead, Florida

Miami-Dade Public Library, 101 West Flagler Street, Miami, Florida

Collier County Public Library, 650 Central Avenue, Naples, Florida

Everglades National Park Headquarters, Homestead, Florida

Big Cypress National Preserve, Headquarters and Oasis Ranger Station, Ochopee, Florida

Big Cypress Land Acquisition Office, 201 8th Street, South, Naples, Florida

FOR FURTHER INFORMATION CONTACT: Fred Fagergren, Superintendent, Big Cypress National Preserve, Star Route Box 110, Ochopee, Florida 33943, Telephone (813) 695-2000.

Robert M. Baker,

Regional Director, Southeast Region.

[FR Doc. 89-18535 Filed 8-7-89; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 29, 1989. Pursuant to § 60.13 of the 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park

Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by August 23, 1989.

Carol D. Shull,

Chief of Registration, National Register.

CALIFORNIA

Orange County

Huntington Beach Municipal Pier, Main St. and Ocean Ave., Huntington Beach, 89001203

GEORGIA

Bulloch County

Brannen, James Alonzo, House (Downtown Statesboro MPS), 112 S. Main St./US 301, Statesboro, 89001154

East Main Street Commercial Historic District (Downtown Statesboro MPS), Roughly E. Main St./US 301 between Siebald and Oak Sts., Statesboro, 89001155

East Vine Street Warehouse and Depot District (Downtown Statesboro MPS), Roughly bounded by E. Vine St., Central of Georgia Railroad tracks, and Cherry St., Statesboro, 89001156

Holland, Dr. Madison Monroe, House (Downtown Statesboro MPS), 27 S. Main St./US 301, Statesboro, 89001157

North College Street Residential Historic District (Downtown Statesboro MPS), Roughly N. College St. from Northside Dr. to Elm St., Statesboro, 89001158

North Main Street Commercial Historic District (Downtown Statesboro MPS), Roughly N. Main St. between Courtland and W. Main Sts., Statesboro, 89001159

South Main Street Historic District (Downtown Statesboro MPS), Roughly S. Main St. between W. Main and Vine Sts., Statesboro, 89001160

Statesboro City Hall and Fire Station (Downtown Statesboro MPS), Sieblad and Courtland Sts., Statesboro, 89001162

US Post Office—Statesboro (Downtown Statesboro MPS), 27 S. Main St./US 301, Statesboro, 89001163

West Main Street Commercial Historic District (Downtown Statesboro MPS), Roughly W. Main St. between Walnut and N. and S. Main Sts., Statesboro, 89001164

Warren County

South Main Street Residential Historic District (Downtown Statesboro MPS), Roughly College Ln., Southern Railway right-of-way, Walnut, Mikell, and S. Main Sts., Statesboro, 89001161

Illinois

Cook County

YMCA Hotel, 820–828 S. Wabash Ave., Chicago, 89001202

KENTUCKY

Breckenridge County

Mattingly Petroglyphs (15BC128) (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Mattingly vicinity, 89001172

North Fork Rough River Petroglyph (15BC130) (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Roff vicinity, 89001174

Tar Springs Petroglyphs (15BC129) (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Cloverport vicinity, 89001173

Butler County

Baby Track Rock Petroglyphs (15BT40) (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Morgantown vicinity, 89001175

Reedyville Petroglyphs (15BT65) (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Reedyvill vicinity, 89001176

Turkey Rock Petroglyphs (15BT64) (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Morgantown vicinity, 89001177

Carter County

Carter Caves Pictograph (15CR60) (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Olive Hill vicinity, 89001178

Christian County

Pilot Rock Petroglyphs (15CH200) (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Hopkinsville vicinity, 89001179

Clay County

Fish Trap Rock Petroglyphs (15CY53) (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Eriline vicinity, 89001181

Red Bird River Petroglyphs (15CY51) (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Eriline vicinity, 89001182

Red Bird River Shelter Petroglyphs (15CY52) (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Eriline vicinity, 89001183

Edmonson County

Asphalt Rock Pictographs (15ED24) (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Asphalt vicinity 89001185

Dismal Rock Shelter Petroglyphs (15ED15) (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Sweeden vicinity 89001184

Estill County

Ashley Petroglyphs (15ES27) (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Furnace vicinity 89001186

Sparks Indian Rock House Petroglyphs (15ES26) (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Lexington vicinity 89001187

Grayson County

Crow Hollow Petroglyphs (15GY65) (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Clarkson vicinity 89001188

Saltsman Branch Petroglyphs (15GY66) (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Moutardier vicinity 89001189

Saltsman Branch Shelter Petroglyphs (15GY67) (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Moutardier vicinity 89001190

Hancock County

Jeffry Cliff Petroglyphs (15HA114) (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Indian Lake vicinity 89001191

Henderson County

Alves Historic District, Roughly bounded by Green, Center, S. Alvasia, Powell, S. Adams and Washington Sts., Henderson, 89001151

Jackson County

Daugherty Bear Track Petroglyphs (15JA160) (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, McKee vicinity 89001192

Kenton County

Beechwood Historic District (Fort Mitchell MPS), Roughly bounded by Beechwood Rd., Dixie Hwy., and Woodlawn Ave., Fort Mitchell, 89001168

Fort Mitchell Heights Historic District (Fort Mitchell MPS), Roughly bounded by Park Rd., Barrington Rd., Dixie Hwy., and Fortside Dr., Fort Mitchell, 89001169

Kruempelman Farmhouse (Fort Mitchell MPS), 24 Ridge Rd., Fort Mitchell, 89001171

Old Fort Mitchell Historic District (Fort Mitchell MPS), Roughly bounded by Saint Johns Rd., Dixie Hwy., E. Maple Ave., and Edgewood Rd., Fort Mitchell, 89001170

Lee County

Bear Track Petroglyphs (15LE112) (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Mount Olive vicinity 89001194

Old Landing Petroglyphs (15LE113) (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Old Landing vicinity 89001195

Perdue Petroglyphs (15LE111) (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Fixer vicinity 89001193

Meade County

Payneville Petroglyphs (15MD308) (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Payneville vicinity 89001196

Menifee County

Spatt's Petroglyphs (15MF353) (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Frenchburg vicinity 89001197

Powell County

Branham Ridge Petroglyphs (15PO158) (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Vaughn's Mill vicinity 89001198

High Rock Petroglyphs (15PO25) (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Nada vicinity 89001201

McKinney Bluff Petroglyphs (15PO107) (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Nada vicinity 89001199

State Rock Petroglyphs (15PO106) (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Furnace vicinity 89001200

Maryland

Baltimore Independent City

Senator Theatre, 5904–5906 York Rd., Baltimore (Independent City), 89001153

Rhode Island

Providence County

Sons of Jacob Synagogue, 24 Douglas Ave., Providence, 89001152

Wyoming

Platte County

Patten Creek Site (48PL68) (Aboriginal Lithic Source Areas in Wyoming MPS), Address Restricted, Hartville vicinity 89001204

[FR Doc. 89–18509 Filed 8–7–89; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31482]

Mid Michigan Railroad Co., Inc., Purchase Exemption, the St. Joseph & Grand Island Railroad Co. Line Between St. Joseph, Mo and Upland, KS.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 11343, *et seq.*, Mid Michigan Railroad Company, Inc.'s acquisition and operation of a line of The St. Joseph & Grand Island Railroad Company, known as the "St. Joseph Branch." The line runs between milespost 0.4 at St. Joseph, MO, and milepost 107.7 at Upland, KS, a distance of approximately 107.3 miles. The exemption is subject to employee protective conditions. Pursuant to 49 CFR 1180.2(d) (7), the decision reflects the class exemption for the trackage rights between Mid Michigan and Union Pacific Railroad Company, also subject to employee protective conditions.

DATES: This exemption is effective on September 11, 1989. Petitions for stay must be filed by August 23, 1989 and petitions for reconsideration must be filed by September 5, 1989.

ADDRESSES: Send pleadings referring to Finance Docket No. 31482 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioners' representatives:

Frank J. Pergolizzi, 1224 Seventeenth Street, NW, Washington, DC 20036, and

Joseph D. Anthofer, 432 East Grove, Greenville, MI 48838

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. [TDD for hearing impaired: (202) 275–1721.]

SUMMARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, writer to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275–1721.)

Decided: July 31, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89–18506 Filed 8–7–89; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31490]

Ogeechee Railway Co.; Lease and Operation Exemption, Southern Railway Co.

AGENCY: Interstate Commerce Commission

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts under 49 U.S.C. 10505 from the prior approval requirements of 49 U.S.C. 11343–11345 the lease and operation by Ogeechee Railway Company of 24.39 miles of rail lines in Crawford, Peach, Bleckley, and Pulaski Counties, GA, owned by the Southern Railway Company, subject to standard labor protective conditions.

DATES: The exemption will be effective on August 11, 1989. Petitions for reconsideration must be filed by August 21, 1989.

ADDRESSES: Send pleadings referring to Finance Docket No. 31490 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and

(2) Petitioners' representatives:

John M. Robinson (Ogeechee), 9616 Old Spring Road, Kensington, MD 20895

F. Blair Wimbush, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–2191.

FOR FURTHER INFORMATION CONTACT: Jospeh H. Dettmar, (202) 275–7245 [TDD for hearing impaired: (202) 275–1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone (202) 289–4357/4359. [Assistance for hearing impaired is available through TDD service at (202) 275–1721.)

Decided: July 24, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89–18507 Filed 8–7–89; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Office of Special Counsel for Immigration Related Unfair Employment Practices

Equal Employment Opportunity Commission

Organization, Functions and Authority Delegations and Coordination; Special Counsel for Immigration Related Unfair Employment Practices and Equal Employment Opportunity Commission

AGENCY: Office of Special Counsel for Immigration Related Unfair Employment Practices, DOJ; Equal Employment Opportunity Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given to the final agreement between the Equal Employment Opportunity Commission and the Office of Special Counsel for Immigration Related Unfair Employment Practices replacing the interim agreement published at 53 FR 15904 (May 4, 1988). The agreement makes each agency the agent of the other for the sole purpose of receiving discrimination charges under Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*) and section 102 of the Immigration Reform and Control Act of 1986 (8 U.S.C. 1324b), and provides for interagency coordination of charge processing activities. The purpose of this agreement is to promote efficiency in the administration and enforcement of the two statutes, and to prevent any loss of rights arising from the operation of a filing deadline against an individual or entity who has mistakenly filed a charge with the wrong agency.

FOR FURTHER INFORMATION CONTACT: Daniel Echavarren, Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, P.O. Box 65490, Washington, DC 20035–5490; (800) 255–7688 (toll free)

or (202) 653–8260 (Voice); or (800) 237–2515 (toll free TDD) or (202) 296–0168 (TDD). At the Equal Employment Opportunity Commission (EEOC), contact Irene L. Hill, Assistant Legal Counsel for Coordination, Office of the Legal Counsel, EEOC, 1801 "L" Street, NW., Washington, DC 20507, (202) 663–4689 (Voice) or 663–7026 (TDD).

Andrew M. Strojny,

Acting Special Counsel for Immigration Related Unfair Employment Practices.

Clarence Thomas,

Chairman, Equal Employment Opportunity Commission.

Memorandum of Understanding between The Equal Employment Opportunity Commission and The Office of Special Counsel for Immigration Realted Unfair Employment Practices

The Equal Employment Opportunity Commission (EEOC), under Title VII of the Civil Rights Act of 1964, as amended (hereinafter, "Title VII"), has jurisdiction to process certain charges of employment discrimination on the basis of national origin. The Office of the Special Counsel for Immigration Related Unfair Employment Practices (hereinafter, "Special Counsel") of the Department of Justice, under section 102 of the Immigration Reform and Control Act of 1986, has jurisdiction to process certain other charges of employment discrimination on the bases of national origin or citizenship status. The purpose of this Memorandum of Understanding between the EEOC and the Special Counsel is to prevent any overlap in the filing of charges of discrimination under these statues and to promote efficiency in their administration and enforcement.

The parties to this Memorandum agree as follows:

I. Exchange of Information

The EEOC and the Special Counsel shall make available for inspection and copying to officials from the other agency any information in their records pertaining to a charge or complaint being processed by the requesting agency. Such request shall be made by the Chairman of the EEOC or his or her designee, or the Special Counsel or his or her designee.

II. Confidentiality

When the Special Counsel receives information obtained by the EEOC which is subject to the confidentiality requirements of sections 706(b) and 709(e) of Title VII, the Special Counsel shall observe those requirements as would the EEOC, except in cases where the Special Counsel receives the same information from a source independent of the EEOC.

III. Referral of Charges

When, during the processing of a charge by either agency, it becomes apparent to the agency processing the charge that the charge or any aspect of the charge falls outside its jurisdiction, but may be within the jurisdiction of the other agency, the agency processing the charge will immediately dismiss as much of the charge as may fall within the jurisdiction of the other agency, refer the dismissed aspects of the charge to the other agency and notify the charging party and the respondent of the referral. In determining whether to refer such a charge or such aspect of a charge to the other agency, the agency processing the charge shall be guided by the attached Guidelines.

IV. Appointment of Respective Agents

By this Memorandum of Understanding, the agencies hereby appoint each other to act as their respective agents for the sole purpose of allowing charging parties to file charges to satisfy the statutory time limits. To ensure that filing deadlines are satisfied, each agency will accurately record the date of receipt of charges and notify the other agency of the date of receipt when referring a charge.

Dated: July 24, 1989.

Approved and Accepted for the Equal Employment Opportunity Commission.

Clarence Thomas,

Chairman, Equal Employment Opportunity Commission.

Dated: June 29, 1989.

Approved and Accepted for the Office of Special Counsel for Immigration Related Unfair Employment Practices.

Andrew M. Strojny,

Acting Special Counsel For Immigration Related Unfair Employment Practices.

Guidelines for EEOC Staff

I. National Origin Charges

A. Referral to the Special Counsel

Charges or aspects of charges alleging discrimination on the basis of national origin should be referred to the Special Counsel when *all* of the following conditions are met:

(1) The charge alleges discrimination against the complainant with respect to his or her hiring, discharge or recruitment or referral for a fee;

(2) The charge is outside the jurisdiction of the EEOC in that the employer (a) has fewer than the 15 employees required for coverage under Title VII and/or (b) is an employer that is expressly excluded from coverage under Title VII, such as the Congress, a private club or an Indian tribe;

(3) The employer may have had at least 4 employees, including both full-time and part-time employees, on the date of the alleged discriminatory occurrence as required by the Special Counsel's regulations at 28 CFR Part 44;

(4) The complainant is a United States citizen or national, or an alien who may be authorized to work in the United States.

B. Allegations of Retaliation

(1) Any charge or aspect of a charge that alleges that an employer retaliated against the complainant because he or she filed a claim of national origin discrimination that is being or has been referred to the Special Counsel, or that is otherwise being or has been processed by the Special Counsel, should be referred to the Special Counsel.

(2) Any charge or aspect of a charge that alleges that an employer retaliated against the complainant because he or she participated in proceedings concerning a claim of national origin discrimination that has been or is being referred to the Special Counsel, or that is otherwise being or has been processed by the Special Counsel, should be referred to the Special Counsel.

II. Citizenship Status Charges

A. Referral to the Special Counsel

Charges or aspects of charges alleging discrimination on the basis of citizenship status should be referred to the Special Counsel when *all* of the following conditions are met:

(1) The charge alleges discrimination against the complainant with respect to is or her hiring, discharge, or recruitment or referral for a fee;

(2) The complainant is a United States citizen or national, or is an alien who may be an "intending citizen" in that he or she has filed or appears eligible to file, a "Declaration of Intention" or "Declaration of Intending Citizen" form;

(3) The employer may have had at least 4 employees, including both full-time and part-time employees, on the date of the alleged discriminatory occurrence as required by the Special Counsel's regulations at 28 CFR Part 44.

B. Special Procedures

(1) A charge or aspect of a charge of citizenship status discrimination that cannot be referred to the Special Counsel because (a) the complainant does not appear to be a citizen, national or "intending citizen" and/or (b) the charge or aspect of the charge alleges

discrimination with respect to terms or conditions of employment should, to the extent possible, be construed as alleging national origin discrimination and processed in accordance with Title VII.

(2) A charge or aspect of a charge that alleges that a citizenship requirement or preference has the purpose or effect of discriminating on the basis of national origin, and is otherwise within the jurisdiction of the EEOC, should be processed in accordance with Title VII. *See* 29 CFR Part 1606 and *Espinoza* v. *Farah Mfg. Co., Inc.*, 414 U.S. 86 (1973). In addition, if this charge or aspect of a charge satisfies the conditions, described in section II A above, for referral to the Special Counsel, it should be so referred.

C. Allegations of Retaliation

(1) Any charge or aspect of a charge that alleges that an employer retaliated against the complainant because he or she filed a claim of citizenship status discrimination that is being or has been referred to the Special Counsel, or that is otherwise being or has been processed by the Special Counsel, should be referred to the Special Counsel.

(2) Any charge or aspect of a charge that alleges that an employer retaliated against the complainant because he or she participated in proceedings concerning a claim of citizenship status discrimination that has been or is being referred to the Special Counsel, or that is otherwise being or has been processed by the Special Counsel, should be referred to the Special Counsel.

III. Procedures for Referral

A. General Provisions

(1) Any charge or aspect of a charge alleging discrimination on the basis of national origin and/or citizenship status that satisfies all of the conditions for referral to the Special Counsel should be forwarded by EEOC staff, with the appropriate file, to the Office of Special Counsel for Immigration Related Unfair Employment Practices, P.O. Box 65490, Washington, DC 20035–5490.

(2) When forwarding a charge or aspect of a charge to the Special Counsel EEOC staff should follow any instructions issued by the Commission regarding this procedure, including instructions relevant to providing notice of the referral to the parties.

B. Additional Procedures Where the Commission Retains Jurisdiction

(1) Where the Commission retains jurisdiction over a charge or any portion of a charge that is being referred, in whole or in part, to the Special Counsel in accordance with Section IIIA above, the EEOC field office, when making the referral, will inform the Special Counsel of the retained jurisdiction. This notice to the Special Counsel will specify the allegation(s) over which the Commission retains jurisdiction. The notice will also state that the processing EEOC field office will consult with the Special Counsel to coordinate, to the extent possible, the investigative activities of both agencies and assure that duplication of effort in processing the charge is minimized.

(2) After confirming that the Special Counsel has received the referred charge or aspect of the charge, the EEOC field office should attempt consultations with the Special Counsel to coordinate, to the extent possible, the investigative activities of both agencies and assure that duplication of effort in processing the charge is minimized.

C. Special Procedures Regarding 706 Agencies

Where permissible and not contrary to an existing work sharing agreement, EEOC staff should not defer to a 706 Agency any charge or portion of a charge, if the charge or any aspect of the charge satisfies all of the conditions for referral to the Special Counsel. Charges or portions of charges not deferred pursuant to this provision should be processed according to the procedures described in sections III A and B).

IV. Procedures Regarding Referrals From the Special Counsel

Upon receipt of a charge or aspect of a charge referred from the Special Counsel, the processing EEOC field office should confirm that the charge or aspect of a charge is within the jurisdiction of the Commission. The field office should then notify the Special Counsel of its receipt of the charge or aspect of a charge.

If the Special Counsel has retained jurisdiction over the charge or any portion of the charge that has, in whole or in part, been referred to the EEOC, the field office should attempt to coordinate with the Special Counsel, to the extent possible, the investigative activities of both agencies. If the Special Counsel has not retained jurisdiction over the charge or any portion of the charge that has, in whole or in part, been referred to the EEOC, the field office should process the referred charge or aspect of the charge as it would any other charge of discrimination.

Guidelines for Attorneys in the Office of Special Counsel

I. National Origin Charges

A. Referral to the EEOC

Charges or aspects of charges alleging discrimination on the basis of national origin should be referred to the EEOC when *all* of the following conditions are met:

(1) The charge is outside the jurisdiction of the Office of the Counsel;

(2) The charge alleges discrimination against the charging party with respect to his or her hiring, discharge, compensation, terms, conditions or privileges of employment; and

(3) The employer may have had fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year.

B. Allegations of Retaliation

(1) Any charge or aspect of a charge that alleges that an employer retaliated against the charging party because he or she filed a claim of national origin discrimination that is being or has been referred to the EEOC, or that is otherwise being or has been processed by the EEOC, should be referred to the EEOC.

(2) Any charge or aspect of a charge that alleges that an employer retaliated against the charging party because he or she participated in proceedings concerning a claim of national origin discrimination that has been or is being referred to the EEOC, or that is otherwise being or has been processed by the EEOC, should be referred to the EEOC.

II. Citizenship Status Charges

A. Referral to the EEOC

Charges or aspects of charges alleging discrimination on the basis of citizenship status should be referred to the EEOC when *all* of the following conditions are met:

(1) The charge is outside the jurisdiction of the Office of Special Counsel;

(2) The charge alleges discrimination against the charging party with respect to his or her hiring, discharge, compensation, terms, conditions or privileges of employment;

(3) The employer may have had fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year; and

(4) The alleged discriminatory practice may have the purpose or effect

of discriminating on the basis of national origin.

B. Allegations of Retaliation

(1) Any charge or aspect of a charge that alleges that an employer retaliated against the charging party because he or she filed a claim of citizenship status discrimination that is being or has been referred to the EEOC, or that is otherwise being or has been processed by the EEOC, should be referred to the EEOC.

(2) Any charge or aspect of a charge that alleges that an employer retaliated against the charging party because he or she participated in proceedings concerning a claim of citizenship status discrimination that has been or is being referred to the EEOC, or that is otherwise being or has been processed by the EEOC, should be referred to the EEOC.

III. Procedures for Referral

A. General Provisions

Any charge or aspect of a charge alleging discrimination on the basis of national origin and/or citizenship status that satisfies all of the conditions for referral to the EEOC should be forwarded to the appropriated EEOC District Office.

B. Additional Procedures Where the Office of Special Counsel Retains Jurisdiction

Where the Office of Special Counsel retains jurisdiction over a charge or any portion of a charge that is being referred, in whole or in part, to the EEOC in accordance with section III–A, above, the attorney making the referral will inform the EEOC of the retained jurisdiction. This notice to the EEOC will specify the claim(s) over which the Office of Special Counsel retains jurisdiction. The attorney should attempt to coordinate with the EEOC, to the extent possible, the investigative activities of both agencies.

IV. Procedures Regarding Referrals from the EEOC

Upon receipt of a charge or aspect of a charge referred from the EEOC, the Office of Special Counsel should confirm that the charge or aspect of a charge is within the jurisdiction of the Office of Special Counsel.

If the EEOC has retained jurisdiction over the charge or any portion of the charge that has, in whole or in part, been referred to the Office of Special Counsel, the attorney handling the charge for the Office of Special Counsel should attempt to coordinate, to the extent possible, the investigative activities of both agencies. If the EEOC has not retained jurisdiction over the charge or any portion of the charge that has, in whole or in part, been referred to the Office of Special Counsel, the attorney should process the charge or aspect of the charge as he or she would any other charge of discrimination.

[FR Doc. 89–18495 Filed 8–7–89; 8:45 am]

BILLING CODE 4410–01–M & 6750–06–M

Lodging of Consent Decree Under Clean Water Act

In accordance with Departmental policy, notice is hereby given that on July 25, 1989, a proposed Consent Decree in *United States* v. *Empire Plating Company, Inc., et al.,* Case No. C85–1580, was lodged with the United States District Court for the Northern District of Ohio. The proposed Consent Decree resolves the litigation concerning the defendants' failure to make payments as set forth in the Consent Decree entered in the District Court for the Northern District of Ohio on September 11, 1987 and provides for Empire Plating Company, Inc. and Empire Industries Inc. to pay to the United States a civil penalty in the amount of $90,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. 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. *Empire Plating Company, Inc., et al.,* D.J. reference #90–5–1–1–2261B.

The proposed Consent Decree may be examined at the office of the United States Attorney, Northern District of Ohio, Suite 500, 1404 East Ninth Street, Cleveland, Ohio 44114, the Region V office of the United States Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, 10th Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $.60 (6 pages at 10 cents per page) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–18528 Filed 8–7–89; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Plymouth Water and Sewer District and the State of New Hampshire* was lodged with the United States District Court for the District of New Hampshire on July 28, 1989. The consent decree addresses alleged violations by the Plymouth Village Water and Sewer District, Plymouth, New Hampshire of the Clean Water Act in regard to its sewage system.

The proposed Consent Decree requires the Plymouth Village Water and Sewer District to construct wastewater treatment facilities designed to provide secondary treatment by May 15, 1991 and to achieve compliance with the effluent limitations of its NPDES permit. In addition, the Consent Decree requires the payment of a civil penalty of $10,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. 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. *Plymouth Village Water and Sewer District and the State of New Hampshire,* D.J. Ref. 90–5–1–1–3166.

The proposed Consent Decree may be examined at the office of the United States Attorney, District of New Hampshire, 55 Pleasant Street, James Cleveland Federal Building and Courthouse, Concord, New Hampshire 03301, and at the Office of Regional Counsel, United States Environmental Protection Agency, Region I, John F. Kennedy Federal Building, Room 2203, Boston, Massachusetts 02203. Copies of the Consent Decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed 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 refer to the referenced case name and D.J. Ref. number and enclose a check in the amount of $2.10 (ten 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. 89-18529 Filed 8-7-89; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice published in the **Federal Register** (53 FR 17988), Western Fher Laboratories, Inc., Carretera 132, KM. 25.3, P.O. Box 7468, Ponce, Puerto Rico 00732, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of phenmetrazine (1631), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: July 26, 1989.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89-18432 Filed 8-7-89; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Annual Survey of Occupational Injuries and Illnesses and Prenotification of Recordkeeping Requirements for Participation in the Survey

AGENCY: Office of the Secretary, Labor.

ACTION: Expedited review under the Paperwork Reduction Act.

SUMMARY: The Bureau of Labor Statistics, Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C., Chapter 35, 5 CFR Part 1320 (53 FR 16618 to 16632, May 10, 1988)), is submitting an annual survey of occupational injuries and illnesses to the Office of Management and Budget for that Agency's approval. The information is to be collected under the authority of section 24(a) of the Occupational Safety and Health Act of 1970.

DATE: BLS has requested an expedited review of this submission under the Paperwork Reduction Act, to be completed within 20 days of the date of publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Comments and questions regarding the survey should be directed to Paul E. Larson, Departmental Clearance Officer, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210 (telephone (202) 523-6331).

Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, Office of Management and Budget, Room 3208, Washington, DC (telephone (202) 392-5880).

Any member of the public who wants to comment on the information collection clearance package which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

SUPPLEMENTAL INFORMATION: As part of a survey on occupational injuries and illnesses BLS plans to conduct a survey of randomly selected establishments to obtain information about the change in the overall rate of occurrence of work injuries and illnesses (by industry), i.e., the total recordable cases rate. The agency estimates that approximately 280,000 respondents will be contacted and the burden will be 15 minutes per response for a total of 70,000 burden hours. The information collected through this survey will be used to develop safety and health policies and procedures; statistics on the appropriate subclassifications of work injury and illness cases (serious and disabling cases, work illnesses, and work fatalities); data essential for targeting industries for inspection and in evaluating the effectiveness of Federal and State programs in improving the workplace safety and health of workers. The survey results will be included in a Report of the President to Congress, bulletin, and press release. Survey results will be available, upon request, to other government agencies, academia, and the public for specific industries or subclassifications. The following submission for approval of the survey has been submitted to OMB with a request for expedited approval under the Paperwork Reduction Act.

Signed at Washington, DC, this 27th day of July 1988.

Paul E. Larson,

Departmental Clearance Officer.

BILLING CODE 4510-24-M

Standard Form 83
(Rev. September 1983)

Request for OMB Review

Important

Read instructions before completing form. Do not use the same SF 83 to request both an Executive Order, 12291 review and approval under the Paperwork Reduction Act.

Answer all questions in Part I. If this request is for review under E.O. 12291, complete Part II and sign the regulatory certification. If this request is for approval under the Paperwork Reduction Act and 5 CFR 1320, skip Part II, complete Part III and sign the paperwork certification.

Send three copies of this form, the material to be reviewed, and for paperwork—three copies of the supporting statement, to

Office of Information and Regulatory Affairs
Office of Management and Budget
Attention: Docket Library, Room 3201
Washington, DC 20503

PART I.—Complete This Part for All Requests.

1. Department, agency and Bureau/office originating request:
U.S. Department of Labor
Bureau of Labor Statistics
Office of Safety, Health and Working Conditions

2. Agency code: 1 2 2 0

3. Name of person who can best answer questions regarding this request:
William M. Eisenberg

Telephone number: (202) 272-3467

4. Title of information collection or rulemaking:
Annual Survey of Occupational Injuries and Illnesses

5. Legal authority for information collection or rule *(cite United States Code, Public Law, or Executive Order)*:
29 USC 651 or PL 91-596

6. Affected public *(check all that apply)*:
1 ☐ Individuals or households
2 ☒ State or local governments
3 ☒ Farms
4 ☒ Businesses or other for-profit
5 ☐ Federal agencies or employees
6 ☒ Non-profit institutions
7 ☒ Small businesses or organizations

PART II.—Complete This Part Only if the Request is for OMB Review Under Executive Order 12291

7. Regulation Identifier Number (RIN):
___ ___ ___ ___ — ___ ___ ___ ___. or. None assigned ☐

8. Type of submission *(check one in each category)*:

Classification
1 ☐ Major
2 ☐ Nonmajor

Stage of development
1 ☐ Proposed or draft
2 ☐ Final or interim final, with prior proposal
3 ☐ Final or interim final, without prior proposal

Type of review requested
1 ☐ Standard
2 ☐ Pending
3 ☐ Emergency
4 ☐ Statutory or judicial deadline

9. CFR section affected:
_____ CFR _____

10. Does this regulation contain reporting or recordkeeping requirements that require OMB approval under the Paperwork Reduction Act and 5 CFR 1320? ☐ Yes ☐ No

11. If a major rule, is there a regulatory impact analysis attached? 1 ☐ Yes 2 ☐ No
If "No," did OMB waive the analysis? 3 ☐ Yes 4 ☐ No

Certification for Regulatory Submissions

In submitting this request for OMB review, the authorized regulatory contact and the program official certify that the requirements of E.O. 12291 and any applicable policy directives have been complied with.

Signature of program official — Date

Signature of authorized regulatory contact — Date

12. *(OMB use only)*

PART III.—Complete This Part Only if the Request Is for Approval of a Collection of Information Under the Paperwork Reduction Act and 5 CFR 1320.

13. Abstract—Describe needs, uses and affected public in 50 words or less: 'Occupational Safety, Occupational Health/Safety Programs' The Occupational Safety and Health Act and 29 CFR Part 1904 prescribes that certain employers maintain, and report when requested, records of job-related injuries and illnesses. These data are needed by BLS and OSHA to report on, and carry out enforcement or standards to guarantee workers' safety and health on the job.

14. Type of information collection *(check only one)*

Information collections not contained in rules

1 [X] Regular submission

2 [ ] Emergency submission *(certification attached)*

Information collections contained in rules

3 [ ] Existing regulation *(no change proposed)*

4 [ ] Notice of proposed rulemaking (NPRM)

5 [ ] Final, NPRM was previously published

6 Final or interim final without prior NPRM

A [ ] Regular submission

B [ ] Emergency submission *(certification attached)*

7. Enter date of expected or actual Federal Register publication at this stage of rulemaking *(month, day, year)*: _____

15. Type of review requested *(check only one)*

1 [ ] New collection

2 [ ] Revision of a currently approved collection

3 [X] Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection

4 [ ] Reinstatement of a previously approved collection for which approval has expired

5 [ ] Existing collection in use without an OMB control number

16. Agency report form number(s) *(include standard/optional form number(s))*

OSHA 200S, BLS 13

17. Annual reporting or disclosure burden

1 Number of respondents	280,000
2 Number of responses per respondent	1
3 Total annual responses *(line 1 times line 2)*	280,000
4 Hours per response	15 mins.
5 Total hours *(line 3 times line 4)*	70,000

18. Annual recordkeeping burden

1 Number of recordkeepers	
2 Annual hours per recordkeeper	
3 Total recordkeeping hours *(line 1 times line 2)*	
4 Recordkeeping retention period	years

19. Total annual burden

1 Requested *(line 17-5 plus line 18-3)*	70,000
2 In current OMB inventory	72,500
3 Difference *(line 1 less line 2)*	- 2,500
Explanation of difference	
4 Program change	- 2,500
5 Adjustment	0

20. Current *(most recent)* OMB control number or comment number

1220-0045

21. Requested expiration date

September 30, 1991

22. Purpose of information collection *(check as many as apply)*

1 [ ] Application for benefits

2 [X] Program evaluation

3 [X] General purpose statistics

4 [X] Regulatory or compliance

5 [X] Program planning or management

6 [X] Research

7 [ ] Audit

23. Frequency of recordkeeping or reporting *(check all that apply)*

1 [ ] Recordkeeping

Reporting

2 [ ] On occasion

3 [ ] Weekly

4 [ ] Monthly

5 [ ] Quarterly

6 [ ] Semi-annually

7 [X] Annually

8 [ ] Biennially

9 [ ] Other *(describe)*: _____

24. Respondents' obligation to comply *(check the strongest obligation that applies)*

1 [ ] Voluntary

2 [ ] Required to obtain or retain a benefit

3 [X] Mandatory

25. Are the respondents primarily educational agencies or institutions or is the primary purpose of the collection related to Federal education programs? [ ] Yes [X] No

26. Does the agency use sampling to select respondents or does the agency recommend or prescribe the use of sampling or statistical analysis by respondents? [X] Yes [ ] No

27. Regulatory authority for the information collection

29 CFR 1904 ; or _____ FR _____ ; or, Other *(specify)*: _____

Paperwork Certification

In submitting this request for OMB approval, the agency head, the senior official or an authorized representative, certifies that the requirements of 5 CFR 1320, the Privacy Act, statistical standards or directives, and any other applicable information policy directives have been complied with.

Signature of program official

Wesley L. Schaible, Associate Commissioner for Research and Evaluation — Date: 7/17/89

Signature of agency head, the senior official or an authorized representative

Paul E. Larson, Department Clearance Officer (OASAM) — Date: 27 JUL 89

BILLING CODE 4510-24-C

SUPPORTING STATEMENT

Annual Survey of Occupational Injuries and Illnesses and Prenotification of Recordkeeping Requirements for Participation in the Survey.

A. Justification

1. *Background.* Section 24(a) of the Occupational Safety and Health Act of 1970 (29 USC 651) requires the Secretary of Labor—in consultation with the Secretary of Health and Human Services—to develop and maintain an effective program of collection, compilation, and analysis of statistics on occupational injuries and illnesses. Section 24 also encourages the Federal government to enlist the aid of States in developing and conducting statistical programs to meet the data needs of the States as well as its own. Sections 8(c)(1), (2), 8(g)(2), 24(a), and 24(e) of the Act specifically require the Secretary of Labor to design and implement a system requiring employers covered by the Act to maintain records of occupational injuries and illnesses and to submit periodic reports to the Secretary of Labor upon request.

In Secretary's Order No. 12–71, the Secretary of Labor delegated to the Commissioner of the Bureau of Labor Statistics (BLS) the responsibility for "Furthering the purpose of the Occupational Safety and Health Act by developing and maintaining an effective program of collection, compilation, analysis and publication of occupational safety and health statistics." The Secretary further directed the Commissioner to coordinate the above functions with the Assistant Secretary for Occupational Safety and Health Administration (OSHA). The regulations concerning recordkeeping, reporting and access to records, developed in cooperation with OSHA, are contained in 29 CFR Part 1904.

Copies of the appropriate sections of the OSH Act, 29 CFR Part 1904, and the annual survey form, OSHA No. 200–S, are included in appendices to this package. Recordkeeping forms and recordkeeping guidelines promulgated under 29 CFR Part 1904 are currently awaiting OMB approval (1220–0029) with an expected expiration date of December 31, 1990. Recordkeeping burden for employers prenotified for the annual survey is included in the OMB No. 1220–0029 inventory.

2. *Reasons for survey.* The purpose of the Act, as stated in Section 2(b), is to assure, as far as possible, every working man and woman in the Nation safe and healthful working conditions. The primary national measure of the progress toward achieving this purpose is the change in the overall rate of occurrence of work injuries and illnesses (by industry), i.e., the Total Recorded Cases (TRC) rate. To determine the change in the rate, it is necessary to annually determine the number of work injury and illness cases and the level of workers' exposure. Additionally, the Act places special emphasis on serious and disabling cases, work illnesses and work fatalities. To measure the progress in these areas, it is necessary for the survey to provide accurate statistics on the appropriate subclassifications of work injury and illness cases.

The annual OSH survey, conducted by BLS and cooperating State agencies, provides data which not only meet all the requirements of the Act but also are used in virtually every area of OSHA's program. Data from the survey are used to prioritize OSHA's scarce resources. Data are essential to target industries for inspection and in evaluating the effectiveness of Federal and State programs in improving workplace safety and health of workers. For these reasons, it is necessary to provide estimates separately for non-18(b) States and for 18(b) States. To evaluate the effectiveness of the Federal and State programs over time, the industry detail produced by the survey must be at the same industry level and with the same reliability as in previous surveys.

Further, the data also play an important part in the administrative procedures mandated by the Supreme Court that allow OSHA to obtain search warrants. Others using the survey data include NIOSH, local government agencies, academia, various corporations in the private sector and the general public.

Efforts to fulfill the Congressional mandate that the Federal government protect employees from safety and health dangers on the job would be severely hampered by incomplete, inconsistent, and inaccurate data. Therefore, the annual OSH survey should be maintained at its current level due to the widespread use of the information it produces and the absence of superior substitute sources of such information.

3. *Use of technology to reduce employer burden.* During 1978 and 1979, the recordkeeping survey collection form was modified which resulted in an estimated 75 percent reduction in time spent by employers to complete the survey form. The changes initiated resulted from modification of the basic records employers are required to maintain.

Basic records are also permitted to be maintained in facsimile on data processing equipment, subject to restrictions in 29 CFR Part 1904.2. Use of such technology, including the advantages of centralization, has reduced employers' burden.

BLS has also implemented a special subsampling procedure for large multi-establishment companies. Some companies felt overly burdened by survey requests covering a number of establishments normally clustered in the Unemployment Insurance (U.I.) sampling frame. Lists of individual establishments of multi-establishment companies are not normally available for use by BLS for sampling for the survey. If mutual benefits may result from the procedure, the company was asked to voluntarily supply BLS with establishment detail including address, employment, identifying information (company store number, etc.), Standard Industrial Classification (SIC) code or equivalent information, and State U.I. account number. This information was then coded by the Bureau and the resulting file used for sampling for the annual OSH survey. Approximately 5,700 of the 280,000 respondents to the annual survey are selected from this file.

Currently 230 companies with 58,258 establishments are included in this special subsampling procedure. As a result the vast majority of their burden complaints regarding the mandatory OSH survey have been satisfactorily resolved.

By using improved statistical and sampling techniques, the BLS has been able to reduce the survey sample size from 650,000 in 1972 to 240,000 private sector establishments and 40,000 government agencies in 1988 (Appendix D). Recordkeeping exemptions have reduced the number of establishments regularly keeping records from over 3 million in 1972 to about 975,000 in 1988.

4. *Efforts to identify duplication.* As nearly all employers are covered by the Act, the survey is able by itself to produce statistics for almost all industries. However, to provide comprehensive, private sector estimates, it is necessary to secure data from other Federal agencies having statutory authority affecting the safety and health of employees in coal, metal, and other nonmetal mining; on railroads; and in nuclear energy facilities. Since passage of the Act in 1970, BLS has explored with agencies which had safety and health mandates the feasibility of adopting the OSHA recordkeeping definitions. In this way, all employers would be maintaining equivalent records and thus would facilitate the collection of uniform statistics for

compilation of national private sector estimates.

Data conforming to OSHA recordkeeping definitions are provided by the Mine Safety and Health Administration, U.S. Department of Labor, for mining employers and by the Federal Railroad Administration, U.S. Department of Transportation, for railroad employers. Participation in the BLS annual survey by contractors who operate nuclear energy facilities became a requirement of the Energy Research and Development Administration (ERDA) in 1971. To satisfy ERDA requirements, these contractors furnish ERDA with a duplicate copy of the completed survey form.

In addition, sampling files are checked manually and mechanically by BLS and State staff for duplication.

5. *Availability of data from existing sources.* The work injury and illness data to be collected in the survey are not available from any other source. The only existing large body of work injury and illness information is located in workers' compensation programs; however, many States do not include all the specific kinds of work-related cases which the Act requires employers to record and report.

Additionally, coverage and reporting differences among States and lack of uniformly complete records prevent the workers' compensation programs from providing statistically accurate data for national estimates. Therefore, data from State workers' compensation programs cannot serve as a replacement for the annual survey.

6. *Minimizing small employer burden.* Since the small employers have lesser impact on the estimates than the larger employers, BLS minimizes the burden upon small employers by using a highly efficient stratified random sampling plan. Under this sampling plan, the larger employment units within an industry have a higher probability of selection than the smaller employment units. As can be determined from the attached tables (Appendix E), on average small employers (1–10 employees) are sampled successfully at the rate of 1.9 percent, while the large employers (500 employees and above) are sampled at the rate of 64.5 percent. Thus, chances of sample selection for small employers is fairly minimal.

The recordkeeping regulations in 29 CFR Part 1904 exempt small employers (those with less than 11 employees) in all industries from routinely keeping OSHA records. Their participation is only required if they are prenotified in advance that they are required to participate in the survey for a given year.

In addition, the Labor–HHS appropriation limits OSHA's activities concerning small farm employers. In essence, farm employers with 10 or fewer employees are totally exempt from any OSHA regulation or activity involving Federal funds and are, therefore, omitted from the survey sample. Pending any permanent change in the regulations, OSHA will continue to exempt this group of farm employers.

7. *Consequence of less frequent collection.* Operational and budgetary issues make collecting survey data annually essential. The annual survey is a cooperative program with State agencies which are partially funded by the Federal government to collect and process the survey data, and share the data with the BLS for generating national estimates. Since the State grant agencies must finance half the costs by appropriation requests to their own State legislatures, many of which convene and appropriate funds over a cycle which may be different from the Federal budget cycle, it is likely that many States would drop out of the program rather than participate in a program of less frequent scheduling. If States do drop out, the Federal government would need to assume the collection of the data at an increased cost.

At a joint meeting of the Occupational Safety and Health Statistics Committee of the Labor Research Advisory Council and the Business Research Advisory Council on August 4, 1977, a resolution was adopted opposing a change in the frequency of the annual survey. The resolution asserted that a less frequent survey would be "less responsive to the needs and considerations of the profession, Congress, and the public if carried out at less frequent periods."

8. *Inconsistencies with 5 CFR Part 1320.6 guidelines.* The forms and guidelines are in accordance with 5 CFR 1320.6.

9. *Consultations.* Semiannually, BLS meets with program committees of the Business Research Advisary Council and the Labor Research Advisory Council to review programs and to solicit advice and recommendations for program enhancement. Following are the names of the committee chairmen:

Committee on Occupational Safety and Health, Business Research Advisory Council, Chairman, Raymond C. Ellis, Jr., American Hotel and Motel Association, 202–289–3100;

Committee on Occupational Safety and Health, Labor Research Advisory Council, Chairman, Eric Frumin, Amalgamated Clothing and Textile Workers Union, 212–242–0700.

Annually, BLS holds a conference with the State agencies which receive grants or contracts to conduct the annual survey, and meets periodically with OSHA and NIOSH representatives. A list of State agency representatives is available on request. Following are the names of the OSHA and NIOSH representatives:

Frank Frodyma, Acting Director, Directorate of Policy, Occupational Safety and Health Administration, U.S. Department of Labor, 202–523–8021;

Thomas Bender, M.D., Director, Division of Safety Research, National Institute for Occupational Safety and Health, U.S. Department of Health and Human Services, FTS–291–4595;

Todd Frazier, Chief, Surveillance Branch, National Institute for Occupational Safety and Health, U.S. Department of Health and Human Services, FTS–684–4304.

All recommendations or issues suggested by the State agencies have been initiated or resolved. Periodically BLS consults with OMB and receives OMB approval of the annual survey package. The current OMB contact is Milo Sunderhauf.

10. *Confidentiality.* Commissioner's Order No. 2–80 outlines BLS policy regarding the confidentiality of records. The State agencies are bound to this policy. The policy states: "In conformance with existing law and Department regulations, it is the policy of the Bureau of Labor Statistics that data collected or maintained by, or under the auspices of the Bureau under a pledge of confidentiality shall be treated in a manner that will assure that individually identifiable data will be accessible only to authorized persons and will be used only for statistical purposes or for other purposes made known in advance to the respondent."

The reporting form, OSHA No. 200–S, carries the statement: "The information collected on this form will be used for statistical purposes only by the BLS, OSHA and the cooperating State agencies."

11. *Sensitive questions.* None are asked.

12. *Cost to the Federal government.* The total cost for collecting and processing the annual survey data will be approximately $5.3 million. Further information will be furnished on request. Respondent cost is estimated at $760,000 based on a wage of $10 an hour plus postage.

13. *Estimation of respondent burden.* Based on experience with the current survey form which has been used since

the 1978 survey, each of the 280,000 sample units will spend an average of 15 minutes to complete the form. The total burden is therefore 70,000 hours. A reporting burden statement is included in the instructions for completion of the OSHA No. 200–S.

All employers in the sample are required by 29 CFR Parts 1904.2(a), (b), 1904.15(b), and 1904.16(a) (by prenotification) to have maintained a Log and Summary of Occupational Injuries and Illnesses (OSHA No. 200). Completion of the injury and illness summary (section VI) of form OSHA No. 200–S requires copying the data from the TOTAL line of Form OSHA No. 200. For the question on the description of the cause of the fatality, from previous surveys it is estimated that less than 1 percent of the survey respondents will need to provide this information. Data for the questions on average employment and hours worked are directly available or easily estimated from records required by other State or Federal government programs.

Estimation of recordkeeping burden for the prenotified employers covered under 29 CFR 1904.15(b) and 16(a) is incorporated in OMB No. 1220–0029.

14. *Change in burden hours.* Total burden hours have been reduced by 2,500, from 72,500 to 70,000 hours. The change is due to the elimination of the burden, on companies which are selected from the sampling frame of large multi-establishment companies, to update their company files. The multi-establishment sampling procedure will be dropped in calendar year 1991 due to the planned improvements to the U.I. sampling frame.

15. *Tabulation/publication timetable.* Results from the survey are published in a press release and in a bulletin. Data are also published in the President's Report on Occupational Safety and Health, an annual report to the U.S. Congress.

Listed below is a summary timetable which identifies the major collection phases and tentative dates for publishing the data.

December—Prenotification mailing.
January—Initial mailing of OSHA No. 200–S forms to sample units.
February—Second request mailing to nonrespondents.
May—Key nonrespondents identified and follow-up initiated.
May—Certified mailing to key nonrespondents completed.
July—Active collection of data closed.
November—Results issued in news release.
May—Detailed results issued in a bulletin.

B. Collection of information employing statistical methods

1. Description of universe and sample

Universe. The potential number of respondents (establishments) covered by the scope of the survey is 5 million, although less than 1 million employers keep records on a routine basis due to recordkeeping exemptions for employers in low hazard industries and employers with less than 11 employees, or having no recordable cases. The occupational injury and illness data reported through the annual survey are based on records which employers in the following industries maintain under the Occupational Safety and Health Act: Agriculture, forestry, and fishing, SIC 01–09; oil and gas extraction, SIC 13; construction, SIC 15–17; manufacturing, SIC 20–39; transportation and public utilities, SIC 41–42 and 44–49; wholesale trade, SIC 50–51; and selected prenotified units in retail trade, SIC 52–59; finance, insurance, and real estate, SIC 60–67; and services, SIC 70–87 and 89. Excluded from the national survey collection are self-employed individuals; farmers with fewer than 11 employees; employers regulated by other Federal safety and health laws; and Federal, State, and local government agencies. Some participating States collect data from State and local government agencies for use in their State estimates.

Sample. A stratified probability sampling design is used for the survey, and the sample is selected by using a systematic sampling procedure with a random start for each strata. Based on the survey's design criteria, a sample of 280,000 private and government respondents from a potential universe of 5 million establishments is required. The units on the frame are stratified based on geography, industry, and employment. Since the survey is a Federal-State cooperative effort, the first characteristic used to stratify the units is the State; this is to enable all the State grantees participating in the survey to produce estimates at the State level. The units are further stratified by SIC code and employment size class. Hence, the total number of possible stratification cells is approximately 234,000 (i.e., $ST \times SIC \times SZC = 52 \times 500 \times 9$). A condensed summary of the sampling frame and the sample at the national level by major industry divisions is provided in the attached table (Appendix E). Additional detailed tables are available upon request.

Response rate. The survey is a mandatory survey with an overall useable response rate of about 94 percent based on the 1987 survey data (latest survey for which data are tabulated). The response rate for future surveys is expected to be about the same.

2. Statistical methodology.

Survey design. The annual survey is fully based on probability survey design theory and methodology at both the national and State design levels. This methodology provides:

- A statistical foundation for drawing inference to the full universe being studied.
- A basis for developing a required sample size to satisfy survey reliability requirements.

While there were many characteristics upon which the national design could have been based, BLS elected to use the TRC rate. This was considered by BLS to be one of the most important characteristics and, importantly, the least variable therefore requiring the smallest sample size.

Additionally, to fulfill the needs of users of the survey statistics, the sample is to provide industry estimates. A list of the industries for which estimates are required is compiled by BLS after consultation with the principal Federal users. The sample is designed to generate data at the 2-digit SIC industry level in agriculture, forestry, and fishing; the 3-digit level in oil and gas extraction, construction, and transportation and public utilities; the 4-digit level in manufacturing; and the 2-digit level in SIC's 50–89, except for some 3- and 4-digit estimates for high rate industries in this range of SIC's as required by OSHA.

Sample procedure. The principal features of the OSH probability sample design are its use of stratified random sampling with a Neyman allocation. The characteristics used to stratify the units are the State, SIC code, and employment size class. Since these characteristics are highly correlated with the characteristics that the survey is to measure, stratified sampling provides a gain in precision and thus results in a smaller sample size. The Neyman allocation procedure produces the minimum sample size required to achieve the desired level of reliability for an estimate. For larger employment size classes, the allocation procedures place virtually all of the establishments of the frame in the sample; as employment decreases, smaller and smaller proportions of establishments are included in the sample.

As mentioned before, a probability sample is selected by using a systematic sampling procedure with a random start for each strata.

The survey will be conducted by mail questionnarie through BLS-Washington and the State statistical grant agencies and State contract agencies receiving Federal funds to participate in the survey.

Estimation procedure. The survey's estimates of the population total are first based on the Horvitz-Thompson estimator which is an unbiased estimator. The precision of the estimates is further improved, hence a reduction in sample size, by using the ratio estimator which utilizes available auxiliary information that is correlated with the characteristics which are to be measured. The estimates of the incidence rates are calculated as: N/EH × 200,000, where:

N = number of injuries and illnesses or lost workdays
EH = total hours worked by all employees during a calendar year
200,000 = base for 100 full-time equivalent workers (working 40 hours per week, 50 weeks per year).

Required accuracy. For the national all industry estimate of the TRC rate, the sample size is set to insure that a year-to-year difference of .10 or more will be statistically significant at the 95 percent confidence level. A target relative sampling error for year-to-year changes in the TRC rate is also set for each industry estimate requried by OSHA. These targets vary from 8 percent to 37 percent at the 95 percent confidence level with the average being 15 percent.

All State statistical grant agencies participating in the survey produce industry estimates at the State level. To enable these States to produce reliable estimates, their samples are supplemented with additional units. In the recent annual surveys (1978–87), these supplemental units have also been used in the national estimates.

Unusual problems. The primary sampling source for the annual OSH survey is each State's Unemployment Insurance Account address file. Depending on the State, address records may be at the establishment level, a country-wide level, or even a State-wide level. In the case of large multiple-establishment companies, a record may cover a large number of establishments requiring the consolidation of each establishment's OSHA records into a single survey report. Some companies have perceived these survey reports as overly burdensome.

In response, the Bureau devised a special subsampling procedure based on establishment lists *voluntarily* provided by companies in past years. Currently 230 companies with 58,258 establishments have provided establishment lists. Sample units are selected from this file using the same statistical methodology as the regular sample. Duplication of reports between files is eliminated using a mechanical method utilizing Unemployment Insurance Account numbers and manually reviewing sample units.

3. Statistical reliability

Response rates and nonresponse adjustment. The survey is a mandatory survey which achieves an overall usable response rate of about 94 percent. The following techniques are employed to help maximize survey response:

- A follow-up mailing to nonrespondents in February.
- A certified mailing/or telephone follow-up of key nonrespondents in May.

This high level of response greatly aids in protecting the survey estimates from nonresponse bias. The data for the remaining 6 percent, that is the nonrespondents, are imputed from the respondent data using a weighting cell adjustment technique.

Survey sampling errors. The survey utilizes a full probability survey design which makes it possible to determine the required sample size needed to satisfy the specified level of reliability for survey estimates. In addition, it permits the calculation of the *achieved* level of reliability (i.e., the sampling error) for each survey estimate.

The survey in its design and implementation controls on the required level of reliability for the survey estimates and produces the required survey estimates along with the corresponding estimates of sampling error at the national level. Based on past surveys (1972–87), the estimates of the sampling errors obtained from the survey are very close to the required (target) levels. As in the past, it is expected that the OSH survey data will yield the required level of reliability for the national TRC rate, for the industry and State detail required by OSHA, and for the industry detail required by the States.

4. *Testing procedures.* the survey was first undertaken in 1972 with a sample size of approximately 650,000. Since then BLS has made significant progress toward reducing respondent burden by employing various statistical survey design techniques; the present sample size is about 280,000. BLS is continually researching for methods that will reduce the respondent burden without jeopardizing the reliability of the estimates. At the present time, BLS has underway several pilot surveys to test alternative data collection forms and procedures. Present plans anticipate implementation of a revised recordkeeping system in calendar year 1991. Currently, BLS also utilizes quality control techniques to maintain the current system's high level of reliability.

5. *Statistical responsibility.* The Statistical Methods Group, Chief, Phil Gilliland is responsible for the sample design which includes selection and estimation. His telephone number is 202—523–5922. The sample design of the survey conforms to professional statistical standards and to OMB Circular No. A46.

Survey responsibility. The Federal-State Periodic Surveys Project Office, Chief, Elaine Chen-Nash, is responsible for standardizing the data collection procedures and data editing methodology. Her telephone number is 202—727–5448. The survey is conducted by this office, and those State statistical grant agencies and State contract agencies receiving Federal funds to participate in the survey. The names and addresses of these agencies are available upon request.

Analysis and publication responsibilities. The Office of Safety, Health and Working Conditions, Assistant Commissioner, William M. Eisenberg, is responsible for these functions. His telephone number is 202—272–3467.

BILLING CODE 4510-24-M

1989 OSHA No. 200-S

Annual Occupational Injuries and Illnesses Survey Covering Calendar Year 1989

U.S. Department of Labor
Bureau of Labor Statistics for the Occupational Safety and Health Administration

The information collected on this form will be used for statistical purposes only by the BLS, OSHA, and the cooperating State Agencies.

THIS REPORT IS MANDATORY UNDER PUBLIC LAW 91-596. FAILURE TO REPORT CAN RESULT IN THE ISSUANCE OF CITATIONS AND ASSESSMENT OF PENALTIES.

O.M.B. No. 1220-0045
Approval Exp.

St Sch No Ck Suf

Burden Statement Located in instructions

SIC

EDIT

Complete this report whether or not there were recordable occupational injuries or illnesses.

PLEASE READ THE ENCLOSED INSTRUCTIONS

Complete and return ONLY THIS FORM within 3 weeks

I. ANNUAL AVERAGE EMPLOYMENT IN 1989

Enter the average number of employees who worked during calendar year 1989 in the establishment(s) covered by this report. Include all classes of employees: full-time, part-time, seasonal, temporary, etc. See the instructions for an example of an annual average employment calculation. ***(Round to the nearest whole number.)***

II. TOTAL HOURS WORKED IN 1989

Enter the total number of hours actually worked during 1989 by **all** employees covered by this report. DO NOT include any non-work time even though paid such as vacations, sick leave, etc. If employees worked low hours in 1989 due to layoffs, strikes, fires, etc., explain under Comments (section VII). ***(Round to the nearest whole number.)***

III. NATURE OF BUSINESS IN 1989

A. Check the box which best describes the general type of activity performed by the establishment(s) included in this report.

- ☐ Agriculture
- ☐ Forestry
- ☐ Fishing
- ☐ Mining
- ☐ Construction
- ☐ Manufacturing
- ☐ Transportation
- ☐ Communication
- ☐ Public Utilities
- ☐ Wholesale Trade
- ☐ Retail Trade
- ☐ Finance
- ☐ Insurance
- ☐ Real Estate
- ☐ Services
- ☐ Public Administration

B. Enter in order of importance the principal products, lines of trade, services or other activities. For each entry also include the approximate percent of total 1989 annual value of production, sales or receipts.

_____ %

_____ %

_____ %

C. If this report includes any establishment(s) which perform services for other units of your company, indicate the primary type of service or support provided. ***(Check as many as apply.)***

1. ☐ Central administration
2. ☐ Research, development and testing
3. ☐ Storage (warehouse)
4. ☐ Other (specify)

_____

IV. MONTH OF OSHA INSPECTION

If the establishment(s) covered by this report had either a Federal or State OSHA compliance inspection during calendar year 1989, please enter the name of the month in which the ***first*** inspection occurred.

_____

(Leave this box blank.)

V. RECORDABLE INJURIES AND ILLNESSES

Did the establishment(s) have any recordable injuries or illnesses during calendar year 1989?

1. ☐ No (Please complete section VII.)
2. ☐ Yes (Please complete sections VI and VII.)

SEE REVERSE →

REPORT LOCATION AND IDENTIFICATION

Complete this report for the establishment(s) covered by the description below:

Please indicate any address changes below.

RETURN REPORT TO:

For Information Call:

OSHA No. 200-S (Revised December 1989)

VI. OCCUPATIONAL INJURY AND ILLNESS SUMMARY (Covering Calendar Year 1989)

- ***Complete this section by copying totals from the annual summary of your 1989 OSHA No. 200.***
- Remember to reverse the carbon insert before completing this side
- Leave section VI blank if there were no OSHA recordable injuries or illnesses during 1989
- ***Note: First aid for injuries even when administered by a doctor or nurse is not recordable.***
- Please check your figures to be certain that the sum of entries in columns (7a) + (7b) + (7c) + (7d) + (7e) + (7f) + (7g) = the sum of entries in columns (8) + (9) + (13)
- If you listed fatalities in columns (1) and/or (8), please give a brief description of the object or event which caused each fatality in the "Comments" section.

OCCUPATIONAL INJURY CASES

INJURY RELATED FATALITIES** (DEATHS)	INJURIES WITH LOST WORKDAYS				INJURIES WITHOUT LOST WORKDAYS*
	Injury cases with days away from work and/or restricted workdays	Injury cases with days away from work	Total days away from work	Total days of restricted activity	
Number of DEATHS in col. 1 of the log (OSHA No. 200)	Number of CHECKS in col. 2 of the log (OSHA No. 200)	Number of CHECKS in col. 3 of the log (OSHA No. 200)	Sum of the DAYS in col. 4 of the log (OSHA No. 200)	Sum of the DAYS in col. 5 of the log (OSHA No. 200)	Number of CHECKS in col. 6 of the log (OSHA No. 200)
(1)	(2)	(3)	(4)	(5)	(6)
DEATHS					

OCCUPATIONAL ILLNESS CASES

TYPE OF ILLNESS — Enter the number of checks from the appropriate columns of the log (OSHA No. 200).							
Occupational skin diseases or disorders	Dust diseases of the lungs	Respiratory conditions due to toxic agents	Poisoning (systemic effects of toxic materials)	Disorders due to physical agents	Disorders associated with repeated trauma	All other occupational illnesses	
(7)							
(a)	(b)	(c)	(d)	(e)	(f)	(g)	
							DEATHS

ILLNESS RELATED FATALITIES** (DEATHS)	ILLNESSES WITH LOST WORKDAYS				ILLNESSES WITHOUT LOST WORKDAYS*
	Illness cases with days away from work and/or restricted workdays	Illness cases with days away from work	Total days away from work	Total days of restricted activity	
Number of DEATHS in col. 8 of the log (OSHA No. 200)	Number of CHECKS in col. 9 of the log (OSHA No. 200)	Number of CHECKS in col. 10 of the log (OSHA No. 200)	Sum of the DAYS in col. 11 of the log (OSHA No. 200)	Sum of the DAYS in col. 12 of the log (OSHA No. 200)	Number of CHECKS in col. 13 of the log (OSHA No. 200)
(8)	(9)	(10)	(11)	(12)	(13)

*WITHOUT LOST WORKDAYS - CASES WITH NO DAYS LOST RESULTING IN EITHER DIAGNOSIS OF OCCUPATIONAL ILLNESS, LOSS OF CONSCIOUSNESS, RESTRICTION OF WORK OR MOTION, OR THE DAY OF OCCURRENCE, TRANSFER TO ANOTHER JOB, OR MEDICAL TREATMENT BEYOND FIRST AID.

**IF YOU LISTED FATALITIES IN COLUMNS 1 AND/OR 8, PLEASE GIVE A BRIEF DESCRIPTION OF THE OBJECT OR EVENT WHICH CAUSED EACH FATALITY IN THE "COMMENTS" SECTION BELOW.

VII. REPORT PREPARED BY (Please type or print)

NAME _____

TITLE _____

SIGNATURE _____

AREA CODE _____ PHONE _____

DATE _____

COMMENTS _____

1989 OSHA No 200-S
Annual Occupational Injuries and Illnesses Survey Covering Calendar Year 1989

U.S. Department of Labor
Bureau of Labor Statistics for the Occupational Safety and Health Administration

The information collected on this form will be used for statistical purposes only by the BLS, OSHA, and the cooperating State Agencies.

THIS REPORT IS MANDATORY UNDER PUBLIC LAW 91-596. FAILURE TO REPORT CAN RESULT IN THE ISSUANCE OF CITATIONS AND ASSESSMENT OF PENALTIES.

O.M.B. No. 1220-0045
Approval Exp.

St Sch No Ck Suf

SIC
EDIT

Complete this report whether or not there were recordable occupational injuries or illnesses.

PLEASE READ THE ENCLOSED INSTRUCTIONS

EMPLOYER'S COPY DO NOT RETURN

I. ANNUAL AVERAGE EMPLOYMENT IN 1989

Enter the average number of employees who worked during calendar year 1989 in the establishment(s) covered by this report. Include all classes of employees: full-time, part-time, seasonal, temporary, etc. See the instructions for an example of an annual average employment calculation. ***(Round to the nearest whole number.)***

II. TOTAL HOURS WORKED IN 1989

Enter the total number of hours actually worked during 1989 by **all** employees covered by this report. DO NOT include any non-work time even though paid such as vacations, sick leave, etc. If employees worked low hours in 1989 due to layoffs, strikes, fires, etc., explain under Comments (section VII). ***(Round to the nearest whole number.)***

III. NATURE OF BUSINESS IN 1989

A. Check the box which best describes the general type of activity performed by the establishment(s) included in this report.

- ☐ Agriculture
- ☐ Forestry
- ☐ Fishing
- ☐ Mining
- ☐ Construction
- ☐ Manufacturing
- ☐ Transportation
- ☐ Communication
- ☐ Public Utilities
- ☐ Wholesale Trade
- ☐ Retail Trade
- ☐ Finance
- ☐ Insurance
- ☐ Real Estate
- ☐ Services
- ☐ Public Administration

B. Enter in order of importance the principal products, lines of trade, services or other activities. For each entry also include the approximate percent of total 1989 annual value of production, sales or receipts.

_____ %
_____ %
_____ %

C. If this report includes any establishment(s) which perform services for other units of your company, indicate the primary type of service or support provided. ***(Check as many as apply.)***

1. ☐ Central administration
2. ☐ Research, development and testing
3. ☐ Storage (warehouse)
4. ☐ Other (specify)

_____

IV. MONTH OF OSHA INSPECTION

If the establishment(s) covered by this report had either a Federal or State OSHA compliance inspection during calendar year 1989, please enter the name of the month in which the ***first*** inspection occurred.

_____

(Leave this box blank.)

V. RECORDABLE INJURIES AND ILLNESSES

Did the establishment(s) have any recordable injuries or illnesses during calendar year 1989?

1. ☐ No (Please complete section VII.)
2. ☐ Yes (Please complete sections VI and VII.)

SEE REVERSE →

REPORT LOCATION AND IDENTIFICATION

Complete this report for the establishment(s) covered by the description below:

Please indicate any address changes below.

For Information Call:

OSHA No. 200-S (Revised December 1989)

VI. OCCUPATIONAL INJURY AND ILLNESS SUMMARY (Covering Calendar Year 1989)

- *Complete this section by copying totals from the annual summary of your 1989 OSHA No. 200.*
- Remember to reverse the carbon insert before completing this side.
- Leave section VI blank if there were no OSHA recordable injuries or illnesses during 1989.
- *Note: First aid for injuries even when administered by a doctor or nurse is not recordable.*
- Please check your figures to be certain that the sum of entries in columns (7a) + (7b) + (7c) + (7d) + (7e) + (7f) + (7g) = the sum of entries in columns (8) + (9) + (13).
- If you listed fatalities in columns (1) and/or (8), please give a brief description of the object or event which caused each fatality in the "Comments" section.

OCCUPATIONAL INJURY CASES

INJURY RELATED FATALITIES** (DEATHS)	INJURIES WITH LOST WORKDAYS				INJURIES WITHOUT LOST WORKDAYS*
	Injury cases with days away from work and/or restricted workdays	Injury cases with days away from work	Total days away from work	Total days of restricted activity	
Number of DEATHS in col. 1 of the log (OSHA No. 200)	Number of CHECKS in col. 2 of the log (OSHA No. 200)	Number of CHECKS in col. 3 of the log (OSHA No. 200)	Sum of the DAYS in col. 4 of the log (OSHA No. 200)	Sum of the DAYS in col. 5 of the log (OSHA No. 200)	Number of CHECKS in col. 6 of the log (OSHA No. 200)
(1)	(2)	(3)	(4)	(5)	(6)
DEATHS					

OCCUPATIONAL ILLNESS CASES

TYPE OF ILLNESS

Enter the number of checks from the appropriate columns of the log (OSHA No. 200).

Occupational skin diseases or disorders	Dust diseases of the lungs	Respiratory conditions due to toxic agents	Poisoning (systemic effects of toxic materials)	Disorders due to physical agents	Disorders associated with repeated trauma	All other occupational illnesses
(7)						
(a)	(b)	(c)	(d)	(e)	(f)	(g)

ILLNESS RELATED FATALITIES** (DEATHS)	ILLNESSES WITH LOST WORKDAYS				ILLNESSES WITHOUT LOST WORKDAYS*
	Illness cases with days away from work and/or restricted workdays	Illness cases with days away from work	Total days away from work	Total days of restricted activity	
Number of DEATHS in col. 8 of the log (OSHA No. 200)	Number of CHECKS in col. 9 of the log (OSHA No. 200)	Number of CHECKS in col. 10 of the log (OSHA No. 200)	Sum of the DAYS in col. 11 of the log (OSHA No. 200)	Sum of the DAYS in col. 12 of the log (OSHA No. 200)	Number of CHECKS in col. 13 of the log (OSHA No. 200)
(8)	(9)	(10)	(11)	(12)	(13)
DEATHS					

* WITHOUT LOST WORKDAYS: CASES WITH NO DAYS LOST RESULTING IN EITHER DIAGNOSIS OF OCCUPATIONAL ILLNESS, LOSS OF CONSCIOUSNESS, RESTRICTION OF WORK OR MOTION ON THE DAY OF OCCURRENCE, TRANSFER TO ANOTHER JOB, OR MEDICAL TREATMENT BEYOND FIRST AID.

VII. REPORT PREPARED BY (Please type or print)

NAME _____

TITLE _____

SIGNATURE _____

AREA CODE _____ PHONE _____

DATE _____

* IF YOU LISTED FATALITIES IN COLUMNS 1 AND/OR 8, PLEASE GIVE A BRIEF DESCRIPTION OF THE OBJECT OR EVENT WHICH CAUSED EACH FATALITY IN THE COMMENTS SECTION BELOW.

COMMENTS _____

SURVEY REPORTING REGULATIONS

Title 29, Part 1904 20-22 of the Code of Federal Regulations requires that each employer shall return the completed survey form, OSHA No. 200-S, within 3 weeks of receipt in accordance with the instructions shown below.

We estimate that it will take an average of 10 30 minutes to complete this form, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing this information. If you have any comments regarding these estimates or any other aspect of this survey, send them to the Bureau of Labor Statistics, Division of Management Systems (1220-0045), 441 G St. NW, Washington, DC 20212, and to the Office of Management and Budget, Paperwork Reduction Project (1220-0045), Washington, DC 20503.

INSTRUCTIONS FOR COMPLETING THE OSHA NO. 200-S FORM 1989 OCCUPATIONAL INJURIES AND ILLNESSES SURVEY (Covering Calendar Year 1989)

Change of Ownership—When there has been a change of ownership during the report period, only the records of the current owner are to be entered in the report. Explain fully under Comments (Section VII), and include the date of the ownership change and the time period this report covers.

Partial-Year Reporting—For any establishment(s) which was not in existence for the entire report year, the report should cover the portion of the period during which the establishment(s) was in existence. Explain fully under Comments (Section VII), including the time period this report covers.

ESTABLISHMENTS INCLUDED IN THE REPORT

This report should include only those establishments located in, or identified by, the Report Location and Identification designation which appears next to your mailing address. This designation may be a geographical area, usually a county or city, or it could be a brief description of your operation within a geographical area. If you have any questions concerning the coverage of this report, please contact the agency identified on the OSHA No. 200-S report form.

DEFINITION OF ESTABLISHMENT

An ESTABLISHMENT is defined as a single physical location where business is conducted or where services or industrial operations are performed. (For example: a factory, mill, store, hotel, restaurant, movie theatre, farm, ranch, bank, sales office, warehouse, or central administrative office.)

For firms engaged in activities such as construction, transportation, communication, or electric, gas and sanitary services, which may be physically dispersed, reports should cover the place to which employees normally report each day.

Reports for personnel who do not primarily report or work at a single establishment, such as traveling salespersons, technicians, engineers, etc., should cover the location from which they are paid or the base from which personnel operate to carry out their activities.

SECTION I. ANNUAL AVERAGE EMPLOYMENT IN 1989

Enter in Section I the **average** (not the total) number of full and part-time employees who worked during calendar year 1989 in the establishment(s) included in this report. If more than one establishment is included in this report, add together the annual average employment for each establishment and enter the sum. Include all classes of employees—seasonal, temporary, administrative, supervisory, clerical, professional, technical, sales, delivery, installation, construction and service personnel, as well as operators and related workers.

Annual Average employment should be computed by summing the employment from all pay periods during 1989 and then dividing that sum by the total number of such pay periods throughout the entire year, including periods with no employment. For example, if you had the following monthly employment—Jan.-10; Feb.-10; Mar.-10; Apr.-5; May-5; June-5; July-5; Aug.-0; Sept.-0; Oct.-0; Nov.-5; Dec.-5—you would sum the number of employees for each monthly pay period (in this case, 60) and then divide that total by 12 (the number of pay periods during the year) to derive an annual average employment of 5.

SECTION II. TOTAL HOURS WORKED IN 1989

Enter in Section II the **total** number of hours actually **worked** by all classes of employees during 1989. Be sure to include **only** time on duty. **DO NOT include any non-work time** even though paid, such as vacations, sick leave, holidays, etc. The hours worked figure should be obtained from payroll or other time records wherever possible; if **hours worked** are not maintained separately from **hours paid**, please enter your best estimate. If actual hours worked are not available for employees paid on commission, salary, by the mile, etc., hours worked may be estimated on the basis of scheduled hours or 8 hours per workday.

For example, if a group of 10 salaried employees worked an average of 8 hours per day, 5 days a week, for 50 weeks of the report period, the total hours worked for this group would be 10 x 8 x 5 x 50 = 20,000 hours for the report period.

SECTION III. NATURE OF BUSINESS IN 1989

In order to verify the nature of business code, we must have information about the specific economic activity carried on by the establishment(s) included in your report during calendar year 1989.

Complete Parts A, B and C as indicated in Section III on the OSHA No. 200-S form. Complete Part C **only** if supporting services are provided to other establishments of your company. Leave Part C blank if a) supporting services are not the primary function of any establishment(s) included in this report or b) supporting services are provided but only on a **contract or fee basis** for the general public or for other business firms. **(Instructions continued on page 2.)**

NOTE: If more than one establishment is included, information in Section III should reflect the combined activities of all such establishments. One code will be assigned which best indicates the nature of business of the group of establishments as a whole.

SECTION IV. MONTH OF OSHA INSPECTION

Enter the name of the first month in 1989 during which your establishment(s) had an OSHA compliance inspection. Include inspections under the Federal or State equivalents of the Occupational Safety and Health Act by Federal or State inspectors and other inspections which may result in penalties for violations of safety and health standards. Do not include inspections limited to elevators, boilers, fire safety or those which are consultative in nature.

SECTION V. RECORDABLE INJURIES AND ILLNESSES

Check the appropriate box. If you checked "Yes," complete Sections VI and VII on the back of the form. If you checked "No," complete only Section VII.

SECTION VI. OCCUPATIONAL INJURY AND ILLNESS SUMMARY

This section can be completed easily by copying the totals from the annual summary of your **1989** OSHA No. 200 form (Log and Summary of Occupational Injuries and Illnesses). Please note that if this report covers **more** than one establishment, the final totals on the "Log" for each must be added and the sums entered in Section VI.

Leave Section VI **blank** if the employees covered in this report experienced no recordable injuries or illnesses during 1989.

If there were recordable injuries or illnesses during the year, please review your OSHA No. 200 form for each establishment to be included in this report to make sure that all entries are correct and complete before completing Section VI. Each recordable case should be included on the "Log" in only one of the six main categories of injuries or illnesses.

1. INJURY—related deaths (Log column 1)
2. INJURIES with days away from work and/or restricted days (Log column 2)
3. INJURIES without lost workdays (Log column 6)
4. ILLNESS—related deaths (Log column 8)
5. ILLNESSES with days away from work and/or restricted days (Log column 9)
6. ILLNESSES without lost workdays (Log column 13)

Also review each case to ensure that the appropriate entries have been made for the other columns if applicable. For example, if the case is an Injury with Lost Workdays, be sure that the check for an injury involving **days away from work** (Log column 3) is entered if necessary. Also verify that the correct number of days away from work (Log column 4) and/or days of restricted work activity (Log column 5) are recorded. A similar review should be made for a case which is an Illness with Lost Workdays (including Log columns 10, 11 and 12). Please remember that if your employees' loss of workdays is still continuing at the time the annual summary for the year is completed, you should estimate the number of future workdays they will lose and add this estimate to the actual workdays already lost. Each partial day away from work, other than the day of the occurrence of the injury or onset of illness, should be entered as one full restricted workday.

Also, for each case which is an illness, make sure that the appropriate column indicating Type of Illness (Log columns 7a-7g) is checked.

After completing your review of the individual case entries on the "Log," please make sure that the "Totals" line has been completed by summarizing Columns 1 through 13 according to the instructions on the back of the "Log" form. Then, copy these "Totals" onto Section VI of the OSHA No. 200-S form. If you entered fatalities in columns (1) and/or (8), please include in the "Comments" section a brief description of the object or event which caused each fatality.

FIRST AID

Finally, please remember that all injuries which, in your judgement, required **only First Aid Treatment**, even when administered by a doctor or nurse, should not be included in this report. First Aid Treatment is defined as one-time treatment and subsequent observation of minor scratches, cuts, burns, splinters, etc., which do not ordinarily require medical care.

SECTION VII. COMMENTS AND IDENTIFICATION

Please complete all parts including your area code and telephone number. Then return the OSHA No. 200-S form in the pre-addressed envelope. **KEEP** your file copy.

Dear Employer:

The Occupational Safety and Health Act of 1970 requires the Secretary of Labor to collect, compile, and analyze statistics on occupational injuries and illnesses. This is accomplished through a joint Federal/State survey program with States that have received Federal grants for collecting and compiling statistics. Establishments are selected for this survey on a sample basis with varying probabilities depending upon size. Certain establishments may be included in each year's sample because of their importance to the statistics for their industry.

You have been selected to participate in the nationwide Occupational Injuries and Illnesses Survey for 1989. Under the Occupational Safety and Health Act, your report is mandatory.

The following items are enclosed for your use: (1) Instructions for completing the form; (2) The OSHA No. 200-S form and a copy for your files; and (3) An addressed return envelope. Please complete the OSHA No. 200-S form and return it within three weeks in the envelope provided.

If you have any questions about this survey, contact the survey collection agency indicated on the OSHA No. 200-S form.

Thank you for your cooperation with this important survey.

Sincerely,

JOHN A. PENDERGRASS
Assistant Secretary for
Occupational Safety and Health

BILLING CODE 4510-24-C

APPENDIX D.—OSH ANNUAL SURVEY OF OCCUPATIONAL INJURIES AND ILLNESSES

Survey year	Number of 50/50 cooperating States	Number of 100 percent funded States	Number of BLS conducted States	Number of sample members
1972	52	0	2	650,000
1973	53	0	2	650,000
1974	50	2	3	650,000
1975	49	3	3	650,000
1976	49	4	2	415,000
1977	46	4	5	320,000
1978	44	6	5	280,000

APPENDIX D.—OSH ANNUAL SURVEY OF OCCUPATIONAL INJURIES AND ILLNESSES—Continued

Survey year	Number of 50/50 cooperating States	Number of 100 percent funded States	Number of BLS conducted States	Number of sample members
1979	42	7	6	280,000
1980	41	7	7	280,000
1981	39	7	9	280,000
1982	38	9	8	280,000
1983	39	9	7	280,000

APPENDIX D.—OSH ANNUAL SURVEY OF OCCUPATIONAL INJURIES AND ILLNESSES—Continued

Survey year	Number of 50/50 cooperating States	Number of 100 percent funded States	Number of BLS conducted States	Number of sample members
1984	40	8	7	280,000
1985	40	8	7	280,000
1986	40	8	7	280,000
1987	40	8	7	280,000

APPENDIX E.—OSH ANNUAL SURVEY, NATIONAL USABLE SAMPLE SIZE AND ADJUSTED RESPONSE RATE

[Summary of national usable sample size by major industry division]

Industry division	Total units	1–3	4–10	11–19	Employment size class			250–499	500–999	1000+
					20–49	50–99	100–249			
Agriculture	9854	1513	2402	1951	2159	911	642	206	60	10
SIC 13 and 1477	2846	174	422	569	833	462	235	86	32	33
Construction	46194	7562	10420	8913	11507	4975	2240	416	114	47
Manufacturing	53719	2208	4748	5507	10565	9425	11435	5331	2602	1898
Transportation	14963	1263	2195	1938	3533	2371	2179	796	329	359
Wholesale Trade	17926	1257	3246	3157	4991	2696	1911	467	130	71
Retail Trade	39174	3195	7502	5399	8972	6453	4911	1623	657	462
F.I.R.E.	10743	2201	2943	1308	1603	951	859	355	229	294
Services	40042	5784	8967	5376	6365	4514	4561	2027	954	1494
Total	235461	25157	42845	34118	50528	32758	28973	11307	5107	4668
Response rate	94%	92%	93%	93%	93%	94%	96%	97%	98%	98%

Data from the 1987 OSH Annual Survey's Table 87–1. 2/21/89 SMG.

OSH ANNUAL SURVEY, NATIONAL SAMPLING FRAME UNITS

[Counts of national sampling frame units by major industry division]

Industry division	Total units	1–3	4–10	11–19	Employment size class			250–499	500–999	1000+
					20–49	50–99	100–249			
Agriculture	110594	51208	37084	11554	7308	2080	1024	249	75	12
SIC 13 and 1477	23552	11171	6287	2572	2240	730	352	117	50	33
Construction	480563	226543	156462	49173	34686	9328	3608	572	144	47
Manufacturing	342047	80314	91076	49552	56705	28443	22335	8103	3554	1965
Transportation	195518	77663	56823	23564	22178	8137	4707	1367	614	465
Wholesale Trade	477027	213944	142378	56405	44568	12796	5452	1096	285	102
Retail Trade	1130832	415126	394880	139120	116822	40383	18241	4044	1484	732
F.I.R.E.	412699	226738	104959	32345	26538	10724	6340	1794	772	489
Services	1525630	762056	471899	130419	92520	35359	22873	6169	2605	1730
Total	4698462	2064763	1461848	494704	405565	147981	84932	23511	9583	5575

Unit counts from Universe Maintenance System File for the first quarter of 1987. 2/21/89 SMG.

[FR Doc. 89–17995 Filed 8–7–89; 8:45 am]

BILLING CODE 4510–24–M

December 1989 Receipt of Pension Benefits Supplement to the Current Population Survey

AGENCY: Office of the Secretary, Labor.

ACTION: Expedited review under the Paperwork Reduction Act.

SUMMARY: The Pension and Welfare Benefits Administration, Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35, 5 CFR Part 1320 (53 FR 16618, May 10, 1988)) is submitting a proposed one-time survey on pension benefit amounts received by retirees. A shift in the provision of retirement benefits from defined benefit pensions to defined contribution plans has signaled a need to measure the total amount of pension benefits received under all types of deferred compensation plans and the adequacy of those benefits. The survey will provide analysis data for public policy issues.

DATE: The Pension and Welfare Benefits Administration has requested an expedited review of this submission under the Paperwork Reduction Act; this OMB review is requested to be completed by September 6, 1989.

FOR FURTHER INFORMATION CONTACT: Comments and suggestions regarding the survey on pension benefit amounts should be directed to Paul E. Larson, Departmental Clearance Officer, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210, 202/523–6331. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for PWBA, Office of Management and

Budget, Room 3001, Washington, DC 20503 202/395–6880.

Any member of the public who wants to comment on the information collection clearance package which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Minutes per response: 3 minutes per response.

Frequency of response: On occasion.

Number of respondents: 57,000.

Annual burden hours: 2,850.

Affected public: Approximately 566,000 households across the U.S.

Respondents obligation to reply: Voluntary.

Signed at Washington, DC, this 2nd day of August, 1989.

Paul E. Larson,

Departmental Clearance Officer.

Appendix

BILLING CODE 4510-29-M

Standard Form **83**
(Rev. September 1983)

Request for OMB Review

Important

Read instructions before completing form. Do not use the same SF 83 to request both an Executive Order 12291 review and approval under the Paperwork Reduction Act.

Answer all questions in Part I. If this request is for review under E.O. 12291, complete Part II and sign the regulatory certification. If this request is for approval under the Paperwork Reduction Act and 5 CFR 1320, skip Part II, complete Part III and sign the paperwork certification.

Send three copies of this form, the material to be reviewed, and for paperwork—three copies of the supporting statement, to:

Office of Information and Regulatory Affairs
Office of Management and Budget
Attention: Docket Library, Room 3201
Washington, DC 20503

PART I.—Complete This Part for All Requests.

1. Department/agency and Bureau/office originating request

Department of Labor/Pension and Welfare Benefits Administration

2. Agency code

1 2 1 0

3. Name of person who can best answer questions regarding this request

Ronald Tucker (Survey Operations)/ Dan Beller (Content)

Telephone number

(301) 763-2773
(202) 523-9505

4. Title of information collection or rulemaking

December 1989 Receipt of Pension Benefits Supplement to CPS

5. Legal authority for information collection or rule *(cite United States Code, Public Law, or Executive Order)*

Title 13 USC Section 182, or Public Law 93-406, Section 513

6. Affected public *(check all that apply)*

1 [X] Individuals or households
2 [ ] State or local governments
3 [ ] Farms
4 [ ] Businesses or other for-profit
5 [ ] Federal agencies or employees
6 [ ] Non-profit institutions
7 [ ] Small businesses or organizations

PART II.—Complete This Part Only if the Request Is for OMB Review Under Executive Order 12291

7. Regulation Identifier Number (RIN)

___ ___ ___ ___ ___ ___ ___ ___ ___ ___, or. None assigned [ ]

8. Type of submission *(check one in each category)*

Classification
1 [ ] Major
2 [ ] Nonmajor

Stage of development
1 [ ] Proposed or draft
2 [ ] Final or interim final, with prior proposal
3 [ ] Final or interim final, without prior proposal

Type of review requested
1 [ ] Standard
2 [ ] Pending
3 [ ] Emergency
4 [ ] Statutory or judicial deadline

9. CFR section affected

_____CFR _____

10. Does this regulation contain reporting or recordkeeping requirements that require OMB approval under the Paperwork Reduction Act and 5 CFR 1320? . . . . . [ ] Yes [ ] No

11. If a major rule, is there a regulatory impact analysis attached? . . . . . 1 [ ] Yes 2 [ ] No
If "No," did OMB waive the analysis? . . . . . 3 [ ] Yes 4 [ ] No

Certification for Regulatory Submissions

In submitting this request for OMB review, the authorized regulatory contact and the program official certify that the requirements of E.O. 12291 and any applicable policy directives have been complied with.

Signature of program official — Date

Signature of authorized regulatory contact — Date

12. *(OMB use only)*

PART III.—Complete This Part Only If the Request is for Approval of a Collection of Information Under the Paperwork Reduction Act and 5 CFR 1320.

13. Abstract—Describe needs, uses and affected public in 50 words or less 'Retirement benefits, surveys'

The survey will evaluate how retiree pension benefits have fared under a changing climate resulting from Federal legislation and trends towards defined contribution plans.

14. Type of information collection *(check only one)*

Information collections not contained in rules

1 [X] Regular submission
2 [ ] Emergency submission *(certification attached)*

Information collections contained in rules

3 [ ] Existing regulation *(no change proposed)*
4 [ ] Notice of proposed rulemaking (NPRM)
5 [ ] Final, NPRM was previously published
6 Final or interim final without prior NPRM
A [ ] Regular submission
B [ ] Emergency submission *(certification attached)*

7. Enter date of expected or actual Federal Register publication at this stage of rulemaking *(month, day, year)*: _____

15. Type of review requested *(check only one)*

1 [X] New collection
2 [ ] Revision of a currently approved collection
3 [ ] Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection
4 [ ] Reinstatement of a previously approved collection for which approval has expired
5 [ ] Existing collection in use without an OMB control number

16. Agency report form number(s) *(include standard/optional form number(s))*

CPS-1, CPS-260

17. Annual reporting or disclosure burden

1 Number of respondents	57,000
2 Number of responses per respondent	1
3 Total annual responses *(line 1 times line 2)*	57,000
4 Hours per response	.05
5 Total hours *(line 3 times line 4)*	2850

18. Annual recordkeeping burden

1 Number of recordkeepers	
2 Annual hours per recordkeeper	
3 Total recordkeeping hours *(line 1 times line 2)*	
4 Recordkeeping retention period	years

19. Total annual burden

1 Requested *(line 17-5 plus line 18-3)*	2850
2 In current OMB inventory	0
3 Difference *(line 1 less line 2)*	2850
Explanation of difference	
4 Program change	2850
5 Adjustment	

20. Current *(most recent)* OMB control number or comment number

____ ____

21. Requested expiration date

February 1990

22. Purpose of information collection *(check as many as apply)*

1 [ ] Application for benefits
2 [ ] Program evaluation
3 [X] General purpose statistics
4 [ ] Regulatory or compliance
5 [ ] Program planning or management
6 [ ] Research
7 [ ] Audit

23. Frequency of recordkeeping or reporting *(check all that apply)*

1 [ ] Recordkeeping

Reporting

2 [X] On occasion
3 [ ] Weekly
4 [ ] Monthly
5 [ ] Quarterly
6 [ ] Semi-annually
7 [ ] Annually
8 [ ] Biennially
9 [ ] Other *(describe)*: _____

24. Respondents' obligation to comply *(check the strongest obligation that applies)*

1 [X] Voluntary
2 [ ] Required to obtain or retain a benefit
3 [ ] Mandatory

25. Are the respondents primarily educational agencies or institutions or is the primary purpose of the collection related to Federal education programs? [ ] Yes [X] No

26. Does the agency use sampling to select respondents or does the agency recommend or prescribe the use of sampling or statistical analysis by respondents? [X] Yes [ ] No

27. Regulatory authority for the information collection

____ CFR ____; or ____ FR ____; or, Other *(specify)*: Title 13 USC, Sec. 182 or Public Law 93-406, Sec. 513

Paperwork Certification

In submitting this request for OMB approval, the agency head, the senior official or an authorized representative, certifies that the requirements of 5 CFR 1320, the Privacy Act, statistical standards or directives, and any other applicable information policy directives have been complied with.

Signature of program official
GERALD B. LINDREW
Assistant Director, OPLA
Gerald B. Lindrew
Date: July 26, 1989

Signature of agency head, the senior official or an authorized representative
PAUL E. LARSON
Department Clearance Officer
Date: 2 AUG 89

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Supporting Statement

A. Justification

1. Supplementary questions concerning receipt of pension benefits, shown in Attachment A, are proposed for the December 1989 Current Population Survey (CPS). This survey is requested by the Pension and Welfare Benefits Administration (PWBA) of the Department of Labor. The purpose of this survey is to provide comprehensive information on monthly benefits and lump sum distributions received under all types of deferred compensation plans by persons 40 years of age or older, with special emphasis on retirees. Data collected on year of initial benefit receipt will enable evaluation of changes in types and amounts of benefits received by workers retiring during different periods.

The private pension system, spurred in part by Federal legislation, has undergone a major shift in recent years in the types of plans established to provide retirement income, from the more traditional defined benefit plan to the defined contribution plan. (Defined benefit plans are usually financed entirely by the employer. At retirement, the employee generally receives an annuity, the value of which is determined by a formula based on years of service times either a percentage of pay or a flat dollar amount. Some defined benefit plans periodically provide post retirement increases in benefits, either on a regular or ad hoc basis. Under a defined contribution plan, the employee is often required to contribute. At retirement, the employee generally receives all retirement money in the form of a single lump sum payment. The value of this payment is directly related to the amount of money contributed by the employer, the employee, and investment earnings.)

In 1975, only 13 percent of all covered workers received basic coverage under defined contribution plans, with the remaining 87 percent covered under defined benefit plans. By 1987, the use of various types of defined contribution plans to provide basic coverage had increased to an estimated 30 percent of all covered workers. In addition, the use of defined contribution plans to provide supplemental coverage has increased from 21 percent of all covered workers in 1975 to an estimated 40 percent in 1987. Overall, more active participants are now enrolled in defined contribution plans than in defined benefit plans.

Benefit levels provided under defined contribution plans are less certain than those provided under defined benefit plans, with a greater burden and responsibility placed on workers to provide for their retirement income. For example, the now common use of 401(k) plans as retirement vehicles bases the ultimate amount of benefits payable at retirement on the employee's voluntary contributions and often on how employees decided to invest their accounts. Defined contribution plans are also much more likely than defined benefit plans to provide benefits in the form of a lump sum payment. Moreover, if a retiree with a defined contribution plan requests an annuity, the value of the retiree's account is used to purchase an insured annuity with no possibility of post-retirement benefit increases. Because of this fundamental shift occurring in the method of providing retirement coverage and benefits, a survey is needed to measure the total amount of pension benefits received under all types of deferred compensation plans and the adequacy of those benefits. The oversight of private pension plans falls within the jurisdiction of the PWBA under the Employee Retirement Income Security Act of 1974 (ERISA). The collection of this information is authorized by Section 513 of ERISA.

2. Beginning with the passage of ERISA in 1974, there have been 14 major Federal legislative Acts designed to increase the soundness of the pension system. The overall intent of this survey is to assess the experience of retirees covered under pension plans during their working career and to evaluate how retiree pension benefits have fared in recent years under the changing climate resulting from Federal legislation and trends toward defined contribution plans. This survey will provide analysis data for public policy issues including: Identification of the demographic characteristics of retirees with and without pension income, the amounts of pension benefits received, the wage replacement rates provided by pensions, the extent to which post-retirement increases cover increases in the consumer price index (CPI), the rate at which married retirees are electing a joint and survivor option, and the rate at which retirees are receiving monthly annuities versus lump sum distributions. In addition, the data will determine how benefit levels and forms of benefits have changed over time. Accurate data on these subjects are absolutely necessary to evaluate the current private pension system and to develop policies to correct any inadequacies.

Following is a discussion of the proposed supplement:

Questions 1 through 3: Defining the Supplement Universe

Questions 1 through 3 identify persons eligible for the supplement. Question 1 establishes the age criteria; only persons aged 40 and over are likely to receive pension benefits. Question 2, the employment check-item, identifies persons currently employed and directs them to the receipt of pension questions, beginning with question 4. For these people, receipt of pension information will be collected only with respect to a possible former employer. Information on pension coverage provided by a current employer, for those employed, was collected in the May 1988 CPS supplement. Data collected from this proposed supplement on receipt of pension benefits, along with the May 1988 data, will provide PWBA with invaluable information that they need to evaluate the current private pension system.

Those identified as not working per check-item 2 will skip to item 3, which determines the likelihood of receipt of retirement benefits based on total years of service at all employers. Those working less than 5 years are unlikely to qualify for pension benefits. If they qualify, their benefit will likely be small and have little effect on the survey results.

Question 4: Pension Coverage

This question identifies persons who were covered under a pension plan at a former employer. A response of "yes" to this item qualifies a person to respond to additional questions that will determine the type of plan, if any, the person receives retirement payments from.

Question 5: Receipt of Benefit

This question determines if respondents are receiving benefits from any type of deferred compensation plan with a lifetime annuity.

Questions 6 and 7: Receipt of Dual Pension Benefits

Approximately 40 percent of all active participants are covered under two or more plans (generally both a defined benefit and defined contribution plan). Identification of dual pension recipients will enable comparison of the total benefits received by dual recipients with benefits received by those with only one plan. It will also enable measurement of post-retirement benefit increases received by dual recipients from their plan providing the largest benefit.

Question 8: Amount of Pension Benefit Received Each Month From All Annuities.

This question collects income amounts on the total monthly pension benefits being received under all plans that have a lifetime annuity. The number of such plans was determined by the response to question 6.

Questions 9 and 10: Joint and Survivor Option

Concern for widows dependent on the income of a spouse that dies is reflected in both the 1974 ERISA legislation and the Retirement Equity Act of 1984. Both legislative acts require private pension plans to include survivor options in varying degrees. Questions 9 and 10 will determine the percentage of married pension recipients electing a joint and survival option and allow PWBA to study the impact of these laws.

Question 11: Dual Annuity Benefit Check Item

For dual annuity benefit recipients, information on change in benefit amount and identification of whether the benefit is from a defined benefit plan will be asked with respect to the annuity providing the largest benefit.

Question 12: Amount of Pension Benefit Received Each Month from the Largest Annuity

This question collects the current monthly amount of pension benefits being received under the annuity plan that provides the largest benefit.

Question 13: Type of Plan

A response of "yes" to this question will indicate that the largest annuity payment is coming from a defined benefit plan.

Question 14 and 15: Post-Retirement Benefit Changes

Responses to these questions will allow PWBA to determine the number of retirees who receive cost of living adjustments either on a regular or ad hoc basis and the extent to which post retirement increases match increases in the CPI.

Question 16: Age When Benefits Began

For retirees receiving post-retirement benefit changes, comparison of respondents current age (from basic CPS) with age when benefits began will permit comparison of any post-retirement benefit changes with CPI changes over the same period. For all retirees, comparison of average benefit levels by year of initial receipt can be made.

Question 17: Number of Years of Benefit Accrual

This question will enable comparisons of benefit amounts by average number of years of benefit accrual.

Question 18: Receipt of Lump Sum Distribution

This question will indicate the extent to which retirees receive a lump sum or fixed payment benefit distribution, both for those receiving a lifetime annuity and for those covered under a plan but not receiving a lifetime annuity. By comparing the amount of benefits received from these two types of plans, the PWBA can measure the adequacy of the private pension system to provide income security for the retired.

Question 19: Amount of Lump Sum Payment(s)

This question, combined with the question on monthly receipt of lifetime annuities, will indicate total private pension benefits received by retirees.

Question 20: Age When Lump Sum or First Fixed Payment was Received

The response to this question will identify the actual value of the lump sum or first fixed payment, at the time it was received, after adjusting for inflation.

Question 21: Type of Plan

A response of "no" to this question will indicate that the lump sum or first fixed payment received came from a defined contribution plan.

Question 22: Additional Pension Benefits

This question targets respondents in their late 50s and early 60s. Its purpose is to determine the number of persons retired and vested but unable to receive benefits until they reach the retirement age specified by the plan for benefits to begin.

Questions 23 and 24: Amount of Social Security Benefits

These questions on Social Security benefits combined with earlier questions on private pension benefits will determine retiree's overall economic security provided by pensions.

Questions 25: Pension Coverage Check Item

This item directs the interviewer to the appropriate lead-in to ask respondents about the characteristics of the job which provided coverage or the characteristics of the longest job for those never covered.

Question 26: Years Worked for Employer

This question will enable examination of the relationship between length of employment, coverage status, and benefit status.

Question 27: Year Employment Ended

For those receiving benefits, this question will determine whether benefit payments began at retirement or if there was a waiting period.

Question 28: Full Versus Part-Time Employment

This question will indicate the relationship between full versus part time employment and the likelihood of having pension coverage, receiving benefits, and the amount of any benefits received.

Question 29: Union Status

This question will indicate the relationship between membership in a collective bargaining unit while employed and coverage status, receipt of benefit, amount of benefit, and extent of post-retirement benefit changes.

Questions 30A–30E: Employer Classification

These questions collect information on the former job that provides pension coverage or, for those not covered, information on the job worked at the longest. They will enable measurement and comparison of pension benefit status and benefit amounts by industry, occupation, and class of worker.

Question 31: Pre-retirement Earnings

This question will enable examination of the relationship between earnings and coverage status. Collection of earnings data together with amount of initial pension benefit (Question 15) will also enable computation of wage replacement rates for those receiving pension benefits.

Question 32: Firm Size

This question allows measurement of pension benefit eligibility and pension amounts by firm size. Together with industry, occupation, and collective bargaining status data, it will identify characteristics of firms by average amounts of pension benefits provided and likelihood of providing post-retirement benefit increases.

Questions 33–36: Receipt of Spousal Benefit

These questions will identify the extent and amounts of benefits received by widows and widowers from the pension plan of a deceased spouse. This

information combined with the joint survivor information (questions 9 and 10) will indicate the adequacy of the current private pension system to secure the income needs of widows and widowers whose deceased spouse received pension benefits.

3. The Bureau of the Census is using the most improved method of data collection available to reduce burden. The CPS sample was redesigned based on results from the 1980 Decennial Census. This sample produces data of greater reliability, though the sample sizes of the new and old samples are almost identical.

The supplemental questions are designed to obtain the required information with minimal respondent burden. The proposed questions are the result of numerous consultations between the Bureau of the Census and the Pension and Welfare Benefits Administration. The questions represent the maximum amount of information, as required by the sponsors, that can be collected within the constraints of the CPS and the limitation of respondent burden.

4. Currently two ongoing surveys, the March CPS income supplement and the Survey of Income and Program Participation (SIPP), routinely collect data on pension income. However, neither of these surveys collects the in-depth information needed to provide a comprehensive profile of total pension income from all sources and to measure the adequacy of post-retirement increases in pension benefits.

Specifically, the March CPS inquires about the amount of pension income received the previous year. It does not collect data on lump sum distributions or on the extent of cost-of-living increases, nor does it characterize past work experience and the employer from which such benefits were established. The SIPP does not collect information on lump sum payments received from deferred retirement plans, the magnitude of any cost-of-living benefit increases since first receipt of benefits, or the amount of any survivor pension income. In addition, the SIPP interviews a substantially smaller number of households so that the cell sizes for retirees in different age groups become too small to permit statistically valid analysis. Neither SIPP nor the March CPS allows for comparison between the retired population that receives benefits and those that do not.

The PWBA is currently developing an analytical file for pension recipients using the SIPP data base. This file will combine relevant SIPP panels on employee and retiree income and benefits. The file will be used to examine total worker and retiree income from all sources and the compensation package of benefits provided by employers. The data available from SIPP on total income received over a relatively short period of time will complement the data collected under this CPS supplement on total pension income received by retirees and workers during their lifetime. In addition, the SIPP will be used to analyze job mobility, changes in type of pension coverage for the same workers and other behavioral analysis for which the CPS is not appropriate.

Two periodically conducted surveys, the Survey of Consumer Finances (SCF) and the New Beneficiary Survey (NBS), also collect pension income data. These surveys, however, collect only limited components of pension income. Moreover, their sample populations are not designed to obtain accurate cross-sectional estimates by age group.

The SCF does not contain questions on post-retirement benefit changes. It requests information on lump sum payments only from the last job held. It cannot be determined whether lump sum payments include only return of employee contributions. Analysis of available data on retireee pension income is also limited by the small sample size of only 5,000 households.

The NBS survey asks if benefits have increased since retirement but data on the magnitude of any increases are not collected. The NBS also interviews only a limited portion of the relevant population. It does not include individuals until they reach Social Security beneficiary status. Thus no data are collected on early retirees receiving private pensions or on individuals age 62 or over receiving private pensions but working and deferring receipt of Social Security benefits.

The May 1988 CPS supplement collected information on retirement coverage provided to those currently employed by their current employer, not on benefits received from a former employer.

5. Past surveys that have included questions on pension income have been geared toward collecting data on retirement income provided under traditional pensions plans. The proliferation of new types of deferred compensation plans in recent years as both primary and supplemental retirement vehicles has resulted in potentially major changes in the form and amount of pension income. The format of the questions contained in surveys which routinely collect data on pension income is also inadequate to provide a comprehensive profile to total income received by individuals under all types of deferred compensation plans.

Specifically, these surveys generally collect data on current but not past pension income and usually define benefits as pension or retirement income. The surveys miss substantial payments made in the form of lump sum distributions and require respondents to make a judgement as to whether income received from a profit sharing, savings, or employee stock ownership plan should be categorized as pension income. Moreover, there is no current data set to provide the comprehensive data needed to perform the analysis described in (A.2) above.

6. The collection of the CPS and its supplemental questions does not involve small businesses or other small entities.

7. This is the first time this information will be collected in conjunction with the CPS. Therefore, the effect of less frequent collection is to not collect the information. The consequences to Federal program or policy activity of not collecting the information are dscribed in (A.2) above.

8. These data will be collected in a manner consistent with the guidelines in 5 CFR 1302.6.

9. The following persons have been consulted concerning the development of the December Supplement questions:

Department of Labor (PWBA) Gary Hendricks (202) 523–9505 John Turner (202) 523–9421 Daniel Beller (202) 523–9751

General Accounting Office Cindy Maher (202) 275–5067

Pension Benefit GuarantyCorp. Emerson Beier (202) 778–8851

Employee Benefit Research Inst. Emily Andrews (202) 659–0670

Mathematica Policy Research William Borden (609) 275–2321

Dartmouth College Alan Gustman (603) 646–2641

Cornell University Olivia Mitchell (607) 255–2743

West Virginia University Stuart Dorsey (304) 293–5721

Bureau of Labor Statistics Jordan Pfuntner (202) 523–9444

Social Security Administration Susan Grad (202) 673–6308 John Woods (202) 673–3904

Federal Reserve Board Arthur Kennickell (202) 452–2247

N. Carolina State University Robert Clark (919) 737–3886

Pension Rights Center Karen Ferguson (202) 296–3776

Texas Tech University Thomas Steinmeir (806) 742–2201

Vanderbilt University Richard Burkhauser (615) 322–2192

Bureau of the Census (DSD) Ronald Tucker (301) 763–2773

10. The supplement data will be collected in compliance with the Privacy Act of 1974 and OMB Circular A–130. Approximately 1 week before the start of interviewing, each new or returning sample household receives an advance letter. This letter includes the information required by the Privacy Act of 1974, informs each respondent of the voluntary nature of the survey, and states the estimated time required for participating in the survey. Additionally, interviews must ask each respondent if he/she received the adavance letter and, if not, must provide a copy of the letter to each respondent and allow sufficent time for him/her to read its contents. Also, interviewers now provide households with the "How the Census Bureau Keeps Your Information Strictly Confidential" pamphlet, which further states the confidentiality assurances associated with this data collection efforts and the Census Bureau's past performance in assuring confidentiality.

All information given by respondents to Census Bureau employees is held in strict confidence by Title 13, United States Code, Section 9. Each Census employee has taken an oath to that effect and is subjed to a jail penalty and substantial fine if he/she discloses any information.

11. The December CPS supplement does not contain any questions of a sensitive nature.

12. The cost to the Government of the CPS program to which this form relates is expected to be $27 million in fiscal year 1990. The costs are to be borne by the Bureau of the Census, the Department of Labor and other Government agencies, if involved. The total estimated cost to the Federal Government for this supplement is $260,000; this cost is borne by the PWBA.

13. The estimated respondent burden is 2,850 hours for fiscal year 1990. Based on professional judgement, the estimated average length of each supplement interview is 3.0 minutes for each sample household. The actual interview time for a household will depend on the size of the household and the characteristics of its occupants.

14. This survey was projected in the FY89 ICB for 3,000 burden hours. This does not exceed that amount. It does represent a program increase of 2,850 hours.

15. Supplement data will be collected by the Census Bureau during the period of December 10–16. A final data file will be available to the sponsors by April 1990 and to the public by June 1990 when the sponsors expect to publish the results.

B. Collection of Information Employing Statistical Methods

1. The December supplement is conducted in conjunction with the basic CPS for which the universe is 93 million households. From this universe, a sample of approximately 71,000 households is selected each month, and interviews are obtained from approximately 57,000 households or 117,000 persons 14 years old or older. We will ask supplement questions in all of the eight rotations. Everyone aged 40 years or older will be asked the supplement questions, and we expect to obtain interviews from about 90 percent of the eligible respondents. The proposed questions will be asked of the sample person, either at the time of the CPS interview or during a telephone or personnel callback.

2. This survey is a supplemental survey associated with the December CPS. Attachment B contains an overview of the CPS sample design and weighting methodology. Attachment C contains a statement of the estimates from a CPS supplement conducted in August 1988, since the actual December statement will not be written until after the data are collected. Although the subject matter is different, the August statement approximates the sampling error common to most CPS supplements.

3. Response rates and data accuracy for the CPS are maintained at high levels through clerical edits, interviewer instructions and training, and close monitoring of these data. (Refer to paragraph 5 of Attachment B for a discussion of CPS nonresponse.)

4. The CPS is currently undergoing the latest phase in a series of methodological and questionnaire tests; this is described in paragraph 6 of Attachment B.

5. The following individuals have been consulted on the statistical data collection and analysis operations:

Lawrence Cahoon Statistical Methods Division Bureau of the Census

Ronald R. Tucker Demographic Surveys Division Bureau of the Census

ATTACHMENT A.—REMINDER: ASK LABOR FORCE QUESTIONS FOR ALL HOUSEHOLD MEMBERS BEFORE ASKING SUPPLEMENT

Supplement questions

1. Interviewer Check Item Age (C.C. item 18) is:
   Under 40 years O (End Questions)
   40 Years or Over O (Read Lead-in)

Lead-in: The next few questions concern pension coverage.

2. Interviewer Check Item Entry or NA in item 20A or 21B O (Skip to 4)
   All others O (Ask 3)
3. Did . . . ever work at a paid job(s) for *5 years* or more?
   O Yes
   O No—(Skip to 33)
4. Was . . . ever covered under a pension, profit sharing, savings, or employer stock plan provided by a former employer?
   O Yes
   O No—(Skip to 23)
   O DK—(Skip to 23)
5. Other than Social Security, is . . . currently receiving a retirement benefit *payable for life* from a pension, profit sharing, savings, or employer stock plan?
   O Yes
   O No—(Skip to 18)
6. Other than Social Security, how many different plans does . . . currently receive *lifetime* pension benefits from?
   O One plan—(Skip to 8)
   O Two plans
   O Three or more plans
7. Are these plans all provided by the same employer or union?
   O Yes
   O No
   O DK
8. Other than Social Security, what is the *total* amount of pension benefits . . . receives *each month?*
   DK O [ ]

   0000
   1111
   2222
   3333
   4444
   5555
   6666
   7777
   8888
   9999

9. Interviewer Check Item Marital status (C.C. item 19) is:
   Married or Separated O (Ask 10)
   All Others O (Skip to 11)
10. Other than Social Security, would some portion of . . .'s pension benefit continue to be paid to his/her spouse if . . . died?
    O Yes
    O No
    O DK
11. Check Item—Item 6 marked:
    One plan O (Ask 13)

Supplement questions

Two or more O (Read Lead-In)
Lead-in: Please answer the following questions about the plan from which . . . receives the largest benefit.
12. How much does . . . currently receive *each month* from this plan?
DK O [ ] 0000 1111 2222 3333 4444 5555 6666 7777 8888 9999
13. Is the retirement benefit from this plan determined by a formula based on years of service and/or the amount of pay received?
O Yes
O No
O DK
14. Has the amount of . . .'s monthly pension benefit ever increased or decreased?
O Inc. or Dec.—(Skip to 15)
O Both Inc. & Dec.—(Skip to 15)
O NO Change—(Skip to 16)
O DK—(Skip to 16)
15. How much did . . . receive *each month* from this plan when he/she first began receiving the regular benefit?
DK O [ ] 0000 1111 2222 3333 4444 5555 6666 7777 8888 9999
16. How old was . . . when he/she began receiving this pension benefit?
3 4 5 6 7 8 9
0 1 2 3 4 5 6 7 8 9
17. How many *years of service* did . . . have under that plan?
0 1 2 3 4 5 6
0 1 2 3 4 5 6 7 8 9
18. Did . . . ever receive a *lump sum* payment or a *fixed number* of payments from a plan after leaving a former employer?
O Yes
O No—(Skip to 22)
O DK—(Skip to 22)
19. How much has *or* will . . . have received from all such payments?
DK O [ ] 000000 111111 222222 333333 444444 55555 66666 77777 88888 99999
20. In what year did . . . receive his/her lump sum payment or first fixed payment? 19—
3 4 5 6 7 8
0 1 2 3 4 5 6 7 8 9

Supplement questions

21. Is the retirement benefit from this plan determined by a formula based on years of service and/or the amount of pay received?
O Yes
O No
O DK
22. Does . . . expect to receive pension benefits from any (other) plan based on a *former* employer?
O Yes
O No
O DK
23. Does . . . receive any Social Security Retirement payments from the U.S. Government?
O Yes
O No
O DK
24. What is the amount of the Social Security payment . . . receives *each month*? (Amount should be before the medicare deduction.)
DK O 0000 1111 2222 3333 4444 555 666 777 888 999
25. Check Item—Item 4 marked:
Yes O (Read lead-in #1 in 26)
All Others O (Read lead-in #2 in 26)
26. Lead-in #1—The following questions refer to the employer who provides or provided . . . 's (largest) pension coverage.
Lead-in #2—The following questions refer to employer for whom . . . worked the longest.
How many years did . . . work for that employer?
0 1 2 3 4 5
0 1 2 3 4 5 6 7 8 9
27. In what year did . . . leave? 19—
3 4 5 6 7 8
0 1 2 3 4 5 6 7 8 9
28. How many hours per week did . . . usually work for that employer?
0 1 2 3 4 5 6 7
0 1 2 3 4 5 6 7 8 9
29. At that employer, was . . . covered by a union or employee association contract?
O Yes
O No
O DK
30A. For whom did . . . work? O Same as (CPS) 23A-E.
30B. What kind of business or industry was this?
30C. What kind of work was . . . doing?
30D. What were . . . 's most important activities or duties at this job?
30E. Was . . . employed by:
O PRIVATE
O FEDERAL
O STATE Govt.

Supplement questions

O LOCAL
O SELF-EMPL, INC.
O SELF-EMPL, NOT Inc.
I&O Code FOSDIC Circles
31. When . . . left that job, how much did . . . USUALLY earn *per week* before deductions? Include any overtime pay, commissions, or tips usually received
DK O[ ] 0000 1111 222 333 444 555 666 777 888 999
32. About how many people were employed by (read name of employer in 30A) at all locations?
O Under 10
O 10–19
O 20–99
O 100–499
O 500 +
O DK
33. Interviewer Check Item Marital Status (C.C. item 19) is:
Widowed O (Ask 35)
Never married O (Fill 37)
All Others O (Ask 34)
34. Has . . . ever been widowed?
O Yes—(Ask 35)
O No—(Fill 37)
35. Does . . . receive benefits based on a pension earned by a deceased spouse?
O Yes—(Ask 36)
O No—(Fill 37)
O DK—(Fill 37)
36. What is the *monthly* amount of this benefit?
DK O [ ] 0000 1111 2222 3333 4444 5555 6666 7777 8888 9999
37. Interviewer Check Item Supplement interview with:
Eligible person O—(End Questions)
Proxy O—(End Questions)

Attachment B—Overview of CPS Sample Design and Methodology

1. CPS Sample Design and Selection

The Current Population Survey (CPS) is a monthly survey conducted in approximately 56,000 occupied households throughout the United States.

The CPS is a probability sample based on a stratified sampling scheme. In general, the CPS sample is selected from

lists of addresses obtained from the most recent decennial census and updated for new construction.

a. State-Based Design

In the first stage of sampling, primary sampling units (PSUs) are selected. These PSUs consist of counties or groups of counties in the United States, and are grouped into strata. The CPS is a state-based design. Therefore, all strata are defined within state boundaries and the sample is allocated among the states to produce state and national estimates with the required reliability, while keeping total sample size to a minimum. Each stratum consists of one or more PSUs. Within each stratum, a single PSU is chosen for the sample, with probability proportional to its population as of the most recent decennial census. This PSU represents the entire stratum from which it was selected. In the case of strata consisting of only one PSU, the PSU is termed "self-representing." A sample of addresses within the sample PSUs is obtained in a second step. Most of the sample addresses are selected from census lists in a single stage of sampling within the selected PSU; for a relatively small proportion, an additional stage of selection within the PSU is necessary.

This two-step process is roughly equivalent to the simple plan of dividing each state into ultimate sampling units (USUs), each containing about four neighboring housing units, and selecting clustered samples of these USUs for interview.

b. Stratification

The variables chosen for grouping PSUs in each state into strata reflect the primary interest of the CPS in maximizing the reliability of estimates of labor force characteristics. Basically, the same set of stratification variables are used for each state: employment and unemployment statistics by male, female, and total population; employment statistics by occupation; change in population since 1970 and other variables. If a significant proportion of a state's 1980 census population (0+) is Black or of Hispanic origin, a few additional variables are included.

c. Rotation System

Each sample is divided into eight approximately equal rotation groups. A rotation group is interviewed for 4 consecutive months, temporarily leaves the sample for 8 months and then returns for 4 more consecutive months before retiring permanently from the CPS (after a total of eight interviews). This rotation scheme has been in use since July 1953. The end result of this rotation pattern is an improvement in the reliability of estimates of month-to-month change as well as estimates of year-to-year change.

d. Phase-in of New Design

Since the creation of the CPS in 1940, the sample has been redesigned several times to upgrade the quality of the survey, improve the reliability of the data, and meet the changing needs for the data. Most recently, the 1970 design was phased out and replaced by the design described in this paper. The introduction of the revised design involved several changes that began in April 1984 and were completed in July 1985.

At the time it was put into place, the 1970 design was intended to provide reliable national estimates of labor force characteristics. Strata were defined within four regions of the United States, with many strata crossing state boundaries. Beginning in the mid 1970's, more accurate estimates of state labor force data were needed. This led to the implementation of a revised design based on state geography.

The phase-in of the new design occurred in two waves. The first involved "continuing" areas: areas selected in both the old and new design. This part of the phase-in consisted of updating the sampling frame in these areas beginning in April 1984 and continuing through July 1985. Ninety percent of the entire sample was in "continuing" areas.

The second wave involved changing the geographic areas selected to be sampled. From November 1984 through June 1985, geographic areas selected in the new design that were not in the old design ("new" areas) gradually replaced geographic areas selected in the old design but not in the new design (outgoing areas). Sample households selected from address lists obtained from the 1980 census and new construction permits issued after 1980 replaced households selected from the 1970 census lists and permits for new construction issued since 1970.

In total, the redesigned sample includes 729 geographic areas from a total of 1,973 geographic areas in the United States. In the 1970 design, 629 areas were chosen to represent the 1,924 geographic areas into which the country was divided. The areas used in the 1970 and 1980 designs are not completely comparable becaue many of the sample areas were redefined for 1980. This redefinition was carried out for a number of reasons. Primary among these was the shift from a national sample design to one designed to produce both state and national estimates. In addition, some sampling areas were redefined to correspond to the new metropolitan area definitions, and others were redefined to improve efficiency in field operations.

2. CPS Estimation Procedure

Under the estimating methods used in the CPS, all of the results for a given month become available simultaneously and are based on returns for the entire panel of respondents. The CPS estimation procedure involves weighting the data from each sample person. The unbiased weight, which is the inverse of the probability of the person being in the sample, is a rough measure of the number of actual persons that the sample person represents. In the 1980 design, almost all sample persons within the same state will have the same unbiased weight. The unbiased weights are then adjusted for noninterview, and the ratio estimation procedure is applied.

a. Noninterview Adjustment

The weights for all interviewed households are adjusted to account for occupied sample households for which no information was obtained. Reasons for a noninterviewed household include absence, impassable roads, refusals, or unavailability for other reasons. This adjustment is performed by noninterview cluster. Noninterview clusters are classified as either MSA or non-MSA. PSUs classified as MSA are assigned to MSA clusters. Likewise, non-MSA PSUs are assigned to non-MSA clusters. MSAs of the same or similar size are grouped in the same noninterview cluster. All non-MSA areas in a state are grouped within the same noninterview cluster. There are two cells within a noninterview cluster. Within MSA clusters, the cells are central city and balance of the MSA. Within non-MSA clusters, the cells are urban and rural.

b. Ratio Estimates

The distribution of the population selected in the sample may differ somewhat, by chance, from that of the population as a whole, in such characteristics as age, race, and sex. Since these characteristics are correlated closely with labor force participation and other principal measurements made from the sample, the latter estimates can be improved substantially when weighted appropriately by the known distribution of these population characteristics. This is accomplished through two stages of ratio estimates as follows:

(1) *First-stage ratio estimate.* In the CPS, a portion of the sample areas is chosen to represent both itelf and other areas not in the sample; the remainder of the sample areas represent only themselves. The first-stage ratio estimation procedure was designed to reduce that portion of the variance resulting from requiring sample areas to represent nonsample areas. Therefore, this procedure is applied only to sample areas the represent other areas and is done by black/nonblack cells at a state level.

(2) *Second-stage ratio level.* The second-stage ratio estimate adjusts sample estimates of the population by rotation group (month-in-sample) in a number of age-sex-race-ethnicity groups to independently derived census estimates of the population in each of these groups. This adjustment reduces mean square error of sample estimates by reducing bias due to differential coverage of the sampling frame. The second-stage is carried out in three steps and each set of three steps is referred to as a "rake". There will be six cycles of raking.

In the first step, the sample estimates are adjusted for each state and the District of Columbia by month-in-sample to an independent control for the civilian noninstitutional population (16+) for the state. The second step of the adjustment is done at the national level by Hispanic ethnicity and month-in-sample. Hispanic and not Hispanic each have nine age/sex cells, which are adjusted to nationwide independent control counts (14+). The final step of the second-stage is performed by Black, White and Other race categories. The cell division is by age/race/sex and month-in-sample. Each of these cells is adjusted to nationwide independent control counts (14+) as in the previous step. The entire second-stage ratio estimation procedure is iterated through six rakes. This iteration ensures that the sample estimates both of state population and of national age-sex-race-ethnic categories will be virtually equal to the independent population estimates.

E. Specialized Sampling

An unusual problem occurs in the CPS sample that requires specialized sampling procedures. This problem occurs in rural areas in the state of Alaska because of its sparse population. Special methods of defining segments are used in these areas of the Alaskan sample.

4. Periodic Data Collection Cycle

Collection of CPS data on a monthly basis is mandated in Paragraph 2 of Title 29, United States Code. Less frequent collection would place the Bureau of Labor Statistics, which is the cosponsor of the CPS, in violation of this code.

5. Nonresponse in CPS

If a respondent is reluctant to participate in CPS, the interviewer immediately informs the regional office staff. The region office sends a follow-up letter to the household explaining CPS in greater detail and urging cooperation. The interviewer then recontacts the household and attempts the interview again. If this procedure fails, a Supervisory Field Representative then contacts the household in an attempt to convert the reluctant respondent. Methods used to interview reluctant households include conducting telephone or personal interviews with the household, if so requested, and interviewing a designated individual within the household. The CPS estimation procedure adjusts for nonresponse in its noninterview adjustment section. This procedure is detailed in Paragraph 2.a. above. Individual item nonresponse is allocated using a procedure in which the mission data are assigned from individuals whose data are complete and have similar characteristics. The CPS noninterview rates range between 4–5 percent monthly.

Accuracy of the CPS data is maintained through interviewer training and monthly home studies, monitoring of error and noninterview rates, and systematic reinterviewing of CPS households. Each month one-sixth of all CPS enumerators have a third of their assignments reinterviewed. Errors uncovered during the reinterview are discussed with the original interviewer and remedial action taken.

6. Methodological Testing

The basic CPS program is not used as a vehicle for testing procedures or methods. There is, however, an extensive program of testing already conducted and currently underway on CPS methods, procedures, and content. This program, the Methods Development Survey (MDS), and its predecessor, the Methods Test Panel (MTP), has been underway since May 1978 and is continuing at this time.

Currently, the MDS is testing the use of Computer Assisted Telephone Interviewing (CATI). There have been two distinct phases thus far. The first was designed to identify and resolve operational problems associated with the use of CATI. The second, which is ongoing, will measure differences in labor force estimates produced by the regular CPS methodology and the CATI procedures, and will measure differences in data quality between these two methodologies.

7. CPS Statistical Contacts

Individuals consulted on the statistical aspects of CPS are Messrs. Preston J. Waite (763–2672), Gary Shapiro (763–2674), Larry Cahoon (763–5855), and Paul Bettin (763–2651), of the Statistical Methods Division, Bureau of the Census. Messrs. Thomas Walsh (763–2776), Gregory Russell (763–2782), and Ms. Kathleen Creighton (763–2773), Demographic Surveys Division, Bureau of the Census, have responsibility for data collection and processing. Messrs. Thomas Plewes (523–1180) and John Bregger (523–1944), Bureau of Labor Statistics, are responsible for data analysis.

Attachment C—Source and Reliability of the August 1988 CPS Supplement on Health Insurance Coverage

Source of Data

The estimates for this survey come from the August 1988 Current Population Survey (CPS) and from supplementary questions to the CPS. The monthly CPS, conducted by the Bureau of the Census, deals mainly with labor force data for the civilian noninstitutional population. Census Bureau interviewers ask questions relating to labor force particiaption about each member in every sample household. In addition, in August 1988, the interviewers asked additional questions about health insurance coverage for persons 40 years old and older.

CPS Design. The CPS sample, selected from the 1980 Decennial Census, represents all 50 states and the District of Columbia. The Census Bureau continually updates the sample to reflect new construction. The sample households are in 729 sample areas which include 1973 counties and equivalent areas. About 56,100 occupied households were eligible for interview. For about 2,500 of these households, interviewers did not obtain interviews because they were unable to find the occupants at home after repeated calls or for some other reason.

CPS Estimation Procedure. The procedure to calculate estimates for this survey involves the inflation of the weighted sample results to independent estimates of the total civilian noninstitutional population of the United States by age, race, sex and Hispanic/non-Hispanic categories. These independent estimates are based on statistics from the decennial censuses of population; statistics on births, deaths,

immigration and emigration; and statistics on the size of the Armed Forces.

Supplement Estimation Procedure. In addition to the CPS estimation procedure, the health insurance coverage supplement requires two additional weighting steps. First, the weights for all interviewed households are adjusted to account for occupied sample households that responded to the CPS, but not to the supplement questionnaire. Second, ratio estimation brings labor force estimates from the supplement into agreement as closely as possible with the August labor force estimates from the basic CPS.

Reliability of the Estimates

Since CPS estimates come from a sample, they may differ somewhat from figures from a complete census using the same questionnaires, instructions, and enumerators. Two types of errors are possible in an estimate based on a sample survey, sampling and nonsampling. The accuracy of a survey result depends on both types. Exercise particular care in the interpretation of figures based on a relatively small number of cases or on small differences between estimates, because the full extent of the nonsampling error is unknown.

Nonsampling Variability. Nonsampling errors can be attributed to many sources, e.g., inability to obtain information about all cases in the sample, definitional difficulties, differences in the interpretation of questions, inability or unwillingness on the part of respondents to provide correct information, inability to recall information, errors made in data collection such as in recording or coding the data, errors made in processing the data, errors made in estimating values for mising data, and failure to represent all units with the sample (undercoverage).

CPS undercoverage results from missed housing units and missed persons within sample households. Overall undercoverage, compared to the level of the 1980 Decennial Census, is about 7 percent. CPS undecoverage varies with age, sex, and race. Generally, undercoverage is larger for males than for females and larger for Black and other races combined than for Whites. Ratio estimation to independent population controls, as described previously, partially corrects for the bias due to survey undercoverage. However, biases exist in the estimates to the extent that missed persons in missed households or missed persons in interviewed households have different characteristics from those of interviewed persons in the same age-sex-race-Hispanic group. Furthermore, the Census Bureau does not adjust the independent population controls for undecoverage in the 1980 census.

For additional information on nonsampling error including the possible impact on CPS data when known, refer to Statistical Policy Working Paper 3, *An Error Profile: Employment as Measured by the Current Population Survey*, Office of Federal Statistical Policy and Standards, U.S. Department of Commerce, 1978 and Technical Paper 40, *The Current Population Survey: Design and Methodology*, Bureau of the Census, U.S. Department of Commerce.

Sampling Variability. Sampling variability is variation that occurred by chance because a sample rather than the entire population was surveyed. The standard errors given in the following tables are measures of sampling variability.

Although standard errors are the accepted measure of sampling variability, these standard errors also include the effect of some nonsampling errors in responses and enumeration but do not meaure any systematic biases in the data. (Bias is the difference, averaged over all possible samples, between the estimate and the desired value.)

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Standard errors are used to determine the reliability of survey estimates and to evaluate the statistical validity of conclusions made about the data.

Confidence interval estimation and hypothesis testing are both procedures that use standard errors to test for statistical validity. The confidence interval is a range about the sample estimate constructed so that, if the survey were to be repeated a large number of times under the same general conditions, the confidence intervals would include the average result of all possible samples with a known probability. For example, if one were to construct an interval from 1.6 standard errors below the estimate to 1.6 standard errors above the estimate, about 90 percent of these intervals would include the average result of all possible samples. Although a particular interval computed for an actual estimate may not contain the average result, one can reason with 90 percent confidence that it does contain the average result.

Hypothesis testing is a procedure for distinguishing between population parameters using sample estimates. One common type of hypothesis is that population parameters are different.

Tests may be performed at various levels of significance, where the level of significance is the probability of concluding that the parameters are different when, in fact, they are the same. To conclude that two parameters are different at the 10 percent level of significance, for example, the absolute value of the difference must be greater than 1.6 times the standard error of the difference. Of course, sometimes this conclusion will be wrong. When the characteristics are, in fact, the same, there is a 10 percent chance of concluding that they are different. The Census Bureau uses as standard statistical testing criteria 90 percent confidence intervals and 10 percent significance level hypothesis tests. Consult standard statistical textbooks for alternative criteria.

Note When Using Small Estimates. Because of the large standard errors involved, there is little chance that summary measures (such as medians and percentage distributions) would reveal useful information when computed on a base smaller than 75,000.

Also, even a small amount of nonsampling error can distort a seemingly valid hypothesis test of a borderline difference. Exercise caution in the interpretation of such small differences.

Standard Errors and Their Use. To derive, at a moderate cost, standard errors that would apply to many estimates, a number of approximations were required. Generalized sets

of standard errors are provided for various types of characteristics in the tables. The sets of standard errors give an indication of the order of magnitude of the standard error of an estimate rather than the precise standard error. The figures presented in Tables A-2 thru A-4 are approximations to the standard errors of various estimates for persons. Use linear interpolation to obtain standard errors for intermediate values not shown in the tables.

Two parameters, a and b, are used to calculate standard errors for each type of characteristic. These parameters, shown in Table A-1, were used to calculate the standard errors in Tables A-2 thru A-4. They may also be used directly to calculate the standard errors for estimated numbers and percentages.

Standard Errors of Estimated Numbers. There are two methods for obtaining the approximate standard error, s_x, of an estimated number. The first method involves interpolation of the standard errors in Table A-2. The second method uses formula (1) from which the standard errors in Table A-2 were calculated. This formula gives more accurate standard errors than those found in Table A-1.

$$s_x = \sqrt{ax^2 + bx} \qquad (1)$$

Here x is the size of the estimate and a and b are the parameters in Table A-1 associated with the particular characteristic.

Illustration of the Computation of the Standard Error of an Estimated Number. Suppose of the Black population who were 40 years old or older in August of 1988, 6,780,000 were covered by insurance other than Medicaid. From Table A-1 the appropriate parameters are a = 0.000234 and b = 2,397. Using formula (1), the approximate standard error of an estimate of 6,780,000 is

$$s_x = \sqrt{0.000234\ (6{,}780{,}000)^2 + 2{,}397\ (6{,}780{,}000)}$$

$$= 164{,}000 \text{ (rounded to the nearest thousand).}$$

Alternatively, by linear interpolation in Table A-2, the standard error on 6,780,000 is 164,000.

Using the 164,000 estimate of standard error, the 90 percent confidence interval as shown by the data is from 6,518,000 to 7,042,000, i.e. 6,780,000 ± (1.6)(164,000). Therefore, a conclusion that the average estimate derived from all possible samples lies within a range computed in this way would be correct for roughly 90 percent of all possible samples.

Standard Errors of Estimated Percentages. The reliability of an estimated percentage, computed using sample data for both numerator and denominator, depends upon the size of the percentage and the size its base. Estimated percentages are relatively more reliable than the corresponding estimates of the numerators of the percentages, particularly if the percentages are 50 percent or more. When the numerator and denominator of the percentage are in different categories, use the factors or parameters from Table A-1 for the numerator.

One method of obtaining the approximate standard error, $s_{x,p}$, of an estimated percentage is by interpolation in Table A-3 and Table A-4.

An alternate method uses the following formula from which the standard errors in Table A-3 and Table A-4 were calculated. This formula will give more accurate standard errors than those in Table A-3 and Table A-4.

$$s_{x,p} = \sqrt{bp(100 - p)/x} \qquad (2)$$

Here x is the size of the population which is the base of the percentage, p is the percentage ($0 \leq p \leq 100$), and b is the parameter in Table A-1 associated with the particular type of characteristic in the numerator of the percentage.

Illustration of the Computation of the Standard Error of a Percentage. Suppose of the 10,997,000 Blacks who were 40 years old or older in August of 1988, 6,780,000 or 61.7 percent were covered by insurance other than Medicaid. From Table A-1, the appropriate b parameter is 2397. Using formula (2), the approximate standard error on 61.7 percent is

$$s_{x,p} = \sqrt{\frac{2,397}{10,997,000}(61.7)(38.3)} = 0.7$$

Alternately, by interpolation in Table A-3, the standard error on 61.7 percent is 0.7 percent. Therefore, the 90 percent confidence interval of the percentage of the Black population who were covered by insurance other than Medicaid is from 60.6 percent to 62.8 percent, i.e. $61.7 \pm (1.6)(0.7)$.

Standard Error of a Difference. For a difference between two sample estimates, the standard error is approximately equal to

$$s_{x-y} = \sqrt{s_x^2 + s_y^2} \qquad (3)$$

where s_x and s_y are the standard errors of the estimates x and y. The estimates can be of numbers, percentages, ratios, etc. This will represent the actual standard error quite accurately for the difference between two estimates of the same characteristic in two different areas or for the

difference between separate and uncorrelated characteristics in the same area. If, however, there is a high positive (negative) correlation between the two characteristics, the formula will overestimate (underestimate) the true standard error.

Illustration of the Computation of the Standard Error of a Difference. Suppose that of the 10,997,000 Blacks who were 40 years old or older in August of 1988, 6,780,000 or 61.7 percent were covered by insurance other than Medicaid, and of the 79,326,000 people who are non-Black and 40 years old or older, 66,558,000 or 83.9 percent were covered by insurance other than Medicaid. Using formula (2), the standard error on 61.7 percent is 0.7 percent. Similarly, the standard error on 83.9 percent is 0.2 percent. The apparent difference between 61.7 and 83.9 percent is 22.2 percent. Using formula (3), the standard on the estimated difference of 22.2 percent is approximately

$$s_{x-y} = \sqrt{0.7^2 + 0.2^2} = 0.7$$

This means that the 90 percent confidence interval around the difference is from 21.1 to 23.3, i.e. $22.2 \pm (1.6)(0.7)$. Since this interval does not include zero, we can conclude with 90 percent confidence that the percentage of the non-Black population who were 40 years old or older in August of 1988 that were covered by insurance other than Medicaid is greater than that of the Black population.

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TABLE A–1.—PARAMETERS FOR CALCULATING STANDARD ERRORS OF ESTIMATED NUMBERS AND PERCENTAGES FOR HEALTH INSURANCE COVERAGE

Characteristic	a	b
Total or White	0.000024	2,217
Black	000234	2,397
Hispanic Origin	000234	2,397

TABLE A–2.—STANDARD ERRORS OF ESTIMATED NUMBERS FOR HEALTH INSURANCE COVERAGE

[Number in thousands]

Size of estimate	Standard error	
	Total or white	Black or hispanic orgin
10	5	5
25	7	8
50	11	11
100	15	16
250	24	25
500	33	35
1,000	47	51
2,500	75	86
5,000	108	134
7,500	134	176

TABLE A–2.—STANDARD ERRORS OF ESTIMATED NUMBERS FOR HEALTH INSURANCE COVERAGE—Continued

[Number in thousands]

Size of estimate	Standard error	
	Total or white	Black or hispanic orgin
10,000	157	218
15,000	197	298
20,000	232	(X)
30,000	297	(X)
40,000	356	(X)
50,000	413	(X)
70,000	522	(X)
100,000	679	(X)

(X) Not Applicable.

TABLE A–3.—STANDARD ERRORS OF ESTIMATED PERCENTAGES FOR HEALTH INSURANCE COVERAGE

[Total or white]

Base of estimated percentage (thousands)	Estimated percentage						
	1 or 99	2 or 98	5 or 95	10 or 90	20 or 80	25 or 75	50
75	1.7	2.4	3.7	5.2	6.9	7.4	8.6
100	1.5	2.1	3.2	4.5	6.0	6.4	7.4
250	.9	1.3	2.1	2.8	3.8	4.1	4.7
500	.7	.9	1.5	2.0	2.7	2.9	3.3
1,000	.5	.7	1.0	1.4	1.9	2.0	2.4
2,500	.3	.4	.6	.9	1.2	1.3	1.5
5,000	.2	.3	.5	.6	.8	.9	1.1
7,500	.2	.2	.4	.5	.7	.7	.9
10,000	.1	.2	.3	.4	.6	.6	.7
25,000	.09	.1	.2	.3	.4	.4	.5
50,000	.07	.09	.1	.2	.3	.3	.3
100,000	.05	.07	.1	.1	.2	.2	.2

TABLE A–4.—STANDARD ERRORS OF ESTIMATED PERCENTAGES FOR HEALTH INSURANCE COVERAGE

[Black and Hispanic origin]

Base of estimated percentage (thousands)	Estimated percentage						
	1 or 99	2 or 98	5 or 95	10 or 90	20 or 80	25 or 75	50
75	1.8	2.5	3.9	5.4	7.2	7.7	8.9
100	1.5	2.2	3.4	4.6	6.2	6.7	7.7
250	1.0	1.4	2.1	2.9	3.9	4.2	4.9
500	.7	1.0	1.5	2.1	2.8	3.0	3.5
1,000	.5	.7	1.1	1.5	2.0	2.1	2.4
2,500	.3	.4	.7	.9	1.2	1.3	1.5
5,000	.2	.3	.5	.7	.9	.9	1.1
7,500	.2	.2	.4	.5	.7	.8	.9
10,000	.2	.2	.3	.5	.6	.7	.8
15,000	.1	.2	.3	.4	.5	.5	.6

[FR Doc. 89–18365 Filed 8–7–89; 8:45 am]
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Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later that August 18, 1989.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to

the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 18, 1989.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 31st Day of July 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/Workers/Firm)	Location	Date Received	Date of Petition	Petition Number	Articles Produced
American Stratigraphic Co. (Workers)	Denver, CO	7/31/89	7/5/89	23,196	Oil & Gas.
BPS Industries (Workers)	New York, NY	7/31/89	7/14/89	23,197	Ladies' Jackets & Coats.
Baker Hughes Vetco (Workers)	Casper, WY	7/31/89	7/10/89	23,198	Oil & Gas.
Beatreme Foods, Inc. (Workers)	Beloit, WI	7/31/89	7/13/89	23,199	Foods.
C.N. Burman, Co. (Company)	Paterson, NJ	7/31/89	7/8/89	23,200	Lamps & Lighting Fixtures.
Cherco Compressors, Inc. (Company)	Longview, TX	7/31/89	7/11/89	23,201	Gas Compressors.
Control Data Corp., Grey Fox	St. Paul, MN	7/31/89	7/10/89	23,202	Integrated Circuits.
Crane Plumbing, Inc. (USA)	Alliance, OH	7/31/89	7/14/89	23,203	Plumbing Fixtures.
Depoister Drilling Co., Inc. (Workers)	Effingham, IL	7/31/89	6/26/89	23,204	Oil & Gas.
Murphy/Henenssee	Owensboro, KY	7/31/89	5/1/89	23,205	Typewriters, Etc.
Newman Crosby Steel, Inc. (USWA)	Pawtucket, RI	7/31/89	7/11/89	23,206	Steel.
Okonite Corp. (URW/IAM)	Passaic, NJ	7/31/89	7/13/89	23,207	Wire and Cable.
Robert B. Britton Oil Properties (Workers).	Olney, IL	7/31/89	7/12/89	23,208	Oil & Gas.
S&J Operating Co. (Workers)	Wichita Falls, TX	7/31/89	7/12/89	23,209	Oil & Gas.
Shadyside Stamping Corp. (Company)	Shadyside, OH	7/31/89	7/13/89	23,210	Sheet Metal Stamping.
Wrangler (Workers)	Tishomingo, MI	7/31/89	7/14/89	23,211	Jeans.

[FR Doc. 89-18503 Filed 8-7-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-22,630]

Imprimis Technology, Inc., Bloomington, MN; Negative Determination Regarding Application for Reconsideration

A former worker requested administrative reconsideration of the Department's negative determination on the subject petition for trade adjustment assistance. The initial petition was filed by workers on behalf of workers at Thin Film Head Machining Department at Imprimis Technology, Inc., Bloomington, Minnesota. The denial notice was signed on May 12, 1989 and published in the **Federal Register** on June 23, 1989 (54 FR 26444).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The workers at Bloomington produce disc drives and their components. The Department's negative determination did not address the issue of the components for disc drives.

The former worker is appealing the Department's negative determination on the basis that the Thin Film Head Machining Department is an appropriate subdivision at Bloomington. It is also stated that the opening of a Malaysian thin film head plant in October, 1988 and an agreement with China to assemble and test thin film heads was the basis for worker applications.

Investigation findings show that thin film heads were not marketed as a single product but were incorporated into the production of the new Sabre drive. Thin film head production at Bloomington increased in quantity and value in 1988 compared to 1987 and in 1989 compared to 1988. Investigation findings also show that the Malaysian thin film head production was primarily for the Oriental market. The Bloomington plant did not import thin film heads during the applicable period of the investigation.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, August 1, 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-18504 Filed 8-7-89; 8:45 am]

BILLING CODE 4510-30-M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 89-60; Exemption Application No. D-7947 et al.]

Grant of Individual Exemptions; Advest Group, Inc. Incentive Savings Plan, 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 be 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.

Advest Group, Inc. Incentive Savings Plan (the Plan) Located in Hartford, CT

[Prohibited Transaction Exemption 89–60; Exemption Application No. D–7947]

Exemption

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 the proposed purchase or sale of zero-coupon obligations based on Treasury securities (STRIPS)[1] between individually-directed accounts in the Plan and Advest, Inc. (AI), the trustee, Plan administrator and sponsor of the Plan, provided the following conditions are met: (a) the purchase or sale of the STRIPS will be on terms at least as favorable as those offered in the ordinary course of business to unrelated customers of AI; (b) purchases or sales will be made only upon the written direction of a Plan participant; and (c) purchases or sales directed by a participant will be only for the participant's individual account.

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 June 14, 1989 at 54 FR 25363.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Dalton Foundries, Inc. Employee Stock Ownership Plan (the Plan) Located in Fort Wayne, Indiana

[Prohibited Transaction Exemption 89–61; Exemption Application No. D–7757]

Exemption

The restrictions of section 406(a) and 406(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 (D) of the Code, shall not apply to the sale for cash by the Plan of certain units in a limited investment partnership (the Partnership Units) to the Dalton Foundries, Inc. Pension Plan (the Pension Plan), a party in interest with respect to the Plan by reason of the Plan's ownership of more than 50 percent of Dalton Foundries, Inc., sponsor of the Pension Plan, provided that the price paid is the fair market value of the Partnership Units on the date of sale.

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 June 14, 1989 at 54 FR 25360.

Written Comment: The Department received one written comment regarding the notice of proposed exemption in which the commentator expressed approval of the proposed exemption.

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

[Prohibited Transaction Exemption 89–62; Exemption Application No. D–7865]

Exemption

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 from Marvin H. Anderson Construction 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.[2]

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 June 22, 1989 at 54 FR 26272.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

International Chemical Workers Union Employees Retirement Plan (the Plan) Located in Akron, Ohio

[Prohibited Transaction Exemption 89–63; Exemption Application No. D–7733]

Exemption

The restrictions of sections 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 loan of $500,000 (the Loan) by the Plan to the International Chemical Workers Union (ICWU), the Plan sponsor, and to the ICWU Building Corporation (ICWUBC), a non-profit corporation wholly owned by ICWU, under the terms and conditions described in the notice of proposed exemption, provided that such terms and conditions are not less favorable to the Plan than those obtainable by the Plan in an arm's-length transaction with an unrelated party.

Written comment: The Department received one comment from a participant of the Plan, in which the participant questioned what would happen to the Plan if the ICWU and ICWUBC defaulted on the Loan. The applicant responded that the Loan is secured by a first mortgage on real property appraised at $3,500,000 which is greatly in excess of the amount of the Loan. The applicant represents that the real property adequately secures the Loan. In addition, the applicant notes that National Associates, Inc., in its capacity as independent fiduciary of the Plan, has been granted full authority to take whatever action is necessary, including foreclosure of the real estate, in order to enforce the Loan obligation.

[1] The STRIPS program was announced by the Department of the Treasury on February 15, 1985, to facilitate Separate Trading of Registered Interest and Principal Securities.

[2] Because the IRA meets the conditions described in 29 CFR 2510.3–2(d), there is no jurisdiction under Title I of the Act. However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

After consideration of the entire record, the Department has determined to grant the exemption.

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 May 24, 1989 at 54 FR 22501.

FOR FURTHER INFORMATION CONTACT: Joseph L. Roberts III of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Mark K. Kim, P.A. Restated Retirement Income Plan and Trust and Mark K. Kim. P.A. Restated Money Purchase Pension Plan and Trust (MP Plan; Collectively, the Plans) Located in Excelsior, Minnesota

[Prohibited Transaction Exemption 89–64; Exemption Application Nos. D–7531 and D–7532]

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 to the MP Plan of up to 720 acres of real property (the Acreage) by the Kim Farms Partnership (the Partnership), a party in interest with respect to the MP Plan; provided that the terms and conditions of the transaction are no less favorable to the MP Plan than those obtainable 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 (the Notice) published on January 19, 1989 at 54 FR 2241.

Written comments. The Department received one comment from the applicant and no requests for a hearing. The applicant initially requested exemptive relief for the Plans' purchase of 920 acres of farm land (the Property) from the Partnership. Ownership of the Property was to be allocated to each Plan in direct proportion to the amount of each Plan's assets, provided that neither plan expend more than 25 percent of its assets to purchase the Property.

The applicant has requested the following modifications to the original exemption request as published in the Notice: (1) The exemption be limited solely to the MP Plan; and (2) the MP Plan be allowed to purchase for a cash price of $246,400 for up to only 720 acres of the Property from the Partnership, provided the purchase price does not exceed 25% of the applicant's separate account therein. The purchase price for the acreage is based on an appraisal performed on May 5, 1989 by Mr. Jack E. Maxwell, SRPA, of Maxwell Appraisal Company.

After consideration of the entire record, including the fact that only the applicant's assets in the MP Plan will be affected by the proposed transaction, the Department has determined to grant the exemption subject to the above modifications.

FOR FURTHER INFORMATION CONTACT: Mrs. B.S. Scott of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Joseph K. Newsom, M.D., P.A. Money Purchase Pension Plan and Trust (the Plan) Located in Cheraw, South Carolina

[Prohibited Transaction Exemption 89–65; Exemption Application No. D–7844]

Exemption

The restrictions of sections 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting for 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 sale of a parcel of real property (the Property) from the Plan to Joseph K. Newsom, a party in interest with respect to the Plan, provided the Plan receives no less than the greater of $203,000 or fair market value for the Property at the time of sale.

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 18045.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Pan American World Airways, Inc. Cooperative Retirement Income Plan; Pan American World Airways, Inc. Defined Benefit Plan for Flight Engineers; Pan American World Airways, Inc. Non-Contract Employees' Pension Plan; Pan American World Airways, Inc. Mechanical Stores and Related Employees' Pension Plan; and Pan American World Airways, Inc. Clerical, Office, and Station Employees' Pension Plan (collectively, the Plans) Located in New York, New York

[Prohibited Transaction Exemption 89–66; Exemption Application Nos. D–7433 and D–7444 through D–7447]

Exemption

The restrictions of section 406(a) and 406(b) (1) and (b)(2), and 407(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 (E) of the Code, shall not apply, to: (1) The purchase by the Plans from Pan American World Airways, Inc. (Airways) of a portion of a leasehold interest (the Leasehold) in the "Worldport" airline passenger terminal (the Terminal) and the land underlying the Terminal located at John F. Kennedy International Airport (JFK); (2) the contribution in kind to the Plans by Airways of the remaining balance of the interest in the Leasehold after reduction for that portion of the Leasehold sold to the Plans by Airways; and (3) the sublease (the Sublease) of the Leasehold by the Plans to Airways for the duration of the remaining term of the Leasehold at a monthly rental rate; provided that the terms of the transactions are not less favorable to the Plans than those negotiated at arm's length in similar circumstances between unrelated third parties; and provided further that an independent fiduciary, among other things, reviews, monitors, and approves the transactions.

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 January 9, 1989, at 54 FR 707 (the Notice of Pendency).

Procedural Background and Comments

In the Notice of Pendency, the Department invited interested persons to submit written comments and any requests for a hearing on the exemption within forty-five (45) days of the date of publication in the **Federal Register**. Airways represented that a written copy of the Notice of Pendency was mailed to all interested persons within fifteen (15) days after the publication of the proposed exemption in the Federal Register. The Department received 276 letters from interested persons commenting on the transactions. A number of the comments received by the Department supported adoption of the exemption. Other commentators opposed the exemption and raised questions and concerns regarding the proposed transactions. The specific concerns expressed related to, among other things: (a) The lack of diversification and liquidity of the assets of the Plans; (b) the valuation of the Leasehold; (c) the effect of the transactions on the Plans in the event that Airways files for bankruptcy; (d) the proposed sale by Airways of a portion of the Leasehold to the Plans in return for cash; and (e) the adequacy of

the proposed safeguards which are intended to protect the Plans' interests.

In addition to the above comments received from interested persons, Airways pointed out a number of technical corrections to the Notice of Pendency and changes in facts since its publication. The Department also received a letter from Bear Stearns Fiduciary Services, Inc. (Fiduciary Services), the independent fiduciary with respect to the Plans, clarifying certain representations which were attributed to Fiduciary Services in the Notice of Pendency. The attached Appendix delineates certain comments and clarifications received from Airways and Fiduciary Services. Their remaining comments, as well as all other comments received by the Department, are contained in the public record of the exemption applications.

In response to requests from interested persons that a hearing be held on the proposed exemption, the Department published a Notice of Hearing (54 FR 11307) on March 17, 1989. In this regard, Airways represented that no later than March 31, 1989, it provided notice to interested persons of the hearing. The hearing on the proposed exemption was held on May 1, and May 2, 1989, in Washington, DC. Those testifying at the hearing included Airways, Fiduciary Services, current and former employees from Certified Engineering and Testing Company, representatives from four international unions and several local unions, two associations of retirees, and a number of individuals.[3]

Hearing Testimony

At the hearing, representatives of Airways testified, among other things, that the transactions will create a source of cash income for the Plans at a high rate of return. In addition, the unfunded benefit liability for the Plans is projected to be lower throughout the term of the Leasehold if the transactions are completed. Airways' representatives also stated that the magnitude of the required minimum funding obligation for the plan years 1986 and 1988 exceeds its current cash balances and that absent the granting of the exemption Airways would be unable to make the required cash contributions for either of those years.[4]

Fiduciary Services testified that its approval of the transactions was based, in part, upon the pre-funding element of approximately $53 million, as of May 1, 1989, the date of the hearing, that the Plans will receive sooner than if the transactions were not consummated. In addition, Fiduciary Services stated that the transactions are protective of the rights of the Plans' participants and beneficiaries because: (a) The Sublease is a triple net lease under which all costs of care and maintenance, repair, taxes, insurance, and rent will be borne by the sublessee, Airways; (b) the transactions have been approved and will be effected and monitored by an independent trustee, Mellon Bank, and by Fiduciary Services, acting on behalf of the Plans, as independent fiduciary; (c) the Leasehold has been valued, as of June 15, 1989, at $167.9 million by an independent appraiser using all three major valuation techniques; and (d) such appraisal has been reviewed and analyzed by Fiduciary Services.

Further, Fiduciary Services represented that one of its tasks as fiduciary would be a determination at the time of closing on the transactions of an appropriate discount rate for valuing the Leasehold and for arriving at a base monthly rental. Such a discount rate would represent the rate of return to the Plans and would be composed of the applicable risk-free rate and a premium above that rate to compensate the Plans for, among other things: (a) The risk of a possible determination by a bankruptcy court, in the event of the failure of Airways, that the transactions are deemed to be a secured financing; (b) the risk associated with Airways' financial condition; (c) possible lost or delayed revenues; and (d) the reduced marketability and diversification of the assets of the Plans. As of the date of the hearing and assuming a closing of June 15, 1989, Fiduciary Services represented that the appropriate discount rate for the transactions was 14.5%. This discount rate represented a combination of the risk-free rate of 9% (i.e. the rate on government bonds of similar maturity to the Leasehold), and a premium to the Plans of 5.5%.[5] The discount rate used for valuing the Leasehold and for arriving at a base monthly rental will not fluctuate after the transaction closes, but will remain fixed for the entire remaining term.

Fiduciary Services also stated that the rate premium, the cash flow pattern of the investment, the ability to re-let in the event of an Airways' default, the ongoing involvement of an independent fiduciary, and the risk to the Plans if the transactions were not effected, were all taken into consideration in its analysis. In summary, Fiduciary Services' conclusion was that the transactions are in the interest of the Plans and their participants and beneficiaries, protective of the rights of the Plans, and administratively feasible.

On June 20, 1989, the Department requested information from the Port Authority of New York and New Jersey (the Port Authority) regarding the Port Authority's role with respect to the transactions, the impact of the JFK 2000 Redevelopment Project on the Leasehold, and the Port Authority's views regarding the future viability of the Leasehold. In a letter to the Department, dated June 27, 1989, a representative of the Port Authority indicated that the Port Authority's actions involving any leasehold interest in the airport, including actions taken with respect to the Leasehold, would be guided by the Port Authority's responsibility to act in the public interest in the management of a very important transportation resource. The Port Authority also noted that in view of current demands for space at JFK by airlines, it would be in the public interest that the Port Authority make every effort to see that all existing facilities be utilized to the fullest extent possible. In addition, the Port Authority noted that it would do everything practical to assist Airways in remaining a viable provider of airline service.

Findings and Analysis

Central to the Department's deliberation regarding this exemption has been the uncertainty regarding the future of Airways and the affect on the Plans of an Airways failure if the transactions were consummated. As a result, the Department has carefully analyzed the exemption record, including the record of the public hearing, the written comments submitted by interested persons, and the analysis conducted by the independent fiduciary. In this regard, because of the concerns raised in written comments and at the hearing, Airways has agreed to an added condition of the grant of the exemption which was not contained in

[3] At the conclusion of the hearing, the Department announced that the record would remain open until the close of business on the tenth working day following the receipt from the applicant of the revised sublease agreement. The revised sublease agreement was received on May 17, 1989, and the ten day period closed on June 1, 1989.

[4] Airways informed the Department by letter, dated May 31, 1989, that the required minimum funding obligation for the 1987 plan year was met by a cash contribution of some $36.1 million and the reopening of the 1983 funding waiver in the amount of $29.5 million. This $65.6 million figure represents the maximum purchase price to be paid by the Plans for the proposed Leasehold interest.

[5] By letter dated July 27, 1989, Fiduciary Services is of the opinion that, assuming the transactions close in the near future, a premium of less than 5.5% would not be fair and reasonable.

the Notice of Pendency. Under this new condition, Airways, throughout the term of the Leasehold, would pay rent two months in advance such that in any month the Plans would be in receipt of the rent for the current month, plus the present value of the rent for the next succeeding two months.[6] The Department believes that such a rental advance will, in addition to the proposed safeguards and conditions already in place, serve as an additional protection of the financial interests of the Plans.

Finally, the Department has, in transactions of this nature, placed emphasis on the need for an independent fiduciary and on such independent fiduciary's considered and objective evaluation of the proposed transactions. In its deliberations, including its analysis of all aspects of risk associated with the transactions, Fiduciary Services has consistently represented for the record that the proposed transactions are in the interest of the Plans.

Accordingly, after careful consideration of the exemption applications, the record of the public hearing, the comments submitted by interested persons, and a review of the analysis of the transactions by Fiduciary Services, the Department has decided to grant the proposed exemption.

The complete application files, including all supplemental submissions received by the Department, were made available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N–5507, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Appendix

The following represent certain comments and clarifications submitted to the Department by Airways and Fiduciary Services subsequent to the publication of the Notice of Pendency:

(1) The entire Leasehold, not just the Terminal, will be the subject of the Sublease between Airways and the Plans. The remaining balance of the interest in the Leasehold after reduction for that portion of the Leasehold sold to the Plans, rather than the value of the Leasehold, will be contributed in kind to the Plans;

(2) The security interest which the Pension Benefit Guaranty Corporation held on behalf of the Plans in the stock of Pan Am World Services, Inc., was released on May 31, 1989, to permit the sale of that stock to an unrelated purchaser. Substitute security interests were granted in certain aircraft and jet engines owned by Airways and the stock of Pan Am Express, Inc., a wholly owned subsidiary of Airways' parent, which together have a value in excess of the unamortized balance of the 1986 plan year funding waiver;

(3) To the extent the value of the Leasehold exceeds Airways' 1986 and 1987 plan year funding obligations, any overage will either be contributed for the 1988 plan year due by September 15, 1989, or applied first to quarterly installments of the 1989 plan year with any balance then applied in satisfaction of the 1988 plan year funding obligation;

(4) At the closing on the transactions, the Port Authority will not execute the Assignment of the Leasehold, as that document evidences a transaction between Airways and the Plans. The Port Authority will, instead, manifest its approval of the transactions by executing the Acknowledgment and Consent to Assignment and Sublease (the Consent);

(5) The books and records associated with the interests of the Plans in the Leasehold and the income stream flowing therefrom will be maintained by the trustee of the Plans;

(6) Under the Use or Lose Provisions of the Consent, Airways or its successor may be required to enter into a sub-sublease, but it is the Port Authority that has the obligation to find sub-subtenants for the Leasehold; and

(7) Fiduciary Services submits that applicable law is not definitive in certain respects as to the requirements for properly recording the transactional documents, however, it will take all steps which, based on extensive legal analysis, are deemed reasonable to properly record such documents in accordance with state and local law.

All comments and corrections submitted to the Department by Airways and Fiduciary Services are included as part of the public record of the exemption applications, which is available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N–5507, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department telephone (202) 523–8883. (This is not a toll-free number.)

[6] Fiduciary Services, as independent fiduciary, is responsible for setting the appropriate discount rate to reflect the one-month and two-month prepayments of fixed dollars obligations. In this regard, Fiduciary Services has determined to use as the discount rate for calculating the present value of each advance rental payment the coupon equivalent on 13-week treasury bills, as established at the most recent applicable auction, as determined and re-adjusted on a quarterly basis.

Pennfield Precision, Inc., Profit Sharing Plan (the Plan) Located in Sellersville, PA

[Prohibited Transaction Exemption 89–67; Exemption Application No. D–7917]

Exemption

The restrictions of sections 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 sale by the Plan of certain unimproved real property (the Property), for the total cash consideration of $70,000, to the John F. Matczak and Carl F. Tate General Partnership (the Partnership), a party in interest with respect to the Plan, provided the amount paid by the Partnership for the Property is not less than fair market value at the time transaction is consummated.

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 18049.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Service Employees Retirement and Pension Fund, Local 32E, AFL–CIO (the Plan) Located in New York, New York

[Prohibited Transaction Exemption 89–68; Exemption Application No. D–7849]

Exemption

The restrictions of sections 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 to the N.Y.C. Building Maintenance Institute, Inc.—Bronx Center (BMI) of a school building (the Building) for $500,000 in cash, and the proposed sale of an adjacent parking lot (the Parking Lot) by the Plan to BMI for $56,685.67 in cash, provided such amounts are not less than the fair market values of the Building and the Parking Lot on the date of the sales.

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 May 24, 1989 at 54 FR 22501.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department,

telephone (202) 523-8881. (This is not a toll-free number.)

Southern California Floor Covering Pension Trust Fund (the Plan) Located in Pasadena, California

[Prohibited Transaction Exemption 89-69; Exemption Application No. D-7738]

Exemption

The restrictions of sections 406(a) and 406(b) (1) and (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 sale of a parcel of improved real property (the Property) by the Plan to Sanwa Bank California, a party in interest with respect to the Plan, provided the Plan recieves the greater of $660,000 or the fair market value for the Property at the time of sale.

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 20, 1989, at 54 FR 16021.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 523-8883. (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 3rd day of August, 1989.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 89-18522 Filed 8-7-89; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-7931] et al.

Proposed Exemptions; Westchester Teamsters Pension Fund, 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 person 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-5507, 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.

Westchester Teamsters Pension Fund (the Plan) Located in Elmsford, New York

[Application No. D-7931]

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) and 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 (1) the proposed purchase by the Plan from Local 456 Holding Corp. (the Corp.), a corporation owned by members of Teamsters and Chauffeurs Local 456 (the Local), of approximately three acres of undeveloped land (the Land), provided the purchase price is not more than the fair market value of the Land on the date of the purchase, and (2) the extension of credit by the

Corp. to the Plan for up to 90 days after the closing date of the purchase pursuant to a non-interest bearing note in the amount of half of the purchase price, provided the terms of the transaction are at least as favorable to the Plan as those the Plan could obtain in a similar transaction with an unrelated party.

Summary of Facts and Representations

1. The Plan is a multiemployer defined-benefit pension plan with approximately 1700 active and 800 retired participants and total assets of approximately $64 million as of December 31, 1988. The Plan was established and has operated under a series of collective bargaining agreements negotiated between the Local, which is affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and the Construction Industy Council together with its component associations (the Association). The Association is composed primarily of road and heavy construction companies located and operating in Westchester and Putnam Counties, New York. Employees of other companies having collective bargaining agreements with the Local requiring contributions to the Plan are also covered by the Plan. The Local represents primarily drivers, warehousemen, and servicemen of contributing employers.

2. The Plan has eight trustees: four were appointed by the Local; three, by the Association; and one, by the Grand Union Company, a contributing employer. The Plan's assets are under the management of a professional money manager and the Connecticut General Life Insurance Company (CIGNA). The Plan's assets are invested in cash, corporate and government bonds, preferred and common stock of publicly held corporations, and a CIGNA group annuity contract providing a guaranteed interest rate and covering pensioners who participated in the Plan before it became self insured. The Plan has no real estate investment assets at the present time. It is represented that the Plan trustees have extensive background in real estate development in Westchester and Putnam Counties, New York, that they have determined that the Plan should diversify its assets and have, accordingly, authorized the investment of no more than 10% of the Plan's assets in real estate development.

3. The Corp. is a non-profit New York corporation owned by the members of the Local. It serves as the Local's property holding entity and is comprised of the members of the Local. Corp. officers are the same Local officers elected by the Local membership. The stock of the Corp. has no par value and is not issued. The membership of the Local manifests its control of the Corp. through the election of Corp. officers.

4. The firm of Howard Lieberman, Consulting Engineer, has agreed to serve as an independent fiduciary to the Plan with respect to the proposed transaction. Mr. Howard S. Lieberman (Mr. Lieberman) is a licensed professional engineeer in the States of New York, New Jersey, Connecticut, Massachusetts, and the District of Columbia. He represents that he has been engaged in the business of engineering since 1954, including, since 1959, private practice in civil and structural engineering with emphasis on matters relating to design and construction of buildings and subdivision improvements (roads, sewers, septic systems, storm drains, individual water systems, extension of public water supply) including preparation of design drawings, specifications, and budgets for new construction, alterations and additions, construction supervision, review of bids and payment requests, and building and construction inspections. He was named Engineer of the Year in 1987 by the National Society of Professional Engineers, and he served as president of the Westchester County chapter of that Society from 1984–5.

Mr. Lieberman states that he and his firm are not involved at present and have not been involved in the past with any individual or organization that is a party in interest to the Plan, including but not limited to the Corp., the Local, the Association, or any employer of Plan participants except for six employers (the Six Employers), namely, Conlin Supply Company, Village of Dobbs Ferry, Nelstad Materials, Village of Scarsdale, Vernon Hills Landscaping, and Yonkers Municipal Housing Authority. The applicant represents that three of the Six Employers, namely—Village of Dobbs Ferry, Village of Scarsdale, and Yonkers Municipal Housing Authority (collectively, the Municipal Employers), are municipal employers which are not parties in interest with respect to the Plan and that Mr. Lieberman's representation to the contrary is incorrect. The applicant explains that the Municipal Employers do employ members of the Local but that these members do not participate in the Plan; accordingly, the Municipal Employers do not contribute to the Plan but maintain their own employee pension plans. The other three of the Six Employers, namely—Conlin Supply Company, Nelstead Materials Corporation, and Vernon Hills Landscaping, contributed $4,353.60, $40,297.73, and $4,790.40, respectively, to the Plan for 1988, representing .1277%, 1.1823%, and .1405%, respectively, of the $3,408,386.94 contributed to the Plan by all employers of Plan participants for 1988. The applicant represents that none of the Six Employers have any interest in purchasing or leasing any of the buildings or building space to be constructed on the Land (see item 8, below).

5. The Land, a three-acre parcel of unimproved land, is located behind the Local building at 160 S. Central Avenue, Elmsford, New York, on Route 9A and is zoned for commercial use. The Plan trustees have commissioned an appraisal of the Land by the Albert Appraisal Company Inc., and independent company with no relationship to the Plan or any party in interest to the Plan, according to the applicant. The appraisers, Eugene Albert, MAI, SREA, CMI, and William Ceccolini, Staff Appraiser, certify that they have no present or prospective interest in the Land and no personal interest or bias with respect to the parties involved, and that their analyses, opinions, and conclusions regarding the appraisal of the Land were developed and reported in conformity with the requirements of the Code of Professional Ethics and the Standards of Professional Practice of the American Institute of Real Estate Appraisers. Mr. Albert, a member of said Institute, has over 35 years experience as a real estate analyst, appraiser, and consultant and, from 1972–82, served as Adjunct Associate Professor of Real Estate at Pace University. Mr. Ceccolini, a licensed real estate broker in New York State, a member of the New York State Society of Real Estate Appraisers, and a candidate for membership in the American Institute of Real Estate Appraisers, has over 15 years experience in the real estate business, including commercial real estate appraising in Westchester County, New York.

6. The above-mentioned appraisal concludes that the market value of the land was $600,000 as of September 1, 1988, and states that even though there is an oversupply of available office space in Westchester County, from an investor's standpoint the Land could either be sold or used to construct additional office rental space. The appraised value of the Land is less than 1% of the Plan's total assets.

7. The Plan trustees wish to purchase the Land from the Corp. for a price not to exceed its fair market value as of the purchase date, said value to be determined by Mr. Lieberman. The Plan will pay the purchase price in cash: half on the closing date of the purchase and half pursuant to a non-interest bearing note payable to the Corp. within 90 days after the closing date. The Corp. will pay all closing costs and fees related to the purchase and will insure a full fee simple title to the Plan as free and clear of encumbrances.

8. Subsequent to the purchase, the Plan trustees plan to develop a series of three separate, but connecting, commercial buildings of approximately 20,000 square feet, each consisting of one floor of warehousing space and three above floors of commercial office space. The applicant states that development plans have not been finalized and will be subject to competitive bidding. Similarly, final plans have not been made regarding rental and sale of the buildings to be constructed. The applicant states that parties in interest to the Plan will not be excluded either from bidding on the development or from renting and purchasing the buildings to be constructed. subject to competitive pricing.[1] However, the applicant represents that the Local has no interest in purchasing or leasing any of the proposed buildings or building space as the Local already maintains an office building. Similarly, as mentioned above (see item 4), none of the Six Employers has any interest in purchasing or leasing any of such buildings or building space.

9. Mr. Lieberman represents that he has reviewed the above-mentioned appraisal by the Albert Appraisal Company, that he has visited the Land, and that he believes said appraisal was carefully prepared and is based on generally accepted procedures. He notes that public utilities, including water, sewer, gas, and electric are readily available to the Land, that there are no indications of any difficult or unusual drainage problems, and that the Land is located well above the elevation of the Saw Mill River and is not within the flood hazard area, as defined by the U.S. Department of Housing and Urban Development maps. Mr. Lieberman opines that the highest and best use of the Land is as the site of an office building. He advises that the zoning regulations of the Village of Elmsford permit construction of a 65,000 square foot building on a three-acre site, resulting in a land value of $9.25 per square foot of building floor area.

10. Mr. Lieberman's professional opinion is that the land should be developed utilizing three buildings each containing four stories for a total of approximately 65,000 square feet. He suggests that the buildings be constructed one at a time so that the additional office space can be absorbed into the market and so as to minimize the disturbance and inconvenience at the site. He estimates the construction cost of this development at $6 million, including approximately $2.5 million for the first building and utilities and site work serving all three buildings. Mr. Lieberman states further that based on his review of the above-mentioned appraisal, inspection of the Land, and familiarity with current conditions in Westchester County, it is his professional opinion that the construction of three additional office buildings on the Land is viable and would be profitable for the owner.

11. For the reasons stated in the two preceding paragraphs, Mr. Lieberman states that he believes that the proposed transaction is in the best interests of the Plan and its participants and beneficiaries since it will lead to a broadening of the Plan's investment base in real estate, which has proven very successul in Westchester County, New York. He represents that the terms of the proposed transaction are no different than those of similar transactions in Westchester County between unrelated parties.

2. Mr. Lieberman explains that before forming his opinion regarding the proposed transaction, he examined the Plan's overall investment portfolio, showing that the Plan's self-insured assets are wholly invested in cash, fixed income investments, and other securities. In undertaking this examination, he examined the Plan's annual report (Form 5500) for the year ending December 31, 1987, the Plan's asset statement for the year ending December 31, 1988, and the Plan's accountant's preliminary report of the Plan's financial statements for the year ending December 31, 1988. Mr. Lieberman states that he has reviewed the Plan's liquidity reports, examined the diversification of the Plan's assets in light of the proposed transaction, and has determined that the proposed transaction complies with the Plan's investment objectives and policies to diversify Plan investments so that up to 10% of the Plan's total assets are invested in real estate development.

13. Mr. Lieberman agrees to monitor the proposed transaction throughout its duration on behalf of the Plan and to take all appropriate actions necessary to safeguard the interests of the Plan and its participants and beneficiaries. The applicant has submitted the Plan trustees' agreement naming Mr. Lieberman as a fiduciary of the Plan and expressly empowering him to direct them regarding the proposed transaction, provided that such directions are consistent with the terms of the Plan and the conditions of the Act. Mr. Lieberman states that although he has limited experience with the Act, he has consulted with counsel experienced with the Act regarding the duties, responsibilities, and liability imposed by the Act on plan fiduciaries and that he understands and acknowledges such duties, responsibilities, and liabilities in acting as a fiduciary with respect to the Plan.

14. In summary, the applicant represents that the proposed transaction satisfies the exemption criteria set forth in section 408(a) of the Act because: (a) An indepenent fiduciary to the Plan, Mr. Lieberman, has determined that the proposed transaction is in the best interests of the Plan and its participants and beneficiaries; (b) said independent fiduciary will monitor the proposed transaction on behalf of the Plan and will take all appropriate actions necessary to safeguard the interests of the Plan and its participants and beneficiaries; (c) the purchase price will not exceed the Land's fair market value as of the purchase date, said value to be determined by Mr. Lieberman, the independent fiduciary; (d) Mr. Lieberman has determined that the terms of the proposed transaction are no different than those of similar transactions in Westchester County between unrelated parties; and (e) the proposed transaction will involve less than one percent of the Plan's total assets as of December 31, 1988.

FOR FURTHER INFORMATION CONTACT: Mrs. Miriam Freund, of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

[1] The proposed exemption provides no relief either for the development of the Land by any party in interest with respect to the Plan or for the rental or sale of the buildings to be constructed to any party in interest with respect to the Plan. Further, the Department is expressing no opinion herein as to the applicability of the exemptions provided under either section 408(b)(2) of the Act and section 4975(d)(2) of the Code to such development, or under Prohibited Transaction Exemptions 76-1 and 77-10 to such rental or sale. Similarly, the Department is expressing no opinion herein as to whether or not the proposed development of the Land or the proposed rental or sale of the buildings to be constructed thereon satisfies the fiduciary duties provided under section 404 of the Act.

Jen Productions, Inc. Restated Money Purchase Pension Plan and Trust Agreement (the Plan) Located in Nashville, Tennessee

[Application No. D–7943]

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 procedures 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 sale by the Plan of unimproved real property (Lot 45) to Edward James Norman (Mr. Norman) and Kimberly Norman (collectively, the Normans), disqualified persons with respect to the Plan, provided that the Plan receives the greater of $165,000 or the fair market value at the time of the sale.[2]

Summary of Facts and Representations

1. The Plan, established on September 1, 1979, is a restated money purchase plan. The Plan's sole participant is Mr. Norman. As of August 31, 1988, the Plan had $333,598 in assets. The current Trustees of the Plan are the Normans (the Trustees). The sponsor of the Plan is Jen Productions, Inc., a California corporation engaged in the business of producing records. Lot 45 is a vacant unimproved property measuring one acre located in Northumberland, Davidson County, Nashville, Tennessee. It was acquired by the Plan on January 9, 1987 for $155,000 for investment purposes from Northumberland Realty Co., an unrelated party. Since its acquisition by the Plan, Lot 45 has remained unimproved and vacant and it has not produced any income. At the time of the purchase, it was anticipated that Lot 45 could be sold at a future date for a substantial profit. The applicant represents that the area is developing very slowly with no anticipation of appreciation in the value of property for some time. The Trustees are thus seeking to invest Plan's assets in instruments with a higher return.

2. The applicant proposes to sell Lot 45 to the Normans. An appraisal, dated April 17, 1989, was prepared by William R. Manier III, an independent and qualified appraiser with the William R. Manier III and Associates, real estate appraisers and consultants (the Appraisal). The Appraisal uses the direct sales comparison approach and esitmates the value of the Lot 45 to be $165,000. Also, the applicant represents that the Normans own a lot that is adjacent to Lot 45. An update to the Appraisal was done by James F. Hagan, an appraiser with William R. Manier III and Associates (the Hagan update). The Hagan update concludes that Mr. Norman's ownership of an adjacent Lot 48 does not merit a premium on the fair market value of Lot 45. The Hagan update states that the current estimate of $165,000 remains the fair market value for Lot 45.

3. The applicant represents that the transaction will be a one-time cash sale. Furthermore, the Plan will bear no costs associated with the sale. The transaction will enable the Plan to acquire liquidity for reinvestment. The fair market value of Lot 45 has been determined by a qualified, independent appraiser. The applicant will pay the greater of $165,000 or the fair market value at the time of the sale.

4. 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 to the Plan will be $165,000 or the fair market value at the time of the sale, whichever is greater;

(C) The Plan will pay no costs associated with the sale;

(D) The sale will provide the Plan with more liquidity for reinvestment; and

(E) Mr. Norman is the sole participant of the Plan to be affected by the transaction, and he desires that the transaction be consummated.

Notice to interested persons: Because Mr. Norman is the sole participant in the Plan, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are done 30 days from the date of publication of this notice in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan at (202) 523–8194 of the Department. (This is not a toll-free number.)

Jon A. Harding, D.M.D., P.S., Employees' Amended and Restated Money Purchase Pension Plan and Trust (the Plan) Located in Spokane, Washington

[Exemption Application No. D–8030]

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 to the proposed sale for cash by the Plan of certain real property (the Real Property) to Helen M. Harding (Mrs. Harding), a party in interest with respect to the Plan, provided that the price paid be no less than the fair market value of the Real Property on the date of sale, as established by an independent and qualified appraiser of real estate.

Summary of Facts and Representations

1. The Plan is a money purchase pension plan sponsored by Jon A. Harding, D.M.D., P.S., which is engaged in the practice of dental medicine in Spokane, Washington. The trustee and administrator of the Plan is Jon A. Harding, D.M.D. (Dr. Harding). As of April 11, 1989 the Plan had five participants. As of October 31, 1988, the Plan had assets of $298,781.

2. In 1981 the Plan acquired the Real Property from unrelated parties for $17,500. The Real Property is a parcel of 1.8 acres of unimproved land on Alberta Lane in Spokane, Washington. The Plan acquired the Real Property in the hope of realizing an appreciation in the value of the Real Property.

3. Since 1981 the Real Property has remained unimproved. The Plan derives no current benefit from its ownership of the Real Property and moreover must pay property taxes on the Real Property. The applicant represents that the Spokane real estate market is depressed and that it would be difficult for the Plan to sell the Real Property at its appraised value in the near future.

4. On March 20, 1989, Kim Hemphill, ASREA, of Appraisals Unlimited, a real estate appraisal firm in Spokane, Washington, a qualified and independent appraiser, stated that the fair market value of the Real Property was $25,000.

5. Accordingly, the Plan proposes to sell the Real Property for cash at its fair market value, as established by a qualified and independent real estate appraiser, to Mrs. Harding, Dr. Harding's former wife, a party in

[2] Because Mr. Norman is the only participant in the Plan and the employer is wholly owned by Mr. Norman, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

interest with respect to the Plan.[3] The Plan will not incur any fees, taxes or transfer costs in connection with the sale of the Real Property. The applicant represents that the proposed sale of the Real Property to Mrs. Harding is unrelated to the divorce settlement between Dr. and Mrs. Harding.

6. In summary, the applicant represents that the proposed transaction will meet the statutory criteria of section 408(a) of the Act because: (a) The Real Property will be sold at its fair market value as of the date of sale as established by an independent and qualified appraiser; (b) the proposed sale represents a one-time transaction for cash, which can be readily verified; (c) the proposed sale will not involve the payment by the Plan of any fees, taxes or transfer costs; (d) the proposed sale will enable the Plan to realize a cash purchase price in the full amount of the current appraised value of the Real Property; and (e) the Plan trustee has determined that the proposed transaction would be in the best interests and protective of the Plan and its participants and beneficiaries.

FOR FURTHER INFORMATION CONTACT: Joseph L. Roberts III of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

A.C. Products Co. Defined Benefit Pension Plan (the Plan) Located in Wooster, Ohio

[Application No. D–8090]

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 sections 406(a) and 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 improved real property (the Property) to Wayne Mullet (Mr. Mullet), a party in interest with respect to the Plan; provided that the terms of the sale are not less favorable to the Plan than similar terms negotiated at arm's length between unrelated third parties; and provided further that the sales price is not less than the fair market value of the Property on the date of the sale.

Summary of Facts and Representations

1. The Plan is a defined benefit pension plan with eighteen (18) participants, as of June 1, 1989, the date the application was filed. The assets of the Plan totaled approximately $705,265 on October 31, 1988. It is represented that notice of intent to terminate the Plan was distributed to each participant of the Plan on November 10, 1988, and the Plan was terminated on January 9, 1989. The applications for approval of the termination and the proposed distribution of assets are currently being assembled for submission to the Internal Revenue Service and the Pension Benefit Guaranty Corporation.

2. Mr. Mullet serves as the trustee and administrator of the Plan and was the president of A.C. Products Co. (the Employer), the sponsor of the Plan. It is represented that Mr. Mullet owned 100 percent of the Employer either directly or through family attribution. On November 4, 1988, the Employer was liquidated through a sale of assets.

3. The Plan purchased the Property June 15, 1987, for $145,000 from Vernon M. and Ada Miller, unrelated parties with respect to the Plan. During the Plan's ownership the Property was leased to Levi D.L. Miller, also an unrelated party, for a rental amount of $4,000 annually. It is represented that rent for similar real estate in the same geographic area ranges from $40 to $60 per acre per year. The Property constitutes approximately 21 percent of the assets of the Plan.

4. The Property consists of an 82.82-acre farm, located at 5798 South Applecreek Road, Applecreek, East Union Township, Wayne County, Ohio. It is represented that Wayne County is predominately agricultural with many farms. The Property is described as irregular in shape and having frontage on the northeastern corner of Applecreek and Buss Roads. The Property includes, among other things, a farm house, consisting of 2,848 square feet and containing five bedrooms and two baths.

5. Mr. Mullet proposed to purchase the Property for the greater of $153,000 or the fair market value of the Property, as appraised by a qualified independent appraiser on the date of the sale. It is represented that the Plan will pay no expenses associated with the sale and that Mr. Mullet will pay for deed preparation, title expenses, auditors conveyance fee, recording of the deed, and any other expenses. Mr. Mullet states that neither the income generated from the Property as a working farm nor the potential appreciation in value are sufficient to make the Property a suitable investment for the Plan. In addition, Mr. Mullet represents that maintenance, costs, and taxes are depleting the assets of the Plan. By his purchasing the Property for cash, Mr. Mullet intends for the Plan to: (1) Avoid delay in locating a qualified buyer in the Wayne County area which has a slow sales activity; (2) avoid delay inherent in consummation of a sale contract which is conditioned on the buyer's securing financing; and (3) avoid unnecessary sales commissions and expenses. Further, Mr. Mullet argues that a cash sale will create a market for a non-liquid asset, increase proceeds available for distribution to all participants, and expedite the winding up of the Plan's affairs.

6. William J. Lemmon (Mr. W.J. Lemmon), MAI, with the assistance of Scott W. Lemmon (Mr. S.W. Lemmon), of William J. Lemmon and Associates, Inc., located in North Canton, Ohio, appraised the Property, as of April 13, 1989. Mr. W.J. Lemmon valued the 82.82 acres at $1,850 per acre for a total of $153,000. Mr. W.J. Lemmon did not employ the cost approach in reaching this valuation due to the age of the buildings on the Property and the difficulty in measuring the accrued depreciation. Mr. W.J. Lemmon represents that he is independent of any personal association or bias with respect to the parties involved and has no present or prospective interest in the Property. Mr. W.J. Lemmon's qualifications include 27 years experience in appraising residential, commercial, industrial, farm, and special purpose properties throughout Ohio and seven (7) other states. Mr. W.J. Lemmon is a member of the American Institute of Real Estate Appraisers, the Society of Real Estate Appraisers and the National Association of Realtors. Mr. S.W. Lemmon has two (2) years of experience appraising residential properties, has successfully completed two real estate appraisers courses, and is a candidate for RM designation from the American Institute of Real Estate Appraisers.

7. In summary, Mr. Mullett represents that the proposed transaction meets the statutory criteria for an exemption under section 408(a) of the Act because: (a) The sale of the Property will be a one time transaction for cash; (b) the Plan will incur no expenses on the sale; (c) the sales price is based on the fair market appraisal prepared by a qualified independent appraiser; and (d) participants will receive timely distribution of their benefits from the cash proceeds of the sale of the Property.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 523–8883 (This is not a toll-free number).

[3] The applicant represents that Mrs. Harding is a party in interest to the plan pursuant to section 3(14)(I) of the Act.

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 3rd day of August 1989.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 89-18523 Filed 8-7-89; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

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 (General Services to the Field Section) to the National Council on the Arts will be held on August 29, 1989, from 9:00 a.m.-10:00 p.m. and August 30, 1989, from 9:00 a.m.-6:00 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 August 30, 1989, from 4:00 p.m.-6:00 p.m. if time permits. The topic for discussion will be policy issues.

The remaining portion of this meeting on August 29, 1989, from 9:00 a.m.-10:00 p.m. and August 30, 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 of 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.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-18481 Filed 8-7-89; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Astronomical Sciences Subcommittee on Optical Infrared Astronomy Meeting

In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committe for Astronomical Sciences Subcommittee on Optional/Infrared Astronomy.

Date & Time: August 29 and 30, 1989, 9:00 a.m.-5:00 p.m.

Place: The Coeur d'Alene Hotel, Cabins 1-2-3, Coeur D'Alene, Idaho.

Type of Meeting: August 29 and 30, 1989, Open.

Contact Person: Dr. G. Wayne van Citters, Jr., Program Director, Astronomical Instrumentation and Development, Division of Astronomical Sciences, Room 618, National Science Foundation, Washington, DC 20550 (202/357-9793).

Summary Minutes: May be obtained from the contact person at the above address.

Purpose of Committee: To provide advice and recommendations concerning research programs, proposals, and projects in NSF-funded astronomy with the objective of achieving the highest quality forefront research for the funds allocted. To provide advice and recommendations concerning short-range and long-range plans in astronomy, including a recommendation of relative priorities.

August 29 and 30

Agenda: Discussion of the scientific areas that show the greatest promise with regard to new breakthroughs in discovery and understanding using ground-based optical/infrared astronomy techniques.

Discussion of activities and initiatives which are needed to address the scientific problems identified above.

Dated: August 3, 1989.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89-18484 Filed 8-7-89; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-335 and 50-389]

Florida Power and Light Co. (St. Lucie Plant, Units 1 and 2), Exemption

I.

Florida Power & Light Company (the licensee) is the holder of Facility Operating License No. DPR-67, issued March 1, 1976, which authorizes operation of the St. Lucie Plant, Unit 1, and Facility Operating License No. NPF-16, issued April 6, 1983, which authorizes operation of the St. Lucie Plant, Unit 2. These licenses provide, among other things, that the facilities are subject to all rules, regulations and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect. The facilities are pressurized water reactors located in St. Lucie County, Florida.

II.

Appendix A of 10 CFR Part 20 defines protection factors for respirators. Footnote d-2(c) of the appendix states, "No allowance is to be made for the use of sorbents against radioactive gases or vapors."

By their submittal dated February 3, 1988, Florida Power & Light Company (FPL) requested an exemption to 10 CFR Part 20, Appendix A, footnote d-2(c). The licensee submitted this request in accordance with 10 CFR Part 20.103(e). The exemption would allow the use of a radioiodine protection factor of 50 for Scott Aviation (SCOTT) 631-TEDA-H chin canisters to be used at the St. Lucie nuclear power plant.

Respiratory protection for radioiodine at St. Lucie has normally been provided by use of either an air-supplied or a self-contained breathing apparatus. The use of these appliances is cumbersome and contributes to worker fatigue and lost efficiency. The net result is increased person-rem exposure and a reduction in personnel safety margin. The use of the air-purifying respirators (utilizing the SCOTT 631-TEDA-H canister) can enhance worker comfort and allow greater mobility than the other appliances. FPL estimates that air-purifying respirators would enable a 25-50% reduction in the time required to conduct certain tasks requiring respiratory protection. This correlates to a 25-50% reduction in person-rem exposure for these tasks.

Criteria and background information used for the evaluation includes 10 CFR 20.103; 10 CFR 19.12; Regulatory Guide 8.15, "Acceptable Programs for Respiratory Protection"; Regulatory Guide 8.20, "Applications of Bioassay for I-125 and I-131"; NUREG/CR-3403, "Criteria and Test Methods for Certifying Air-Purifying Respirator Cartridges and Canisters Against Radioiodine"; and Regulatory Guide 8.8, "Information Relevant to Ensuring That Occupational Radiation Exposures at Nuclear Power Stations Will Be As Low As Is Reasonably Achievable."

In addition to the information provided in their February 3, 1988 application, FPL provided additional information on May 5, 1988, June 23, 1988, and May 4, 1989 in response to staff requests for additional information in a March 16, 1988 letter and in conference calls on October 4, 1988 and March 15, 1989. Clarifications of the FPL submittals were obtained in telephone discussions with FPL representatives on June 2 and June 7, 1989.

III.

Since a NIOSH/MSHA testing and certification schedule for sorbents for use for protection against radioiodine gases and vapors has not been developed, the NRC staff has evaluated the licensee's request and verified, as required by 10 CFR 20.103(e), that the licensee has demonstrated by testing, or by reliable test data and adequate quality assurance measures, that the material and performance characteristics of the SCOTT 631-TEDA-H canister can provide the proposed degree of protection (i.e., a protection factor of 50), under the anticipated conditions of use, for a maximum of 8 hours. The main considerations of the staff's technical evaluation were canister efficiency and service life, including the effects of temperature, poisons, relative humidity, challenge concentration, and breathing rates on canister efficiency and service life. The staff's programmatic evaluation considered quality control/quality assurance (QC/QA) measures employed to ensure canister performance, and radiation protection/ALARA measures, such as reduction of radioiodine levels using system cleanup, engineering controls, radiological surveillance, and radiological training.

The licensee has provided reliable test information which verifies that the sorbent canister selected (SCOTT 631-TEDA-H) will provide a protection factor of 50 for a period of 8 hours or more of continuous use, provided that the total challenge concentration of radioactive and non-radioactive iodine and other halogenated compounds does not exceed 1 ppm, and temperature does not exceed 120°F at 100% relative humidity. The data provided by SCOTT shows that use of the 631-TEDA-H canister in saturated air (100% relative humidity) at 120°F should provide a nominal 12 hour duration to a 1% methyl iodine penetration.

Testing has been conducted under acceptable conditions of pulsed flow, and under worst case conditions for those environmental factors affecting service life: temperature, relative humidity, and challenge concentration of CH_3I (methyl iodine), which is the most penetrating of the challenge forms. SCOTT data provided by the licensee indicates that the 631-TEDA-H canisters perform adequately under the accepted test conditions. These conditions, the criteria and test methods, are consistent with those recommended in NUREG/CR-3403 and are acceptable.

The licensee has provided commitments that the SCOTT canisters will meet standards for quality assurance and quality control that are recognized by NIOSH, compatible with NRC staff positions, and are, therefore, acceptable. This includes a commitment by SCOTT to establish an MIL-STD-414, Level II, 1% AQL (Acceptable Quality Limit) in a 10 ppm challenge concentration of CH_3I, 90% relative humidity, 120°F, 64 L/min pulsed flow, for a test duration of 8 hours for maximum penetrations equal to 1% of the challenge concentration. Test data provided by the licensee has demonstrated that performance (i.e., service life) of canisters at 100% relative humidity is acceptable.

Coupled with the use of a full facepiece with the capability of providing a minimum fit factor of 500, the protection factor of 50 is conservative under these conditions. Canister efficiency will be retained for the radioiodine gas or vapors of interest (CH_3I, I_2, HOI) for this time period (i.e., 8 hours). Additionally, the licensee has provided data which shows the breakthrough point to be well beyond 8 hours. To preclude aging, a maximum of 8 hours will be stipulated. This service life will be calculated from the time the canister is unsealed, including periods of non-use.

Canisters will be sealed at time of manufacture with an essentially hermetic seal which inhibits water vapor transmission through the seals. The canisters will be stored in air-conditioned rooms and will be discarded after the use period of 8 hours or less to prevent reuse. The shelf-life of the canisters, under the conditions of storage at St. Lucie, is estimated by the licensee to be 3 years.

Through usage restrictions, provided by a chemical control program, the licensee will preclude the unauthorized

and indiscriminate use of organic solvents and chemicals (such as paints, paint solvents, methyl alcohol, ethanol, isopropyl alcohol and acetone) which could cause aging, poisoning, or desorption of the sorbed radioiodines. The chemical controls will not prohibit the use of these organic solvent vapors and chemicals, but the protection factor will be reduced from a value of 50 to a value of 1 when the SCOTT canister is used in their presence. The licensee will modify their health physics and respiratory protection procedures regarding the proper use and limitations of SCOTT 631–TEDA–H canisters prior to use for radioiodine protection. FPL will have an active program to recognize chemical contaminants that may affect the canister. Relevant helath physics procedures will be modified to include requirements to evaluate the potential effects to the canister from work involving chemicals.

The 631–TEDA–H canister contains activated carbon impregnated with 5% by weight triethylenediamine (TEDA). This compound has a normal boiling point of 174°C but is known to sublime readily at room temperatures. The volatility of the pure crystals has raised the questions of (1) the volatility of the TEDA impregnated in activated carbon and (2) the possible toxicity of TEDA volatilized from a canister and inhaled. Studies have been performed on the desorption characteristics of TEDA from impregnated activated carbons. It has been found that the desorption vapor concentration of TEDA is not a function of the linear flow rate or sorbent bed depth within the canister. However, the logarithm of the desorption vapor concentration has been found to be linearly related to the reciprocal of the absolute temperature (°K). The maximum TEDA desorption vapor concentration at 48.9°C (120°F) has been found, by extrapolation from published measurements at higher temperatures [G.O. Wood, *Am. Ind. Hyg. Assoc. J. 45* (9):622–625(1984)], to be approximately 2 mg/m^3. There are no toxicological data available for TEDA; however, TEDA belongs to a class of organic aliphatic amines many of which have been shown to be toxic. Threshold limit values for similar amines are as follows:

	(mg/m^3)	(ppm)
Ethylamine	18	10
Diethylamine	30	10
Triethylamine	40	10
Ethylenediamine	25	10
Diethylenetriamine	4	1

The 2 mg/m^3 desorption value at 48.9°C is below the lowest threshold limit value for similar type substances and therefore the licensee does not expect desorbed TEDA to present a toxic hazard to the user.

Certain limitations and precautions based on the sorbent canister manufacturer's recommendations and NUREG/CR–3403 guidance are necessary for effective utilization of the sorbent canisters. The staff agrees with the following such limitations and usage restrictions as proposed by the licensee:

1. Protection factor equal to 50 as a maximum value.

2. Maximum service life of 8 hours (time from unsealing to discarding, including periods of non-exposure).

3. Canisters are not to be used in the presence of organic solvent vapors.

4. Canisters are to be stored in sealed, humidity barrier packaging in an air-conditioned (office-type) environment.

5. Canisters are to be used with a full facepiece respirator for which the canister has been certified by NIOSH/MSHA (approval number TC–14G–118). These respirators with 631–TEDA–H canisters are to be capable of providing fit factors greater than 500 for each potential user of the respirator as determined by fit testing with a challenge atmosphere. FPL will verify that each individual has, prior to the initial use of the canister, received a respirator fitting with the type of full-face respirator to be used with the canister and has achieved as a minimum a fit factor of 500 (10 times greater than the protection factor of 50). The relevant health physics procedure will be modified to incorporate the minimum required fit factor of 500 for full-face respirators to be used with the SCOTT 631 TEDA–H canisters.

6. Canisters are not to be used in environments where the temperature exceeds 120 °F.

7. Canisters are not to be used in challenge atmosphere concentrations of total organic iodines and other halogenated compounds (including nonradioactive compounds) greater than 1.0 ppm.

In addition to the limitations and usage restrictions noted above, the licensee will utilize the following additional administrative and procedural controls:

1. Health physics procedures for maximum permissible concentration hour accountability, bioassay, and respiratory protection will be modified to reflect the additional efforts that will be necessary to verify the effectiveness of the SCOTT canister program.

2. FPL will perform weekly whole body/thyroid counts for individuals using the SCOTT canister for protection against radioiodines. Relevant health physics procedures will be modified to reflect the need for whole body counting on a weekly basis for those individuals using the canister for protection from radioiodines.

3. In the initial implementation of SCOTT canister use, the following program verification measures will be used:

a. All personnel who exceed 10 maximum permissible concentration (MPC) hours in seven (7) consecutive days will receive a whole body/thyroid count prior to re-entering a radioiodine atmosphere.

b. Personnel that have a thyroid burden of 70 nCi or greater as determined by whole body/thyroid count will be restricted from further exposure to radioiodine atmospheres until the reason for the thyroid burden has been evaluated by Health Physics and until the individual is authorized by the Health Physics Department Head to re-enter atmospheres containing radioiodines.

c. A database of whole body/thyroid count results and maximum permissible concentration hour data will be established to assist in the evaluation of the program's effectiveness.

4. The St. Lucie Plant's chemical control program precludes the unauthorized and indiscriminate use of organic solvents and chemicals. Some organic solvent vapors of concern to the SCOTT cartridges are paints, paint solvents, methyl alcohol, ethanol, isopropyl alcohol and acetone.

The St. Lucie Plant will establish procedural controls over the use of the SCOTT canister in the presence of these chemicals. The controls will not prohibit the use of the SCOTT canister in the presence of these organic solvent vapors and chemicals, but the protection factor of the canister will be reduced from 50 to 1. FPL will have an active program to recognize chemical contaminants that may affect the canister. Relevant health physics procedures will be modified to include requirements to evaluate the potential effects to the canister from work involving chemicals.

5. A quality control (Q.C.) lot acceptance plan will be employed by SCOTT Aviation on each manufacturing lot of 631–TEDA–H canisters produced. Therefore, all canisters consumed by FPL will have been tested per the requirements of the Q.C. plan.

6. MIL–STD–414, level II, AQL 1% will be used to determine the number of criteria based on canister performance results. The canister test conditions will be as follows:

Air Temperature, % Relative Humidity: 120 °F /90% R.H.
Airflow rate conditions: 192 L/min for 0.82 seconds; O L/min for 1.64 seconds
Contaminant/Concentration: CH_3 I/10 ppm
Test Duration: 8 hours
Performance Criteria: 1% maximum penetration

FPL will accept only those canisters that have been certified by SCOTT as meeting the acceptance criteria of the MIL–STD–414 acceptance plan. FPL will perform a receipt inspection of each shipment of the canisters to verify lot number, expiration data of the canisters and physical integrity of the canisters. SCOTT will be required to provide to FPL the results of the acceptance testing for each lot of the canisters that FPL purchases from SCOTT.

7. FPL does not plan to reuse the canisters after initial use. All canisters will be removed after use and discarded to prevent any further use. The canisters will not be used when the radionuclide concentrations of radioiodines, particulates or a combination of each exceed 50 times the applicable limit for the radionuclides in question in 10 CFR Part 20 Appendix B, Table I Column 1 as described in 10 CFR 20.103(c)(1).

8. Existing respiratory protection program requirements and restrictions (e.g., physicals, fit tests, Part 20 requirements, Appendices A and B) still apply. The licensee will modify respiratory protection procedures to include specific aspects of issue and use of SCOTT canisters.

FPL experience has indicated that the use of air-purifying respirators with the SCOTT 631–TEDA–H canister can result in significant savings in collective (person-rem) dose to workers. In 1985 the St. Lucie Unit 1 steam generator channel heads were shielded to reduce exposure during a nozzle dam modification. During mock-up training, time trials were performed using airline respirators vs. air-purifying respirators with iodine canisters. It took 26 minutes of jump time to install the shielding in one channel head using airline respirators vs. 18 minutes using air-purifying respirators. This 31% reduction in time would have resulted in a reduction of 2.4 man-rem (300 mrem/min) per channel head and a total of 9.6 man-rem for all four channel heads. Nozzle dam installation/removal has been identified as a task where significant man-rem reductions could be realized using air-purifying respirators. In 1987, forty-two (42) man-rem were received for this job, whereas 12.6 man-rem would have been avoided if air-purifying respirators had been used. In 1984, the Farley Plant provided a task analysis showing that the use of similar (Mine Safety Appliances Co. Model GMR–1) canisters at Farley would result in significant dose savings and would be an effective ALARA measure.

Reduction of radioiodine levels at St. Lucie is primarily conducted through system cleanup. Shutdown boron concentrations for refueling operations are reached early in a unit cooldown to create crud burst and allow for maximum cleanup time with the reactor coolant pumps available. To prevent radioiodine from remaining in the stagnant loops, the reactor coolant pumps are run concurrent with shutdown purification operations until the reactor coolant system iodine levels appear to be stable or decreasing to approximately 0.1 mCi/cc. The pressurizer steam space is vented to the volume control tank and the reactor coolant system degasification is accomplished by following Operating Procedure 1–0030127, entitled "Reactor Plant Cooldown—Hot Standby to Cold Shutdown." The containment purge system and airborne activity removal fans are used to reduce radioiodine concentrations in the containment building. Temporary charcoal filters have also been placed at the inlet side of the containment coolers for additional iodine removal. Portable HEPA units (negative pressure ventilation blowers) are used at the steam generator manway openings and the reactor head during and after the breach of the reactor coolant system. Decontamination of work areas is accomplished throughout an outage. Previous major system decontamination efforts include the steam generator channel head and the refueling pool cavities. If practical, time is allowed for contamination reduction by decay; however, the main emphasis is on system and area cleanup. During normal operation, attempts are made to minimize power transients in order to reduce radioiodine levels. Long-term efforts include QA/QC programs for fuel quality. Also, the benefits of the fuel reconstitution process are being evaluated by FPL for consideration in subsequent refueling outages. With respect to fuel design improvement, several areas are being evaluated and/or implemented in order to reduce the fretting of fuel pins, therefore reducing the likelihood of fuel pin failures. Additionally, following outages of certain duration, slow power ramp rates are used to precondition the fuel which could result in a lower incidence of fuel failure.

The licensee has developed and is implementing an ALARA program consistent with the staff's position in Regulatory Guide 8.8 and the licensee's efforts to keep radiation exposures ALARA are acceptable to the staff.

In summary, the licensee is required to use process or other engineering controls, to the extent practicable, to limit concentrations of radioactive materials in air to levels below those which delimit an airborne radioactivity area as defined in 10 CFR 20.203(d)(1)(ii). When it is impracticable to apply process or other engineering controls to achieve these concentrations of radioactive material in air, the licensee is required to use other precautionary procedures, such as increased surveillance, limitation of working times, or provision of respiratory protective equipment to maintain worker intake of radioactive material as far below the limits of 10 CFR Part 20 as is reasonably achievable. The licensee has been providing respiratory protection for radioiodine by use of air-supplied or self-contained breathing apparatus. However, the use of these apparatuses is cumbersome and contributes to worker fatigue and lost efficiency. The net result is increased exposure of workers to radiation (increased person-rem). The use of air-purifying respirators can enhance worker comfort and allow greater mobility than the air-supplied or self-contained breathing apparatus. However, 10 CFR Part 20, Appendix A, Footnote d–2(c) stipulates that no allowance is to be made for the use of sorbents against radioactive gases or vapors in assigning protection factors for respirators. Also, 10 CFR 20.103(e) provides that where equipment of a particular type has not been tested and certified, or had certification extended by NIOSH/MSHA, or where there is no existing schedule for test and certification of certain equipment, the licensee shall not make allowance for this equipment without specific authorization by the Commission. An application for this authorization must include a demonstration by testing, or on the basis of reliable test information, that the material and performance characteristics of the equipment are capable of providing the proposed degree of protection under anticipated conditions of use.

Therefore, the licensee has applied for an exemption, in accordance with the provisions of 10 CFR 20.103(e), to allow the use of a radioiodine protection factor in estimating worker exposure from radioiodine gases and vapors when an air-purifying respirator with a sorbent canister is used to provide this protection. The staff's review of the

licensee's proposal indicates that the actions proposed by the licensee can result in significant dose savings over alternative methods while still providing effective protection. The licensee has provided usage restrictions and controls which can assure an effective radioiodine protection program. The proposed criteria and test methods for verifying the effectiveness and quality of SCOTT 631-TEDA-H canisters are consistent with the staff's criteria. The licensee's proposed exemption, with the controls and limitations, is consistent with the staff's position in granting similar exemptions, is consistent with the qualification process recommended in NUREG/CR-3403, is consistent with the staff's position in Regulatory Guide 8.8, and is acceptable.

The actions proposed by the licensee are consistent with the requirements of 10 CFR Part 20.103(e), and form an acceptable basis to authorize the granting of an exemption in accordance with the provisions of 10 CFR Part 20.103(e).

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 20.501, an exemption is authorized by law and will not result in undue hazard to life and property. The Commission hereby grants an exemption from the requirements of footnote d-2(c) of Appendix A of 10 CFR Part 20 to permit the use of Scott Aviation 631-TEDA-H canisters at the St. Lucie Plant, Units 1 and 2.

Pursuant to 10 CFR 51.32, the Commission has determined that granting this exemption will have no significant effect on the quality of the human environment (54 FR 31902, August 2, 1989).

For further details with respect to this action, see the licensee's request dated February 3, 1988, as supplemented by letters dated May 5, 1988, June 23, 1988, and May 4, 1989, which are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation.

Dated at Rockville, Maryland, this 2nd day of August 1989.

[FR Doc. 89-18513 Filed 8-7-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-361 and 50-362]

Southern California Edison Co., et al., Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 75 to Facility Operating License No. NPF-10 and Amendment No. 63 to Facility Operating License No. NPF-15, issued to Southern California Edison Company, San Diego Gas and Electric Company, The City of Riverside, California and the City of Anaheim, California (the licensees), which revised the Technical Specifications for operation of the San Onofre Nuclear Generating Station, Units 2 and 3, located in San Diego County California.

The amendments were effective as of the date of issuance.

These amendments revise the following Technical Specifications (TS) to increase the interval for the 18 month surveillance tests to at least once per refueling interval, which is defined as 24 months: TS ¾.3.1, "Reactor Protective Instrumentation"; TS ¾.3.2, "Engineered Safety Features Actuation System Instrumentation"; TS ¾.3.3.3, "Seismic Instrumentation", and TS ¾.8.1.1, "AC Sources."

The applications for amendments comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the license amendments.

Notices of Consideration of Issuance of Amendments and Opportunity for Hearing in connection with this action were published in the **Federal Register** on February 21, 1989 (54 FR 7493) and February 24, 1989 (54 FR 8033 and 8035). No request for a hearing or petition for leave to intervene was filed following these notices.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact related to the action and has determined that an environmental impact statement need not be prepared and that issuance of the amendments will have no significant adverse effect on the quality of the human environment.

For further details with respect to the action see (1) the applications for amendments dated April 26, October 11, October 24, November 7, and December 16, 1988, and January 16, January 20, and March 28, 1989; (2) Amendment No. 75 to License No. NPF-10 and Amendment No. 63 to License No. NPF-15; (3) the Commission's related Safety Evaluation dated July, 1989; and (4) the Commission's Environmental Assessment dated July 24, 1989 (54 FR 31394). All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and the General Library, University of California, P.O. Box 19557, Irvine, California 92713. A copy of items (2), (3), and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 28th day of July 1989.

For the Nuclear Regulatory Commission.

Donald E. Hickman,

Project Manager Project Directorate V, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-18514 Filed 8-7-89; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash (202) 272-2142.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, 450 Fifth Street, NW., Washington, DC 20549.

Revisions: Form N-2, File No. 270-21, Family of Rules under Section 8(b) of the Investment Company Act of 1940, File No. 270-135.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for clearance of OMB amendments to Form N-2 and the Family of Rules under Section 8(b) of the Investment Company Act of 1940, specifically Rule 8b-16.

Form N-2 is used by closed-end investment companies to register under both the Investment Company Act of 1940 and the Securities Act of 1933. Rule 8b-16 requires all registered management investment companies except small business investment companies, to update their registration statement of Form N-2 annually with the Commission. Under the proposed revision, each of the approximately 90 respondents would spend approximately

1630 hours, annually, fulfilling the requirements of the form and the rule, an estimated reduction of 470 burden hours per respondent.

The estimated average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even representative survey or study of the cost of SEC rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, 450 Fifth Street, NW., Washington, DC 20549–6004, and Gary Waxman, Clearance Officer, Office of Management and Budget, Paperwork Reduction Project (3235–00722 for Form N–2, and 3235–0176 for Rule 8b–16) Room 3208 New Executive Office Building, Washington, DC 20543.

July 28, 1989.

Jonathan G. Katz.

Secretary.

[FR Doc. 89–18517 Filed 8–7–89; 8:45 am]

BILLING CODE 8010–01–M

[34–27084; MBS–88–17]

Self-Regulatory Organizations; MBS Clearing Corporation; Order Approving Proposed Rule Change Amending By-Laws

August 1, 1989.

On November 16, 1988, MBS Clearing Corporation ("MBSCC") filed a proposed rule change (File No. SR–MBS–88–17) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The proposal will amend MBSCC's By-Laws to create a nominating committee for the selection of directors to MBSCC's Board of Directors ("Board"). On January 25, 1989, the Commission published notice of the proposed rule change in the **Federal Register.**[2] No comments were received. This Order approves the proposal for the reasons stated below.

I. Description

The proposed rule change will amend MBSCC's By-Laws to create a nominating committee for the election of directors at the annual shareholders meeting. The proposal requires the nominating committee to select candidates with a view toward providing fair representation for the interests of a cross-section of participants. The proposal also provides a mechanism for participants to make nominations directly and makes conforming modifications to the By-Laws where appropriate.

The nominating committee will be composed of three individuals, who will be elected at the annual shareholder's meeting for a one-year term. Individuals eligible to serve on the nominating committee must be general partners and officers of participants who do not hold any other MBSCC office. Nominating committee vacancies that arise between annual meetings will be filled by the remaining committee members from among persons who would have been eligible for participation on the nominating committee at the last annual meeting. Committee members will not be eligible for any other MBSCC office or position and cannot serve as a member for two consecutive years.

No later than 60 days prior to the shareholder's annual meeting, the nominating committee will nominate directors to fill the positions of directors with expiring terms and any vacancies in positions with unexpired terms.[3] These nominations must be made with a view toward providing fair representation for the interests of a cross-section of MBSCC's participants. The committee will report its nominations to MBSCC's secretary, who will, within five days thereafter, mail a list of nominations to each participant.

MBSCC participants can nominate their own candidates by filing a nominating petition with MBSCC's secretary, at least 30 days before the annual meeting. The petition must be signed by at least five participants. No participant can nominate by petition in the aggregate more than five individuals.

Under the proposal, if no nominating petitions are filed as described above, the sole shareholder [Midwest Stock Exchange ("Midwest")] will appoint as directors the individuals nominated by the nominating committee. If an individual declines the appointment, the vacancy will be filled by a majority vote of directors then in office (or by a sole remaining director) and such director(s) shall finish out the term of the vacancy. If one or more nominating petitions are filed, Midwest will elect directors from among the individuals nominated either by nominating committee or petition, with a view toward providing fair representation of the interests of a cross-section of MBSCC participants.

II. MBSCC's Rationale

MBSCC states that the purpose of the proposed rule change is to assure participants fair representation in the selection of directors and administration of MBSCC's affairs. The Commission, in granting MBSCC temporary registration as a clearing agency,[4] stated that it expected MBSCC, as a condition to permanent registration, to file proposed rule changes designed to satisfy the requirement of section 17A(b)(3)(C) that a clearing agency's rules assure fair representation to its participants in the selection of its directors and administration of its affairs. MBSCC states that the proposal is intended to satisfy that requirement.

III. Discussion

Section 17A(b)(3)(C) of the Act requires the rules of a clearing agency assure a fair representation of its shareholders and participants in the selection of its directors and administration of its affairs. For the reasons discussed below, the Commission believes that the proposal is consistent with the Act, and in particular section 17A(b)(3)(C).

Section 17A(b)(3)(C) does not define fair representation or establish particular standards of representation. Instead the Act provides that the Commission must determine whether the rules of the clearing agency regarding the manner in which decisions are made give fair voice to participants as well as to shareholders in the selection of directors and the administration of its affairs. With respect to providing participants with a meaningful opportunity to be represented in the selection of the board of directors and the administration of the clearing agency's affairs, the Division's Standards [5] counsel that each clearing agency's procedures be evaluated on a case-by-case basis. The Standards state that a number of methods can comply with the fair representation standard, including the selection of candidates for election to the board of directors by a nominating committee which would be composed of,

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[1] 15 U.S.C. 78(b)(1) (1988).

[2] Securities Exchange Act Release No. 26470 (January 18, 1989), 54 FR 3703.

[3] In addition, the nominating committee must nominate three members to act as committee members in connection with the next annual meeting.

[4] *See* Securities Exchange Act Release No. 24046 (February 2, 1987), 52 FR 4218.

[5] The Division of Market Regulation ("Division") has published standards that its uses in evaluating clearing agency registration applications and proposed rule changes ("Standards"). The Standards provide additional information concerning the Division's interpretation of subparagraphs (A) thorugh (I) of the section 17A(b)(3). *See* Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 ("Standards Release").

and selected by, the participants or representatives of the participants.[6]

Since MBSCC's initial registration in February 1987, the composition of the MBSCC Board has adjusted to fairly represent MBSCC participants. Originally, MBSCC's 13 member Board included both dealer and bank participant directors, reflecting MBSCC's participant composition, and a Midwest representative. During preparations for the sale of the Depository Division in 1988 and early 1989 to the Participants Trust Company ("PTC"), MBSCC increased the size of its Board from 13 to 15 directors to accommodate two Midwest representatives who assisted the Board with the sale negotiations.[7] After the sale, MBSCC reduced the number of directors to 11 and adjusted the composition of the Board to reflect that only dealers remained as participants.[8] Currently, the Board consists of one Midwest representative and ten participant representatives.

The proposal provides for participant involvement in the selection of all directors, either directly or indirectly. First, Midwest will appoint the Board members from a pool of nominees selected by MBSCC participants or their representatives. The nominees will consist of candidates chosen by the nominating committee, which will consist of participant representatives and candidates nominated by individual participants through the petition process. Second, vacancies on the Board that occur between elections or if an individual declines appointment will be filled by a majority vote of the remaining directors (which are nominated by MBSCC participants). Finally, vacancies on the nominating committee will be filled by the remaining members from among representatives of participants who would have been eligible for nominee committee participation at the last annual meeting.

The Commission believes the proposal is designed to provide fair representation for all MBSSC participants, even those with differing views. The proposal contains a number of safeguards to assure that the views of minority groups of participants are considered in the selection of directors. First, the proposal states that the nominating committee must make its nominations with a view toward providing fair representation for interests of a cross-section of participants. Second, participants that believe that the nominated candidates represent them may nominate their own candidates through the petition process. Finally, the proposal requires Midwest to appoint directors with a view toward providing fair representation of a cross-section of participants.

IV. Conclusion

On the basis of the foregoing, the Commission finds that MBSCC's proposed rule change is consistent with the Act and, in particular, with the section 17A(b)(3)(C) of the Act.

Accordingly, *It is therefore ordered*, under the section 19(b)(2) of the Act, that the proposal (File No. SR–MBS–88–17) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–18518 Filed 8–7–89; 8:45 am]

BILLING CODE 8010–01–M

[6] The Midwest Clearing Corporation ("MCC", a subsidiary of Midwest) complies with the fair representation standard through the use of a nominating committee. MCC's procedures provide for a nominating committee composed of participant representatives and charged with nominating director candidates with a view toward providing fair representation for a cross-section of MCC participants and additional nomination by participant petition.

The Standards describe other methods by which a clearing agency can comply with the fair representation standard including direct selection of a number of the directors by, and from among, the users, direct participation of participants in the election of directors through the allocation of voting stock to all participants based on their usage of the clearing agency and selection by participants of a state of nominees for which stockholders of the clearing agency would be required to vote their shares. *See* Standards Release, *supra* note 5, 45 FR at 41923.

[7] *See* Securities Exchange Act Release No. 25384 (February 23, 1988), 53 FR 6045.

[8] *See* Securities Exchange Act Release No. 26729 (April 4, 1989), 54 FR 16438G. Bank participants used only Depository Division services and became participants in PTC when the buyout occurred.

[Release No. 34–27072; File No. SR–Phlx–89–41]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Filing and Immediate Effectiveness of Proposed Rule Change Relating to Floor Decorum.

Pursuant to section 19(b)(1), 15 U.S.C. 78s(b)(1), of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder, 17 CFR 240.19b–4, notice is hereby given that on July 10, 1989, the Philadelphia Stock Exchange, Inc. ("PHLX" of "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to Rule 19b–4 under the Act, the PHLX proposes to codify the following rules of order and decorum as Exchange procedure advices, designed as Options Floor Procedure Advice f–8 and Equity Floor Procedure Advice EM–2: [1]

Regulation 1—Smoking

Smoking is prohibited on the trading floor and the lower level areas adjacent to the trading floor except for those areas specifically designated for smoking.

1st Occurrence: Official Warning
2nd Occurrence: $250.00
3rd Occurrence: $500.00
4th and thereafter: Sanction Discretionary with Business Conduct Committee

Regulation 2—Food, Liquids and Beverages

Food, liquids and beverages are prohibited on the trading floor and the lower level areas adjacent to the trading floor except for lunch rooms.

1st Occurrence: Official Warning
2nd Occurrence: $100.00
3rd Occurrence: $200.00
4th and thereafter: Sanction Discretionary with Business Conduct Committee

Regulation 3—Identification Badges/ Access Cards

(i) Identification badges must be worn chest high in full view and must accurately reflect the respective person's associations and dual affiliations.

1st Occurrence: Official Warning
2nd Occurrence: $100.00
3rd Occurrence: $200.00
4th and thereafter: Sanction Discretionary with Business Conduct Committee

(ii) Use of another person's Identification Badge or Access card will carry a fine of $250.00 for the first occurrence and $500.00 for each

[1] The rules are an implementation of Phlx Rule 60, which provides a Floor Official or exchange official may impose on members and member organizations assessments not to exceed $1,000.00 per occurrence for breaches by members or their employees of regulations which relate to administration of, and order, decorum, health, safety and welfare on the exchange or two Floor officials may refer the matter to the Business Conduct Committee where it shall proceed in accordance with Rules 960.1–960.12 and higher fines and sanctions may be imposed.

subsequent occurrence. The fine may be assessed against both the user and the person who allowed such use.

Regulation 4—Order

No member/participant or employee of a member/participant shall conduct himself or herself in a disorderly manner on the trading floor.
1st Occurrence: Official Warning
2nd Occurrence: $100.00
3rd Occurrence: $250.00
4th Occurrence: $500.00
5th and thereafter: Sanction
Discretionary with Business Conduct Committee

In the case of FIGHTING or any other form of physical abuse each and every occurrence will carry a fine of $1,000.00.

Firearms and prohibited on the trading floor and each and every occurrence will carry a fne of $1,000.00.

Regulation 5—Guests

Non-member guests will be permitted on the trading floor at the discretion of the respective floor committee (Options, FCO or Floor Procedures). All guests must be signed in by a member or Exchange official and accompanied at all times by a member, associated person of a member or Exchange official.
1st Occurrence: Official Warning
2nd Occurrence: $50.00
3rd Occurrence: $100.00
4th Occurrence: $200.00
5th and thereafter: Sanction
Discretionary with Business Conduct Committee

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In order to maintain the proper transaction of business on the Exchange's trading floors, and to preserve the safety of members and Exchange personnel on the floors, it is necessary to impose rules of order and decorum. This prospect is especially urgent in the case of smoking in an environment in which a great amount of paper is left on the floor, and in which exists a great deal of electrical equipment.

Accordingly, the Phlx believes that it would be beneficial to codify, with the approval of the Commission, its rules of order and decorum as procedural advices. Additionally, the Phlx proposes to increase the amounts of fines imposed for violation of said rules, in order to account for inflation. These measures are proposed in order to provide greater significance and impact to the rules of order and decorum.

The proposed rule change is consistent with section 6(b)(6) of the Act, in that members of the Exchange shall be appropriately disciplined for violation of the rules of the Exchange. Additionally, the proposed rule change is consistent with, and is an implementation of, Phlx Rule 60.[2] Assessments shall not exceed $1,000 per occurrence for breaches by members or their employees of regulations which relate to the administration of order, decorum, health, safety and welfare on the Exchange, and higher fines and santions may be imposed only by the Phlx Business Conduct Committee.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statements on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the PHLX, it has become effective pursuant to section 19(b)(3) of Act and subparagraph (e) of Rule 19b-4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule if its appears to the Commission that such action is necessary or appropriate in the public interest, or otherwise in furtherance of the purposes of the Act.

[2] *See* note 1, *supra.*

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 Commision, 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 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 filings will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 29, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Dated: July 28, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-18519 Filed 8-7-89; 8:45 am]

BILLING CODE 8010-01-M

[3] *See* 17 CFR 200.30-3.

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Incorporated

August 2, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Lifetime Corp.
Common Stock, $.01 Par Value (File No. 7-4764)

DQU, Inc.
Common Stock, $1 Par Value (File No. 7-4765)

Idaho Power Co.
Common Stock, $2.50 Par Value (File No. 7-4766)

Pacific Western Bancshares
Common Stock, No Par Value (File

No. 7–4767)
Tredegar Indusries, Inc.
Common Stock, No Par Value (File No. 7–4768)
Cash America Investments, Inc.
Common Stock, $.10 Par Value (File No. 7–4769)
Catalina Lighting Co.
Common Stock, $.01 Par Value (File No. 7–4770)
P.H. Glatfelter Co.
Common Stock, $.01 Par Value (File No. 7–4771)
James Madison, Ltd.
Class A Common Stock, $1.00 Par Value (File No. 7–4772)
Smiths Food & Drug Centers, Inc.
Class B Common Stock, $.01 Par Value (File No. 7–4773)
Apex Municipal Fund, Inc.
Common Stock, $.10 Par Value (File No. 7–4774)
MFS Charter Income Trust
Shares of Beneficial Interest, No Par Value (File No. 7–4775)
Chili's Inc.
Common Stock, $.10 Par Value (File No. 7–4776)
Smith Corona Corporation
Common Stock, $.01 Par Value (File No. 7–4777)

These securities are listed and registered on one or more other national securities exchange and are expected in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 23, 1989, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintanance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–18520 Filed 8–7–89; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

August 2, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Berry Petroleum Co.
Class A Common Stock, $0.01 Par Value (File No. 7–4738)
First Interstate Bancorp
Class A Common Stock, $0.01 Par Value (File No. 7–4739)
WCI Holdings Corporation
15½% Cumulative Exchangeable Redeemable Preferred Stock, $.01 Par Value (File No. 7–4740)
The Liberty Corporation
Common Stock, $1 Par Value (File No. 7–4741)
Thermedics Inc.
Common Stock, $0.10 Par Value (File No. 7–4742)
Waban, Inc.
Common Stock, $.01 Par Value (File No. 7–4743)
Mott's Holdings, Inc.
Common Stock, $1 Par Value (File No. 7–4744)
Storage Technology Corporation
Common Stock, $10 Par Value (File No. 7–4745)
Citytrust Bancorp, Inc.
Common Stock, $2.50 Par Value (File No. 7–4746)
MFS Charter Income Trust
Shares of Beneficial Interest (File No. 7–4747)
Rayonier Timberlands, L.P.
Class A Depositary Units (File No. 7–4748)
Ford Motor Credit Company
Currency Exchange Warrants Expiring 7/15/91 (File No. 7–4749)
Ford Motor Credit Company
Currency Exchange Warrants Expiring 2/1/93 (File No. 7–4750)
J.P. Morgan & Co., Inc.
Currency Exchange Warrants Expiring 7/1/91 (File No. 7–4751)
Student Loan Marketing Association
Currency Exchange Warrants Expiring 7/15/92 (File No. 7–4752)
Student Loan Marketing Association
Currency Exchange Warrants Expiring 3/1/93 (File No. 7–4753)
Student Loan Marketing Association
Foreign Exchange Warrants Expiring 2/11/93 (File No. 7–4754)
Citcorp
Foreign Exchange Warrants Expiring 7/15/92 (File No. 7–4755)
Citicorp
Currency Exchange Warrants Expiring 7/25/93 (File No. 7–4756)
CDI Corp.
Common Stock, $0.10 Par Value (File No. 7–4757)
Chili's Inc.
Common Stock, $.10 Par Value (File No. 7–4758)
HAL, Inc.
Common Stock, $3 Par Value (File No. 7–4759)
Heritage Media Corp.
Class A Common Stock, $0.01 Par Value (File No. 7–4760)
Smith Corona Corp.
Common Stock, $0.01 Par Value (File No. 7–4761)
Affiliated Publications, Inc.
Series A Common Stock, $0.01 Par Value (File No. 7–4762)
Coast Savings Financial Inc.
Common Stock, $.01 Par Value (File No. 7–4763)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 23, 1989, written data, views and arguments concerning the above-reference application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–18521 Filed 8–7–89; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Application Number: 01/01-0348]

Southern Berkshire Investment Corp.; Application for a Small Business Investment Company License

An application for a license to operate a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended (the Act) (15 U.S.C. 661, *et seq.*) has been filed by Southern Berkshire Investment Corporation (SBIC) with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1988).

The officers, directors, and major shareholders of the Applicant are as follows:

Name and Address	Title	Percent of Ownership of Common Stock
Henry H.M. Thornton, P.O. Box 669, Sheffield, MA 01257.	President and Director.	14.0
Deborah S. Thornton, P.O. Box 669, Sheffield, MA 01257.	Director	14.0
Richard A. Flintoft, 215 East 73rd Street, New York, NY 10021.	Director	
Peter W. Flexner, P.O. Box 248, Millerton, NY 12546.	Director	

The Applicant, SBIC, a Massachusetts corporation, will begin operations with $1,051,000 paid-in capital and paid-in surplus. The Applicant will conduct its activities principally in the States of Massachusetts and New York, but will consider investments in other areas of the United States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the company under their management, including adequate profitability and financial soundness in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street NW., Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in Pittsfield, Massachusetts.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 1, 1989.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc 89-18488 Filed 8-7-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/1295]

The U.S. Organization for the International Telegraph & Telephone Consultative Committee (CCITT) Study Group C; Meeting

The Department of State announces that Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet August 30, 1989 at 9:30 a.m. at the Marriott Hotel (201-623 0006) at Newark Airport.

The meeting will be to discuss contributions dealing with Study Group XV work on fiber optics. The meeting is in preparation for the working party meetings of Study Group XV to be held in November.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Henry Marchese (201) 234 4047.

Dated: July 27, 1989.

Earl S. Barbely,

Director, Office of Telecommunications and Information Standards; Chairman, U.S. CCITT National Committee.

[FR Doc. 89-18531 Filed 8-7-89; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/1296]

Shipping Coordinating Committee; Meeting; Subcommittee on Safety of Life at Sea Working Group on Bulk Chemicals

The Working Group on Bulk Chemicals of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on August 29, 1989 at 9:30 a.m. in Room 4315 at Coast Guard Headquarters, 2100 Second Street SW., Washington, DC.

The purpose of this meeting will be a general review of all agenda items for the nineteenth session of the International Maritime Organization (IMO) Subcommittee on Bulk Chemicals scheduled for September 11-15, 1989.

The agenda for this meeting includes the following items:

—Evaluation of chemicals shipped in bulk
—Interpretations of the IMO codes for carriage of bulk liquids and gases
—Guidelines for ships engaged in the collection and transport of chemical slops
—Review of solvent washing and recycling for chemical tankers
—Vapor emission control systems

Members of the public may attend up to the seating capacity of the room.

For further information, contact Mr. Thomas J. Felleisen, U.S. Coast Guard Headquarters (G-MTH-1), 2100 Second Street SW., Washington, DC 20593-0001, telephone (202) 267-1217.

Dated: July 28, 1989.

Thomas J. Wajda,

Chairman, Shipping Coordinating Committee.

[FR Doc. 89-18532 Filed 8-7-89; 8:45 am]

BILLING CODE 4710-07-M

Office of the Secretary

[Public Notice 1121; Delegation of Authority No. 180]

Under Secretary of State for Management Payment of Rewards Under 22 U.S.C. 2708

By virtue of the authority vested in me as Secretary of State, including section 4 of the Act of May 26, 1949 (63 Stat. 111, 22 U.S.C. 2658), I hereby delegate to the Under Secretary of State for Management the functions vested in the Secretary of State by section 36 of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 2708), with respect to the payment of rewards of less than $100,000 under the authority provided by section 102 of the 1984 Act to Combat International Terrorism (98 Stat. 2708, Pub. L. 98-533) and section 502 of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 (110 Stat. 869, Pub. L. 99-399), subject to the concurrence of the Under Secretary of State for Political Affairs as to each proposed payment.

Unless otherwise directed, the Under Secretary of State for Management may not redelegate this authority.

Dated: July 23, 1989.

James A. Baker, III,

Secretary of State.

[FR Doc. 89-18533 Filed 8-7-89; 8:45 am]

BILLING CODE 4710-08-M

Bureau of Oceans and International Environmental Affairs

[Public Notice 1122]

U.S. National Committee for Man and the Biosphere; Request for Proposals Fiscal Year 1990

Roger E. Soles,
Executive Director, U.S. Man and the Biosphere Program.

The mission of the United States Man and the Biosphere Program (U.S. MAB) is to foster harmonious relationships between humans and the biosphere through an international program of policy-relevant research which integrates social, physical and biological sciences to address actual problems. These activities—broadly interpreted—include catalytic conferences and meetings, education and training, and the establishment and use of biosphere reserves as research and monitoring sites.

The U.S. National Committee for U.S. MAB hereby announces its priorities and criteria for the selection of original research proposals and projects to receive U.S. MAB support in fiscal year 1990, contingent upon the availability of funds.

Scientists are encouraged to collaborate in developing new interdisciplinary proposals and to seek complementary funds from other sources. Proposed research and projects, such as symposia, workshops or other activities which further the U.S. MAB objectives, may be spread over several years. Proposed workshop activities must be especially innovative to merit consideration.

Interested scientists should write to the U.S. MAB Secretariat to receive copies of the U.S. MAB Directorate Mission Statements on:

- High Latitude Ecosystems;
- Human Dominated Systems;
- Marine and Coastal Ecosystems;
- Temperate Ecosystems; and
- Tropical Ecosystems.

Abstracts of these Mission Statements will be published in the August 1989 issue of the *U.S. MAB Bulletin* and in the **Federal Register.**

Proposals must first be submitted as a prospectus with a maximum length of two pages.

U.S. MAB will not pay overhead fees on grants.

Consideration will only be given to proposals which are inter or transdisciplinary and concentrate on at least one of the following:

- biological diversity,
- global climate and ecological change,
- sustainable/integrated development.

Preference will be given to proposals which:

- request $50,000 or less;
- when international, involve scientists from the host country; and
- deal with environmental policy issues, especially those relevant to agencies which support U.S. MAB.

Prospectuses may not exceed two pages and must be accompanied by a summary biographic sketch of the potential principal(s) which include exceptional qualifications and lists any relevant publications. The bibliographic sketch of each principal may not exceed two (2) pages. The prospectuses must also be accompanied by a cover sheet clearly indicating how the potential proposal meets the above stated requisite criteria.

Mail prospectuses to: U.S. MAB Secretariat, OES/ENR/MAB, U.S. Department of State, Washington, DC 20520.

No prospectus will be accepted after November 6, 1989. Prospectuses will be subject to an administrative review for adherence to the requirements listed and will be returned without review if deficiencies are found.

The U.S. MAB Secretariat will distribute prospectuses to the appropriate U.S. MAB Directorate. Individual Directorates will review the prospectuses based on responsiveness to this call, relevancy of the proposed activity to their mission statements, and the performance competence of the proposed principal(s) as evidenced by the summary biographic sketch. Directorates will review all prospectuses by December 15, 1989.

Prospectuses favorably reviewed by a Directorate will be forwarded to the U.S. National Committee for MAB for further review at the January 1990 National Committee meeting. The National Committee will review the prospectuses for their relevance to the U.S. MAB program priorities. The National Committee will then determine which principals will be invited to submit a full proposal. The U.S. National Committee at its own initiative may request that additional proposals on specific subjects be submitted for review and consideration.

Complete project and research proposals must be received by the U.S. MAB Secretariat by close of business May 1, 1990. Proposal texts may not exceed 25 pages, double-spaced, including a two page executive summary describing the objective of the proposed effort and the method of approach.

If proposed project activities are international in scope, the proposal must provide written evidence that host country permissions have already been obtained to carry out the project.

All proposals must contain: (1) Clearly defined objectives; (2) a feasible work plan to achieve those objectives within the time frame and resources of the grant; and (3) specified products which will result from the grant.

Proposals must identify one individual for contract purposes and specify one institution to receive and sub-allocate funds for the proposed activities.

Proposals will be subject to an administrative review for adherence to listed requirements and if deficiencies are found, will be returned without further consideration.

Appropriate U.S. MAB Directorate and peer reviewers, including discipline specialists in the areas of the proposals, will be selected by U.S. MAB to evaluate and rate the proposals on the basis of their intrinsic scientific merit and intellectual focus, and on their potential to increase scientific understanding and provide the basis for policy development by U.S MAB's supporting agencies. Directorates and peer reviewers will also consider, in their overall assessments of the proposals, the performance competence of the principals and the adequacy of the requested resources to accomplish the stated objectives.

A final ranking of the proposals received will be made by the U.S. National Committee for the Man in the Biosphere Program based on all of the above factors and their assessment of each proposal's relevancy to the goals of U.S. MAB. Proposals will then be funded in the order of their assigned rank and based on available funds.

Prinicipals will receive copies of all peer review evaluations made of their proposal and a written notification of the Committee's decision on their project. Winning proposals become part of the public domain. Proposals not selected for funding by the National Committee will be returned to the authors.

The National Committee will notify all principals of its final decisions in August 1990. Funds will be committed to the managing institutions identified in the selected proposals by September 30, 1990.

Agencies involved with the U.S. MAB Program: Department of State, Agency for International Development, USDA Forest Service, National Park Service, National Aeronautics and Space Administration, the Peace Corps, National Oceanic and Atmospheric

Administration, the Environmental Protection Agency and the Smithsonian Institution.

Abstracts of Directorates Mission Statements

High-Latitude Ecosystems

Background

High-latitude regions of the earth include the zones of continuous and discontinuous permafrost in North America and Eurasia, and the cold-dominated ecosystems at lower latitudes such as the Aleutian Peninsula. Circumpolar high-latitude regions include some of the most undeveloped land areas of the northern hemisphere. These regions support indigenous human populations which until very recently have been practicing a relatively stable subsistence lifestyle. Now, however, these regions are undergoing rapidly accelerating social change, including increasing pressure for resource extraction, growing resident populations as a result of population migration from lower latitudes, and, concurrently, increased scrutiny of resource use and decisions concerning their management.

The circumpolar high-latitude regions encompass a multiplicity of ecosystems including arctic tundra, alpine tundra, cold deserts, subartic taiga forests, urbanized settings, freshwater systems and estuaries and coastal and marine systems.

Mission Statement

The mission of the High-Latitude Ecosystems Directorate of the United States Man and the Biosphere program is to foster mutually supportive relationships between humans and the biosphere in high-latitude ecosystems through a program of research and projects which integrate social, physical and biological sciences in addressing actual problems on which to base recommendations to policymakers.

Among the areas for concentrated project activities and proposed research are:

—Sustainable resource management and cultural development;
—Monitoring of global climatic change, implications for biological productivity, engineering works and transportation systems, and resident human populations;
—Maintaining aquatic areas and wetlands;
—Maintaining and protecting biological diversity;
—Cooperation in research and policy development to recover any of the above that are lost or are in the process of being damaged.

N.B. A decision was made by the U.S. National Committee to establish a Directorate for Human Dominated Systems rather than for Human Settlements in order for U.S. MAB to be able to support projects and activities over a broader range of problems.

Human Dominated Systems

Background

There are many circumstances in which human activity has so profoundly altered the underlying ecosystems that a very different environment is created. Present day population growth levels have caused such ecosystem alteration more rapidly and over wider areas than ever before, resulting in urbanization and intensification of agriculture that present tremendous problems for human health and continued food production. Other processes, such as mining and resource extraction, and tourist developments also create altered and distinct ecologies dominated by humans. Many of these areas suffer from severe problems arising from the collapse of ecological life support systems, such as severe air pollution in cities, soil degradation and tropical deforestation in relation to agriculture, and the loss of beaches and coastal areas due to the expansion of various kinds of development. As a result, the capacity of natural systems, and the viability of various types of human interventions need to be better understood.

Mission Statement

The mission of the Human-Dominated Systems Directorate of the U.S. Man and the Biosphere Program is to foster interdisciplinary research on the problems arising from human activity that profoundly modify or dominate underlying ecosystems and related life support systems. This program will integrate social, physical and biological sciences in providing information and research results in addressing actual problems on which to base recommendations to policymakers.

The research needed to address the issues arising in connection with human activities that overwhelm or threaten to overwhelm natural ecosystems and their life support functions will focus not on defined geographical areas, but on areas in which dense aggregations of people occur or where natural systems have been profoundly altered by purposeful human manipulation. Such research would include:

- Identifying levels or intensity of activity that can be supported without causing the collapse of life support systems essential to the activity, e.g. agriculture, or urban development;
- Identifying key factors that can be manipulated and those than cannot without detrimental effect, e.g. major controllable variables causing the greenhouse effect, its origins and the effects of various control methods;
- Addressing the major pollution issues facing urban settlements, identifying both immediate health effects or indirect effects such as groundwater pollution, chemical run-off or atmospheric pollution/climate change;
- Identifying and analyzing methods for reintegrating natural functions into modified ecosystems so as to restore or support important life-support systems;
- Analyzing human decision-making processes as they relate to resource and ecosystem management, and methods for improving integration of ecosystem considerations in such decisionmaking; and
- Analyzing how the stress resulting from deteriorating environment impacts upon human beings.

Marine and Coastal Ecosystems

Background

The coastal zones of the world, the region of terrestrial-marine convergence, constitute an area equal to the African continent and contain most of the marine resources used by humans. Growing problems of marine pollution, habitat degradation and biological impoverishment are found in a number of the world's poorly mixed coastal waters, especially those associated with population centers, industrial activity and river inputs.

Mission Statement

The mission of the Marine and Coastal Ecosystems Directorate of the United States Man and the Biosphere Program is to foster mutually supportive relationship between humans and the biosphere in coastal and marine ecosystems through a program of research and projects which integrate social, physical and biolgical sciences in addressing problems on which to base recommendations to policymakers.

The Directorate will encourage research and project activities on the biolgeography of marine and coastal ecosystems, including their influences on and interdependencies with human activities and well-being.

The areas of concentrated project activities and proposed research are:

- Monitoring of sources and quantity of pollution;
- Rising sea level;
- Planned marine disposal;

• Preservation of traditional uses of ocean space;
• Eutrophication in coastal areas
• Sedimentation;
• Red tides and harmful blooms.

Tropical Ecosystems

Background

Dramatic changes in land-use have had enormous consequences to the maintenance and quality of life of people in the tropical latitutdes. The magnitude of the change is affecting the biological diversity of the planet, causing losses of precious genetic material, changing the chemistry and composition of the oceans and the atmosphere, seriously depleting the fertility of soils and nature's ability to replenish that fertility, changing the climate of the world and greatly influencing the biogeo-chemical cycles of the planet. Therefore, the overriding issues facing governments, researchers, resource managers, local communities, and resource users in the tropics are: how can we stem the tide of negative global change and protect the world's biological diversity; while also providing conditions supportive of the growth and developoment of social systems needed to maintain a healthy human population.

Mission Statement

The mission of the Tropical Ecosystems Directorate of the United States Man and the Biosphere Program is to foster mutually supportive relationship between humans and the biosphere in tropical ecosystems through a program of research and projects which integrate social, physical sciences in addressing actural problems on which to base recommendations to policy makers.

Among the research and project activities that will form the focus of the tropical directorate are:
• Tropical forest restoration;
• Producing management plans that outline the steps for restoring landscapes, fresh water systems or grazing lands;
• Improving communication between social and natural scientists or managers who are working on the conservation of tropical ecosystems; and
• Generating data bases which contain available solutions to the problems of natural resource

Temperate Ecosystem

Background

The Temperate Zone is occupied by the most industrialized nations and contains about two-thirds of the earth's population. Consequently, human activities have had substantial impacts on natural ecosystems as well as on global ecological processes. The per capital rate of resource consumption and pollution are far higher in the temperate zone than in other zones, and modification to natural ecosystems is extensive.

Mission Statement

The mission of the Temperate Ecosystem Directorate of the United States Man and the Biosphere Program is to foster mutually supportive relationships betwen humans and the biosphere in temperate ecosystems through a program of research and projects which integrate social, physical and biological sciences in addressing actual problems on which to base recommendations to policymakers.

Among the problem areas that will provide the focus of the directorate program are:
• Human modification of ecosystem structure and function, especially the impacts upon ecosystem productivity, sustainability and resilience;
• Development and application of environmental management practices that provide for both commodity production and preservation of biological diversity;
• Adaptation of humans to an increasing extent, frequency and severity of environmental hazards;
• Adoption of soil conservation practices in arid and semi-arid temperate ecosystems with declining productivity;
• Adaptation of human populations to increasingly economically marginal environments.

Would You Like to Participate in a U.S. MAB Directorate?

In our bulletin of March 1989 you were informed of our reorganization of the U.S. MAB Program into five new Directorates. An Abstract of the Mission Statement of each of these new Directorates appears above.

Our National Committee wants to ensure that these new Directorates are composed of a balance of both social and biological/natural scientists as well as of governmental agency and private sector scientists and representatives. Therefore, if you are interested in being appointed to a Directorate, please write to the U.S. MAB Secretariat to receive copies of the full Directorate mission statements and an application form.

Applicants should submit the form and a short (4 page maximum) CV to the U.S. MAB Secretariat by October 1, 1989. By the end of October 1989, Directorate members and their Chairs will be appointed.

An organizational meeting for each of the new Directorates will be held sometime between Thanksgiving and Christmas 1989 in Washington, DC.

[FR Doc. 89-18530 Filed 8-7-89; 8:45 am]
BILLING CODE 4710-09-M

DEPARTMENT OF TRANSPORTATION

[Docket 37554]

Order Adjusting the Standard Foreign Fare Level Index

The International Air Transportation Competition Act (IATCA), Pub. L. 96-192, requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile. Order 80-2-69 established the first interim SFFL and Order 89-6-31 set the currently effective two-month SFFL applicable through July 31, 1989.

In establishing the SFFL for the two-month period beginning August 1, 1989, we have projected nonfuel costs based on the year ended March 31, 1989 data, and have determined fuel prices on the basis of the latest experienced monthly fuel cost levels as reported to the Department.

By Order 89-7-53 fares may be increased by the following factors over the October 1, 1979, level:

Atlantic	1.2513
Latin American	1.3726
Pacific	1.7279
Canada	1.3964

FOR FURTHER INFORMATION CONTACT: Keith A. Shangraw (202) 366-2439.

By the Department of Transportation: July 31, 1989.

Jeffrey N. Shane,
Assistant Secretary for Policy and International Affairs.

[FR Doc. 89-18428 Filed 8-7-89; 8:45 am]
BILLING CODE 4910-62-M

Federal Aviation Administration

[Summary Notice No. PE-89-31]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the

application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion of omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before August 28, 1989.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No._____, 800 Independence Avenue, SW., Washington, DC. 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on August 1, 1989.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 25902
Petitioner: Mountain Air Cargo, Inc.
Regulations Affected: 14 CFR 135.225(d)
Description of Relief Sought: To allow petitioner to operate C208 aircraft in less than the prescribed visibility and landing minimum with pilots having less than 100 hours of pilot-in-command experience in that type of aircraft.

Docket No.: 25903
Petitioner: Falcon Jet Corporation
Section of the FAR Affected: 14 CFR 47.9(b)(2)
Description of Relief Sought: To allow petitioner to extend the initial reporting period for foreign-owned corporations from every 6 months after registration to an initial reporting period of 12-months after registration and every 6 months thereafter.

Docket No.: 25927
Petitioner: Golden Goose Company
Section of the FAR Affected: 14 CFR 135.267(b)(2) and (c)(2) and 135.269(b)(4)
Description of Relief Sought: To allow petitioner to assign a pilot and to permit a pilot to accept an assignment for flight time in excess of 10 hours for a two-pilot crew and in excess of 12 hours for a three-pilot crew.

Docket No.: 25935
Petitioner: New Creations, Inc., d/b/a U.S. Check
Sections of the FAR Affected: 14 CFR 43.3(a) and (h)
Description of Relief Sought: To allow persons not certificated as mechanics under the provisions of Part 65 to conduct preventive maintenance and other simple maintenance and inspection procedures on aircraft operated by U.S. Check.

Docket No.: 25951
Petitioner: Mid Pacific Air Corporation
Section of the FAR Affected: 14 CFR 121.343(b)
Description of Relief Sought: To delay the installation of new digital flight recorders in three YS-11A aircraft for 75 days and to use aircraft foil-type recorders on a temporary basis during the time period requested.

Docket No.: 24453
Petitioner: Braniff, Inc.
Regulations Affected: 14 CFR 121.411 and 121.413
Description of Relief Sought/ Disposition: To extend and amend Exemption No. 5015 that allows petitioner to use certain Aeroformation A320 pilot flight instructors and simulator instructors to train petitioner's initial cadre of A320 pilots. The amendment would add another Aeroformation pilot instructor to the list of approved instructors.
Grant, July 21, 1989, Exemption No. 5015A

Docket No.: 24700
Petitioner: San Juan Airlines
Sections of the FAR Affected: 14 CFR 135.225(e)(1)
Description of Relief Sought/ Disposition: To extend Exemption No. 4761 that allows aircraft operated by petitioner to take off under instrument flight rules from any Canadian civil airport when the weather visibility minimum at those airports is less than 1-mile visibility, but not less than the minimums prescribed by Transport Canada, which is the Canadian government agency responsible for establishing such weather visibility minimum.
Grant, February 27, 1989, Exemption No. 4761A

Docket No.: 25779
Petitioner: JBH Air Charter
Sections of the FAR Affected: 14 CFR 43.3
Description of Relief Sought/ Disposition: To allow petitioner's flightcrews to remove passenger seats and cabinets and install patient stretchers or cargo floors and nets.
Denial July 21, 1989, Exemption No. 5074

[FR Doc. 89-18466 Filed 8-7-89; 8:45 am]
BILLING CODE 4910-13-M

Federal Railroad Administration

Petition for Exemption or Waiver of Compliance; Napa Valley Railroad Co.

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for an exemption from or waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in this proceeding by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with this proceeding since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, he or she should notify FRA, in writing, before the end of the comment period and specify the basis for the request.

All communications concerning this proceeding should identify the appropriate docket number (Waiver Petition Docket Number RSRM 89-1) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Communications received before September 21, 1989, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning this proceeding are available for examination during regular business hours (9 a.m.-5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

The individual petitioner seeking an exemption or waiver of compliance is:

Napa Valley Railroad Company

(Waiver Petition docket Number RSRM–89–1)

The NAPA Valley Railroad Company (NVR) seeks an exemption from the regulation requiring that a prescribed rear end marking device be displayed on passenger, commuter and freight trains (Title 49, Code of Federal Regulations, part 221). Instead, the NVR proposes to use an alternative marking device similar to the original equipment used on this historical passenger train. The train is proposed to operate between NAPA and St. Helena, a distance of 19.0 miles.

Today, the NVR switches an occasional car of freight on industrial sidings. In the future, it is proposed to provide this service over the line at separate times. For this reason, the NVR feels the request is not contrary to the public interest or safety.

Issued in Washington, DC, on July 31, 1989.

J. W. Walsh,

Associate Administrator for Safety.

[FR Doc. 89–18429 filed 8–7–89; 8:45 am]

BILLING CODE 4910–06–M

National Highway Traffic Safety Administration

Highway Safety Programs; Amendment of Conforming Products List of Calibrating Units for Breath Alcohol Testers

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

ACTION: Notice.

SUMMARY: This notice amends the Conforming Products List for instruments which have been found to conform to the Model Specifications for Calibrating Units for Breath Alcohol Testing (49 FR 48865).

EFFECTIVE DATE: August 8, 1989.

FOR FURTHER INFORMATION CONTACT: Mrs. Robin Mayer, Office of Alcohol and State Programs, NTS–21, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590; Telephone: (202) 366–9825.

SUPPLEMENTARY INFORMATION: On August 19, 1975 (40 FR 36167), the National Highway Traffic Safety Administration (NHTSA) published the Standards for Calibrating Units for Breath Alcohol Testers. A Qualified Products List of Calibrating Units for Breath Alcohol Testers, of devices which met this standard, was first issued on November 30, 1976 (41 FR 53384).

On December 14, 1984 (49 FR 48864), NHTSA converted this standard to Model Specifications for Calibrating Units for Breath Alcohol Testers, and published in Appendix B (49 FR 48872), a Conforming Products List (CPL) of calibrating units which were found to conform to the Model Specifications. Amendments to the CPL have been published in the **Federal Register** since that time.

Since the last publication of the CPL for calibrating units, several calibrating units not previously on the CPL, have been tested in accordance with the Model Specifications, and were found to be in conformance. These units include: CMI, Inc.'s Toxitest II; Guth Laboratories, Inc., Model 34C FM; Protection Devices, Inc., LS34, Model 6100; and Systems Innovation, Inc., True-Test MD 901.

The Conforming Product List is therefore amended as follows:

Conforming Products List of Calibrating Units for Breath Alcohol Testers

Manufacturer and Calibrating Unit

1. Century Systems, Inc., Arkansas City, KA: Breath Alcohol Simulator BAS311.
2. CMI, Inc., Ownensboro, KY: Toxitest II.
3. Federal Signal Corporation, CMI, Inc., Minturn, CO: Toxitest Model ABS 120.
4. Guth Laboratories, Inc., Harrisburg, PA: Model 34C Simulator; Model 34C Cal DOJ; Model 34C–FM; and Model 10–4.
5. Intoximeters, Inc., St. Louis, MO: Nalco Breath Alcohol Standard.
6. Luckey Laboratories, Inc., San Bernardino, CA: Simulator.
7. Protection Devices, Inc., Dayton, NJ: LS34 Model 6100.
8. Smith & Wesson Electronic Co., Springfield, MA: Mark II–A Simulator.
9. Systems Innovation, Inc., Hallstead, PA: True-Test MD 901.

(23 U.S.C. 402; delegations of authority at 49 CFR 1.50 and 501)

Issued on: August 8, 1989.

Robert Nicholson,

Acting Associate Administrator for Traffic Safety Programs.

[FR Doc. 89–18545 Filed 8–3–89; 1:48 pm]

BILLING CODE 4910–59–M

Highway Safety Program; Amendment of Conforming Products List of Evidential Breath Testing Devices

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

ACTION: Notice.

SUMMARY: This notice amends the Conforming Products List for instruments which have been found to conform to the Model Specifications for Evidential Breath Testing Devices (49 FR 48854).

EFFECTIVE DATE: August 8, 1989.

FOR FURTHER INFORMATION CONTACT: Mrs. Robin Mayer, Office of Alcohol and State Programs, NTS–21, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590; Telephone: (202) 366–9825.

SUPPLEMENTARY INFORMATION: On November 5, 1973, the National Highway Traffic Safety Administration (NHTSA) pubished the Standards for Devices to Measure Breath Alcohol (38 FR 30459). A Qualified Products List of Evidential Breath Measurement Devices comprised of instruments that met this standard was first issued on November 21, 1974 (38 FR 41399).

On December 14, 1984 (49 FR 48854), NHTSA converted this standard to Model Specifications for Evidential Breath Testing Devices, and published in Appendix D to that notice (49 FR 48864), a Conforming Products List (CPL) of instruments that were found to conform to the Model Specifications. Amendments to the CPL have been published in the **Federal Register** since that time.

Since the last publication of the CPL, one device has been tested in accordance with the Model Specifications, and was found to conform to the Model Specifications: Intoximeter Inc.'s Intoximeter 3000 (rev B2) w/FM option.

Further, CMI, Inc., has moved its manufacturing plant from Mintern, CO, to Owensboro, KY. Instruments manufactured by CMI in Owensboro have been tested and found to remain in conformance with the Model Specifications. In addition, several typographical errors found in prior Conforming Product Lists have been corrected.

The Conforming Products List is therefore amended as follows:

CONFORMING PRODUCTS LIST OF EVIDENTIAL BREATH MEASUREMENT DEVICES

Manufacturer and model	Mobile	Nonmobile
Alcohol Countermeasures System, Inc., Port Huron, MI		
Alert J3AD	X	X
BAC Systems, Inc., Ontario, Canada		
Breath Analysis Computer		X

CONFORMING PRODUCTS LIST OF EVIDENTIAL BREATH MEASUREMENT DEVICES—Continued

Manufacturer and model	Mobile	Nonmobile
CAMED Ltd., North Shields, Tyne and Ware, England		
IR Breath Analyzer	X	X
CMI, Inc., Owensboro, KY		
Intoxilyzer Model		
4011	X	X
4011A	X	X
4011AS	X	X
4011AS-A	X	X
4011AS-AQ	X	X
4011AW	X	X
4011A27-10100	X	X
4011A27-10100 with filter	X	X
5000	X	X
5000 (w/Cal. Vapor Re-Circ.)	X	X
5000w/3/8" ID Hose option)	X	X
5000 (CAL DOJ)	X	X
5000(VA)	X	X
PAC 1200	X	X
Decator Electronics, Decator, IL		
Alco-Tector model 500		X
Intoximeters, Inc., St. Louis, MO		
Photo Electric Intoximeter		X
GC Intoximeter MK II	X	X
GC Intoximeter MK IV	X	X
Auto Intoximeter	X	X
Intoximeter Model		
3000	X	X
3000 (rev B1)	X	X
3000 (rev B2A)	X	X
3000 (rev B2A)	X	X
3000 (rev B2A) w/ FM option	X	X
3000 (Fuel Cell)	X	X
Alco-Sensor III	X	X
Alco-Sensor III	X	X
RBT III	X	X
Komyo Kitagawa, Kogyo, K.K.		
Alcolyzer DPA-2	X	X
Breath Alcohol Meter PAM 101B	X	X
Lion Laboratories, Ltd., Cardiff, Wales, UK		
Alcolmeter Model		
AE-D1	X	X
SD-2	X	X
EBA	X	X
Auto-Alcolmeter		
Lucky Laboratories, San Bernardino, CA		
Alco-Analyzer Model		
1000		X
2000		X
National Draeger, Inc., Pittsburgh, PA		
Alcotest Model		
7010	X	X
7110	X	X
Breathalyzer Model		
900	X	X
900A	X	X
900BG	X	X
National Patent Analytical Systems, Inc., East Hartford, CT		
BAC Datamaster	X	X

CONFORMING PRODUCTS LIST OF EVIDENTIAL BREATH MEASUREMENT DEVICES—Continued

Manufacturer and model	Mobile	Nonmobile
Omicron Systems, Palo Alto, CA		
Intoxilyzer Model		
4011	X	X
4011AW	X	X
Siemans-Allis, Cherry Hill, NJ		
Alcomat	X	X
Alcomat F	X	X
Smith and Wesson Electronics, Springfield, MA		
Breathalyzer Model		
900	X	X
900A	X	X
1000	X	X
2000	X	X
2000 (non-Humidity Sensor)	X	X
Stephenson Corp.		
Breathalyzer 900	X	X
Verax Systems, Inc., Fairport, NY		
The BAC Verifier	X	X
BAC Verifier Datamaster	X	X
BAC Verifier Datamaster II	X	X

(23 U.S.C. 402; delegations of authority at 49 CFR 1.50 and 501.)

Robert Nicholson,

Associate Administrator for Traffic Safety Programs.

[FR Doc. 89-18534 Filed 8-3-89; 1:48 pm]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1989 Rev., Supp. No. 1]

Surety Companies Acceptable on Federal Bonds; Acstar Insurance Co.

A Certificate of Authority as an acceptable surety on Federal Bonds is hereby issued to the following company under Sections 9304 to 9308, Title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1989 Revision, on page 27801 to reflect this addition:

Acstar Insurance Company. Business Address: 141 Prestige Park Road, P.O. Box 8307, East Hartford, CT 06108. Underwriting Limitation *b/*: *$1,493,000.* Surety Licenses *c/*: All except AS, DE, GU, HI, PR, and VI. Incorporated IN: Illinois.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR, Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Finance Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (202) 287-3921.

Dated: August 1, 1989.

Mitchell A. Levin,

Assistant Commissioner, Comptroller, Financial Management Service.

[FR Doc. 89-18483 Filed 8-7-89; 8:45 am]

BILLING CODE 4810-35-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination; Canaletto

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit "Canaletto" (see list),[1] imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Metropolitan Museum of Art, in New York, NY, beginning on or about October 30, 1989 to on or about January 21, 1990, is in the national interest.

Public notice of this determination is ordered to be published in the Federal Register.

Dated: July 28, 1989.

R. Wallace Stuart,

Acting General Counsel.

[FR Doc. 89-18455 Filed 8-7-89; 8:45 am]

BILLING CODE 8230-01-M

[1] A copy of this list may be obtained by contacting Ms. Lorie Nierenberg of the Office of the General Counsel of USIA. The telephone number is 202-485-8827, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547.

Culturally Significant Objects Imported for Exhibition; Determination; Czech Modernism: 1900–1945

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit "Czech Modernism: 1900–1945" (see list[1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. I also determine that the temporary exhibition or display of the listed exhibit objects at the Museum of Fine Arts, Houston, Texas, beginning on or about October 6, 1969 to on or about January 7, 1990, is in the national interest. The works in the painting, sculpture, drawings, and prints segment of the exhibition will be further displayed at the Brooklyn Museum, Brooklyn, New York, beginning on or about March 2, 1990 to on or about May 7, 1990. The works in the photography segment of the exhibition will be further displayed at the International Center of Photography, New York, New York, beginning on or about February 9, 1990 to on or about May 7, 1990, and at the Akron Art Museum, Akron, Ohio, beginning on or about June 23, 1990 to on or about August 26, 1990. These additional displays are also deemed to be in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: July 29, 1989.

R. Wallace Stuart,

Acting General Counsel.

[FR Doc. 89–18454 Filed 8–7–89; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Ms. Lorie Nierenberg of the Office of the General Counsel, USIA. The telephone number is (202) 485–8827, and the address is Room 700, U.S. Information Agency, 301–4th Street, SW., Washington, DC 20547.

Culturally Significant Objects Imported for Exhibition, Determination; Velazquez Exhibition

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Velazquez Exhibition" (see list),[1] imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Metropolitan Museum of Art in New York, beginning on or about October 3, 1989 to on or about January 7, 1990, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: July 28, 1989.

R. Wallace Stuart,

Acting General Counsel.

[FR Doc. 89–18456 Filed 8–7–89; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Ms. Lorie J. Nierenberg of the Office of the General Counsel of USIA. The telephone number is 202–485–8827, and the address is Room 700, U.S. Information Agency, 301 4th Sreet SW., Washington, DC 20547.

Grants Program for Private Not-for-Profit Organizations In Support of International Educational and Cultural Activities

The United States Information Agency invites applications from private sector organizations to conduct two youth exchange projects between the U.S. and several American Republics countries (Latine America/ the Caribbean). Please note that both of these projects were announced in the **Federal Register** of December 6, 1988, pages 49266–67. Subsequent substantial modifications have caused the reannouncement of these projects.

The deadline for receipt of proposals in USIA is August 15, 1989.

Uruguay

A two-way project for students from a junior college or junior college consortium and students from the Binational Center in Montevideo to learn about the host culture through education. The students will attend classes in various subjects at the host institution(s) and will participate in cultural activities. Each phase will last six weeks.

Regional Projects

Young Diplomats.—A two-way project for students from Latin American diplomatic academies and young American professionals or graduate students preparing for a foreign service career to learn about the foreign policy organization, foreign policy formulation and training for the foreign service in another country. The 10 northbound participants will attend courses and briefings with their American counterparts in the U.S. for three weeks. The 8 Americans will spend one week in each of three of the participating Latin American countries for a total of three weeks. In these countries they will visit and attend courses and briefings with their counterparts from the northbound segment.

Youth Exchange Programs, Bureau of Educational and Cultural Affairs, (ATTN: Susan Wanger-Crystal, Youth Exchange Staff, United States Information Agency), 301 4th St. SW., Rm 357, Washington, DC 20547, Telephone 202/485–7299.

Dated: July 26, 1989.

Csaba T. Chikes,

Director, Youth Exchange Staff.

[FR Doc. 89–18457 Filed 8–7–89; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 151
Tuesday, August 8, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

August 3, 1989.

TIME AND DATE: 10:00 a.m., Thursday, August 10, 1989.

PLACE: Room 600, 1730 K Street, NW., Washington, DC

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Secretary of Labor, MSHA v. Garden Creek Pocahontas Co.*, Docket No. VA 88-9, etc. (Issues include whether certain injuries were "occupational injuries" required to be reported to MSHA pursuant to 30 CFR § 50.20(a).)

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)]

The meeting will be closed after discussion of the above. The Commission will continue its consideration of the following:

2. *Westwood Energy Properties*, Docket No. PENN 88-42-R. (Issues include whether the Secretary has jurisdiction under the Mine Act to inspect operations involving a culm bank at Westwood's power plant.)

3. *FMC Wyoming Corporation*, Docket No. WEST 86-43-RM, etc. (Issues include whether FMC Wyoming's violation of 30 CFR § 57.5002 was a significant and substantial contribution to a mine health hazard and the result of FMC's unwarrantable failure to comply, and whether FMC violated 30 CFR § 57.18002.)

Any person intending to attend the open portion of this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFOR: Jean Ellen, (202) 653-5629/(202) 566-2673 for TDD Relay.

Jean H. Ellen,
Agenda Clerk.
[FR Doc. 89-18613 Filed 8-4-89; 2:27 pm]
BILLING CODE 6735-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, August 14, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 4, 1989.

Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 89-18647 Filed 8-4-89; 3:15 pm]
BILLING CODE 6210-01-M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Previously Held Emergency Meeting

TIME AND DATE: 1:05 p.m., Friday, August 4, 1989.

PLACE: Chairman's Office, 6th Floor, 1776 G Street NW., Washington, DC 20456.

STATUS: Closed.

MATTER CONSIDERED:

1. Special Assistance under Section 208 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).

The Board voted unanimously that Agency business required that a meeting be held with less than the usual seven days advance notice.

The Board voted unanimously to close the meeting under the exemptions listed above. The Deputy General Counsel certified that the meeting could be closed under those exemptions.

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682-9600.

Becky Baker,
Secretary of the Board.
[FR Doc. 89-18662 Filed 8-4-89; 3:56 pm]
BILLING CODE 1535-01-M

NATIONAL SCIENCE BOARD

DATE AND TIME: August 18, 1989.

8:00 a.m. Closed Session
10:15 a.m. Open Session

PLACE: National Science Foundation, 1800 G Street, NW, Room 540, Washington, DC 20550.

STATUS:

Most of this meeting will be open to the public.

Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED AUGUST 18:

Closed Session (8:00 a.m. to 10:15 a.m.)

1. Minutes—June 1989 Meeting.
2. NSB and NSF Staff Nominees.
3. Future NSF Budgets.
4. Grants and Contracts—Action Items.

Open Session (10:15 a.m. to 12:00 noon)

5. Grants, Contracts, and Programs—Action Item.
6. Chairman's Report.
7. Minutes—June 1989 Meeting.
8. Biennial Delegation of Authority.
9. Director's Report.
10. Draft Report of the NSB Task Force on Global Biodiversity.
11. Opportunities for Research in Japan.
12. Other Business.

Thomas Ubois,
Executive Officer.
[FR Doc. 89-18618 Filed 8-4-89; 2:29 pm]
BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of August 7, 14, 21, and 28, 1989.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of August 7

Thursday, August 10

2:00 p.m.
Periodic Briefing by Advisory Committee on Reactor Safeguards (ACRS) Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, August 11

10:00 a.m.
Briefing on Certification of DOT Transurantic Waste Package—TRUPACT II (Public Meeting)

Week of August 14—Tentative

Tuesday, August 15

10:00 a.m.
Periodic Briefing on EEO Program (Public Meeting)

Wednesday, August 16

10:00 a.m.
Briefing on Status of Calvert Cliffs (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Thursday, August 17

10:00 a.m.
Discussion of Full Power Operating License for Limerick-2 (Public Meeting)

Week of August 21—Tentative

There are no meetings scheduled for the Week of August 21.

Week of August 28—Tentative

There are no meetings scheduled for the Week of August 28.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To verify the status of meetings call (Recording)—(301) 492–0292

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

Dated: August 3, 1989.

William M. Hill, Jr.,
Office of the Secretary.

[FR Doc. 89–18641 Filed 8–4–89; 2:30 pm]
BILLING CODE 7590–01–M

MISSISSIPPI RIVER COMMISSION

TIME AND PLACE: 9:00 a.m., September 11, 1989.

PLACE: On board MV MISSISSIPPI at foot of Eighth Street, Cairo, IL.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries Project in Memphis District.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601–634–5766.

Rodger D. Harris,
Executive Assistant, Mississippi River Commission.

[FR Doc. 89–18614 Filed 8–4–89; 2:28 pm]
BILLING CODE 3710–GX–M

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 9:00 a.m., September 12, 1989.

PLACE: On board MV MISSISSIPPI at City Front, vicinity of Beale Street, Memphis, TN.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: (1) Report on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; and (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601–634–5766.

Rodger D. Harris,
Executive Assistant, Mississippi River Commission.

[FR Doc. 89–18615 Filed 8–4–89; 2:28 pm]
BILLING CODE 3710–GX–M

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 9:00 a.m., September 13, 1989.

PLACE: On board MV MISSISSIPPI at City Front, Greenville, MS.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries Project in Vicksburg District.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601–634–5766.

Rodger D. Harris, Executive Assistant
Mississippi River Commission.

[FR Doc. 89–18616 Filed 8–4–89; 2:28 pm]
BILLING CODE 3710–GX–M

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 9:00 a.m., September 15, 1989.

PLACE: On board MV MISSISSIPPI at City Front, Morgan City, LA.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries Project in New Orleans District.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601–634–5766.

Rodger D. Harris,
Executive Assistant, Mississippi River Commission.

[FR Doc. 89–18617 Filed 8–4–89; 2:28 pm]
BILLING CODE 3710–GX–M

Corrections

Federal Register
Vol. 54, No. 151
Tuesday, August 8, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-930-09-4214-12; MTM 15568]

Termination of Classification for Multiple-Use Management; Montana

Correction

In notice document 89-17586 beginning on page 31254 in the issue of Thursday, July 27, 1989, make the following corrections:

1. On page 31254, in the third column, under **Principal Meridian Montana**, the 10th and 11th lines should be removed.

2. On the same page, in the same column, the third line from the end should read "sec. 30, N½NE¼.".

3. On page 31255, in the first column, the fourth line should read "sec. 24, N½."

4. On the same page, in the same column, in the 14th line, the comma preceding "and" should be removed.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010-AB21

Oil, Gas, and Sulphur Operations in the Outer Continental Shelf; Training Requirements for Personnel Engaged in Drilling, Production, Well-Completion, and Well-Workover Operations

Correction

In proposed rule document 89-17712 beginning on page 31768 in the issue of Tuesday, August 1, 1989, the heading should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 43, 65, and 145

[Docket No. 25965]

RIN 2120-AC38

Repair Station and Repairmen Certification Rules; Regulatory Review; Meetings

Correction

In proposed rule document 89-17239 beginning on page 30866 in the issue of Monday, July 24, 1989, make the following corrections:

On page 30867, in the third column, in the third paragraph, in the material set off by dashes "Class 3" and "Class 2" should read "Class 2" and "Class 3" respectively.

BILLING CODE 1505-01-D

federal register

Tuesday
August 8, 1989

Part II

Environmental Protection Agency

40 CFR Part 85

Control of Air Pollution From Motor Vehicles and Motor Vehicle Engines; Emission Control System Performance Warranty Regulations and Voluntary Aftermarket Part Certification Program; Final Rulemaking

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 85

[FRL-3484-4]

Control of Air Pollution From Motor Vehicles and Motor Vehicle Engines; Emission Control System Performance Warranty Regulations and Voluntary Aftermarket Part Certification Program

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This final rule amends the Emission Control System Performance Warranty regulations and the Voluntary Aftermarket Part Certification Program. EPA developed this rulemaking in response to the October 14, 1983, decisions of the United States Court of Appeals for the District of Columbia Circuit.[1] The court's decision for the most part upheld the Emissions Control System Performance Warranty Regulations and Voluntary Aftermarket Part Certification Program.[2] However, it cited several areas of concern where the court felt some revision was required. EPA proposed amendments addressing these concerns in the January 9, 1987, Notice of Proposed Rulemaking (NPRM), 52 FR 924, and received numerous comments from aftermarket part manufacturers and vehicle manufacturers.

These final rules amend the voluntary aftermarket part regulations to provide all aftermarket part manufacturers a means to certify emission related parts.[3] The amended regulations provide part and vehicle manufacturers with a defined mechanism for resolving warranty claim disputes involving these certified parts. Additionally, vehicle manufacturers are provided with guidelines for denying warranty coverage for repairs involving uncertified parts. Finally, these rules require that durable labels that are unique (and thus distinguishable between manufacturers) be used on all certified aftermarket parts.

EFFECTIVE DATE: September 7, 1989.

ADDRESSES: Copies of materials relevant to this rulemaking proceeding are contained in public Docket EN-84-08 at the U.S. Environmental Protection Agency, Central Docket Section, Room 4, South Conference Center (LE—131), Waterside Mall, 401 M Street SW., Washington, DC 20460, and are available for review weekdays between 8:00 a.m. and 3:00 p.m. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Michael Sabourin, Certification Division, U.S. Environmental Protection Agency, 2565 Plymouth Rd., Ann Arbor, MI 48105 (313) 668-4316.

SUPPLEMENTARY INFORMATION

I. Background

Section 207(a)(1) of the Clean Air Act (the Act) requires motor vehicle manufacturers to warrant that each new vehicle is designed, built, and equipped to conform to the applicable Federal emission standards. The vehicle manufacturer must also warrant that the vehicle is free from defects which would cause the vehicle or engine to fail to conform to the applicable regulations within the useful life of the vehicle. Section 207(b) of the Act directs EPA to promulgate rules requiring vehicle manufacturers to also warrant the performance of certified emission related parts or systems (the performance warranty) for the useful life of the vehicle, if EPA determines that testing methods and procedures are available to determine if a vehicle is in compliance with applicable emission standards during its useful life. EPA promulgated these emission control system performance warranty regulations on May 22, 1980 (45 FR 34829). Proper maintenance and use of a vehicle are prerequisites to section 207(b) performance warranty coverage.

EPA also promulgated regulations, as authorized by section 207(a)(2) of the Act, that allow automotive part manufacturers to certify their parts as equivalent to original equipment manufacturer (OEM) parts (45 FR 78448, November 25, 1980). Vehicle manufacturers cannot deny a performance warranty claim on the ground that use of an aftermarket part is improper maintenance or repair if the part is certified under the voluntary aftermarket part certification regulations. Thus, consumers can use certified aftermarket parts without jeopardizing their emission control performance warranties. Further, the consumer can purchase certified parts knowing that they have been evaluated for emission performance.

The vehicle manufacturers are required by section 207(b) to honor warranties for vehicles equipped with certified aftermarket parts. However, the certified part manufacturer is required to reimburse the vehicle manufacturer if the certified part caused the emissions failure.

The regulations promulgated in 1980 limited certification to thirteen specific replacement parts. For each of these parts, the regulations defined unique durability procedures and emission critical parameters (ECP's). ECP's are those physical and performance characteristics of a part which, if duplicated (or exceeded), will result in satisfactory emission performance. Manufacturers of the thirteen specific parts covered by the regulations could certify by evaluating their parts according to these ECP procedures or, at the manufacturer's option, on the basis of Federal Test Procedure (FTP) emission results and such other evaluation as approved by the Administrator of EPA.

Vehicle manufacturers and part manufacturers challenged several aspects of the aftermarket part certification regulations and the emission control system performance warranty regulations.[4] On October 14, 1983, the United States Court of Appeals for the District of Columbia Circuit ruled on the petitions. The court's decision basically upheld the regulations. However, the court directed EPA to make or consider amendments to the following areas.

A. Specialty Parts

The original regulations specifically excluded add-on or specialty parts from the aftermarket part certification program since there were no recognized emission critical parameter evaluation procedures for these parts. This exclusion was challenged by manufacturers of specialty parts. The court ruled that even if emission critical parameter evaluation procedures were not available, manufacturers of specialty parts should at least be allowed to certify on the basis of FTP test results unless EPA could provide a reasoned explanation for excluding these parts from certification. Thus, EPA proposed to allow specialty parts to be certified on the basis of FTP results. Additionally, although not directed by the court to do so, EPA proposed amendments which would allow manufacturers of all types of aftermarket emission related parts to

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[1] *Specialty Equipment Manufacturers Association (SEMA)* v. *Ruckelshaus*, 720 F.2d 124; *Automotive Parts Rebuilders Association (APRA)* v. *EPA*, 720 F.2d 142.

[2] Code of Federal Regulations (CFR), title 40, part 85, subpart V.

[3] Emission related components include those components installed for the specific purpose of controlling emissions (such as exhaust gas recirculation valves) as well as those components, systems, or elements of design which must function properly to assure continued vehicle emission compliance (such as the fuel metering system).

[4] *SEMA* v. *Ruckelshaus*, 720 F.2d at 124; *APRA* v. *EPA*, 720 F.2d at 142.

certify on the basis of FTP results. This proposal would greatly expand the number and types of parts eligible for aftermarket part certification.

B. Inspection/Maintenance (I/M) Short Tests

The original regulations denied the use of I/M type short tests[5] for aftermarket part certification, relying instead on either the emission critical parameter procedures or FTP test results. Aftermarket part manufacturers argued in favor of certification based on the I/M-type short tests since, in practice, these short tests were used to determine emission compliance for performance warranty purposes. The court directed EPA to reconsider its policy and technical reasons for rejecting short tests. EPA did so in the NPRM, explaining that existing short tests are not a substitute for the FTP, the concern for potential emission degradation if certification via short tests were widely used, and the expected increase in performance warranty emission failures if short test certification was allowed.

C. Reimbursement Plan

As required by the original regulations, a motor vehicle manufacturer has to honor a consumer emission performance warranty claim, provided the vehicle failed to meet emission standards during its useful life and has been properly used and maintained with OEM parts or certified aftermarket parts. However, the motor vehicle manufacturer can require reimbursement from the certified part manufacturer for "reasonable expenses" incurred in the repair of a vehicle if a "valid emission performance warranty claim" arose because of the use of the certified aftermarket part. The original regulations did not define the two terms "reasonable expense" and "valid emission performance warranty claim," nor did they specify a reimbursement plan for the manufacturers to follow in the event of a dispute between the two parties.

The motor vehicle manufacturers and representatives of parts rebuilders contended that the two terms, "reasonable expense" and "valid emission performance warranty claim," were too vague to provide meaningful guidance to part manufacturers and vehicle manufacturers; the court agreed. The court required that EPA either apply its expertise in the area and define the terms within the regulations, or provide a forum in which the terms would be clarified through an adversarial process, such as arbitration. EPA improved the definition of these terms and proposed the adoption of an arbitration process to be followed when other attempts to settle a claim are unsuccessful.

D. Warranty Denial

The regulations allow a manufacturer to deny emission performance warranty to a customer if a vehicle's emission performance failure was traced to an uncertified aftermarket part. The original regulations required the vehicle manufacturer to "present evidence that an uncertified part on a vehicle was defective, or not equivalent, from an emission standpoint, to an OEM part" before the manufacturer could be free of emission performance warranty responsibility.[6] Vehicle manufacturers argued that demonstrating that a part was either defective or not equivalent to an OEM part placed an excessive burden on them. The court cautioned EPA not to "shift * * * the burden of demonstrating equivalency * * * to the vehicle manufacturers"[7] but permitted EPA to "* * * require vehicle manufacturers to submit a statement (or other evidence) indicating why an uncertified part was relevant to the vehicles' [emission] failure * * *."[8]

EPA proposed to allow the vehicle manufacturer to deny a warranty claim if it can make a technical determination that the uncertified aftermarket part was at fault and provide the consumer with a written assertion and supporting objective evidence that the uncertified part was at fault and that restoring the vehicle to OEM condition would repair the emission problem.

Finally, vehicle manufacturers argued the need for permanent labels or identification symbols on certified parts. EPA concurred with the vehicle manufacturers and, although not directed to do so by the court, proposed permanent labeling requirements.

II. Summary of Final Rule

These final rules permit all aftermarket part manufacturers to voluntarily certify their emission related parts. The previously existing method of certifying eligible parts using ECP's is unchanged by these rules. Therefore, manufacturers of the thirteen types of parts currently eligible to certify using ECP criteria are still allowed to certify these parts by that method.[9] However, today's action provides an alternative means of certifying parts which does not rely on ECP procedures. Utilizing this alternative method, the regulations also expand eligibility for voluntary certification to all emission related aftermarket parts.

The alternative method relies on FTP test results to demonstrate that use of the aftermarket part will not result in an unacceptable emissions increase compared to the vehicle in its original equipment (OE) configuration.

The alternative method also requires some form of durability demonstration for certain parts, depending on the potential emissions impact of the part to be certified. These final rules establish two categories of durability demonstration requirements for parts. The first category consists of parts which, when excessively deteriorated or failed in-use, will result in driveability problems likely to be quickly corrected. No durability testing is required for these parts to ensure continued emissions compliance. The second category consists of parts for which durability testing is required to demonstrate emissions compliance. The failure of these parts in-use will likely not cause driveability problems which would be automatically repaired.

Vehicle manufacturers will continue to be required to repair vehicles which fail in-use emission tests and are covered by the Act's section 207(b) emission warranty. If the warranty repair requires replacement of a defective or deteriorated certified aftermarket part, the vehicle manufacturer will make that repair without charge to the customer. The vehicle manufacturer is entitled to reimbursement from the manufacturer of the certified aftermarket part for reasonable costs incurred while repairing emissions failure caused by the aftermarket part. These final regulations establish reimbursement procedures for warranty cost claims between vehicle and certified aftermarket part manufacturers. The regulations also expand and clarify the meaning of reasonable expense and a valid emission performance warranty claim. This provides additional guidance for resolving reimbursement disputes that may arise. EPA prefers that disputes between vehicle manufacturers and aftermarket part manufacturers over warranty cost claims be resolved informally. Disputes which cannot be

[5] Short test are relatively quick, inexpensive tests ordinarily used by States in inspection/maintenance (I/M) programs to screen vehicles in use for compliance with certain emission standards. Failure of a short test approved under section 207(b) of the Act may result in a performance warranty claim.

[6] 40 CFR 85.2105(b).

[7] *APRA* v. *EPA*, 720 F.2d at 157.

[8] Ibid. at 158 n.63

[9] The thirteen currently eligible parts are listed in 40 CFR 85.2122.

resolved informally will be decided through arbitration.

These revised regulations prohibit denial of warranty coverage involving an uncertified part unless the vehicle manufacturer determines and documents to the consumer that the uncertified part was relevant to the failure. The regulations provide the requirements the vehicle manufacturer must meet to make such a denial.

The revised regulations also require that each certified aftermarket part be identified with a unique and durable label.

III. Discussion of Final Rulemaking[10]

A. Certification of Aftermarket Parts

1. Eligibility

The regulations promulgated in 1980 which established the voluntary certification program for aftermarket parts, limited certification to thirteen parts which had defined ECP (emission critical parameter) categories. As a result of the court case brought by aftermarket specialty part industry representatives, EPA was directed to either develop further its reasoning for limiting certification access or provide a means by which other emission related aftermarket parts can be certified.[11]

As proposed in the NPRM and set forth in these final rules, all manufacturers of emission related aftermarket parts are now eligible to participate in the voluntary certification process. EPA has developed testing criteria for the certification of emission related parts. These testing criteria will give reasonable assurance that use of these parts will not cause vehicles to fail to meet emission standards.

While EPA is allowing emission related specialty (i.e., add-on) parts to participate in this certification program, the main purpose of this program is to facilitate the maintenance and repair of an owner's vehicle by making good quality parts available for that purpose. It is not EPA's intention to encourage repair facilities to remove a primary OEM emission control component that is still properly operating (i.e., a low mileage part with no overt or driveability malfunction) in order to install a certified aftermarket part. While certified aftermarket parts must undergo testing that demonstrates their compliance with warranty requirements, the part manufacturer does not have to demonstrate a part's durability and emission performance as extensively as a vehicle manufacturer must do in certifying a vehicle. While EPA sees that increased part availability as a result of this certification program will generally be beneficial, use of a certified aftermarket part to replace a properly functioning OEM component may not always be in the best interest of air quality. Thus, EPA intends to monitor the use of certified parts. If the Agency determines that these parts are being used in a manner that is detrimental to air quality, EPA will consider amending these regulations to address that situation.

Consistent with EPA's past practice, the certifying manufacturer of an aftermarket part must not only demonstrate the part complies with emission standards during certification demonstration, but also attest that the part does not cause a substantial increase to emissions in any other normal vehicle driving mode not represented during certification or compliance testing. Parts that cannot meet these demonstration criteria are called defeat devices. For example, EPA is concerned about electronic devices such as replaceable PROM's (programmable read only memory chips) which store many of the operating parameters of the emission control system used by the vehicle's on-board computer. Aftermarket PROM's could be programmed to operate adequately under Inspection/Maintenance testing or under FTP testing, yet cause a substantial loss in emission control in normal vehicle operating modes not represented by one or both of these two test cycles. This might be due to lack of design sophistication or deliberate design intent (i.e., performance enhancement). Whatever the cause, if EPA obtains data showing that a part is a defeat device, that part will be decertified.

2. Warranty Obligations

The final rules clarify the existing requirement (40 CFR 85.2117) that all certified aftermarket parts must be warranted by the part manufacturer not to cause emission noncompliance of the vehicle on which it is installed. The amended rules clarify that this warranty applies for the remainder of the useful life of the vehicle on which the part is installed. The original vehicle manufacturer is required to honor all valid emission performance warranty claims involving any and all properly installed certified parts.[12] The vehicle manufacturer may then obtain reimbursement from the certified part manufacturer for a valid warranty claim caused by the certified part according to procedures described later in these final rules.

The basic performance warranty requirements contained in 40 CFR 85.2103 for vehicles are unchanged by these amendments. However, certain clarification is warranted here. Basically, the owner is eligible for warranty repair if his or her vehicle has been properly maintained and used yet fails an EPA approved state or local I/M test during the vehicle's useful life and the owner is required to seek repair of the vehicle or incur some other sanction. Of particular interest to this rulemaking, the vehicle manufacturer is required to repair or replace without charge those certified emission related components necessary to remedy that emission failure if it occurs within the prescribed warranty period. Warranted components include all OEM emission related components and any certified aftermarket component installed on the vehicle. For vehicles in operation less than 24 months or 24,000 miles, any emission related repairs to the vehicle are covered by the warranty. After 24 months or 24,000 miles, only those parts installed for the sole or primary purpose of reducing emissions are covered by the performance warranty.

Certified parts and systems shall be warranted for the remaining warranty period of the vehicle. Since these parts could be installed on a vehicle with low mileage, the part manufacturer must be prepared to warrant its parts for the full warranty period of the vehicle (e.g., for the full useful life of 5 years or 50,000 miles for primary emission control devices installed on light-duty vehicles). Since the OEM is only required to warrant certain emission related parts for 2 years or 24,000 miles under the performance warranty, the aftermarket part manufacturer is likewise only required to warrant its comparable parts for that same period, even if the OEM is required to warrant its part for an interval greater than the 2 years or 24,000 miles under the defect warranty.

In the NPRM, EPA proposed an option that would have allowed vehicle manufacturers to deny warranty coverage to a vehicle owner when a certified specialty part was determined to be the cause of a performance

[10] In this section, where appropriate, EPA responds to certain comments on the NPRM. Responses to other significant comments are in the "Summary and Analysis of Comments" which has been placed in the public docket for this rulemaking.

[11] The court case only directed EPA to reconsider certification of specialty parts. *SEMA* v. *Ruckelshaus*, 720 F.2d at 137–138. However, EPA has decided it is appropriate to include all emission related parts in this category.

[12] If an original vehicle manufacturer's authorized service facility improperly installs a certified part, the vehicle manufacturer is still required to honor the performance warranty claim.

warranty claim. EPA had suggested that since specialty parts were typically add-on parts not used primarily for maintenance and repair, as specifically covered in the warranty provisions of section 207(b) of the Act, they could be denied warranty repair by the vehicle manufacturer if the failure was related to the add-on part. Under this proposed option the vehicle owner would go directly to the certified specialty part manufacturer for warranty coverage.

A number of commenters pointed out problems with the definition of specialty parts in the NPRM. It was unclear whether the NPRM definition of specialty parts included parts which provide a necessary repair or replacement function as well as an additional feature or function. Commenters contended that these parts do not fit the definition proposed by EPA. They stated that consumers may buy these parts for convenience and/or cost savings, with no intention of altering the vehicle's emission system. This is contrary to EPA's contention in the NPRM that consumer's generally purchase specialty parts with the knowledge and intent of altering the vehicle's emission control system. Thus, these commenters requested that specialty parts should be treated the same as all other certified aftermarket parts and that OE manufacturers should not be allowed to deny warranty repairs for problems caused by a certified specialty part.

Based on these comments, EPA can see difficulties in clearly defining what constitutes a specialty part. The difficulty rests in determining whether a part provides a repair or maintenance function to warrant certification. It appears that many parts will fall into this category of providing both a replacement/maintenance function and some additional, unnecessary enhancement.

On the other hand, in their comments to the NPRM, vehicle manufacturers supported the optional treatment of certified specialty parts based on the concern that OEM dealerships would not know how to diagnose and repair problems caused by specialty parts which were designed to perform substantially different functions than OEM parts. However, as indicated above, many parts that normally are considered specialty parts also serve a replacement function. For such parts, the OEM dealership generally should be able to determine if the replacement features of the specialty part are performing adequately. Diagnosis of problems due to parts other than the specialty part should further allow the repair facility to assess whether the specialty part is significantly contributing to the emissions noncompliance. Additionally, EPA expects that major suppliers of specialty equipment will make diagnosis and repair information available to repair facilities. Finally, manufacturers can verify their diagnosis by removing the specialty equipment and returning the vehicle to its OEM configuration. EPA recognizes that this could be relatively expensive and would expect repair facilities only to take this action when it is quite likely that the specialty part is at fault.

Specialty parts certified according to the rules being promulgated today will have demonstrated their emission control capability. EPA expects warranty claims due to certified specialty parts to occur no more frequently than for any other certified part. Thus, specialty part warranty claims should be relatively rare. Given the difficulty, complexity and potential confusion associated with trying to implement a separate warranty system for specialty parts and the expected infrequent occurrences of certified specialty part warranty claims, EPA cannot justify a separate specialty part warranty system. Thus, for all of the above reasons, these final rules clarify that warranty claims involving certified specialty parts will be handled in the same way as all other claims involving certified parts as suggested by certain commenters. However, EPA may reconsider the proposed option if the need arises in the future.

3. Certification Emissions Test Requirements

a. *Certification using ECP's.* As noted earlier, today's final rules do not change the regulations currently allowing certification using ECP's (emission critical parameters). Specifically, today's rules do not add or delete any part categories that are eligible to certify using ECP's. Several commenters expressed an interest in expanding the ECP parts list. EPA believes the approach of using ECP's is a sound one, as well as the most straightforward procedure for certifying parts in cases where it is possible to develop ECP's. EPA encourages industry initiatives to develop additional categories of ECP's for the certification of aftermarket parts. It is one approach that meets the needs of a part manufacturer to certify at reasonable cost and gives reasonable assurance that the specific part will work properly for its useful life.

Any expansion of the ECP list will require another EPA rulemaking. In the meantime, this final rulemaking also allows all part manufacturers to certify their emission related aftermarket parts, whether or not their parts have defined ECP's, through FTP testing.

b. *Certification using the FTP.* As proposed in the NPRM, the regulations being promulgated today permit a part manufacturer to conduct FTP emission testing to demonstrate emissions compliance by vehicles using its part.[13]

For aftermarket parts determined not to accelerate the deterioration of other preexisting emission related parts, the actual test procedure will require two FTP tests, the first in the test vehicle's original configuration and the second with the aftermarket part installed. To obtain certification, the difference of emissions between the two tests must be less than the smallest "certification vehicle emission margin" of all the OEM engine families on which the part is specified for use by the part manufacturer. "Certification vehicle emission margin" for a certified engine family means the difference between the EPA emission standards and the average FTP emission test results of that engine family's emission-data vehicles at the projected full useful life mileage point (full useful life mileage for light-duty vehicles is presently 50,000 miles and for light-duty trucks is 120,000 miles) obtained by the OE manufacturer during vehicle certification.

Aftermarket parts accelerating deterioration of other OEM emission related parts ordinarily will require only one test on a worst-case vehicle. The vehicle with the part installed must be driven for its useful life and then emission tested to determine compliance with applicable standards.

Several commenters indicated that EPA should not allow the part manufacturers to use up the emission margin created by the OEM during vehicle development and certification. Vehicle manufacturers commented that this margin is necessary to allow for production differences and other factors which might cause an emission increase to be detected during selective enforcement auditing (SEA) [14] or in-use compliance testing (e.g., recall).[15]

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[13] However, as discussed later in this notice, in order to minimize testing expenses for parts manufacturers, EPA is eliminating (or reducing) durability testing requirements for certain parts.

[14] Under section 206(b) of the Act EPA implements the SEA program involving assembly line emission testing to determine whether new motor vehicles or new motor vehicle engines conform with applicable emissions regulations.

[15] Under section 207(c) EPA implements what is sometimes referred to as its recall program. Vehicle manufacturers are required to recall and repair a class of vehicles if EPA determines that a

Continued

However, in the 1983 court case reviewing the 1980 regulations,[16] EPA was already challenged on the issue of allowing an increase in emissions during aftermarket parts certification. The Motor Vehicle Manufacturers Association (MVMA) argued that parts should be certified to a "no increase" standard. EPA argued that the regulations need only require that a part not cause a vehicle to exceed emission standards, not that the part cause no emissions increase. The court upheld EPA's interpretation as being consistent with section 207 of the Act. The statute says nothing about prohibiting certified parts from causing any increase in emissions. Its only concern is that a vehicle in which parts are installed comply with emission standards.

From an emission perspective, EPA would prefer not to allow any emissions increase due to the installation of aftermarket parts. However, in order to treat part manufacturers with similar equity to vehicle manufacturers, the Agency will not prohibit aftermarket part manufacturers from using up the certification vehicle emission margin during certification. Vehicle manufacturers may comply with certification requirements by certifying at a level equal to or below the emission standards. EPA does not believe it is necessary or equitable to require another set of lower standards (i.e., lower than the vehicle emission standards listed in the regulations) to which the part manufacturer must certify, if the part manufacturer demonstrates that its part when installed will not cause this original emission standard to be exceeded.

Moreover, EPA expects that any potential emission increase due to some aftermarket parts using up some of this certification margin will be small. Additionally, the SEA and in-use compliance programs are unaffected by this. For the SEA program OEM compliance is based on the performance of assembly line vehicles equipped with OEM components. For the in-use compliance program nonconformity determination will not be based on vehicles with unrepresentative emissions caused by non-OEM parts. Therefore, the vehicle manufacturer is not in jeopardy of failing emission standards in these programs due to the installation of aftermarket parts. Further, this potentially small total emission increase should not result in an appreciable increase in performance warranty emission test failures. The I/M programs currently in place have relatively high short test emission standards. Few properly maintained and functioning vehicles would be expected to fail these short test standards due to part certification using up some of the original certification vehicle emission margin. Moreover, a certified part manufacturer has a strong incentive not to certify or produce parts that would use up so much of the vehicle certification margin as to make it likely that a vehicle would fail an emission test since the part manufacturer must warrant its parts and reimburse vehicle manufacturers if a certified part causes a vehicle to fail a short test. Thus, the Agency has concluded that it is not necessary to adopt more stringent certification requirements for part manufacturers and the part manufacturer need only show that its parts will not cause vehicles in which the part is installed to exceed emission standards.

After the certification process, both part and vehicle manufacturers are responsible on their own to assure that standards will be met in-use. EPA has established strong incentives for part and vehicle manufacturers to demonstrate in-use compliance. As discussed above, vehicle manufacturers have to meet SEA and in-use compliance requirements in addition to honoring the performance warranty, while aftermarket part manufacturers must honor performance warranties and reimburse vehicle manufacturers for the cost of vehicle warranty repair if the certified parts cause emission failures.

One vehicle manufacturer expressed concern that emission failure during in-use compliance (recall) testing under section 207(c) of the Act may increase due to provisions of this certification program. The commenter explained that the vehicle manufacturer should not be forced to recall vehicles which fail to meet standards due to aftermarket part installation. The Agency currently considers the representativeness of each vehicle tested in the recall program. EPA will continue to screen vehicles to ensure that the emissions of the vehicles (when tested by EPA) are not made unrepresentative by the use of non-OEM parts. Nonconformity determinations, as they pertain to vehicle manufacturers, will not be based on vehicles with unrepresentative emissions caused by non-OEM parts.

One commenter stated that EPA should account for the effect of multiple parts on emissions. The commenter theorizes that interaction of several aftermarket parts may cause emissions to increase beyond that normally expected by simply accounting for the emissions increase of each individual component. The commenter believes that the part certification test procedure may not adequately account for this possible effect and that in-use vehicles equipped with multiple parts may exceed standards.

EPA does not expect a significant air quality impact from multiple aftermarket part usage. Since most OEM parts are designed to be durable for the full useful life of the vehicle, EPA expects few of these parts to be replaced before 50,000 miles in use. Multiple failures of OEM parts are even more unlikely. Furthermore, the court of appeals has already addressed a concern raised by the MVMA on the potential effect of multiple aftermarket parts on in-use emissions.[17] *APRA* v. *EPA* considered parts certified using ECP'S. MVMA argued that several certified parts, each of which only cause some increase in emissions, together might result in a failure (during I/M testing). However, the court stated that such a result is entirely speculative and not a basis for overturning the rules. EPA believes the same reasoning applies to this rulemaking. Since the possibility of a multiple component failure is likely small and there is no currently available evidence that such failures are occurring in use, EPA has no basis on which to revise the regulations to accommodate this issue at this time. If evidence becomes available at some later date confirming a problem with failures caused by multiple aftermarket part usage, EPA will readdress this issue at that time.

4. Denying Use of Short Tests for Aftermarket Parts Certification

Aftermarket part manufacturers continue to prefer the use of short tests rather than the FTP as a basis for certification of parts, pointing out that short tests are less expensive to conduct than the FTP. Allowing short test use in certification would reduce certification costs compared to a program relying on FTP test results. The aftermarket part manufacturers also commented that section 207(b) emission performance warranty claims only result from failure of EPA approved short tests, not the FTP. Therefore, they contend, it is only necessary that the manufacturer demonstrate compliance with the short tests, not with the FTP.

In *SEMA* v. *Ruckelshaus*, the court stated that section 207(a)(2) of the Act neither prevents use of the short test for

substantial number are failing in use during their useful lives even though properly maintained and used.

[16] *APRA* v. *EPA*, 720 F.2d at 142.

[17] Ibid.

parts certification purposes, nor does it require EPA to use short tests as a basis for certification. The court went on to say that there may be valid policy reasons for rejecting short tests[18] and directed EPA to better explain its rationale before doing so.

In the NPRM, EPA presented its reasons for proposing to prohibit use of a short test for certification from both a policy and technical perspective. Several commenters still argued for the use of alternative short tests for certification of aftermarket parts. To effectively analyze the suitability of various types of short tests for aftermarket part certification, this section is divided into three groupings: (a) The existing I/M short tests currently listed in the federal regulations; (b) the alternative non-FTP tests not listed in the federal regulations but considered in the preamble of the NPRM; and (c) the cold 505 (Bag 1) portion of the FTP test, a short test not specifically considered in the NPRM but recommended in the comments.

a. *Existing I/M short tests.* These final rules do not adopt any existing I/M short test for certification under this program. EPA does not believe that I/M short tests, standing alone, are adequate for certification purposes.

EPA does not accept the argument made by part manufacturers that the I/M short test must be used for certification because it is the only basis for determining performance warranty claims. Congress has empowered EPA to ensure that vehicles meet all applicable emission standards for their statutory useful life. EPA does not believe it can satisfy this purpose with the I/M short test alone and, as a policy matter EPA does not believe it would be appropriate to attempt to do so.

To carry out Congress' intent, EPA has published regulations that spell out the manufacturer's certification and in-use compliance responsibilities, which at times exceed performance warranty responsibilities. For example, while many original vehicle parts have performance warranty coverage for only 2 years or 24,000 miles, EPA has determined that some of these parts are either too critical to emission performance, or not sufficiently likely to be serviced in use, to allow manufacturers to replace the part at intervals as low as 24,000 miles during certification vehicle mileage accumulation. In 40 CFR 86.088–25, EPA established minimum emission part change intervals required during certification vehicle durability demonstration that go beyond the performance warranty requirements. In many cases, while a vehicle manufacturer may only warrant a certain part (e.g., ignition wires, emission-related hoses and tubes) for 2 years or 24,000 miles under the performance warranty, that same part would be covered under the 207(a) defect warranty up to 5 years or 50,000 miles, and that manufacturer may not be allowed to change that same part on the durability test vehicle for the entire certification mileage accumulation cycle (50,000 miles for LDV's). Thus, EPA believes it would be inappropriate and inequitable to allow certified aftermarket parts to meet only section 207(b) short test requirements while the OEM parts they are intended to replace are subject to a 5 year/50,000 mile defect warranty, and often must demonstrate compliance under the much more stringent FTP test, including full useful life durability requirements.

Moreover, from a more technical perspective, EPA does not believe it should adopt the I/M short tests for part certification. Existing I/M short tests were not designed to predict accurately in every case actual vehicle or emission part performance under the wide range of operating conditions typically encountered in use. I/M short tests are used to screen, in a short time period, large numbers of vehicles that have already passed certification and assembly line testing requirements using the full FTP and to identify vehicles with atypically high emissions which need maintenance or repair. Working within these severe constraints, the short test is designed specifically to be a screening tool; it is not a predicting tool.

Faced with technical and practical implementation constraints (discussed at length in the NPRM and the Summary and Analysis of Comments to this rulemaking), it was appropriate for EPA to optimize the I/M short test's effectiveness as an in-use inspection screening tool of vehicles that had demonstrated compliance in certification and SEA, with no intention of ever using the I/M short test for a part's certification demonstration. The optimization was accomplished by minimizing the chances that a vehicle capable of passing the FTP test would fail the short test (minimize errors of commission) while at the same time catching vehicles with particularly high emissions which, if repaired, would result in the greatest emission benefit per failing vehicle. In particular, this was achieved by setting I/M test standards so that the typical vehicle failing the existing I/M short tests and standards would most likely be expected to have FTP emission levels above the FTP standards. While this gives the Agency reasonable confidence that the I/M tests will catch particularly high emitters that would fail the FTP and will not inappropriately fail many vehicles, the existing I/M short tests do not accurately identify every vehicle which would meet the Federal FTP emission standards and every vehicle which would fail to meet those standards.

The discussion above outlines the effectiveness of current short tests in screening many vehicles to identify potential FTP failures, and appropriately providing warranty repair for some high emitters in the current population of in-use vehicles. EPA believes that the current I/M short tests are reasonably effective and correlate reasonably well with the FTP for these purposes largely because the vehicles being tested in-use were certified and produced to pass the FTP standards. EPA's elaborate preproduction certification and end of production line programs are in place to continually verify FTP compliance of vehicles as produced. Since certified vehicle designs have passed the FTP, and assembly line vehicles have passed or are subject to FTP testing in the SEA process, EPA is reasonably confident that most properly maintained vehicles in-use will meet FTP emission standards.

Under the present system, use of existing short tests serves the purpose of section 207(b) by protecting manufacturers from errors of commission, while sufficiently protecting consumers and the environment by identifying high emitting vehicles and providing an economical means for ensuring repair of those vehicles. However, the present system relies on the fact that FTP-based certification and selective enforcement auditing help reduce the risk that other vehicles may be exceeding standards in-use. By contrast, EPA has no data on how effective the current short tests would be in flagging FTP failures, or how well they would "reasonably correlate" with the FTP, if vehicle/part designs not certified for FTP compliance were also included in the in use population. However, EPA expects that the addition of numerous "new" vehicle/part designs, not previously certified under the FTP or subject to any FTP audits, would significantly increase the variability between emission results that would be obtained under I/M short tests and that would be expected under the FTP and increase the risk that more

[18] *SEMA* v. *Ruckelshaus*, 720 F.2d at 136–137, 141.

vehicles passing the short tests would fail the FTP (or vice versa).

In determining whether to use short tests to certify aftermarket parts, the close relationship between the effectiveness of the current I/M short tests and the FTP-tested design of the in-use vehicles is particularly important. As noted earlier, aftermarket part manufacturers argued that it was only necessary to demonstrate compliance with approved short tests since only these short tests would be used to assess in-use compliance of the part and to initiate a performance warranty claim for which the part manufacturer would be responsible. Moreover, a vehicle with an aftermarket part installed is, in effect, a new vehicle/part combination which may or may not have been designed and produced to pass the FTP. Thus, if the part manufacturers' comments were adopted, and part certification was permitted based on existing short tests, EPA would not have confidence that the short test results would "reasonably correlate" with FTP results, given the new vehicle/part combination.

As discussed above, allowing aftermarket part certification relying upon only the existing short tests for new vehicle/part combinations likely would decrease the degree of correlation between the I/M short tests and the FTP. Two undesirable results could occur. First, in-use emissions could increase as a result of the short tests passing more vehicle/aftermarket part combinations that would fail the FTP. Second, the current I/M tests could fail more in-use vehicles which actually would pass FTP standards and thus increase improper performance warranty claims. It is inappropriate for EPA to establish an aftermarket certification program which could unnecessarily burden the current I/M and performance warranty programs with more improper claims. EPA also believes it is somewhat inequitable to allow aftermarket manufacturers to meet less vigorous, less effective tests than required of OEM's.

Finally, while performance warranty (I/M) testing is an important part of EPA's comprehensive strategy for controlling air pollution, it is not the only component in EPA's compliance program strategy. This testing is not sufficient or adequate outside the context of the vehicle compliance program to ensure emissions compliance. The I/M performance warranty program was implemented to complement the certification process by efficiently and economically identifying in-use vehicles with abnormally high emissions so that they might be specifically emission repaired. It has been EPA's policy to use an integrated comprehensive approach to meeting Congress' goals. Certifying aftermarket parts to meet only performance warranty requirements would be inconsistent with EPA's overall policy approach and would present a high risk that these parts would not allow vehicles to comply with emission standards.

For these reasons, EPA continues to reject any of the existing approved short tests as the basis for aftermarket part certification.

b. *Alternative short tests considered in the NPRM.* Since the court ruling, EPA has investigated several alternative short tests and discussed them at length in the NPRM. These tests have an advantage over currently implemented I/M short tests in that they, like the FTP, may be loaded tests and may measure NO_x emissions as well as HC and CO. However, in comparison to directly utilizing the FTP, these tests remain at a disadvantage because there is no data that show how well these tests correlate with the FTP. Furthermore, no standards have been established by EPA that can be used with these tests to determine compliance with Clean Air Act (CAA) emission standards. Moreover, these tests have not been reviewed by the technical community at large for their acceptability.

EPA has not changed its position that the alternative tests considered in the NPRM should not be adopted in these final rules. EPA did not receive comments which specifically addressed the first three alternatives discussed in the NPRM. Thus, for reasons discussed in the NPRM and its accompanying issue paper,[19] those tests are not adopted in these final rules.

The other two alternative procedures discussed in the NPRM were procedures proposed by SEMA.[20] In each case, SEMA proposed a multi-tier approach to certification testing. Each tier attempted to match the level of certification demonstration stringency to the uncertainty of the part's ability to perform properly. The tiers ranged from accepting engineering judgment to FTP testing a vehicle with and without the candidate aftermarket part installed as adequate demonstration of a part's performance.

SEMA commented that their proposals were not adequately reviewed by EPA in the NPRM. EPA does not agree. In the NPRM and supporting issue paper EPA pointed out a number of areas where further development of the demonstration criteria required to carry out SEMA's proposals was necessary before these approaches would be justified. EPA did not receive comments from any party, including SEMA, that addressed the development of the necessary screening criteria. Therefore, for the reasons discussed in the NPRM and the issue paper, EPA concludes that there is no adequate basis for adopting the SEMA proposals. Should new information be submitted which supports the SEMA proposed procedures, EPA may consider reevaluation of those options at that time.

c. *Proposed cold 505 portion of the FTP as a short test.* During the comment period on the NPRM, SEMA suggested an alternative short test that consisted of using the bag 1 (cold 505) portion of the FTP in lieu of using the entire FTP for certification emissions testing. SEMA submitted a California Air Resources Board (CARB) analysis involving regressions between cold 505 (bag 1) and corresponding FTP (all 3 bags) gram/mile emission results from in-use vehicles in CARB's database. According to SEMA, the CARB analyses suggested that the cold 505 emission results could possibly be used to demonstrate compliance by "either meeting an appropriate emission standard or by showing no increase in emissions."[21]

The cold 505 emissions test procedure was not considered in the NPRM and largely for this reason is not being adopted with this final rulemaking. However, in response to SEMA's suggestion, EPA has analyzed the technical merits of this alternative short test. EPA believes the bag 1 portion of the FTP can be used to reasonably screen parts for compliance with the full FTP standard. First, this alternative test is a loaded, transient test, overcoming critical shortcomings of a number of the tests considered in the NPRM. Secondly, this alternative reflects the impact on emissions during start up and cold transient performance, two operating conditions not evaluated in any of the other short tests considered. What is lacking, however, is an appropriate standard for the cold 505 test which can be used to reasonably assure that vehicles meeting such a cold 505 test standard with an aftermarket part installed would also be expected to

[19] See the Public Docket #EN-84-08, category II-B-6.

[20] See the NPRM and the issue paper, docket number EN-84-08, category II-B-6 for a detailed explanation.

[21] Docket #EN-84-08, Category IV-D-4, SEMA's Comments.

meet FTP standards. An evaluation of the cold 505 short test alternative and possible cold 505 values that correspond to FTP standards are included in the docket to this rulemaking in a report entitled, "Using the Cold 505 Emission Test Procedure for Certification of Aftermarket Parts".[22]

Public comment on this new alternative test procedure and the appropriate standard is necessary. Consequently, elsewhere in today's Federal Register, EPA is proposing use of the cold 505 portion of the FTP as an alternative to FTP testing for the certification of aftermarket parts. EPA will take final action on this alternative test procedure based on comments to that proposal.

5. Durability Requirements

These final rules promulgate the durability demonstration requirements for aftermarket parts proposed in the NPRM.[23] To certify an aftermarket part, the part manufacturer must prove its part will operate properly (i.e., not cause emission failure, unacceptable driveability or safety problems)[24] for the remainder of the warranted useful life of the vehicle on which the part is installed. These final rules are adopting the same durability (part useful life) requirements for aftermarket parts as are required under vehicle certification for original equipment parts.

EPA has established what the Agency considers to be the minimum aftermarket part durability demonstration requirements necessary to assure the continued satisfactory emission performance of vehicles on which the certified parts are installed. EPA has selected these procedures in order to minimize the cost of durability testing. In those cases where durability testing is required, EPA does recognize that the cost of demonstration may be a disincentive to certification (see section F). However, continued satisfactory emission performance over the expected life of the part is necessary. Currently the Agency does not know of an alternative scheme which would be applicable to a wide range of aftermarket parts and yet provide sufficient assurance of aftermarket part emission performance durability.

To establish a program that gives reasonable compliance assurance at a reasonable cost, EPA has categorized parts by the minimal level of durability demonstration necessary to maintain sufficient confidence that the part will not contribute to excess in-use emissions. For these final rules discussion, the categories fall under those parts requiring no testing and those parts requiring testing. A summary of the program durability requirements, and the decision process involved to determine when these requirements apply to a specific part to be certified, is shown in Attachment I.

a. *Parts requiring no durability testing.* These regulations will allow a durability exemption for certification of any emission related parts that upon failure normally cause a noticeable vehicle driveability performance, and/or fuel economy change of the vehicle at a level detectable by the driver and likely to result in near term repair. Even parts designed primarily for emission control will be considered for durability exemption if failure of these parts will normally result in noticeable driveability problems.[25] Due to the driveability problems, early maintenance of such malfunctioning parts will likely occur. Thus, since in-use emission problems caused by malfunction of these parts should be short term, parts properly assigned to this category will be allowed a durability exemption. Only parts that during normal part operation, are determined to accelerate the emission deterioration of existing components will be required to perform durability demonstration as described in the next section (part 5b).

The regulations (at 40 CFR 85.2114) require the manufacturer to submit with its notification a document which provides adequate demonstration that the part will be replaced at failure due to poor driveability, poor performance and/or poor fuel economy. It is the responsibility of the part manufacturer to demonstrate that failure of the part would result in vehicle repair, and thereby, be exempt from any durability demonstration. The type of conditions that must be satisfied for durability exemption are more fully discussed in the Summary and Analysis of Comments.

b. *Parts requiring durability testing—*
i. *Parts demonstrated to cause no noticeable change in vehicle driveability when the part fails.* These regulations require that an aftermarket part manufacturer, certifying a part that is appropriately categorized as those emission related parts that do not normally cause noticeable driveability change when their emission performance deteriorates or fails, must demonstrate the part's durability by aging it over an accepted durability cycle on an appropriate durability vehicle. EPA cannot be sure that failure of these parts, and the resulting vehicle emission noncompliance, would be detected and repaired in a timely manner. Thus, these parts must be shown to be durable for their full useful lives.

These regulations state that part aging for these shall be conducted by driving the durability vehicle with the part installed for the part's useful life over the durability cycle specified in 40 CFR part 86, appendix IV. The manufacturer may use an alternative durability cycle if it determines that the alternative cycle is at least as representative of typical in-use operation as the cycle described in appendix IV. However, in some cases, test data from a durability vehicle run specifically for certification purposes will not be required if the manufacturer submits other data collected for other purposes, (e.g., for design reliability purposes) that is sufficient to demonstrate the durability of a part (i.e., if the manufacturer determines that the operating cycle and other factors potentially affecting the data are typically representative of what would occur for in-use vehicles).

For parts that during normal part operation would not be expected to cause accelerated deterioration (compared to OEM counterparts) of other existing emission related components, it is not necessary that the vehicle used for durability aging also be used for demonstrating certification emission compliance. The aftermarket part manufacturer may choose to demonstrate certification emission compliance of the aged part on another test vehicle if for some reason the manufacturer determines the durability vehicle is not suitable for emission testing.

Only parts that during normal part operation are determined to accelerate

[22] Docket #EN-84-08, Category IV—A.

[23] These requirements address deterioration due to mileage accumulation, but arguably do not reflect deterioration caused by salt, moisture, dirt, and other phenomenon that age a part or system over time. While EPA does not explicitly require material and workmanship specifications in these regulation revisions, it is EPA's intention that the part manufacturer will consider aging effects in its designs. EPA will monitor the material and structural specifications of parts and, if the Agency determines there is a high risk that parts will not withstand aging effects for the required useful life, EPA may revise these regulations to address this issue.

[24] The Act, section 202(a)(4), states EPA's responsibility for not allowing use of devices or emission designs where the "* * * device system or element of design will cause or contribute to an unreasonable risk to public health or safety in its operation or function."

[25] Two commenters (MEMA and SEMA) were uncertain as to how parts "designed primarily for emissions control" that cause driveability problems would be categorized. This clarification in these final rules show that such parts will be considered for durability exemption.

the emission deterioration of existing emission related components will be required to perform more stringent durability demonstration as described in the next paragraph.

ii. *Parts that accelerate deterioration of existing emission related parts.* EPA expects that manufacturers will be able to determine that the great majority of their parts will not accelerate deterioration of other existing emission related components. EPA expects aftermarket parts that mainly perform the same function as an OEM component, or even a consolidated function, can be determined by the aftermarket part manufacturer not to accelerate deterioration of other existing emission related components compared to OEM parts. However, in the case where an aftermarket part might cause emission deterioration of existing emission related parts beyond that expected if only OEM parts were present, both the part's deterioration and the degradation to the rest of the emission related components must be evaluated.

For these parts, an appropriate durability vehicle (see Section E of this preamble) must be aged for the vehicle's full useful life with the aftermarket part installed. At the time of certification, the same durability vehicle is emission tested with the aged part installed. Since both vehicle and part are aged, a part passes certification if the FTP emission results of the fully aged vehicle with the aged part installed do not exceed the applicable FTP standards.

One commenter (APAA) asked for an example of "the accelerated deterioration to other emission related components of the vehicle." A detailed example is presented in the Summary and Analysis of Comments.

One vehicle manufacturer (Ford) expressed its concern that when a part and vehicle are aged and tested together, as required for parts that accelerate deterioration of other parts, a part that is a maintenance part with a scheduled replacement interval of less than 50,000 miles could be replaced during certification mileage accumulation. If the part is replaced, the last installed part may not be aged to its full warranted mileage at the time of certification testing. In such a case, the emission impact of a fully deteriorated part will not be evaluated. EPA agrees with this comment. Therefore, EPA will require that the installed part be aged to at least the recommended replacement mileage prior to certification testing. This may require the reinstallation of a replaced part used during durability mileage accumulation that is aged for the minimum recommended mileage. A full discussion is given in the Summary and Analysis of Comments.

c. *Light-Duty Truck (LDT) part durability.* To demonstrate LDT part durability for 120,000 miles (the useful life for LDT's), EPA proposed in the NPRM that for a LDT part manufacturer required to perform durability testing, the manufacturer would have to accumulate not more than 50,000 vehicle miles on the part and then project FTP emission results from the worst case test vehicle with the aged part installed out to the 120,000 mile useful life point.

Ford expressed concern with the method proposed in the NPRM for projecting LDT emission results, commenting that it would be difficult for a part manufacturer to predict aftermarket part impact on truck emission deterioration from 50,000 to 120,000 miles without intimate knowledge of the rest of the truck. EPA agrees that Ford's comment has some merit and understands the technical difficulty of the proposal. Thus, EPA has reviewed the complete proposed method of certifying these LDT parts for consistency and ease of implementation relative to the entire part certification program. Based on that review, it has been determined that the LDT certification process as proposed can be clarified in such a way that, while maintaining a reasonable demonstration requirement, it will be more consistent with LDV demonstration and in most cases rely on actual test data rather than extrapolated deterioration estimates.

For LDT parts that are exempt from durability testing (i.e., parts demonstrated to cause a noticeable change in vehicle driveability when the part fails, but also have no deteriorative affect on existing emission related components), two FTP tests will be performed on the worst case test vehicle, one test before and one test after the part is installed. As in the case of comparable LDV parts, the difference in emissions between the two tests must be less than the certification vehicle emission margin at the full useful life mileage point.

The situation is a little different for parts requiring durability evaluation. It is expected that most LDT aftermarket parts will not be installed on vehicles for anything near the full 120,000 mile useful life of the truck. Therefore, EPA will retain the 50,000 mile durability mileage accumulation demonstration requirement as proposed for those parts that require durability testing. If the part manufacturer has determined that full durability demonstration is more appropriate for its LDT part, the manufacturer has the option of accumulating 120,000 miles on its part and then testing for emission performance rather than using 50,000 mile emission test results.

For LDT parts demonstrated to cause no noticeable change in vehicle driveability when the part fails, and also have no deteriorative effect on existing emission related components or systems, the part does not have to be aged on the same test vehicle used for emission testing. After the part is aged for 50,000 miles, the selected worst case emission test vehicle is FTP tested once before and once after the aged part is installed. As in the case of comparable LDV parts, the difference in emissions between the two tests must be less than the certification vehicle emission margin at 120,000 miles as determined using deterioration factors (d.f.'s) during the vehicle certification process. (Note that the certification vehicle emission margin is determined at 50,000 miles for LDVs but at 120,000 miles for LDTs. However, 50,000 miles for LDVs approximates half of the full life expected for LDVs, whereas 120,000 estimates the full useful life for LDTs. Thus, aging aftermarket parts to 50,000 for both classes of vehicles reasonably evaluates the aftermarket parts for about half the full useful life of the vehicles on which they are installed.)

For only those LDT parts that are categorized as parts that cause accelerated deterioration to existing emission related parts or systems, EPA requires that the part be aged on the same test vehicle that will be used for emission testing. An FTP test must be performed at 4,000 miles and at 50,000 miles (other FTP tests may be performed at interim mileages at the option of the manufacturer). Deterioration factors (d.f.'s) for the test vehicle with the part installed will be calculated from these two test results, or from all test results when multiple FTP tests are run, using linear regression. The LDT d.f.'s will be used to linearly project the 50,000 mile test result out to 120,000 miles. EPA has observed that original vehicle manufacturers never project LDT deterioration at greater than a linear rate. Therefore, the regulations require linear d.f. projections as representative of expected emission deterioration for these parts. The projected 120,000 mile test results must meet LDT emission standards.[26]

[26] For those LDT part manufacturers that choose to run a full 120,000 miles of durability demonstration, the actual FTP test at the 120,000 mile point must pass the FTP standards. The one test is then sufficient for certification and no other FTP tests or emission projections are necessary.

Aside from requiring projections to 120,000 miles, this method of demonstration is basically the same as the requirements for LDV parts that have similar effects on existing emission related parts. The added burden of one extra FTP test at 4,000 miles is necessary to enable the part manufacturer to reasonably project its results out to 120,000 miles, thus avoiding the burden of actually accumulating mileage on the test vehicle out to 120,000 miles. As in the case of LDV parts with comparable effects on existing emission related parts, EPA again believes that few LDT aftermarket parts will be certified in this category (see discussion in section III.A.5.b).

d. *Evaporative emission control system durability.* EPA is adopting the evaporative system durability requirements proposed in the NPRM. No comments were received on this proposal. For aftermarket parts which the manufacturer determines should only affect evaporative emission performance, the durability requirements of the regulations are similar to those in place for vehicle evaporative certification. The regulations require the aftermarket part manufacturer to determine and document the appropriate methodology for durability evaluation of its evaporative emission control system parts and their synergistic deteriorative effect on OEM evaporative emission components. As specified in the current regulations (§ 85.2114(d)), compliance with the evaporative emission standards would be determined after completing durability evaluation by performing the evaporative emission portion of the FTP on the vehicle with the part installed.

6. Test Vehicle Selection

The proposed regulations would have required that certification emission testing be performed on a single worst case test vehicle selected by the aftermarket part manufacturer for each part design it is certifying. One part manufacturer association (SEMA) was concerned that its members would have to perform extensive analyses to determine a single worst-case configuration for certification testing. It proposed that EPA define narrow selection criteria that would specifically identify two test vehicle applications and reasonably assure worst case demonstration. SEMA suggested specific criteria for the two alternative test vehicles but stated that EPA may determine other, more acceptable criteria.

These final rules adopt the EPA proposed method of vehicle selection and, as requested by the comments, offer an alternative, optional, two vehicle method for test vehicle selection. The first method, as proposed, requires the aftermarket part manufacturer to select that vehicle application expected to have the largest increase in emission levels due to the installation of the part to be certified. For part manufacturers capable of making this determination, this selection method is potentially the least costly method since only one test vehicle and set of emission tests are needed to certify.

The alternative method requires selection of two test vehicles. The first test vehicle is selected from the certified vehicle configurations representing the largest projected sales volumes of the part. Within this group of certified vehicles, the manufacturer shall select the heaviest equivalent test weight from the set of test vehicles originally used to demonstrate vehicle certification. Within the group of vehicles of that weight, the manufacturer shall select the design which corresponds to the vehicle certification emission data vehicle which has the largest engine displacement.

The second test vehicle is required to come from a different vehicle manufacturer than the first vehicle; if the part is intended for installation on only a single manufacturer's product line, then the second test vehicle is to be selected from a different engine family. Within this set of vehicles, the same criteria as used to select the first test vehicle are used to select the second test vehicle. The test vehicle selected will correspond to the certification emission data vehicle with the highest equivalent test weight for all possible applications of the part. Within this group, the largest engine displacement shall be selected. If a part applies to only one engine family then only the first worst case vehicle is required to certify.

While slightly different from SEMA's specific proposal, these selection criteria are consistent with those recommended by SEMA.[27] Most importantly, these criteria satisfy SEMA's goal of providing objective criteria for test vehicle selection. For part manufacturers that cannot determine their own worst case vehicle selection, the alternative method is a reasonable choice.

Information on vehicle certification emission data vehicles is conveniently available to the public through the annual "Federal Certification Test Result List." From this list the aftermarket part manufacturer can select the test vehicles according to the criteria above. Carline designation need not be identical between the vehicle certification emission data vehicle and the aftermarket part certification test vehicle. The only requirements are that the test vehicle has the same equivalent test weight and engine displacement and be from the same engine family as determined by the specific criteria. If the certification test car list contains more than one emission data vehicle satisfying the criteria for an aftermarket part test vehicle selection, then the manufacturer may select any one of the eligible designs.

The regulations require the aftermarket part certification test vehicle or vehicles selected to be serviced to ensure all parts function properly before testing. All excessively worn or malfunctioning emission components should be repaired or replaced before testing.

If durability demonstration is necessary, EPA is adopting the NPRM proposal that the part manufacturer select the durability vehicle expected to cause the greatest deterioration in the performance characteristics of the part that influence emissions. EPA is also adopting an alternative selection criteria for durability test vehicles proposed by SEMA during the comment period. Manufacturers may choose (as they did when selecting certification test vehicles) the vehicle representing the highest equivalent test weight with the largest engine displacement size of all configurations on which the part is meant to be used (the alternative second vehicle selection). Thus, if the manufacturer chooses, a certification test vehicle could be used as the durability vehicle. For durability vehicle selection, only the one vehicle is required to reasonably represent the part.

On occasion, an aftermarket part manufacturer may determine that more than one part that it wishes to certify will use the same durability and/or emission test vehicle. The regulations do not prohibit this manufacturer from simultaneously installing more than one part on one demonstration test vehicle and performing the durability and/or emission test requirement. The part manufacturer could realize a cost benefit by using one test cycle to demonstrate the compliance of more than one part. However, if the manufacturer plans to separately certify and sell each of these jointly tested parts, it must assure EPA, with a

[27] Although SEMA recommended inertia weight instead of equivalent test weight as a criteria, equivalent test weight is a more appropriate criterion for selecting a unique test vehicle. As a subset of inertia weight, equivalent test weight more accurately defines the actual weight of the vehicle and is the simulated weight at which it is emission tested on the chassis dynamometer.

technical rationale, that each component, if tested separately, would not cause the vehicle to exceed emission standards.

One vehicle manufacturer (Ford) suggested that the worst case test vehicle requirement for part certification be the same as the worst case selection criteria for vehicle certification. Vehicle manufacturers must select a worst-case vehicle for each engine family certified each model year. As proposed, an aftermarket part manufacturer could certify a part for use on several engines or across several model years so long as the critical design aspects of the part remained the same and therefore the test data were relevant. However, EPA does not find it appropriate to require a part manufacturer to run a test vehicle for every application of a part every model year. The sales of a part on each engine family would likely not be great enough to justify the cost of yearly individual certification demonstration. Furthermore, just as in the case of vehicle manufacturers, part manufacturers often have specific components which are installed on many engine families and are expected to perform identically on each engine family. Since one aftermarket part design can cover several families, models, and model years, a single set of test data can appropriately apply across these families, models, and model years. Therefore, Ford's suggestion is not adopted.

7. Parts that Affect the Vehicle's Onboard Diagnostic System

EPA proposed that no manufacturer may certify a part that would alter or render ineffective the onboard diagnostic system of any vehicle on which it is installed. Only if a part integrates properly with the existing diagnostic system can it be certified. These provisions involving vehicle diagnostic systems received no comments, and are adopted as proposed.

8. Notification of Intent to Certify

The regulations currently require that a notification of intent to certify a part be sent to EPA by the part manufacturer at least 45 days prior to the proposed date of sale of the part as certified. The Agency may use this period to review the notification for adequacy and notify a part manufacturer of potential problems, if necessary.

For part manufacturers who have not developed a format for their notification, EPA will make available upon request a recommended generic format. Its use is optional.

For convenience, EPA will place all notifications received in a public information file in the EPA headquarters library so that any party, including vehicle manufacturers, interested in reviewing the notification can do so. However, EPA will treat material which the part manufacturer has clearly identified as proprietary or confidential in a manner that complies with Agency confidentiality regulations.

B. Reimbursement and Dispute Resolution Procedure

In these final rules, as was proposed in the NPRM, EPA has provided a forum in which vehicle manufacturers and certified aftermarket part manufacturers can resolve cost reimbursement disputes that arise with regard to a performance warranty claim involving a certified aftermarket part. EPA prefers that disputes that arise between vehicle and part manufacturers be resolved informally. Therefore, provisions are made in this rulemaking to require discussion between involved parties before a more formal dispute mechanism is pursued.

As was proposed in the NPRM, disputes which cannot be resolved informally will be decided through arbitration. Either party may then resort to a court of competent jurisdiction as provided by law. The NPRM provisions provided guidelines for arbitration based generally on the comprehensive arbitration rules of the American Arbitration Association (the AAA). In the NPRM, EPA expressed its belief that it was necessary to leave some latitude to resolve individual warranty disputes on a case-by-case basis. Comments received from vehicle manufacturers, however, indicated that additional guidance as to the specifics of the arbitration process was required.

Based on these comments, EPA has decided in these final rules to specify the exact arbitration framework it contemplated in the NPRM by explicitly adopting the AAA arbitration mechanism with certain changes. Consequently, disputes which cannot be resolved informally will be decided by means of arbitration rules based on Commercial Arbitration Rules, published by the AAA, revised and in effect as of September 1, 1988.

As a precondition to certification, part manufacturers must agree to arbitration should an otherwise unresolvable reimbursement dispute occur over the use of a certified aftermarket part. To initiate the arbitration procedure, the involved parties may select arbitrators pursuant to the steps presented in this rulemaking.

The regulations provide that if a part manufacturer refuses to go to arbitration after attempts at independent settlement have failed to resolve the dispute, that party is treated as if it loses the arbitration and is liable to pay all "reasonable expenses" (reasonable expenses are those defined in the following section) billed by the vehicle manufacturer.

If a vehicle manufacturer refuses to participate in arbitration concerning a specific claim, that manufacturer is treated as if it loses the arbitration.

1. Reimbursement Definitions

Under existing regulations a vehicle manufacturer must honor a consumer emission performance warranty claim during the time frames provided by Clean Air Act section 207(b), provided the vehicle has been properly used and maintained, whether the failure is caused by OEM parts or certified aftermarket parts. The vehicle manufacturer is entitled to reimbursement from the certified part manufacturer for "reasonable expenses" incurred in the repair of a vehicle if a "valid emission performance warranty claim" arose because of the use of the certified aftermarket part.

Prior to this rulemaking, vehicle and part manufacturers contended that the terms "reasonable expense" and "valid emission performance warranty claim" used in the existing regulations were too vague to provide meaningful guidance to part manufacturers and vehicle manufacturers. In *SEMA* v. *Ruckelshaus*, 720 F.2d at 139–40, the court required that EPA either apply its expertise in the area and define terms, or provide a forum in which the terms would be clarified through an adversarial process such as arbitration. Today's rulemaking does both. These final rules clarify and broaden the definition for "reasonable expense" and require the OEM or the aftermarket part manufacturer to retain replaced parts prior to the resolution of a "valid emission performance warranty claim." It also establishes a step-by-step dispute resolution process that requires specific actions and imposes deadlines to resolve claim disputes leading into the arbitration process. The arbitration process provides a forum for further clarification of the meaning of these terms on a case-by-case basis.

a. *Reasonable expenses.* In the NPRM, EPA proposed to define "reasonable expense" to include any expense categories that would be considered payable by the vehicle manufacturer to its authorized dealer under similar conditions where an OEM part was

determined to be the cause of the failure. EPA further stated that these expenses might include but are not limited to cost of labor, materials, recordkeeping, and billing. EPA also pointed out that any additional necessary clarification would occur during the dispute resolution process.

Vehicle manufacturers commented that the proposed definition of "reasonable expense" was too limited and should be further defined and expanded. They recommended a number of additional expense categories unique to processing claims involving aftermarket parts. Manufacturers were looking for a means of reimbursement of those costs beyond normal dealer-related costs. Furthermore, vehicle manufacturers recommended that the ultimate scope and specifics of the term should not be left to the dispute resolution process for clarification. In this rulemaking, EPA has determined that reimbursement for some but not all of these additional expense categories suggested by vehicle manufacturers is reasonable and should be allowed. While EPA recognizes the vehicle manufacturers' concern about resolving the definition and has taken steps to broaden expense categories where appropriate, the Agency also realizes that unforeseen issues may surface and will have to be dealt with on a case by case basis during the resulting dispute resolution process.

In order to provide an equitably defined expense category for both vehicle and part manufacturers, the regulations provide the following structure for determining reimbursable costs.

i. Reasonable expenses will include normal warranty costs reimbursable from the vehicle manufacturers to their dealers, as proposed, plus additional vehicle manufacturer costs unique to processing claims involving non-original equipment parts, as suggested by commenters. However, all charges beyond actual parts and labor repair expenses must be amortized over the number of valid claims and/or a number of years in a manner consistent with generally accepted accounting principles. Moreover, storage costs are not reimbursable.

ii. The vehicle manufacturer, who has extensive experience with the evaluation of warranty claims from the dealer network for OEM parts, should make an evaluation of what is deemed reasonable and submit an itemized bill to the part manufacturer. The part manufacturer has the right to dispute any portion of the billing that it deems unreasonable through the dispute resolution procedure.

iii. Storage costs related to retention of a certified aftermarket part involved in a performance warranty claim are not reimbursable. Parts must be retained until the claim has been resolved. The vehicle manufacturer providing the repair may, in lieu of storing the parts, transfer the parts to the applicable part manufacturer for storage. The part manufacturer is only required to retain the parts related to those claims it intends to contest. While storage costs are not reimbursable, the cost to the vehicle manufacturer of shipping the part may be added to the reasonable expense of a valid warranty claim.

b. *Valid emission warranty claim.* As was proposed, these final rules define a "valid emission performance warranty claim" on a vehicle as a claim for which (1) there is no evidence that the vehicle was not properly maintained and operated in accordance with manufacturer instructions in a manner linked to emission failures; (2) the vehicle failed to conform to applicable emission standards as measured by an EPA-approved emissions warranty test during the useful life of a part related to emission control, and (3) in the case of a test failure, the owner is subject to a sanction as a result of a test failure.

Part manufacturers commented that they should not be required to honor a warranty claim allegedly caused by an aftermarket part without sufficient proof that the claim is valid. Part manufacturers said this proof should include access to the parts replaced. Vehicle manufacturers commented that either they should be allowed to recover the substantial costs associated with retaining the part or part retention should not be required. In the latter case, some other means of providing proof of a part failure should be established in lieu of providing the actual part to the part manufacturer.

Since the parts involved in a warranty claim are likely the most concrete and necessary evidence with which to validate a claim, these final rules require retention of the involved parts until disputes have been resolved. However, EPA will allow the vehicle manufacturer the option to transfer the parts to the part manufacturer for storage. The part manufacturer need only retain those parts related to the warranty reimbursement claims it chooses to dispute. If the part manufacturer does not receive a bill from the vehicle manufacturer within one year of the date of repair of these parts, the part manufacturer is not required to store the parts beyond one year from the date of repair.

2. Dispute Resolution Forum

a. *Arbitration.* EPA intends that independent settlement between manufacturers will be the normal mechanism of dispute resolution. However, when disputes cannot be resolved through independent negotiation, the involved manufacturers must follow a structured forum for dispute resolution via arbitration consistent with the guidelines provided by these final rules. This provides a reasonable method for manufacturers to present a case, to further clarify what "reasonable expenses" and "valid warranty claims" are, and to receive a quick, impartial decision. Since EPA expects the arbitrator's award and decision to have due regard for precedent, arbitration awards and decisions will be maintained on file at EPA as described in section 4, below.

Many commenters requested additional details for the arbitration procedure as presented in the NPRM. The regulations specify the step by step process from beginning through arbitration for manufacturers pursuing warranty claims involving certified aftermarket parts. The process specified in the regulations is a revised version of that presented in the proposal. The finally-adopted process provides further guidance and additional details regarding scheduling to ensure that a forum exists for resolving disputes prior to judicial involvement.

In a general commercial setting, arbitration is binding because the parties voluntarily agree to give up their right to immediate judicial recourse. Section 207(a)(2) of the Clean Air Act and the order of the SEMA court referred to above, however, provide the authority for establishing arbitration as a mechanism to resolve warranty disputes. In addition, under section 301(a)(1) of the Clean Air Act the Administrator has general regulatory authority to prescribe regulations to carry out provisions of the Clean Air Act.

A form of arbitration utilizing the AAA was chosen as the dispute resolution mechanism in this context for three reasons. Firstly, cost reimbursement disputes are generally commercial matters and do not commonly involve questions of public policy. They can therefore be resolved independently of the Agency by an outside entity whose impartial decision is clearly not Agency action. Secondly, the AAA has considerable experience in resolving commercial disputes and has agreed to assist EPA in dealing with any unique problems that might arise.

Thirdly, AAA based arbitration as a dispute resolution mechanism has been incorporated into regulations promulgated under other environmental statutes such as the Toxic Substances Control Act and the Federal Insecticide, Fungicide and Rodenticide Act (40 CFR 791.20 et seq. and 29 CFR part 1440).

The following is a brief summary of the arbitration process adopted today. The vehicle manufacturer is required to submit a bill for reimbursement to the part manufacturer. If the vehicle manufacturer transfers the part to the part manufacturer, the vehicle manufacturer must submit the bill within one year of the date of repair. Independent discussions between the parties must take place within 60 days after receipt of the warranty claim bill. Arbitration may begin before the end of the 60 day period only if both parties agree to arbitration. After expiration of the 60 day period, if either party files, then both parties must submit to arbitration. The party filing for arbitration must also notify EPA at that time. If the parties by themselves cannot select an arbitrator within 90 days of receipt of the original repair bill, then the arbitrator will be appointed from the National Panel of Commercial Arbitrators that is established and maintained by the AAA. The arbitrator will determine the date, time and place of the hearing.

If the aftermarket part manufacturer is ordered by the arbitrator to reimburse all or part of the warranty repair costs, it must do so within 30 days of an arbitration decision, or, if a court of competent jurisdiction agrees with the arbitrator's decision, within 30 days of the court's decision unless the court orders otherwise.

EPA believes that this arbitration procedure has a number of advantages. Evidentiary rules are flexible so that less time will be spent arguing about the propriety and relevance of evidence. The hearings are apt to be less expensive and less likely to create antagonism between the parties. The flexible process used by the greater discretion of the arbitrator will easily accommodate the variety of situations in which reimbursement questions will arise.

Many commenters expressed a desire for more detail than was provided in the arbitration mechanism proposed in the NPRM. They suggested that the industry be allowed to develop a master arbitration agreement as a means of providing detail beyond that proposed. Since the arbitration mechanism is described in considerable detail in the final regulations, EPA believes that it provides the type of guidance for resolving disputes contemplated by the commenters in requesting a master arbitration agreement. The procedures specified in these final rules can be varied only with the agreement of both parties.

By requiring an arbitration mechanism, EPA is providing a structured forum for the initial resolution of disputes. However, this does not prohibit either party from resorting to the judicial system, as provided for by law, after the arbitration is concluded. Moreover, the regulations do not preclude either party from filing a lawsuit in an appropriate court *ab initio* if neither desires to submit the dispute to arbitration. If either party does file for arbitration, however, both parties are bound to follow the arbitration procedure to its conclusion prior to recourse to the courts.

b. *EPA Involvement.* Several manufacturers questioned the efficiency of the dispute resolution program proposed in the NPRM without direct EPA involvement. EPA believes that this program will provide a fair, effective, and well structured forum for resolving those disputes (expected to be relatively few) not resolved informally. Moreover, EPA will monitor the effectiveness of this program, keeping the Agency involved both by manufacturer feedback and EPA initiated monitoring. Should a need for change become apparent, EPA will act accordingly to provide further regulatory interpretation and guidance or revise regulations if necessary. To aid in this monitoring effort, EPA requires that the Manufacturers Operations Division (MOD) Director of the Office of Mobile Sources be informed of scheduled arbitration hearings by the filing party. Should the arbitration panel need specific information from EPA, EPA will be available on a consulting basis.

Manufacturers in their comments on the NPRM suggested that EPA participate on an arbitration panel. The apparent reason for suggesting EPA participation is the possibility that EPA could speed up the dispute resolution process because of the Agency's knowledge and exposure to certain voluntary aftermarket part certification program issues.

However, the technical expertise required to make an informed arbitration determination is not unique to EPA personnel. An uninvolved outside party could also provide an adequate determination assuming the party was given the appropriate background. The arbitrator, or members of an arbitration panel, would be briefed by the involved parties and would be provided with adequate information and evidence on which to base the arbitration decision. Moreover, direct EPA participation would not necessarily expedite the proceeding; in fact it could result in some delay.

EPA is compelled to use its limited resources in a manner that will most effectively benefit air quality. While EPA recognizes the importance of dispute resolution, EPA could not maintain a resource bank waiting for an aftermarket dispute to occur. Should an arbitration claim be brought during a time when EPA resources were committed to other projects, it could substantially slow up the entire process.

Thus, the option of using EPA personnel as arbitrators in resolving disputes is not adopted.

3. Arbitration Costs and Payments

The arbitration costs are set out in the Administrative Fee Schedule of the AAA. Unless determined otherwise by the arbitrator, the arbitration costs will be allocated as follows. Individual case costs will be borne by the losing party. If the judgment is wholly against the vehicle manufacturer, it would need to pay only the arbitration costs of the decision, since it would have already absorbed the original repair costs. If the judgment is wholly against the aftermarket part manufacturer, it must not only pay all arbitration costs, but also reimburse the vehicle manufacturer for the original repair costs. If the arbitrator does not rule wholly in favor of either party, the parties will share the cost of repair and arbitration.

As adopted in today's final rules, the part manufacturer is required to make payment on a lost arbitration decision or after completion of judicial proceedings, if any, relating to the arbitrator's decision. However, if the part manufacturer does not pay for a lost arbitration settlement (including both original repair costs and its share of arbitration costs) on a timely basis, EPA will decertify that part on all vehicle applications for which it is certified. The aftermarket part manufacturer will then be liable for all results of decertification specified in 40 CFR 85.2121.

4. Provision for Recurring Disputes

In their comments, several motor vehicle manufacturers stated that EPA needs to provide a mechanism for handling recurring disputes especially if there are subsequent claims for a part that has previously been decertified or when there is a large number of claims for a particular part which was previously determined in arbitration to be defective. Vehicle manufacturers recommended that once an arbitration

panel has determined that an aftermarket part is the cause of emissions failure, the decision should set a precedent for future disputes. Therefore, a vehicle manufacturer could obtain automatic reimbursement for recurring warranty claims and avoid the burden of repeated reimbursement proceedings.

EPA is rejecting the commenters' suggestion to include a provision for handling recurring disputes for the following reasons:

First, it is EPA's intent that in subsequent arbitration proceedings, consideration will be given to previous arbitration decisions which involved the same manufacturer and specific part. EPA intends and believes that all arbitrators will treat prior decisions as precedents and give them appropriate deference whenever the circumstances justify that. However, a provision allowing a previous decision on the same part to dictate all future decisions (i.e., automatic payment of a claim by the part manufacturer) denies the part manufacturer access to arbitration and could potentially impair the right of the part manufacturer to present evidence as to why, under the specific circumstances of its case, a prior, decision should not be considered a binding precedent.

Similarly, all claims for a part failure may not necessarily be legitimate. The circumstances which made the first claim for a part failure legitimate may not necessarily apply in the subsequent cases brought to arbitration. Thus, all claims will need to be settled on a case by case basis in order to determine the validity of each claim.

Third, businesses that comprise the aftermarket industry are unlikely to want to go to the expense of rearguing a claim for the same part and circumstances which were involved in a previous claim for which they lost arbitration. Thus, there should be few such cases requiring arbitration.

Finally, in the case where a part manufacturer has lost repeated claims involving a particular defective part, EPA may decide to decertify the part. While this would not affect the part manufacturer's warranty liability for parts already sold as certified parts to consumers, it would stop future production, distribution and sales by the part manufacturer of these parts as certified components. In so doing, it would reduce the number of warranty claims involving this aftermarket part over a period of time and correspondingly reduce the disputes that arise due to the part.

While not adopting a provision for handling recurring disputes, EPA will assist in assuring prompt dissemination of arbitration decisions by acting as a clearing house for the results and records of arbitration hearings. The Agency will maintain a file of records submitted by industry, organized by manufacturer and component as well as a file of arbitration awards and decisions organized along the same lines. EPA expects the vehicle manufacturers will voluntarily supply this information since it is to their benefit. Any vehicle and part manufacturer will have reasonable access to this information upon request. This information may be used by manufacturers during arbitration hearings involving a repeat failure. Furthermore, this file may act to flag parts showing pattern failures that should be considered for decertification.

5. Escrow/Bond Requirement

In the NPRM, EPA considered but did not propose a requirement for part manufacturers to demonstrate financial stability by posting bond or escrow. Requiring posting of a bond would violate EPA's intent to make certification as efficient and inexpensive as possible for part manufacturers. In addition, there is no evidence that suggests that part manufacturers are financially unstable.

EPA's position is basically the same as it was when the parts certification regulations were first promulgated in 1980. That position was upheld by the court in *SEMA* v. *Ruckelshaus*, 720 F.2d at 140. The court in the SEMA case pointed out that one intent of the regulations was to make certification as efficient and inexpensive as possible (while maintaining technical and legal integrity), so that small part manufacturers will be able to overcome the competitive disadvantages of the performance warranty program, and that a bonding requirement could be anti-competitive. *SEMA* v. *Ruckelshaus*, 720 F.2d at 140.

Certain vehicle manufacturers nonetheless commented in response to the NPRM that in order to assure that part manufacturers have an equal incentive and financial stake, an escrow account should be required. Specifically, they suggested that since the vehicle manufacturer must initially pay for repairs, the part manufacturers should be required to set up an escrow account as a condition of certification or at the beginning of the arbitration process. It was argued that an escrow account would bring the part manufacturers into the dispute resolution mechanism with a financial stake equal to that extended by the vehicle manufacturer. These vehicle manufacturers contended this may either lead to fewer requests for arbitration or quicker conclusions.

One vehicle manufacturer suggested an option to require certification bonds from part manufacturers who have refused to pay claims, who are delinquent in paying claims, or who have demonstrated abnormally high dispute losses. It claimed that this requirement would have a potential to encourage prompt resolution. Subsequently, many claims could be resolved without resorting to full arbitration.

However, EPA still believes that the suggested financial instability of certified part manufacturers is purely speculative. To date, EPA is aware of no specific evidence which would indicate significant problems in this area. EPA has no information that suggests that part manufacturers would not live up to their financial responsibilities and promptly pay valid warranty reimbursement claims. Similarly, there is no evidence at this time that part manufacturers are likely to request arbitration on frivolous grounds or to delay arbitration proceedings. Thus, the vehicle manufacturers' requests for an escrow or bonding requirement have no factual support. Moreover, as discussed in the NPRM and the SEMA opinion, such requirements could be an economic disincentive to small part manufacturers to participate in certification and could increase the potential anti-competitive effects of the performance warranty. Therefore, EPA rejects the commenters' requests.

Nevertheless, for the sole purpose of defraying arbitration costs, a reasonable deposit may be required from the parties prior to an arbitration hearing. EPA does not view such a deposit as a bond or escrow account.

C. Denial of a Consumer Warranty Claim Based on the Use of an Uncertified Replacement Part

To deny a warranty claim based on a performance warranty failure involving an uncertified part, the performance warranty regulations originally required the vehicle manufacturer to present evidence that the uncertified part was either defective in materials or workmanship, or not equivalent from an emissions standpoint to the original equipment part.[28] Further, the uncertified part had to be relevant to the failure for any warranty denial to occur.[29]

[28] 40 CFR 85.2105(b)(1)
[29] 40 CFR 85.2104(h)(3)

The MVMA and the Automotive Parts Rebuilders Association (APRA) brought legal challenges to these regulations claiming that EPA exceeded its authority in forcing vehicle manufacturers to carry the burden of demonstrating equivalency before they may deny a warranty claim.[30] The court agreed that EPA may not shift the burden of demonstrating equivalency to the vehicle manufacturers, but permitted EPA to "* * * require vehicle manufacturers to submit a statement (or other evidence) indicating why the uncertified part was relevant to the vehicles' emission failure."[31] The court indicated that EPA may use its expertise to decide what is the permissible information required for the vehicle manufacturer to demonstrate that the uncertified part was relevant to the emissions failure.[32]

In the NPRM EPA proposed that, in lieu of demonstrating that an aftermarket part is not equivalent to a comparable OEM part, the vehicle manufacturer should provide both written assertions and a list of available "objective evidence" (described below) used in the warranty denial determination to demonstrate that the part was relevant to the failure. EPA determined that this approach would best ensure appropriate warranty denial decisions.

In their comments, vehicle manufacturers expressed their concern over the scope of the "objective evidence" required in the NPRM. EPA had proposed that "objective evidence" be defined to include any historical data such as previous warranty claims, recall information, or manufacturer studies on similar phenomenon that were related to the current claim, as well as any diagnostic information used to make the warranty denial determination. EPA also stated in the NPRM that any evidence used by the vehicle manufacturer in the warranty denial should be accessible to the consumer upon request.

Vehicle manufacturers commented they could not know which or how much past information should be used to support a warranty denial and felt that assembling and supplying this information could not be done in a timely manner. They also felt that their dealers lack the technical expertise necessary to administer a warranty denial based on objective evidence as described in the NPRM.

In light of the *APRA* court decision, EPA believes that a valid warranty denial determination will best be made if a comprehensive definition for objective evidence, such as that proposed in the NPRM, is adopted.[33] Denying a consumer warranty coverage for a performance failure for any reason is an important move and should be carried out only after careful consideration of the actual cause of failure. EPA's major concerns are that the vehicle noncompliance be appropriately diagnosed and repaired, to protect the environment, and that the consumer obtain the protection afforded by the section 207(b) warranty when the failure is not caused by improper maintenance and use (as when the failure is caused by an uncertified part). Only by requiring the vehicle manufacturer to demonstrate improper use or maintenance or a relevant failure of an uncertified part to escape warranty liability, can EPA assure that consumers will be encouraged to use section 207(b) and that they and the environment will get the benefits Congress intended.

These final rules essentially adopt the NPRM proposal for denial of a performance warranty claim involving an uncertified part. However, based on comments, EPA has revised the proposed definition for allowable "objective evidence" to minimize the burden on the OEM's. The actual requirements adopted in today's final rules were based on EPA's consideration, in light of the comments, of what is minimally necessary to properly judge a warranty denial determination with due concern for the OEM manufacturers' burden.

Under these final rules, the vehicle manufacturer will provide to the consumer a written assertion that the uncertified part is the cause of a vehicle's emission test failure due to the part's own failure and/or damage to other engine or emission components caused by the uncertified part.[34] The written assertion will also state that the removal of the uncertified part and the reinstallation and recalibration of any OEM part that was replaced or damaged by the uncertified part is expected to repair the emissions failure.

If the vehicle manufacturer claims other components have been subsequently damaged, the vehicle manufacturer will have to specify which components were affected, what appears to be wrong with the parts, and why the manufacturer believes the uncertified part caused the damage. This information must also be provided in writing to the consumer along with any objective evidence used in the determination.

"Objective evidence" is defined in these final rules as all diagnostic information and data, and any other information directly used in making the warranty denial determination. This eliminates the requirement that the vehicle manufacturer present historical data as proposed in the NPRM. EPA's new treatment of objective evidence should resolve vehicle manufacturers' concerns that certain information is not readily available or that OEM dealers do not have an adequate level of expertise to provide the information required. If a dealer is unable to meet even this reduced level of demonstration, it is questionable whether the warranty denial was valid. At the same time, the revised requirements will still provide the consumer with access to sufficient information to determine the validity of the vehicle manufacturer's determination.

One vehicle manufacturer (Ford) recommended, as an alternative to EPA's proposal on objective evidence, that verification that the remaining certified components function properly be considered sufficient evidence that the aftermarket part caused the failure. EPA has considered this proposal but has decided not to adopt this as an alternative method. A vehicle in its original configuration (no aftermarket parts installed) may fail an I/M test, yet all OEM emission components test out as functioning properly. This type of failure has been seen in specific instances in the I/M program and is called a "pattern failure." Thus, while use of an uncertified part on such a vehicle would not actually be the cause of the performance warranty failure, the alternative method of demonstration proposed by Ford would mistakenly identify the uncertified part as the cause of the failure. Furthermore, the actual cause of the pattern failure might never be identified and repaired properly.

[30] *APRA* v. *EPA*, 720 F.2d at 157.

[31] Ibid., at 158–159 n.63 (emphasis in original).

[32] Ibid.

[33] At the same time, EPA recognizes that this places a burden on the OEM for supporting a denial determination when, in fact, the OEM is not responsible for the part being on the vehicle in the first place. Nonetheless, the vehicle manufacturer is not automatically relieved of responsibility for its own part's performance merely by the presence of an uncertified part on the vehicle. Nothing in the Act suggests that manufacturers may deny warranty coverage solely on that basis.

[34] Alternatively, the vehicle manufacturer could assert that the uncertified part was installed improperly and therefore caused failure to the vehicle emission system. However, in this case, as under the current regulations, a warranty cannot be denied based on improper installation by an OEM authorized facility since consumers who, in good faith, had their vehicle repaired at an authorized facility should have assurance that they will not lose their warranty due to improper service by the authorized facility.

Many commenters recommended "causal proof" as a more appropriate method for denying warranty to an uncertified part. Commenters did not provide a specific definition of causal proof. However, it appears they are referring to a procedure where the vehicle manufacturer identifies a part as uncertified, and only asserts that the uncertified part caused the failure (perhaps with some technical explanation short of any supportive evidence). However, this procedure would not provide the consumer with any concrete evidence that the part caused the problem, and leaves the consumer with very little recourse but to pay for the repair. This would unduly limit the use of, and environmental benefits expected from, section 207(b)'s warranty requirement. In contrast, the final rules require the vehicle manufacturer to provide the consumer with a list of the factual information directly used in the warranty denial determination, and then to provide the actual information to the consumer on request. Since this information should be readily available, EPA believes the small additional burden to the vehicle manufacturer is more than offset by the substantially improved position of the consumer attempting to judge the validity of a warranty denial. Thus, EPA rejects the commenters' suggestion.

D. Labeling

These final rules adopt the language proposed in the NPRM for certified aftermarket part labeling. Aftermarket part manufacturers will be required to identify their certified parts with unique, readable labels that are durable for the useful life of the part as specified by the manufacturer. These unique certification labels and symbols may only be used on production aftermarket parts that are certified through this regulation. Furthermore, if a manufacturer's part that was previously certified is later decertified under § 85.2118, that manufacturer may no longer use the unique certification label or symbol on any of these parts built or assembled after the date of decertification. Comments to the NPRM suggest motor vehicle and aftermarket part manufacturers are in agreement with the language incorporated in § 85.2119.

Several vehicle manufacturers also suggested that some sort of cataloguing or tracking system for certified parts should be utilized by EPA and provided to the vehicle manufacturers. Vehicle manufacturers are in favor of this option since it would provide them with an up to date ready reference of all certified parts. This reference would make warranty claim decisions much easier since their service departments would probably have access to these references.

EPA agrees with this comment. Therefore, EPA will make available a yearly listing of certified aftermarket parts and each certified aftermarket part manufacturer's unique symbol or identifier. In addition, EPA expects that, in order to promote the use and proper repair of their parts, part manufacturers will provide the vehicle manufacturers with proof or a listing of their actual certified parts.

One part rebuilder association expressed concern over adequate space availability for labels on a small part, especially one which has been rebuilt several times. To deal with rebuilt parts and this potential problem of space for several logos for subsequent rebuilders, EPA will allow a subsequent rebuilder to remove or cover the previously applied label.

E. 2 Year/24,000 Miles Quality Warranty Requirement

These final rules do *not* adopt the NPRM proposal that would require a minimum "acceptable quality" warranty of 2 years or 24,000 miles.

Part manufacturer associations (MEMA and SEMA) commented that the warranty requirement proposed in the NPRM would increase costs and that it would be unnecessary because of current requirements that involve certification and durability testing. They pointed out that the aftermarket part industry currently provides the level of quality and associated warranty coverage demanded by the part purchaser. The consumers decide how much they want to pay for additional warranty coverage.

The quality of the parts that EPA approves is an important issue. The Agency's intention in proposing this provision was to assure that only acceptable quality parts which the manufacturer will stand behind obtain EPA certification. However, EPA does not currently have evidence suggesting that existing emission related aftermarket parts are showing unacceptable quality. Therefore, EPA is not convinced that this provision is necessary, and the Agency will not adopt the minimum quality warranty requirement proposed in the NPRM. However, if sufficient evidence arises showing that parts are not capable of performing for a reasonable lifetime (e.g., a minimum of 2 years or 24,000 miles), then EPA may repropose this warranty option and revise this regulation at a future date.

F. Costs of Emission Testing and Durability Demonstration

1. FTP Costs

In the NPRM, EPA presented emission testing costs that the part manufacturer would be expected to incur during the certification process. EPA's FTP cost figures of $600 to $900 per test were determined based on a survey of independent laboratories that are available for all part manufacturers to use.[35]

Several part manufacturer associations disagreed with EPA's cost estimates. These manufacturers submitted annual FTP costs per certified part which are much higher than the EPA estimates. There are several apparent reasons for their higher cost estimates.

Some manufacturers indicated that certification using the FTP test cycle would require them to run numerous FTP tests during the emission compliance development of their parts. However, EPA believes that even prior to amendment of these certification regulations, many part manufacturers probably had developed their parts sufficiently so that little if any additional emission development will be necessary. Many of these aftermarket part manufacturers also supply the OEM's with parts. The OEM parts have proven emission performance. The development that goes into the parts supplied to the OEM is likely in many cases to be directly transferable to the aftermarket parts. Similarly, aftermarket parts which are designed to be functionally equivalent (or superior) to the OEM part should not require any significant further development to assure their emission performance prior to certification.

Only in the case of unique parts which alter or are significantly different from the OEM parts, such as specialty parts, is there a concern that significant emission development work might be necessary prior to certification demonstration. It is impossible, however, for EPA to determine if significant development work will be necessary for specialty parts or to estimate the cost of that development should it be necessary. However, the strong interest in the certification program shown by the specialty parts manufacturers suggests that this segment of the aftermarket part industry is confident in the emission control capability of their parts and anxious to

[35] "Cost of Alternative Short Tests", EPA memo from M. Sabourin to R. Larson, Aug. 7, 1986, in the public docket #EN-84-08.

prove this capability via the voluntary aftermarket part certification program. EPA believes this confidence in the emission performance capability of these parts is based upon reasoned analysis supported by data. In such a case, the amount of additional development work should also be minimal.

Finally, although the FTP cycle is relied upon for certification demonstration, the manufacturer has at its disposable a wide range of alternative evaluation tests and criteria including, for example, material and structural analyses and bench tests. EPA expects the competent manufacturers to make full use of these alternative evaluations, many of which would be far less expensive and often more useful for development purposes than the FTP test. Thus, EPA rejects the commenters suggestions that FTP testing during the development process will be a widespread and frequent occurrence.

One commenter (SEMA) also stated that, based on the "worst case" vehicle selection criteria presented in the NPRM, most part manufacturers would need to test ten or more worst case vehicle configurations per part per model year to ensure the appropriate application was tested. Thus, its resulting cost estimates were based on a large number of test vehicles.

In these final rules, EPA has adopted an alternative for worst case vehicle selection that specifically identifies the criteria for selection of two worst case vehicles. This clear guidance should make it unnecessary for a part manufacturer to test more than two vehicles to certify. Part manufacturers that have determined that they can appropriately select the one worst-case application as proposed in the NPRM may still do so. Furthermore, since one part likely will often have application over more than one model year, vehicle selection is not model year specific and parts are not required to be recertified every model year (unless a new model year application is not properly represented by previous worst case vehicles).

Based on the cost figures presented in the NPRM, and after considering comments on certification costs, EPA estimates the cost of FTP tailpipe emissions testing to be $600–$900 per test. This is based on a survey of independent laboratories which are available for all part manufacturers to use.[36] This cost does not include SHED testing (as SHED testing is not required unless parts affect evaporative emission results). For components requiring SHED tests instead of tailpipe emissions tests (i.e., components affecting evaporative emission control only), EPA estimates that the cost will not be greater than the tailpipe FTP cost of $600–$900 per test.[37]

Either one or two worst-case vehicles are required to be tested for each part, leading to a total FTP certification cost between $1200–$3600 per part (based on a minimum of two tests per part at $600 per test, up to four tests per part at $900 per test). Such FTP costs can be amortized over the applicable vehicle models and model years of the certified part.

2. Durability Costs

As indicated in the NPRM and earlier in this preamble, durability demonstration requirements, and therefore costs, will differ significantly among parts to be certified. Many of the parts to be certified will be eligible for durability exemption. In these cases, the manufacturer does not incur a durability cost. Furthermore, in those other cases requiring durability demonstration, one part will likely work for many vehicle applications over a number of model years and one durability vehicle may suffice to represent a large number of applications for a part. This will help control costs for the part manufacturer.

Also, the regulations allow for alternative mileage accumulation cycles which may be less expensive than that described in 40 CFR Part 86, appendix IV. The manufacturer may opt to use an alternative durability cycle if it determines that the alternative cycle is at least as representative of typical in-use operation as the cycle described in appendix IV of the FTP. For example, the manufacturer may determine that an "on road" durability cycle may be representative of an aftermarket part's aging and therefore suitable for durability demonstration. EPA currently evaluates and approves alternative durability cycles through its policy described in Advisory Circular 37–A.

One part manufacturer association (SEMA) estimated a durability cost of $80,000 per part. This is an accurate cost figure for current large volume vehicle manufacturers who support entire in-house programs of multiple vehicles and run vehicles sufficient to represent each engine family to be certified each model year. It is highly unlikely that a durability vehicle will be required for every aftermarket part certified, or that the part manufacturer will choose to pay to run a vehicle just for part durability demonstration. Several testing facilities have submitted information to EPA to demonstrate that alternative, less expensive, mileage accumulation cycles are available that are at least as stringent as the currently approved cycle listed in the Federal Regulations. At least one of these cycles costs around five cents per mile plus a $200 to $300 report charge. Thus, durability mileage accumulation could cost around $3,000 when durability testing is necessary. However, EPA expects that durability demonstrations will typically not be utilized, especially in the initial years of implementation. Initially, manufacturers are more likely to choose to voluntarily certify those parts that are technically and economically easier to certify (i.e., those that are eligible for durability exemption or eligible for an alternative cycle). Since they may rarely durability test a part, the durability cost amortized over every part will likely be even less than $3,000 per part.

For the above reasons, EPA believes that FTP testing and durability demonstration costs will, for the great majority of parts, be much less than certain part manufacturers have suggested and that the actual costs of certification will be reasonable and appropriate given the purposes and requirements of the certification program.

IV. Reporting and Recordkeeping Requirements

The Agency does not believe the additional reporting and recordkeeping requirements imposed by this amendment to the regulations are burdensome. An economic impact analysis was prepared for the original 1980 rulemaking and is contained in Central Docket #EN–79–8. The document concluded that the regulations did not pose a significant cost to the parties involved. The modifications being adopted here should not increase that cost substantially.

These revisions to the regulations would impose some new reporting and recordkeeping requirements on aftermarket part manufacturers that choose to take advantage of the certification program, as well as the vehicle manufacturers. The addition of a reimbursement mechanism will require recordkeeping. The certification program will be extended to include manufacturers of parts not certifiable under the regulations before these revisions. The new manufacturers will need to keep records and report certification. The new requirements for labeling may increase some

[36] Ibid.

[37] Ibid.

manufacturer material expenses. As noted in the information collection request document approved for these final rules under OMB control number 2060–0060, this burden was estimated at $166,500 at the time of proposal. No commenters disagreed with this estimate and EPA believes it is still correct.

V. Paperwork Reduction Act

The information collection requirements contained in these rules have been approved by the Office of Management and Budget (OMB) under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2060–0060.

Public reporting burden for this collection of information is estimated to average 124 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Paperwork Reduction Project (2060–0060), Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

VI. Regulatory Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirements of a regulatory impact analysis. This regulation should not be considered a major regulation because it meets none of the conditions for a major regulation. As discussed fully in the Summary and Analysis of Comments (see Docket #EN–84–08), these final rules will have an annual effect on the economy of less than $100 million. It is estimated that at most a retail price and service repair value of $2 billion of emission related parts will be certified in any one year. About 1 percent or $20 million worth of parts will require warranty service each year, which represents most of the economic impact of this regulation (certification costs, in comparison, will be far less than warranty repair costs). This will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions. Nor will there be any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S. based enterprises to compete with foreign based enterprises in domestic or export markets.

These final rules and certain accompanying documents were submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA and any EPA written response to those comments are available for public inspection in the docket for this rulemaking; Docket #EN–84–08. The EPA's Central Docket Section (LE–131) is located at 401 M Street SW., Washington, DC, 20460.

VII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., EPA is required to determine whether a final regulation will have a significant impact on a substantial number of small entities so as to require a regulatory flexibility analysis.

Several aftermarket part manufacturer organizations contested EPA's assertion in the NPRM that there would be no significant adverse impact on a substantial number of small entities because of the aftermarket part certification program, given that the program is voluntary.

SEMA stated that certification is not voluntary since it is the only means that its members can use to eliminate the potentially anti-competitive effects of the CAA warranties. EPA has no data or other information which establishes the potentially anti-competitive effects of the CAA warranties claimed by SEMA. EPA also has no data which could be used to evaluate any countervailing impact of the aftermarket certification program. However, if SEMA believes that sales of its members' parts will significantly increase as a result of certification, then it follows that the aftermarket certification program will have a beneficial impact on aftermarket part manufacturers by reducing or eliminating the anti-competitive effects of the CAA performance warranty. These regulations open up the certification program to allow certification of all types of components which are emission related (including the specialty parts manufactured by SEMA's members) and adopt a relatively low cost compliance demonstration program so that most potential certifiers of quality aftermarket parts will not be economically excluded. EPA hopes that other manufacturers will see advantages in certifying aftermarket parts which will tend to proliferate the quantity and choice of aftermarket parts with proven emission control capability. Thus, rather than having an adverse impact on small part manufacturers these final rules should benefit any manufacturers that choose to take advantage of them.

Another commenter stated that, as an aftermarket part manufacturer, it would be forced to participate in the program and absorb all associated costs in order to compete with larger suppliers of certified aftermarket parts. EPA agrees that the part manufacturer will incur some costs if it chooses to certify a part. However, EPA believes that these final rules will aid competition by providing the opportunity for part manufacturers to sell emission related parts with reduced or no anti-competitive effects from the performance warranty program.

EPA has designed these final rules to minimize certification demonstration costs while at the same time providing necessary assurance of adequate emission control. Two measures have been adopted to reduce durability costs. First, for components that are likely to be repaired or replaced in actual use, these parts are exempted from any independent certification durability demonstration. Second, for parts that do require durability testing, EPA expects that many will be able to demonstrate no additional deterioration of other emission related components; these parts can be aged on a vehicle which in itself does not need to meet emission standards. This should help limit the durability test costs for these aftermarket parts.

Emission compliance demonstration cost is also minimized by not requiring the emission test vehicle to meet standards. Rather the changes in emissions due to aftermarket part installation is quantified and compared to the preexisting certification vehicle emissions margin for vehicle designs. Again, vehicle and test costs are minimized. Finally, worst case testing is allowed to reduce the number of required test vehicles and emission tests. Only in the case of short test versus FTP test costs was EPA unable to find a more economic, acceptable cost reduction alternative. Even in this case, the estimated cost differential between the required FTP tests and short tests is likely less than $3,600 per part certified. This should not represent a significant barrier to aftermarket part certification for most manufacturers.

I hereby certify that this regulation will not have a significant adverse impact on a substantial number of small entities. Specialty part manufacturers

(who are often small) will be eligible for the first time to certify under this revised aftermarket part certification program which should benefit these manufacturers. The potential adverse impact is further minimized since the program is voluntary and, presumably, no part manufacturer will participate unless it sees an economic benefit to doing so. Further, for those manufacturers that choose to participate, certification of quality parts should be attainable at a reasonable cost.

List of Subjects in 40 CFR Part 85

Imports, Labeling, Motor vehicle pollution, reporting and recordkeeping requirements, Research, Warranties.

Authority: 42 U.S.C. 7522, 7541, 7542, and 7601(a).

Dated: July 27, 1989.

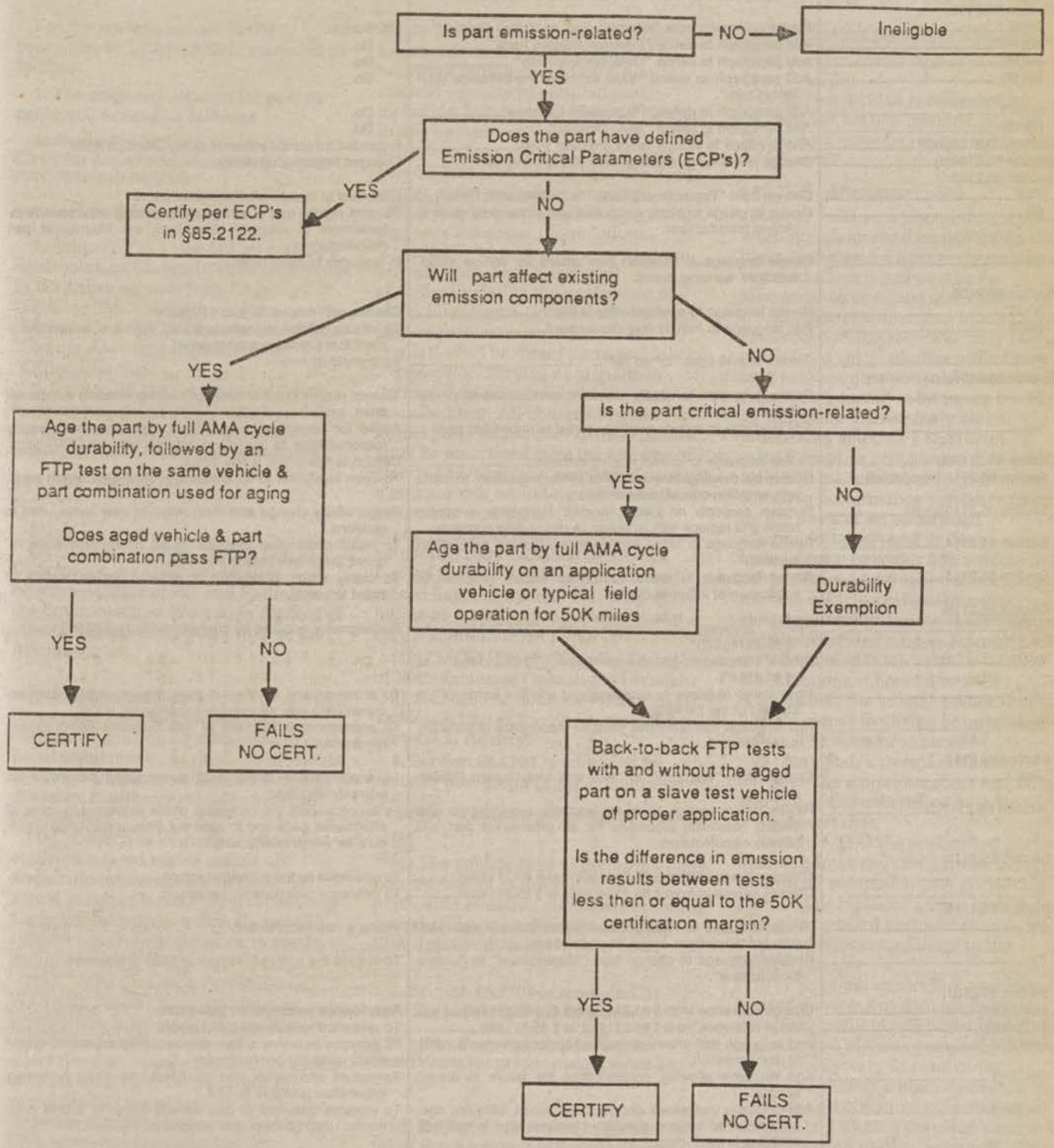
William K. Reilly,

Administrator.

BILLING CODE 6560-50-M

Attachment I

Aftermarket Parts Certification Procedure



Appendix—Explanation of Specific Changes

Section	Change	Reason
1. Part 85, Authority	None	
2. Supbart V	Nomenclature change from "Agency" or "EPA" to "MOD Director", from "Director" to "MOD Director," and from "Deputy Assistant Administrator" to "Office Director".	For clarification and new designation of responsibility.
3. Section 85.2102:		
(a)(2)	Revise paragraph from "Administrator" to "Office Director"	Clarification.
(a)(14)	Add paragraph to define "Emission Related Parts"	Do.
(a)(15)	Add paragraph to define "Objective Evidence"	Do.
(a)(16)	Add paragraph to define "Valid Emission Performance Warranty Claim".	Do.
(a)(17)	Add paragraph to define "Reasonable Expense"	Do.
(a)(18)	Add paragraph to define "MOD Director"	Do.
4. Section 85.2103(a)(2)	Add language to include family emission limits	Expanded for consideration of family emission limits.
5. Section 85.2104(d)	Change referencing of paragraph (c)(5) to paragraph (e)	Changed to proper reference.
6. Section 85.2105:		
Title	Change from "Replacement Parts" to "Aftermarket Parts"	Expanded to include all aftermarket parts.
(a)	Revise language to clarify reimbursement of warranty claim to vehicle manufacturer.	To alert reader that a vehicle manufacturer may seek reimbursement of warranty claim from the aftermarket part manufacturer.
(b)	Revise language to establish new criteria for vehicle manufacturers' warranty denial.	In response to court order.
7. Section 85.2106:		
(e)(2)	Revise language to establish criteria link	Clarifies with respect to § 85.2105(b).
(e)(3)	Add language to include new requirement	To require vehicle manufacturers to submit a written document that justifies warranty denial.
(f)	Correct line 10 from "to" to "of"	Typographical error.
8. Section 85.2107:		
(c)	Revise language to clarify warranty reimbursement procedures.	To alert reader to initial steps of seeking warranty reimbursement.
(e)	Add language to include warranty denial to uncertified parts	Added for consideration of vehicle manufacturers' warranty responsibilities to uncertified aftermarket (non-OEM) parts.
9. Section 85.2110(b)	Revise language to correct mailing address	Division is now under a new office.
10. Section 85.2112 Introduction	Revise by deleting language that limits regulation to parts with emission-critical parameters.	To open regulation to all emission related aftermarket parts.
11. Section 85.2113(e)–(k)	Remove concepts no longer needed. Renumber remaining terms and replace with language to define new concepts.	Responsibility change and clarification of new terms used in revisions.
12. Section 85.2114	Revise language in entire section to explain the certification process.	To make certification available to all aftermarket parts requires these new testing methods.
13. Section 85.2115	Revise language in entire section to explain process for notification of intent to certify.	To clarify which information is required for notification of intent to certify.
14. Section 85.2116:		
(a)(2)	Revise language to change from "§ 85.2114(b)" to "§ 85.2114(d)(2)".	Redesignation required by changes made to § 85.2114.
(a)(4)	Revise language to change from "§ 85.2114(c)" to "§ 85.2114".	Do.
(a)(7)	Make minor revisions to language and add the word "or" to the end of the paragraph.	To accommodate addition of new requirements and to accommodate new information in paragraph (a)(8).
(a)(8)	Add language that facilitates possible inadequacy of durability documentation.	To accommodate inclusion of new durability demonstration requirements.
15. Section 85.2117:		
Title	Change from "Warranty" to "Warranty and Dispute Resolution".	To accommodate inclusion of a resolution procedure for warranty disputes.
Section 85.2117	Revise entire section to cover warranty requirements and dispute resolution procedure for all aftermarket part and vehicle manufacturers.	To accommodate the expansion of the regulation to cover all aftermarket parts and to spell out dispute resolution procedure for warranty disputes.
16. Section 85.2118:		
(a)	Change reference from § 85.2114(a)(1) to § 85.2114(b)	To reference redesignated paragraph.
(b)	Change reference from § 85.2114(a)(2) to § 85.2114(c)	To reference redesignated paragraph.
17. Section 85.2119:		
(a)	Revise language to require that label be durable and readable for the defined useful life of the part.	This is a new requirement.
(b)	Revised language to change from "identification" to "unique identification".	To include the new requirement of label uniqueness.
18. Section 85.2121:		
(a)(1)(ii)(A)	Change reference from § 85.2114(b)(4) to § 85.2114(d)	To reference redesignated paragraph.
(a)(1)(ii)(B)	Change reference from § 85.2114(b) to § 85.2114(d)	To reference redesignated paragraph.
(a)(1)(ii)(C)	Add language that allows decertification for improper durability demonstration.	To increase incentive to part manufacturers to perform appropriate durability demonstration.
(a)(1)(vi)	Add language allowing decertification for failure to submit records.	To assure aftermarket part manufacturers make necessary information available to EPA.
(a)(1)(vii)	Add language that allows decertification when adequate documentation to support durability demonstration is not submitted or is insufficient.	To increase incentive to part manufacturers to submit information required for proper evaluation.
(a)(1)(viii)	Add language that allows basis for decertification if lost arbitration is not paid.	To increase incentive to comply with arbitration decision.
19. Section 85.2122(a)	Change reference from § 85.2114(a)(1) to § 85.2114(b)	To reference redesignated paragraph.

Section	Change	Reason
20. Appendix Title	Change to "Appendix I" and change "Emission Related Standards" to "Emission Critical Parameters".	To accommodate addition of Appendix II and to change "Emission Related Standards" to a more familiar term, "Emission Critical Parameters."
21. Appendix II	Add Appendix II	To provide for a detailed arbitration procedure for warranty disputes.

For the reasons set out in the preamble, 40 CFR part 85 is amended as follows:

1. The authority citation for part 85 continues to read as follows:

Authority: Sec. 203, 207, 208, and 301(a). Clean Air Act, as amended (42 U.S.C. 7522, 7541, 7542, and 7601(a)).

Subpart V—[Amended]

2. Subpart V is amended by making a nomenclature change in each occurrence in the entire subpart from "Agency" or "EPA" to "MOD Director", from "Director" to "MOD Director", and from "Deputy Assistant Administrator" to "Office Director."

3. Section 85.2102 is amended by revising paragraph (a)(2), and by adding paragraphs (a)(14), (a)(15), (a)(16), (a)(17), and (a)(18) to read as follows:

§ 85.2102 Definitions.

* * * * *

(a) * * *

(2) "Office Director" means the Director for the Office of Mobile Sources—Office of Air and Radiation of the Environmental Protection Agency or other authorized representative of the Administrator.

* * * * *

(14) "Emission Related Parts" means those parts installed for the specific purpose of controlling emissions or those components, systems, or elements of design which must function properly to assure continued vehicle emission compliance.

(15) "Objective Evidence" of an emission related repair means all diagnostic information and data, the actual parts replaced during repair, and any other information directly used to support a warranty claim, or to support denial of such a claim.

(16) "Valid Emission Performance Warranty Claim" means a claim in which there is no evidence that the vehicle had not been properly maintained and operated in accordance with manufacturer instructions, the vehicle failed to conform to applicable emission standards as measured by an EPA-approved type of emission warranty test during its useful life and the owner is subject to sanction as a result of the test failure.

(17) "Reasonable Expense" means any expense incurred due to repair of a warranty failure caused by a non-original equipment certified part, including, but not limited to, all charges in any expense categories that would be considered payable by the involved vehicle manufacturer to its authorized dealer under a similar warranty situation where an original equipment part was the cause of the failure. Included in "reasonable expense" are any additional costs incurred specifically due to the processing of a claim involving a certified aftermarket part or parts as covered in these regulations. The direct parts and labor expenses of carrying out repairs is immediately chargeable to the part manufacturer. All charges beyond the actual parts and labor repair expenses must be amortized over the number of claims and/or over a number of years in a manner that would be considered consistent with generally accepted accounting principles. These expense categories shall include but are not limited to the cost of labor, materials, record keeping, special handling, and billing as a result of replacement of a certified aftermarket part.

(18) "MOD Director" means Director of Manufacturers Operations Division, Office of Mobile Sources—Office of Air and Radiation of the Environmental Protection Agency.

4. Section 85.2103 is amended by revising paragraph (a)(2) as follows:

§ 85.2103 Emission performance warranty.

(a) * * *

(2) The vehicle fails to conform at any time during its useful life to the applicable emission standards or family emission limits as determined by an EPA-approved emission test, and

* * * * *

5. Section 85.2104 is amended by revising paragraph (d) as follows:

§ 85.2104 Owner's compliance with instructions for proper maintenance and use.

* * * * *

(d) Except as provided in paragraph (e) of this section, the time/mileage interval for scheduled maintenance services shall be the service interval specified for the part in the written instructions for proper maintenance and use.

* * * * *

6. Section 85.2105 is amended by revising the section heading, and by revising paragraphs (a) and (b) to read as follows:

§ 85.2105 Aftermarket parts.

(a) No valid emission performance warranty claim shall be denied on the basis of the use of a properly installed certified aftermarket part in the maintenance or repair of a vehicle. A vehicle manufacturer that honors a valid emission performance warranty claim involving a certified aftermarket part may seek reimbursement for reasonable expenses incurred in honoring the claim by following the warranty claim procedures listed in § 85.2107(c).

(b) Except as provided in § 85.2104(h), a vehicle manufacturer may deny an emission performance warranty claim on the basis of an uncertified aftermarket part used in the maintenance or repair of a vehicle if the vehicle manufacturer can demonstrate that the vehicle's failure to meet emission standards was caused by use of the uncertified part. A warranty claim may be denied if the vehicle manufacturer submits a written document to the vehicle owner that the vehicle owner is unable or unwilling to refute. The document must:

(1) Establish a causal connection between the emissions short test failure and use of the uncertified part, and,

(2) Assert that:

(i) Removal of the uncertified part and installation of any comparable certified or original equipment part previously removed or replaced during installation of the uncertified part will resolve the observed emissions failure in the vehicle, and/or

(ii) Use of the uncertified part has caused subsequent damage to other specified certified components such that replacement of these components would also be necessary to resolve the observed vehicle emissions failure, and,

(3) List all objective evidence as defined in § 85.2102 that was used in the determination to deny warranty. This evidence must be made available to the vehicle owner or EPA upon request, and

* * * * *

7. Section 85.2106 is amended by revising paragraph (e)(2) and (f) and by adding paragraph (e)(3) to read as follows:

§ 85.2106 Warranty claim procedures.

* * * * *

(e) * * *

(2) Provide the owner, in writing, with an explanation of the basis upon which the claim is being denied; or

(3) If the basis of the claim denial involves use of an uncertified part, provide the owner in writing with an explanation of the basis upon which the claim is being denied according to all criteria specified in § 85.2105(b).

(f) Failure to notify an owner within the required time period (as determined under paragraph (d) of this section) for reasons that are not attributable to the vehicle owner or events which are not beyond the control of the vehicle manufacturer or the repair facility, shall result in the vehicle manufacturer being responsible for repairing the warranted items free of charge to the vehicle owner.

* * * * *

8. Section 85.2107 is amended by revising paragraph (c) and adding paragraph (e), to read as follows:

§ 85.2107 Warranty remedy.

* * * * *

(c) The remedy provided under paragraph (a) of this section shall include the repair or replacement of certified parts as required in § 85.2105(a). To seek reimbursement from the involved certified aftermarket part manufacturer for reasonable expenses incurred due to the certified aftermarket parts determined to be the cause of a performance warranty failure, the vehicle manufacturer must:

(1) Retain all parts replaced during the performance warranty repair, and

(2) Follow the procedures laid out in § 85.2117.

* * * * *

(e) The vehicle manufacturer may deny warranty for a failure caused by an uncertified part in accordance with the criteria in § 85.2105.

9. Section 85.2110 is amended by revising paragraph (b) to read as follows:

§ 85.2110 Submission of owners' manuals warranty statements to EPA.

* * * * *

(b) All materials described in paragraph (a) of this section shall be sent to: Director, Field Operations and Support Division (EN 397F), Office of Mobile Sources, Environmental Protection Agency, 401 "M" Street SW., Washington, DC., 20460.

10. Section 85.2112 is revised to read as follows:

§ 85.2112 Applicability.

The provisions of §§ 85.2112 through 85.2122 apply to emission related automotive aftermarket parts which are to be installed in or on 1968 and later model year light-duty vehicles and light-duty trucks.

11. Section 85.2113 is amended by revising paragraphs (e) through (k) to read as follows:

§ 85.2113 Definitions.

* * * * *

(e) "Certified Aftermarket Part" means any aftermarket part which has been certified pursuant to this subpart.

(f) "Emission Warranty" means those warranties given by vehicle manufacturers pursuant to section 207 of the Act.

(g) "Emission-Critical Parameters" means those critical parameters and tolerances which, if equivalent from one part to another, will not cause the vehicle to exceed applicable emission standards with such parts installed.

(h) "Engine Family" means the basic classification unit of a vehicle's product line for a single model year used for the purpose of emission-data vehicle or engine selection and as determined in accordance with 40 CFR 86.078–24.

(i) "Vehicle or Engine Configuration" means the specific subclassification unit of an engine family or certified part application group as determined by engine displacement, fuel system, engine code, transmission and inertia weight class, as applicable.

(j) "Certification Vehicle Emission Margin" for a certified engine family means the difference between the EPA emission standards and the average FTP emission test results of that engine family's emission-data vehicles at the projected applicable useful life mileage point (i.e., useful life mileage for light-duty vehicles is 50,000 miles and for light-duty trucks is 120,000 miles for 1985 and later model years or 50,000 miles for 1984 and earlier model years).

(k) "Applications" means all vehicle or engine configurations for which one part is being certified as set forth in the aftermarket part manufacturer's notification of intent to certify pursuant to § 85.2115(a)(1).

12. Section 85.2114 is revised to read as follows:

§ 85.2114 Basis of certification.

(a) *Prior to certifying,* the aftermarket part manufacturer must determine:

(1) Whether the part to be certified is an emission related part as defined in § 85.2102. The MOD Director shall deny certification to any parts which he or she determines is not an emission related part.

(2) The vehicle or engine configurations for which this part is being certified. These are the vehicle and engine designs for which the aftermarket part manufacturer intends to sell the certified aftermarket part.

(3) Whether the part qualifies under one of the part categories, listed in § 85.2122 of this subpart that are eligible to certify using emission critical parameters and, if so, whether the manufacturer elects to demonstrate certification using emission critical parameters. An aftermarket part may be certified under this category only if the part's emission-critical parameters, as set forth in § 85.2122, are equivalent to those of the original equipment or previously certified part it is to replace. Compliance with the emission-critical parameters discussed in paragraph (b) of this section may be demonstrated by compliance with the relevant test procedures and criteria specified in appendix I to this subpart. The requirements of this paragraph apply to all on-road vehicles and engines. Alternatively, the manufacturer may elect to demonstrate certification compliance according to the emission test procedures described in paragraph (c) of this section.

(b) *For parts eligible to certify using emission-critical parameters, certification compliance can be demonstrated as follows.* (1) The durability procedure contained in Appendix I to this subpart can be used. As an alternative, the aftermarket part manufacturer may use a different durability procedure if it can demonstrate to the MOD Director that the alternative procedure results in an improved technical evaluation of the part's influence on vehicle or engine emissions for its useful life mileage interval, or results in a significant cost savings to the aftermarket part manufacturer with no loss in technical validity compared to the recommended durability procedure. The aftermarket part manufacturer shall receive the written approval from the MOD Director prior to implementation of the alternative procedures.

(2) Compliance with certification requirements is based on conformance with all emission-critical parameters in § 85.2122. This shall be accomplished by performing such procedures, tests, or analyses described in appendix I, or other procedures subject to the MOD Director's approval, necessary to ascertain with a high degree of certainty the emission-critical parameter

specifications and tolerances for the aftermarket part and the original equipment or previously certified part for which an equivalent aftermarket certified part is to be used.

(i) If information is available in Appendix I of this subpart to identify the applicable emission-critical parameters, the aftermarket part certifier must use such information.

(ii) If sampling and analysis of original equipment or previously certified parts is relied upon, the aftermarket part certifier must use sound statistical sampling techniques to ascertain the mean and range of the applicable emission parameters.

(iii) If an aftermarket part replaces more than one part on the same application, it may be certified only if the aftermarket part meets the applicable emission-critical parameters of § 85.2122 for each part or parts which the aftermarket part is to replace. If an aftermarket part is to replace more than one part or an entire system, compliance must be demonstrated for all emission-critical parameters involved, except those which relate solely to the interface between the parts being replaced by the aftermarket part.

(c) *For parts certifying on the basis of emission test results, durability demonstration testing shall be conducted as follows.* (1) Prior to certification emission testing, the actual aftermarket part used for certification testing must meet the durability demonstration requirements of this paragraph for at least the part's useful life mileage interval.

(i) If an original equipment part has no scheduled replacement interval, then the useful life mileage interval of the aftermarket part of that type or which replaces the function of that part may be certified with a service interval less than the useful life of the motor vehicle or motor vehicle engine, or

(ii) If any provision of 40 CFR part 86 establishes a minimum replacement or service interval for an original equipment part during vehicle or engine certification, then the useful life mileage interval of the aftermarket part of that type or which replaces the function of that part is said minimum interval.

(2) The part manufacturer must decide whether it can demonstrate to the MOD Director that, during normal vehicle operation, the candidate part will not accelerate deterioration of any original equipment emission related parts. This demonstration must be based on technical rationale that shows that the candidate part has no significant physical or operational effect on any original emission components or system which would be different than that experienced by the vehicle operating with all original equipment emission system parts. The part's effect on each major emission system must be addressed separately in the demonstration.

(i) If the aftermarket part to be certified accelerates deterioration of any existing emission related parts then certification shall be carried out as specified under the paragraph (c)(3) of this section for parts that accelerate deterioration of existing emission related parts.

(ii) If the aftermarket part manufacturer can demonstrate that the part to be certified will not accelerate deterioration of any existing emission related components, then the manufacturer can certify according to paragraph (c)(4) in this section for parts demonstrated to not accelerate deterioration of existing emission related parts.

(3) *For aftermarket parts that accelerate deterioration of existing emission related parts during normal operation.* (i) The aftermarket test part can be installed on the durability test vehicle and aged for 50,000 miles using the vehicle durability driving schedules contained in part 86, appendix IV. As an alternative, the aftermarket part manufacturer may use a different durability procedure if it can demonstrate to the MOD Director that the alternative procedure results in an improved technical evaluation of the part's influence on vehicle or engine emissions for the part's useful life mileage interval, or results in a significant cost savings to the aftermarket part manufacturer with no loss-in technical validity compared to the recommended durability schedules in part 86, appendix IV. The aftermarket part manufacturer shall receive the written approval from the MOD Director prior to implementation of the alternative procedures.

Note: At the time of certification emission testing, the same part and vehicle combination used for mileage accumulation shall be used for emission testing.

(ii) Where the comparable original equipment part has a recommended replacement interval of less than 50,000 miles, the test part shall be replaced no sooner than its useful life mileage interval during the required 50,000 mile durability demonstration.

Note: At the time of certification emission testing, one of the aftermarket parts that accumulated at least its useful life mileage during the aging process under this paragraph shall be installed on the durability test vehicle that has accumulated 50,000 miles.

(4) *For aftermarket parts demonstrated not to accelerate deterioration on existing emission related parts during normal operation,* the part manufacturer must determine whether the part will cause a noticeable change in vehicle driveability.

(i) Parts that cause no noticeable change in vehicle driveability, performance, and/or fuel economy when the part fails, the durability driving schedules contained in part 86, appendix IV can be used. As an alternative, the aftermarket part manufacturer may use a different durability procedure if it can demonstrate to the MOD Director that the alternative procedure results in an improved technical evaluation of the part's influence on vehicle or engine emissions for its useful life mileage interval, or results in a significant cost savings to the aftermarket part manufacturer with no loss in technical validity compared to the durability schedules in part 86, appendix IV. The aftermarket part manufacturer shall receive the written approval from the MOD Director prior to implementation of the alternative procedures.

(ii) Parts demonstrated to cause a noticeable change in vehicle driveability, performance, and/or fuel economy when the part fails, are exempt from aging if the part manufacturer can demonstrate to the MOD Director that the primary failure mode of the aftermarket component or system affects the driveability, performance, and/or fuel economy of the vehicle at a level readily detectable by the driver and likely to result in near term repair of failing components and correction of the emissions failure. (Use of on-board diagnostics and malfunction indicators as covered in paragraph (g) of this section is not necessarily an adequate demonstration that the certified part will be replaced. The part manufacturer must demonstrate that the diagnostic and malfunction indicator system will routinely result in repair or replacement of the part in use).

(5) *For parts which only affect evaporative emissions performance,* the aftermarket part manufacturer shall determine and demonstrate to the MOD Director the appropriate durability procedure to age its part. The demonstration shall include all documentation, analyses, and test results that support this determination, and the documentation that support the durability procedure results shall be submitted with the notification of intent to certify as per § 85.2115 and is subject to MOD Director's review.

(6) *Durability demonstration vehicle selection.* The demonstration vehicle

used must represent the "worst case" of all the configurations for which the aftermarket part is being certified. The worst case configuration shall be that configuration which will likely cause the most deterioration in the performance characteristics of the aftermarket part which influence emissions during the part's useful life mileage. The worst case configuration shall be selected from among those configurations for which the aftermarket part is to be certified. One of the following two methods shall be used to select the worst case durability demonstration vehicle(s):

(i) In the first method, the selection shall be based on a technical judgment by the aftermarket part manufacturer of the impact of the particular design, or calibration of a particular parameter or combination of parameters, and/or an analysis of appropriate data, or

(ii) In the second alternative method, the selection shall be made from among those vehicle configurations with the heaviest equivalent test weight, and within that group, the largest displacement engine.

(d) *For parts certifying on the basis of emission test results, certification compliance shall be demonstrated as follows.* (1) The emission test to be used is the Federal Test Procedure as set forth in the applicable portions of 40 CFR part 86. Certification emission testing must be carried out using representative production aftermarket parts as provided in paragraph (e) of this section. The test results must demonstrate that the proper installation of the certified aftermarket part will not cause the vehicle to fail to meet any applicable Federal emission requirements under section 202 of the Act.

(2) The following portions of the Federal Test Procedure are not required to be performed when certifying a part using emission testing:

(i) The evaporative emissions portion, if the aftermarket manufacturer has an adequate technical basis for believing that the part has no effect on the vehicle's evaporative emissions;

(ii) The exhaust emissions portion, if the part manufacturer has an adequate technical basis for believing that the part has no affect on the vehicle's exhaust emissions; and

(iii) Other portions therein which the part manufacturer believes are not relevant; *Provided, That* the part manufacturer has requested and been granted a waiver in writing by the MOD Director for excluding such portion.

(3) Exhaust Emission Testing. Certification exhaust emission testing for aftermarket parts shall be carried out in the following manner:

(i) For light duty vehicle parts that accelerate deterioration of existing emission related parts, at least one emission test is required. The test(s) shall be performed according to the Federal Test Procedure on the same test vehicle and aftermarket part combination that was previously aged as required. The results of all tests performed shall be averaged for each emission constituent. The average values shall meet all applicable Federal emission requirements under section 202 of the Act.

(A) For aftermarket parts where the comparable original equipment part has no recommended replacement interval, the same part and vehicle combination used for the durability demonstration shall be used for certification exhaust emission testing.

(B) For aftermarket parts where the comparable original equipment part has a recommended replacement interval of less than 50,000 miles, one of the aftermarket parts that accumulated at least the part's useful life mileage during the durability demonstration must be installed on the durability demonstration vehicle that has accumulated 50,000 miles for certification exhaust emission testing.

(ii) For light duty truck parts that accelerate deterioration of existing emission related parts.

(A) An emission test shall be performed on emission test vehicles at 4000 miles and at 50,000 miles, with the part installed. Exhaust emission deterioration factors for the test vehicle shall be calculated from these two test results. The aftermarket part manufacturer may elect to perform other emission tests at interim mileages. However, any interim tests must be spaced at equal mileage intervals. If more than one test is performed at any one mileage point, then all tests at this point shall be averaged prior to determining the deterioration factor. The deterioration factor shall be calculated using the least squares straight line method, in accordance with § 86.088–28(a). The deterioration factor for each emission constituent shall be used to linearly project the 50,000 mile test result out to 120,000 miles. The projected 120,000 mile test result shall meet light duty truck emission standards.

(B) As an option, the light-duty truck part manufacturer may durability age the test vehicle and aftermarket part to 120,000 miles, and then perform one Federal Test Procedure test. The actual test results in this case must pass all Federal emission standards.

(iii) For parts demonstrated to not accelerate deterioration of existing emission related parts during normal operation:

(A) If parts cause no noticeable change in vehicle driveability, performance, and/or fuel economy when the part fails, the certification exhaust emission test vehicle need not be the same vehicle as that used for durability demonstration. Upon completion of aging, one Federal Test Procedure test shall be performed with the aged aftermarket part installed on a test vehicle that has just completed one Federal Test Procedure test in the original equipment configuration (i.e., before the aftermarket part or system is installed). If more than one test is performed either before or after the aftermarket part is installed, then an equivalent number of tests must be performed in both configurations. The results of all tests performed before the part is installed shall be averaged and the results of all tests performed after the part is installed shall be averaged for each emission constituent. The difference in Federal Test Procedure emission results between the tests with the aged aftermarket part installed and the test vehicle in the original equipment configuration shall be less than or equal to the certification vehicle emission margin of any and all of the certification test vehicles from the various configurations for which the aftermarket part is being certified.

(B) For parts demonstrated to cause a noticeable change in vehicle driveability, performance, and/or fuel economy when the part fails, no durability aging of the part is required before certification emission testing. One Federal Test Procedure test shall be performed on the test vehicle in its original equipment configuration (i.e., before the aftermarket part or system is installed) and one test with an aftermarket part representative of production (as provided in paragraph (e) of this section) installed on the test vehicle. If more than one test is performed either before or after the aftermarket part is installed, then an equivalent number of tests must be performed in both configurations. The results of all tests performed with the aftermarket part installed shall be averaged and the results of all tests performed in the original equipment configuration shall be averaged for each emission constituent. The difference in Federal Test Procedure emission results between the tests with the aftermarket part installed and the test vehicle in the original equipment configuration shall be less than or equal to the certification vehicle emission margin of any and all of the certification test vehicles from the

various configurations for which the aftermarket part is being certified.

(4) Evaporative emission testing. For parts determined by the part manufacturer (with appropriate technical rationale) to affect only evaporative emissions performance, at least one evaporative emissions portion of the Federal Test Procedure test shall be performed on the vehicle in its original equipment configuration and at least one with the aftermarket part installed. Both the original equipment and aftermarket part shall be aged according to paragraph (c)(5) of this section prior to testing. If more than one test is performed either before or after the aftermarket part is installed, then an equivalent number of tests must be performed in both configurations. The emission results of all tests performed before the part is installed shall be averaged and the emission results of all tests performed after the part is installed shall be averaged. The difference in Federal Test Procedure emission results between the tests with the aged aftermarket part installed and the test vehicle in the original equipment configuration shall be less than or equal to the certification vehicle emission margin of any and all of the certification test vehicles from the various configurations for which the aftermarket part is being certified.

(5) Emission test vehicle selection: The test vehicle used must represent the "worst case" with respect to emissions of all those configurations for which the aftermarket part is being certified. The worst case configuration shall be that configuration which, having the aftermarket part installed, is least likely to meet the applicable emission standards among all those configurations on which the aftermarket part is intended to be installed as a certified aftermarket part. One of the following two methods shall be used to select the worst case emission test vehicle(s):

(i) In the first method, the selection shall be based on a technical judgment by the aftermarket part manufacturer of the impact of the particular design or calibration of a particular parameter or combination of parameters and/or an analysis of appropriate data, or

(ii) In the second alternative method, two defined worst case test vehicles shall be selected from the vehicle configurations using the following criteria:

(A) The first test vehicle is that engine family for which the largest number of parts are projected to be sold. Within that family the manufacturer shall select the configurations with the heaviest equivalent test weight, and then within that group the configuration with the largest displacement engine.

(B) The second test vehicle shall be from a different vehicle manufacturer than the first test vehicle, or if the aftermarket part applies to only one vehicle manufacturer, from a different engine family. Engine families are determined by the vehicle manufacturer or when certifying under 40 CFR Part 86. Within that group, the second test vehicle is selected from the vehicle configurations with the heaviest equivalent test weight, and then, within that group, the configuration with the largest displacement engine. If a part applies to only one engine family then only the vehicle specified in paragraph (d)(5)(ii)(A), of this section, is required to be tested.

(iii) The results of certification tests using the worst case vehicle selections made in this section shall only be applicable for configurations that are required to meet the same or less stringent (numerically higher) emission standards than those of the worst case configuration.

(iv) The worst case test vehicle(s) selected for certification emission testing is(are) not required to meet Federal emission standards in its original configuration. However, each test vehicle shall have representative emissions performance that is close to the standards and have no obvious emission defects. Each test vehicle shall be tuned properly and set to the vehicle manufacturer's specifications before testing is performed. Any excessively worn or malfunctioning emission related part shall be repaired prior to testing.

(e) *Test part selection.* Certification shall be based upon tests utilizing representative production aftermarket parts selected in a random manner in accordance with accepted statistical procedures.

(f) *Replacing original equipment parts.* Installation of any certified aftermarket part shall not result in the removal or rendering inoperative of any original equipment emission related part other than the part(s) being replaced. Furthermore, installation of any certified aftermarket part shall not require the readjustment of any other emission related part to other than the vehicle manufacturer specifications, cause or contribute to an unreasonable risk to the public health, welfare or safety, or result in any additional range of parameter adjustability or accessibility to adjustment than that of the vehicle manufacturer's emission related parts.

(g) *Affects on vehicle on board diagnostic system.* Installation of any certified aftermarket part shall not alter or render inoperative any feature of the on-board diagnostic system incorporated by the vehicle manufacturer. The certified part may integrate with the existing diagnostic system if it does not alter or render inoperative any features of the system. However, use of on-board diagnostics or warning indicators to alert the driver to part failure is not sufficient by itself to qualify the part for exemption from aging under paragraph (c)(4)(ii) of this section. The part manufacturer must demonstrate that the diagnostic and malfunction indicator system will routinely result in repair or replacement of the aftermarket part in use.

(Approved by the Office of Management and Budget under the control number 2060–0016)

13. Section 85.2115 is revised to read as follows:

§ 85.2115 Notification of intent to certify.

(a) At least 45 days prior to the sale of any certified automotive aftermarket part, notification of the intent to certify must be received by the Agency.

(1) The notification shall include:

(i) Identification of each part to be certified; and.

(ii) Identification of all vehicle or engine configurations for which the part is being certified including make(s), model(s), year(s), engine size(s) and all other specific configuration characteristics necessary to assure that the part will not be installed in any configuration for which it has not been certified; and

(iii) All determinations, demonstrations, technical rationale, and documentation provided in § 85.2114; and

(iv) Any and all written waivers and approvals obtained from the MOD director as provided in § 85.2114, and any correspondence with EPA regarding certification of that part; and

(v) A description of the tests, techniques, procedures, and results utilized to demonstrate compliance with § 85.2114(b) applicable to parts eligible to certify using emission-critical parameters, except that, if the procedure utilized is recommended in appendix I of this subpart, then only a statement to this effect is necessary. A description of all statistical methods and analyses used to determine the emission-critical parameters of the original equipment parts and compliance of the certified part(s) with those parameters including numbers of parts tested, selection criteria, means, variance, etc; and

(vi) All results and documentation of tests and procedures used by the part manufacturer as evidence of compliance

with the durability and emission requirements specified in § 85.2114; and

(vii) A discussion of the technical basis(es) for foregoing any portion of the Federal Test Procedure when applicable; and

(viii) A description of the test part selection criteria used, and a statement that the test part(s) used for certification testing is(are) a representative production aftermarket part(s) consistent with § 85.2114(e); and

(ix) A description of the test and demonstration vehicle selection criteria used, and rationale that supports the technical judgment that the vehicle configurations used for emission testing and durability demonstration represent worst case with respect to emissions of all those configurations for which the aftermarket part is being certified, and all data that supports that conclusion; and

(x) The service intervals of the part, including maintenance and replacement intervals in months and/or miles, as applicable, and a statement indicating whether it is different than the service, maintenance, and replacement interval of the original equipment requirements; and

(xi) A statement, if applicable, that the part will not meet the labeling requirements of § 85.2119(a) and the description of the markings the aftermarket manufacturer intends to put on the part in order to comply with § 85.2119(b); and

(xii) A statement that the aftermarket part manufacturer accepts, as a condition of certification, the obligation to comply with the warranty requirements and dispute resolution procedures provided in § 85.2117; and

(xiii) A statement of commitment and willingness to comply with all the relevant terms and conditions of this subpart; and

(xiv) A statement by the aftermarket part manufacturer that use of its certified part will not cause a substantial increase to vehicle emissions in any normal driving mode not represented during certification or compliance testing; and

(xv) The office or officer of the aftermarket part manufacturer authorized to receive correspondence regarding certification requirements pursuant to this subpart.

(2) The notification shall be signed by an individual attesting to the accuracy and completeness of the information supplied in the notification.

(3) Notification to the Agency shall be by certified mail or another method by which date of receipt can be established.

(4) Two complete and identical copies of the notification and any subsequent industry comments on any such notification shall be submitted by the aftermarket manufacturer to: Director, MOD (EN-340F), Attention: Aftermarket Parts, 401 "M" St. SW., Washington, DC 20460.

(5) A copy of the notification submitted under paragraph (a)(4) of this section will be placed in a public docket. Comments on any notice in the public docket may be made to the MOD Director.

(b) The MOD Director reserves the right to review an application to determine if the submitted documents adequately meet all the requirements for certification specified in §§ 85.2114 and 85.2115. A part may be sold as certified 45 days after the receipt by the Agency of the notification given pursuant to this subsection provided that the Agency has not notified the part manufacturer otherwise.

(Approved by the Office of Management and Budget under the control number 2060-0016)

14. Section 85.2116 is amended by revising paragraphs (a)(2), (a)(4) and (a)(7) and by adding paragraph (a)(8) to read as follows:

§ 85.2116 Objections to certification.

(a) * * *

(2) The part is to be certified on the basis of emission testing, and the procedure used in such tests was not in compliance with those portions of the Federal Test Procedure not waived pursuant to § 85.2114(d)(2).

* * * * *

(4) The durability requirement of § 85.2114 has not been complied with;

* * * * *

(7) Information and/or data required to be in the notification of intent to certify as provided by § 85.2115 have not been provided or may be inadequate; or,

(8) Documentation submitted under § 85.2114(c)(4)(ii) was determined inadequate for durability exemption.

* * * * *

15. Section 85.2117 is revised to read as follows:

§ 85.2117 Warranty and dispute resolution.

(a) *Warranty.* (1) As a condition of certification, the aftermarket part manufacturer shall warrant that if the certified part is properly installed it will not cause a vehicle to exceed Federal emission requirements as determined by an emission test approved by EPA under section 207(b)(1) of the Act. This aftermarket part warranty shall extend for the remaining performance warranty period of any vehicle on which the part is installed, or for the warranty period specified for an equivalent original equipment component, if this period is shorter than the remaining warranty period of the vehicle.

(2) The aftermarket part manufacturer's minimum obligation under this warranty shall be to reimburse vehicle manufacturers for all reasonable expenses incurred as a result of honoring a valid emission performance warranty claim which arises because of the use of the certified aftermarket part.

(3) The procedure used to process a certified aftermarket part warranty claim is as follows. The time requirements are in units of calendar days.

(i) The vehicle manufacturer shall submit, by certified mail or another method by which date of receipt can be established, a bill for reasonable expenses incurred to the part manufacturer for reimbursement. Accompanying the bill shall be a letter to the part manufacturer with an explanation of how the certified part caused the failure and a copy of the warranty repair order or receipt establishing the date that the performance repair was initiated by the vehicle owner.

(ii) The parts retained pursuant to § 85.2107(c)(1) shall be retained until the reimbursement process is resolved. The vehicle manufacturer shall store these parts or transfer these parts to the involved certified part manufacturer for storage. If the vehicle manufacturer transfers these parts to the certified part manufacturer, the part manufacturer shall retain these parts:

(A) For at least one year from the date of repair involving these parts, if the part manufacturer does not receive a bill from the vehicle manufacturer within that time period, or

(B) Until the claim reimbursement process has been resolved, if the part manufacturer receives a bill from the vehicle manufacturer within one year of the date of repair involving these parts.

(iii) If the vehicle manufacturer transfers the parts retained pursuant to paragraph (a)(3)(ii) of this section to the part manufacturer, a bill shall be submitted to the part manufacturer within one year of the date of initiation of the actual repair by the vehicle owner. If this requirement is not met, the vehicle manufacturer shall forfeit all rights to the reimbursement provisions provided in this regulation.

(iv) Storage costs are not reimbursable as part of a performance warranty claim.

(b) *Dispute resolution.* (1) The part manufacturer shall respond to the vehicle manufacturer within 30 days of receipt of the bill by paying the claim or requesting a meeting to resolve any disagreement. A meeting shall occur within the next two week period. At this meeting the parties shall, in all good faith, attempt to resolve their disagreement. Discussions should be completed within 60 days of receipt of the bill for the warranty claim by the part manufacturer.

(2) If the parties cannot resolve their disagreement within 60 days, either party may file for arbitration. Neither party may file for arbitration within 60 days unless both parties agree to seek arbitration prior to the end of the 60-day period. If, after 60 days, either party files, then both parties shall submit to arbitration.

(3) This arbitration shall be carried out pursuant to the Arbitration Rules contained in Appendix II of this subpart which are based on Commercial Arbitration Rules published by the American Arbitration Association, revised and in effect as of September 1, 1988. The Arbitration Rules detail the procedures to be followed by the parties and the arbitrator in resolving disputes under this section. They can be varied only with the agreement of both parties. If either involved manufacturer refuses to participate in the arbitration process, that party is treated as if it had lost the arbitration and is required to pay all reasonable expenses.

(4) Any party losing the arbitration has the right to resort to an appropriate federal district court or state court, subject to the established rules of that court regarding subject matter jurisdiction and personal jurisdiction.

(5) If the vehicle manufacturer wins the arbitration, the part manufacturer must provide reimbursement in accordance with the arbitrator's award and decision. Such reimbursement must be made within 30 days of the award and decision.

(6)(i) If the part manufacturer refuses to pay a lost arbitration award, the involved part will be decertified pursuant to 40 CFR 85.2121, provided that if the part manufacturer resorts to a court of competent jurisdiction, decertification will be withheld pending the outcome of such judicial determination.

(ii) In addition, under these circumstances, the vehicle manufacturer has the right to bring an enforcement action on the arbitration award and decision in the appropriate federal district court or state court, subject to the established rules of that court regarding subject matter jurisdiction and personal jurisdiction. If this court agrees with the arbitrator's award and decision, reimbursement shall be made within 30 days of the court's decision unless the court orders otherwise.

16. Section 85.2118 is amended by revising paragraphs (a) and (b) and republishing the introductory text for the convenience of the reader as follows:

§ 85.2118 Changes after certification.

The aftermarket part manufacturer shall be required to recertify any part which:

(a) Was certified pursuant to § 85.2114(b) and to which modifications are subsequently made which could affect the results of any test or judgment made that the part meets all of the applicable Emission-Critical Parameters;

(b) Was certified pursuant to § 85.2114(c) and to which modifications are made which are likely to affect emissions or the capability of the part to meet any other requirement of this subpart; or

* * * * *

17. Section 85.2119 is amended by revising paragraphs (a) and (b) to read as follows:

§ 85.2119 Labeling requirements.

(a) Except as specified in paragraph (b) of this section, each part certified pursuant to these regulations shall have "Certified to EPA Standards" and the name of the aftermarket part manufacturer or other party designated to determine the validity of warranty claims placed on the part. The name of the aftermarket part manufacturer or other party and the statement, "Certified to EPA Standards," must be made durable and readable for at least the useful life mileage interval of the part.

(b) In lieu of the name of the aftermarket part manufacturer or other party and "Certified to EPA Standards," the part may contain unique identification markings. A description of the marking and statement that such marking is intended in lieu of the name of the aftermarket part manufacturer or other party and "Certified to EPA Standards," shall be made to the Agency in the notification of intent to certify. The unique symbol shall not be used on any uncertified or decertified part built or assembled after the date of decertification.

* * * * *

18. Section 85.2121 is amended by revising paragraphs (a)(1)(ii)(A) and (a)(1)(ii)(B) and (a)(1)(vi) and by adding paragraphs (a)(1)(ii)(C), (a)(1)(vii) and (a)(1)(viii) to read as follows:

§ 85.2121 Decertification.

(a) * * *

(1) * * *

(ii) * * *

(A) The procedures used in such tests were not in substantial compliance with a portion or portions of the Federal Test Procedure which were not waived pursuant to § 85.2114(d);

(B) The emission results were not in compliance with the requirements of § 85.2114(d); or

(C) The procedures used for part aging for durability demonstration were not in substantial compliance with the durability cycle required by § 85.2114.

* * * * *

(vi) The manufacturer of such parts has not established, maintained or retained the records required pursuant to § 85.2120 or fails to make the records available to the MOD Director upon written request pursuant to § 85.2120.

(vii) Documentation required to support the type of durability demonstration used for a part under § 85.2114:

(A) Were not submitted for the part, or

(B) Were insufficient to justify a claim of durability exemption status.

(viii) The aftermarket part manufacturer failed to pay a lost arbitration settlement within 30 days of the arbitrator's decision or within 30 days after completion of judicial review, if any.

* * * * *

19. Section 85.2122 is amended by revising paragraph (a) introductory text to read as follows:

§ 85.2122 Emission-critical parameters.

(a) The following parts may be certified in accordance with § 85.2114(b):

* * * * *

20. The existing Appendix to Subpart V is designated as Appendix I and the heading is revised to read as follows:

Appendix I to Subpart V—Recommended Test Procedures and Test Criteria and Recommended Durability Procedures to Demonstrate Compliance With Emission Critical Parameters

* * * * *

21. Appendix II is added to Subpart V to read as follows:

Appendix II—Arbitration Rules

Part A—Pre-Hearing

Section 1: Initiation of Arbitration

Either party may commence an arbitration under these rules by filing at any regional office of the American Arbitration Association (the AAA) three copies of a written submission to arbitrate under these rules, signed by either party. It shall contain a statement of the matter in dispute, the

amount of money involved, the remedy sought, and the hearing locale requested, together with the appropriate administrative fee as provided in the Administrative Fee Schedule of the AAA in effect at the time the arbitration is filed. The filing party shall notify the MOD Director in writing within 14 days of when it files for arbitration and provide the MOD Director with the date of receipt of the bill by the part manufacturer.

Unless the AAA in its discretion determines otherwise and no party disagrees, the Expedited Procedures (as described in Part E of these Rules) shall be applied in any case where no disclosed claim or counterclaim exceeds $25,000, exclusive of interest and arbitration costs. Parties may also agree to the Expedited Procedures in cases involving claims in excess of $25,000.

All other cases, including those involving claims not in excess of $25,000 where either party so desires, shall be administered in accordance with Parts A through D of these Rules.

Section 2: Qualification of Arbitrator

Any arbitrator appointed pursuant to these Rules shall be neutral, subject to disqualification for the reasons specified in Section 6. If the parties specifically so agree in writing, the arbitrator shall not be subject to disqualification for said reasons.

The term "arbitrator" in these rules refers to the arbitration panel, whether composed of one or more arbitrators.

Section 3: Direct Appointment by Mutual Agreement of Parties

The involved manufacturers should select a mutually-agreeable arbitrator through which they will resolve their dispute. This step should be completed within 90 days from the date of receipt of the warranty claim bill by the part manufacturer.

Section 4: Appointment From Panel

If the parties have not appointed an arbitrator and have not provided any other method of appointment, the arbitrator shall be appointed in the following manner: 90 days from the date of receipt of the warranty claim bill by the part manufacturer, the AAA shall submit simultaneously to each party to the dispute an identical list of names of persons chosen from the National Panel of Commercial Arbitrators, established and maintained by the AAA.

Each party to the dispute shall have ten days from the mailing date in which to cross off any names objected to, number the remaining names in order of preference, and return the list to the AAA. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable. From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, the AAA shall invite the acceptance of an arbitrator to serve. If the parties fail to agree on any of the persons named, or if acceptable arbitrators are unable to act, or if for any other reason the appointment cannot be made from the submitted lists, the AAA shall have the power to make the appointment from among other members of the panel without the submission of additional lists.

Section 5: Number of Arbitrators; Notice to Arbitrator of Appointment

The dispute shall be heard and determined by one arbitrator, unless the AAA in its discretion, directs that a greater number of arbitrators be appointed.

Notice of the appointment of the arbitrator shall be mailed to the arbitrator by the AAA, together with a copy of these rules, and the signed acceptance of the arbitrator shall be filed with the AAA prior to the opening of the first hearing.

Section 6: Disclosure and Challenge Procedure

Any person appointed as an arbitrator shall disclose to the AAA any circumstance likely to affect impartiality, including any bias or any financial or personal interest in the result of the arbitration or any past or present relationship with the parties or their representatives. Upon receipt of such information from the arbitrator or another source, the AAA shall communicate the information to the parties and, if it deems it appropriate to do so, to the arbitrator and others. Upon objection of a party to the continued service of an arbitrator, the AAA shall determine whether the arbitrator should be disqualified and shall inform the parties of its decision, which shall be conclusive.

Section 7: Vacancies

If for any reason an arbitrator should be unable to perform the duties of the office, the AAA may, on proof satisfactory to it, declare the office vacant. Vacancies shall be filled in accordance with the applicable provisions of these rules.

In the event of a vacancy in a panel of arbitrators after the hearings have commenced, the remaining arbitrator or arbitrators may continue with the hearing and determination of the controversy, unless the parties agree otherwise.

Section 8: Interpretation and Application of Rules

The arbitrator shall interpret and apply these rules insofar as they relate to the arbitrator's powers and duties. When there is more than one arbitrator and a difference arises among them concerning the meaning or application of these rules, it shall be decided by a majority vote. If that is unobtainable, either an arbitrator or a party may refer the question to the AAA for final decision. All other rules shall be interpreted and applied by the AAA.

Section 9: Administrative Conference and Preliminary Hearing.

At the request of any party or at the discretion of the AAA, an administrative conference with the AAA and the parties and/or their representatives will be scheduled in appropriate cases to expedite the arbitration proceedings.

In large or complex cases, at the request of any party or at the discretion of the arbitrator or the AAA, a preliminary hearing with the parties and/or their representatives and the arbitrator may be scheduled by the arbitrator to specify the issues to be resolved, stipulate to uncontested facts, and to consider any other matters that will expedite the arbitration proceedings. Consistent with the expedited nature of arbitration, the arbitrator may, at the preliminary hearing, establish (i) the extent of and the schedule for the production of relevant documents and other information, (ii) the identification of any witnesses to be called, and (iii) a schedule for further hearings to resolve the dispute.

Section 10: Fixing of Locale

The parties may mutually agree on the locale where the arbitration is to be held. If any party requests that the hearing be held in a specific locale and the other party files no objection thereto within ten days after notice of the request has been mailed to it by the AAA, the locale shall be the one requested. If a party objects to the locale requested by the other party, the AAA shall have the power to determine the locale and its decision shall be final and binding.

Part B—The Hearing

Section 1: Date, Time, and Place of Hearing

The arbitrator shall set the date, time, and place for each hearing. The AAA shall mail to each party notice thereof at least ten days in advance, unless the parties by mutual agreement waive such notice or modify the terms thereof.

Section 2: Representation

Any party may be represented by counsel or other authorized representative. A party intending to be so represented shall notify the other party and the AAA of the name and address of the representative at least three days prior to the date set for the hearing at which that person is first to appear. When such a representative initiates an arbitration or responds for a party, notice is deemed to have been given.

Section 3: Attendance at Hearings

The arbitrator shall maintain the privacy of the hearings unless the law provides to the contrary. Representatives of the MOD director, and any persons having a direct interest in the arbitration are entitled to attend hearings. The arbitrator shall otherwise have the power to require the exclusion of any witness, other than a party or other essential person, during the testimony of any other witness. It shall be discretionary with the arbitrator to determine the propriety of the attendance of any other person.

Section 4: Oaths

Before proceeding with the first hearing, each arbitrator may take an oath of office and, if required by law, shall do so. The arbitrator may require witnesses to testify under oath administered by any duly qualified person and, if it is required by law or requested by any party, shall do so.

Section 5: Majority Decision

All decisions of the arbitrators must be by a majority. The award must also be made by a majority.

Section 6: Order of Proceedings and Communication with Arbitrator

A hearing shall be opened by the filing of the oath of the arbitrator, where required; by the recording of the date, time, and place of the hearing, and the presence of the

arbitrator, the parties and their representatives, if any; and by the receipt by the arbitrator of the statement of the claim and the answering statement, if any.

The arbitrator may, at the beginning of the hearing, ask for statements clarifying the issues involved. In some cases, part or all of the above will have been accomplished at the preliminary hearing conducted by the arbitrator pursuant to Part A Section 9 of these Rules.

The complaining party shall then present evidence to support its claim. The defending party shall then present evidence supporting its defense. Witnesses for each party shall submit to questions or other examination. The arbitrator has the discretion to vary this procedure but shall afford a full and equal opportunity to all parties for the presentation of any material and relevant evidence.

Exhibits, when offered by either party, may be received in evidence by the arbitrator.

The names and addresses of all witnesses and a description of the exhibits in the order received shall be made a part of the record.

There shall be no direct communication between the parties and an arbitrator other than at oral hearing, unless the parties and the arbitrator agree otherwise. Any other oral or written communication from the parties to the neutral arbitrator shall be directed to the AAA for transmittal to the arbitrator.

Section 7: Evidence

The parties may offer such evidence as is relevant and material to the dispute and shall produce such evidence as the arbitrator may deem necessary to an understanding and determination of the dispute. An arbitrator or other person authorized by law to subpoena witnesses or documents may do so upon the request of any party or independently.

The arbitrator shall be the judge of the relevance and materiality of the evidence offered, and conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of all of the arbitrators and all of the parties, except where any of the parties is absent, in default, or has waived the right to be present.

Section 8: Evidence by Affidavit and Post-hearing Filing of Documents or Other Evidence

The arbitrator may receive and consider the evidence of witnesses by affidavit, but shall give it only such weight as the arbitrator deems it entitled to after consideration of any objection made to its admission.

If the parties agree or the arbitrator directs that documents or other evidence be submitted to the arbitrator after the hearing, the documents or other evidence shall be filed with the AAA for transmission to the arbitrator. All parties shall be afforded an opportunity to examine such documents or other evidence.

Section 9: Closing of Hearing

The arbitrator shall specifically inquire of all parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies or if satisfied that the record is complete, the arbitrator shall declare the hearing closed and a minute thereof shall be recorded. If briefs are to be filed, the hearing shall be declared closed as of the final date set by the arbitrator for the receipt of briefs. If documents are to be filed as provided for in Part B Section 9 and the date set for their receipt is later than that set for the receipt of briefs, the later date shall be the date of closing the hearing. The time limit within which the arbitrator is required to make the award shall commence to run, in the absence of other agreements by the parties, upon the closing of the hearing.

Section 10: Reopening of Hearing

The hearing may be reopened on the arbitrator's initiative, or upon application of a party, at any time before the award is made. The arbitrator may reopen the hearing and shall have 30 days from the closing of the reopened hearing within which to make an award.

Section 11: Waiver of Oral Hearing

The parties may provide, by written agreement, for the waiver of oral hearings.

Section 12: Waiver of Rules

Any party who proceeds with the arbitration after knowledge that any provision or requirement of these rules has not been complied with and who fails to state an objection thereto in writing, shall be deemed to have waived the right to object.

Section 13: Extensions of Time

The parties may modify any period of time by mutual agreement. The AAA or the arbitrator may for good cause extend any period of time established by these rules, except the time for making the award. The AAA shall notify the parties of any extension.

Section 14: Serving of Notice

Each party shall be deemed to have consented that any papers, notices, or process necessary or proper for the initiation or continuation of an arbitration under these rules; for any court action in connection therewith; or for the entry of judgment on any award made under these rules may be served on a party by mail addressed to the party or its representative at the last known address or by personal service, inside or outside the state where the arbitration is to be held, provided that reasonable opportunity to be heard with regard thereto has been granted to the party.

The AAA and the parties may also use facsimile transmission, telex, telegram, or other written forms of electronic communication to give the notices required by these rules.

Part C—Award and Decision

Section 1: Time of Award

The award shall be made promptly by the arbitrator and, unless otherwise agreed by the parties or specified by law, no later than 30 days from the date of closing the hearing, or, if oral hearings have been waived, from the date of the AAA's transmittal of the final statements and proofs to the arbitrator.

Section 2: Form of Award

The award shall be in writing and shall be signed by the arbitrator, or if a panel is utilized, a majority of the arbitrators. It shall be accompanied by a written decision which sets forth the reasons for the award. Both the award and the decision shall be filed by the arbitrator with the MOD Director.

Section 3: Scope of Award

The arbitrator may grant to the vehicle manufacturer any repair expenses that he or she deems to be just and equitable.

Section 4: Award upon Settlement

If the parties settle their dispute during the course of the arbitration, the arbitrator may set forth the terms of the agreed settlement in an award. Such an award is referred to as a consent award. The consent award shall be filed by the arbitrator with the MOD Director.

Section 5: Delivery of Award to Parties

Parties shall accept as legal delivery of the award, the placing of the award, or a true copy thereof in the mail addressed to a party or its representative at the last known address, personal service of the award, or the filing of the award in any other manner that is permitted by law.

Section 6: Release of Documents for Judicial Proceedings

The AAA shall, upon the written request of a party, furnish to the party, at its expense, certified copies of any papers in the AAA's possession that may be required in judicial proceedings relating to the arbitration.

Part D—Fees and Expenses

Section 1: Administrative Fee

The AAA shall be compensated for the cost of providing administrative services according to the AAA Administrative Fee Schedule and the AAA Refund Schedule. The Schedules in effect at the time the demand for arbitration or submission agreement is received shall be applicable.

The administrative fee shall be advanced by the initiating party or parties, subject to final allocation at the end of the case.

When a claim or counterclaim is withdrawn or settled, the refund shall be made in accordance with the Refund Schedule. The AAA may, in the event of extreme hardship on the part of any party, defer or reduce the administrative fee.

Section 2: Expenses

The loser of the arbitration is liable for all arbitration expenses unless determined otherwise by the arbitrator.

Section 3: Arbitrator's Fee

An arrangement for the compensation of an arbitrator shall be made through discussions by the parties with the AAA and not directly between the parties and the arbitrator. The terms of compensation of arbitrators on a panel shall be identical.

Section 4: Deposits

The AAA may require the parties to deposit in advance of any hearings such sums of money as it deems necessary to defray the expense of the arbitration, including the arbitrator's fee, if any, and shall render an accounting to the parties and return any unexpended balance at the conclusion of the case.

Part E—Expedited Procedures

Section 1: Notice by Telephone

The parties shall accept all notices from the AAA by telephone. Such notices by the AAA shall subsequently be confirmed in writing to the parties. Should there be a failure to confirm in writing any notice hereunder, the proceeding shall nonetheless be valid if notice has, in fact, been given by telephone.

Section 2: Appointment and Qualifications of Arbitrator

The AAA shall submit simultaneously to each party an identical list of five proposed arbitrators drawn from the National Panel of Commercial Arbitrators, from which one arbitrator shall be appointed.

Each party may strike two names from the list on a preemptory basis. The list is returnable to the AAA within seven days from the date of the AAA's mailing of the list to the parties.

If for any reason the appointment of an arbitrator cannot be made from the list, the AAA may make the appointment from among other members of the panel without the submission of additional lists.

The parties will be given notice by the AAA by telephone of the appointment of the arbitrator, who shall be subject to disqualification for the reasons specified in Part A, Section 6. The parties shall notify the AAA, by telephone, within seven days of any objection to the arbitrator appointed. Any objection by a party to the arbitrator shall be confirmed in writing to the AAA with a copy to the other party or parties.

Section 3: Date, Time, and Place of Hearing

The arbitrator shall set the date, time, and place of the hearing. The AAA will notify the parties by telephone, at least seven days in advance of the hearing date. Formal Notice of Hearing will be sent by the AAA to the parties and the MOD Director.

Section 4: The Hearing

Generally, the hearing shall be completed within one day, unless the dispute is resolved by the submission of documents. The arbitrator, for good cause shown, may schedule an additional hearing to be held within seven days.

Section 5: Time of Award

Unless otherwise agreed by the parties, the award shall be rendered not later than 14 days from the date of the closing of the hearing.

Section 6: Applicability of Rules

Unless explicitly contradicted by the provisions of this part, provisions of other parts of the Rules apply to proceedings conducted under this part.

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Part III

Environmental Protection Agency

40 CFR Part 85

Performance Warranty Regulations and the Voluntary Aftermarket Part Certification Program: Proposed Alternative Short Test Procedure; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 85

[AMS FRL-3491-8]

Performance Warranty Regulations and the Voluntary Aftermarket Part Certification Program: Proposed Alternative Short Test Procedure

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) proposes to amend the voluntary aftermarket part certification program regulations by adopting an alternative, shorter test procedure for the certification of aftermarket parts.

Elsewhere in today's **Federal Register**, EPA is promulgating a final rule which revises its aftermarket part certification regulations. Under that final rule, any aftermarket part manufacturer that wishes to certify its emission-related part must demonstrate that use of its part will not cause a vehicle to fail Federal emission standards during the vehicle's useful life. When the demonstration involves emission testing the final rule specifies that the Federal Test Procedure (FTP) is the only acceptable test.

During the comment period prior to publishing today's final rule, aftermarket part manufacturers submitted information suggesting an alternative "short test" is available that would provide reasonable correlation to the currently required FTP test at a lower cost.[1] EPA's independent analyses indicate that the shorter procedure (known as the cold 505 test procedure) may correlate reasonably well with the FTP.[2] This notice of proposed rulemaking (NPRM) proposes to adopt such an alternative short test procedure for certification of aftermarket parts, and proposes standards that will ensure that this short test demonstrates compliance with the existing FTP emission standards.

DATES: Public comments on the NPRM must be submitted on or before October 10, 1989. The date and place of a public hearing will be announced shortly in the **Federal Register**. The public comment period will be open until at least 30 days after the hearing.

ADDRESSES: Comments on the NPRM may be submitted to the U.S. Environmental Protection Agency, Central Docket Section, Room 4, South Conference Center (LE-131), Waterside Mall, 401 M Street SW., Washington, DC, 20460, Attn: Docket No. A-88-31.

FOR FURTHER INFORMATION CONTACT: Daniel Heiser, Certification Division, U.S. Environmental Protection Agency, 2565 Plymouth Rd., Ann Arbor, MI 48105 (313) 668-4502.

SUPPLEMENTARY INFORMATION:

I. Background

Section 207(a)(2) of the Clean Air Act (the Act) provides that a motor vehicle part manufacturer may certify that use of its parts will not result in a failure of the vehicle or engine to comply with emission standards promulgated under section 202 of the Act. Section 207(a)(2) instructs EPA to promulgate regulations for the certification of automotive parts. Although part manufacturers are not required to certify aftermarket parts, those aftermarket parts voluntarily certified are covered under the vehicle manufacturer's performance warranty provisions.

In 1980 EPA promulgated regulations that allow automotive part manufacturers to certify their parts as equivalent to original equipment manufacturer (OEM) parts (45 FR 78448, November 25, 1980). Elsewhere in today's **Federal Register**, EPA is promulgating revisions to those regulations that expand the applicability of the part certification program to include all emission-related aftermarket parts.[3] Those revisions to the voluntary self-certification regulations [4] allow aftermarket part manufacturers to certify their parts on the basis of FTP data.

The FTP is a test procedure that collects emissions under transient driving conditions, including acceleration, deceleration, stop and go, and constant speed driving modes. The FTP also includes "loaded" conditions where the test vehicle is subjected to simulated operation loads that represent proper test vehicle weight, aerodynamic drag, and other frictional forces. The FTP exhaust test cycle begins after the test vehicle has been "soaked" (i.e., placed in the controlled ambient environment of an enclosed room with all vehicle power systems turned off for twelve hours minimum) to ensure that all vehicle systems start the test at the same baseline temperature. The actual test starts with one cold start driving cycle followed by one hot transient driving cycle, and finishes with one hot start driving cycle. Emissions are collected from each cycle in a separate enclosed collection medium known as an emission bag. FTP emissions are based on a weighted average of emissions from all three emission bags.[5]

In reviewing the 1980 regulations on aftermarket parts certification in *Specialty Equipment Market Association (SEMA)* v. *Ruckelshaus* 720 F.2d 124 (1983), the DC Circuit Court of Appeals stated that section 207(a)(2) of the Act does not prevent EPA from using short tests in place of the FTP as a basis for certification. It pointed out that EPA had approved the use of short tests for Inspection/Maintenance purposes to trigger the vehicle manufacturer's performance warranty under section 207(b) of the Act.[6] The *SEMA* court stated, however, that the Act does not require EPA to authorize the use of short tests for certification of aftermarket parts. It noted that there may be valid policy grounds for rejecting short tests for this purpose. 720 F.2d at 136-137 (1983).

EPA has already considered and rejected several alternative short test procedures for aftermarket part certification.[7] These short tests were suggested by SEMA, which claimed such tests were less expensive than the full FTP for certification of aftermarket parts. EPA rejected these alternative test procedures since they had test cycle deficiencies and would not reasonably assure adequate emission performance

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[1] Docket No. EN-84-08, Category IV-D-4, comments of Specialty Equipment Market Association (SEMA).

[2] See "Using the Cold 505 Emission Test Procedure for Certification of Aftermarket Parts," Certification Division (CD), EPA, December, 1988. This technical support document has been placed in the public docket for this NPRM, docket no. A-88-31.

[3] Emission-related aftermarket parts are parts installed for those components, systems, or elements of design which must function properly to assure continued vehicle emission compliance.

[4] 40 CFR, Part 85, Subpart V.

[5] 40 CFR 86.144-78.

[6] Section 207(b) requires the establishment of short test procedures to be used for determining in-use compliance of vehicles with federal emission standards, if the Administrator determines that three conditions have been met: (1) The short test methods and procedures are available (i.e., that the necessary equipment may be readily obtained and the procedure is reasonably expected to serve its function); (2) the procedures are consistent with good engineering practices; and (3) such methods and procedures are reasonably capable of being correlated with the FTP.

[7] A detailed explanation of EPA's analysis of these short tests is contained in several publicly available documents. See the following three documents: "Options for Amendments to the Emission Control Performance Warranty Regulation and Voluntary Aftermarket Part Certification Program," Nov. 1988, Docket #EN-84-08, Category II-B-6; "NPRM for Emission Control Warranty Regulations and Voluntary Aftermarket Part Certification Program," 45 FR 924; and "Summary and Analysis of Comments Regarding the January 9, 1987 NPRM Concerning the Emission Control System Performance Warranty Regulations and Voluntary Aftermarket Part Certification Program," Docket #EN-84-08, Category IV-D-4.

over the range of driving conditions typical of the FTP.

However, the cold 505 procedure proposed today differs from the short tests already rejected because there is a reasonable technical basis that compliance with this procedure will assure reasonable compliance with the FTP standards. The cold 505 test procedure shows a reasonable correlation with the FTP and includes important test cycle features of the FTP that were lacking in the rejected short tests.

II. Summary of Proposal

EPA proposes to allow use of the first 505 seconds of the FTP test (the cold 505 test) for the certification of most aftermarket parts. For most parts, the aftermarket part manufacturer could use the cold 505 test in place of the full FTP test whenever an FTP is required for certification of the part under the final certification regulations published today. EPA also proposes cold 505 test standards in today's NPRM.

III. Discussion

A. Cold 505 Test Procedure

In its comments on the NPRM corresponding to the final rulemaking published in today's **Federal Register** that revises the voluntary aftermarket part certification program regulations, SEMA asserted that there is good reason to allow part manufacturers to use the cold 505 test in lieu of the full FTP test for certification of aftermarket parts.[8] The cold 505 test is the first 505 seconds of the FTP, which includes a cold start after the test vehicle has been soaked for at least twelve hours under controlled ambient conditions. During the cold 505 test, emissions are collected in the first emission bag of the FTP. SEMA submitted data generated by the California Air Resources Board (CARB), and claimed that this data established a correlation between the cold 505 test and the full FTP test. CARB's report noted that, "[SEMA is] seeking compliance determination criteria based on either meeting an appropriate standard or by showing no increase in emissions.[9]

SEMA believes that aftermarket part certification testing can be conducted with the cold 505 test at a significant cost savings compared to the FTP. SEMA claims that, by using the cold 505 test, aftermarket part manufacturers could save up to half of testing costs associated with the full FTP. EPA continues to believe that the cost of using the full FTP emission test for certification is reasonable for aftermarket part certification and that the cost savings of the cold 505 procedure may not be as great as estimated by SEMA. However, these cost savings may prove significant to very small part manufacturers. Therefore, EPA has followed up on CARB's work by performing its own independent analyses of the cold 505 test.[10]

EPA's analyses are based on vehicle FTP emission results contained in EPA's emissions factor database of vehicles driven in-use. Using these data, it appears that a reasonable correlation does exist between results from the cold 505 and the FTP, such that cold 505 emission values can be established that will reasonably predict compliance with Federal emission standards.

B. Proposed Cold 505 Standards

To ensure compliance with the Federal emission standards, EPA believes that the cold 505 standards should be set at levels such that a vehicle equipped with an aftermarket part that fails the FTP should also fail when tested according to the proposed cold 505 test. EPA has determined that if a test vehicle containing an aftermarket part produces values less than or equal to the standards set forth below, it is almost certain that the vehicle configuration also will meet the FTP standards (i.e., the errors of omission, Eo,[11] will be equal to zero).

For light-duty vehicles (LDV's), EPA proposes that the test vehicles, selected according to the aftermarket part certification regulations (and with the part installed), when tested using the cold 505 test procedure must yield emission results at 50,000 miles of no higher than 0.46 grams per mile (g/mi) for hydrocarbons (HC), 4.3 g/mi for carbon monoxide (CO), and 0.7 g/mi for oxides of nitrogen (NO_x).[12]

For light duty trucks (LDT's), EPA proposes a separate set of standards that must be met at the full useful life of 120,000 miles.[13] For all LDT's, the proposed standard for HC is 0.98 g/mi and for CO is 13.0 g/mi. For LDT's weighing 3750 pounds or less, the proposed NOx standard is 1.0 g/mi, and for LDT's weighing 3751 pounds or more, the proposed NOx standard is 1.7 g/mi.

EPA evaluated the sensitivity of the cold 505 proposed standards to changes in the Eo rate, by determining standards that correspond to Eo rates greater than zero.[14] This would allow some vehicles to pass the cold 505 standard but fail the FTP, a result that EPA does not believe is appropriate. EPA found that a small increase in the Eo rate resulted in a significant increase in the cold 505 standards. These higher cold 505 values would make it easier for some parts that are not capable of passing the FTP emission standards to be certified. Such a relaxation in standards appears unjustified to EPA. Nevertheless, EPA solicits comment on the appropriate level of the cold 505 standards and may adjust the standards based on comment and further analysis.

All emission testing under the cold 505 procedure would be required to comply with the absolute standards proposed herein. Today's proposal does not provide for certification to a "certification vehicle emissions margin" [15] as adopted in the final regulations promulgated today, for certification using the full FTP.

C. Other Provisions

For aftermarket parts that cause accelerated deterioration of other original equipment components, the certification procedures are the same as those promulgated in today's aftermarket part final rule. EPA proposes, however, to give the part manufacturer the option to substitute the cold 505 test for the full FTP test required by the aftermarket part regulations adopted today.

For aftermarket parts that do not cause accelerated deterioration to other original equipment parts, the part manufacturer will have to demonstrate full useful life compliance for its part (i.e., 50,000 miles for LDV's and 120,000

[8] See SEMA's comments, docket No. EN–84–08, Category IV–D–4.

[9] See attachment to SEMA's comments, docket No. EN–84–08, Category IV–D–4.

[10] See "Using the Cold 505 Emission Test Procedure for Certification of Aftermarket Parts," Certification Division (CD), EPA, December, 1988. This technical support document has been placed in the public docket for this NPRM, docket No. A–88–31.

[11] An error of omission (Eo) occurs when a vehicle passes the cold 505 standards when tested using the cold 505 procedure but cannot pass FTP standards when tested over the entire FTP procedure.

[12] Currently, vehicle manufacturers must comply with the LDV emission standards for the full useful life period of 50,000 miles. 40 CFR 86.085–2.

[13] Currently, LDT manufacturers must comply with LDT emission standards for the full useful life of 120,000 miles. 40 CFR 86.085–2.

[14] See "Using the Cold 505 Emission Test Procedure for Certification of Aftermarket Parts," Certification Division (CD), EPA, December 1988. This technical support document has been placed in the public docket for this NPRM, Docket No. A–88–31.

[15] "Certification vehicle emissions margin" is the difference between the emission standard and the 50,000 mile certification emission level of the original certification test vehicle used during vehicle FTP certification.

miles for LDT's) by multiplying each cold 505 test emission value by a deterioration factor (d.f.).[16] EPA proposes to use the original vehicle certification FTP d.f.'s of the engine family corresponding to the test vehicle. These parts are not expected to adversely affect the durability performance of the remainder of the vehicle's emission-related components. Therefore, the d.f.'s characteristic of the vehicle in its originally certified configuration should reasonably predict the emission deterioration rates with the aftermarket part installed.

All other aspects of aftermarket parts certification, such as durability treatment of parts and test vehicle selection, would be left unchanged by today's NPRM.

D. Limited Applicability of Cold 505 Test

Since the cold 505 test procedure does not yield results perfectly correlated with the FTP data, a particular part could meet the cold 505 standards yet fail the FTP standards. EPA is particularly concerned about aftermarket parts which would affect only part of the calibration performance of a vehicle. Such a part could have little or no impact on the startup emission performance of a vehicle (i.e., that tested by the cold 505 procedure) while having a significant adverse impact on emissions during particular warm engine operating modes such as rapid accelerations (which are represented in the later stages of the FTP). Such a part's impact on overall vehicle emission performance would not be well represented by the cold 505 test and could be inappropriately certified. Specifically, EPA is concerned that aftermarket programmable read only memory chips (PROM's) or other parts or calibration kits that alter the emission control logic of the vehicle's control computer could be inappropriately certified if allowed to demonstrate compliance using only the cold 505 test procedure and standards. EPA has no data on this type of aftermarket device which would alleviate this concern. Therefore, EPA is proposing that PROM's and similar devices or systems that alter the computer control logic not be certified using the cold 505 test procedure and standards. Certification of these devices would continue to be based upon compliance with FTP standards. EPA solicits comment on whether it is inappropriate to certify any other aftermarket part using the cold 505 test procedure.

The cold 505 procedure proposed today is recommended based on the premise that a candidate aftermarket part is to be used on a vehicle designed and certified to meet FTP emission standards. This short test, although acceptable for certification of parts used for maintenance and repair of previously certified vehicles, would be considered inadequate for certifying new vehicle designs or determining import, SEA, or in-use compliance.

[16] The d.f. is an estimate of the deterioration rate of a vehicle's useful life emissions. For vehicle certification, the 4000-mile emission results of the emission data vehicle must be multiplied by the d.f. to predict emissions out to the useful life of the vehicle. The d.f. calculation procedure is described in 40 CFR 86.088-28.

IV. Reporting and Recordkeeping Requirements

These proposed revisions to the existing regulations would impose no new reporting or recordkeeping requirements on aftermarket part manufacturers that choose to use the certification program, nor on vehicle manufacturers that are affected by part certification. Today's proposal would merely provide the option of an alternative test procedure to be used for certification.

V. Paperwork Reduction Act

Today's proposal is expected to have no effect on information collection requirements of the regulations which this notice proposes to amend. The Office of Management and Budget (OMB) has approved the information collection requirements for these regulations under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060-0060.

Public reporting burden for this collection of information is estimated to average 124 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Paperwork Reduction Project (2060-0060), Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

VI. Regulatory Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a regulatory impact analysis. This regulation should not be considered "major" because it meets none of the conditions for a major regulation. It will have an annual effect on the economy of less than $100 million. It will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local Government agencies, or geographic regions. Nor will there be any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Comments from OMB to EPA and any EPA response to those comments are available for public inspection in the docket for this rulemaking: Docket No. A-88-31. The EPA's Central Docket Section (LE-131) is located at 401 M Street SW., Washington, DC 20460.

VII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA is required to determine whether a proposed regulation will have a significant impact on a substantial number of small entities so as to require a preliminary regulatory flexibility analysis.

I hereby certify that this proposed regulation will not have a significant adverse impact on a substantial number of small entities. This proposal in part responds to a request by the specialty equipment manufacturers for an alternative test procedure to the Federal Test Procedure (FTP) currently required for certification of certain parts. The specialty equipment manufacturers believe that the proposed revisions will reduce their burden to certify aftermarket parts.

List of Subjects in 40 CFR Part 85

Imports, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, and Warranties.

Authority: 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7546, and 7601(a).

Dated: July 27, 1989.

William K. Reilly,

Administrator.

APPENDIX—EXPLANATION OF SPECIFIC CHANGES

Section	Change	Reason
1. Part 85, Authority.	None	
2. Section 85.2113		
(l)	Add paragraph to define "Cold 505 Emissions Test Procedure".	Clarification.
(m)	Add paragraph to define "Exhaust Emission Deterioration Factor".	Clarification.
3. Section 85.2114		
(d)(1)–(d)(3)	Revise paragraphs to address certification using the Cold 505 Emissions Test Procedure.	To discuss aftermarket part certification using the Cold 505 Emissions Test Procedure.
(d)(6)	Add paragraph to define Cold 505 Emissions Test Procedure standards.	To show required Cold 505 Emissions Test Procedure standards
(h)	Add paragraph to exclude certain parts from using the Cold 505 Emissions Procedure for certification.	PROM's and parts affecting computer control are excluded from certification using the Cold 505 Emissions Test Procedure.

For the reasons set forth in the preamble, 40 CFR Part 85 is proposed to be amended as follows:

PART 85—[AMENDED]

1. The authority citation for Part 85 will continue to read as follows:

Authority: Sections 202, 203, 205, 206, 207, 208, 212, and 301(a) of the Clean Air Act, as amended; 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7546, and 7501(a), unless otherwise noted.

2. Section 85.2113 is amended by adding new paragraphs (l) and (m) to read as follows:

§ 85.2113 Definitions.

* * * * *

(l) "Cold 505 Emissions Test Procedure" means that test procedure which is the first 505 seconds of the Federal Test Procedure cycle, including all test vehicle preconditioning for testing, as described in § 86.132–82. Emissions collected during the Cold 505 Emissions Test Procedure (measured in grams per mile) are identical to FTP "bag 1" emissions.

(m) "Exhaust Emission Deterioration Factor" means that factor determined in accordance with § 86.088–28.

3. Section 85.2114 is amended by revising paragraphs (d)(1), (d)(2) introductory text, (d)(3)(i)(A), (d)(3)(ii) and (d)(3)(iii) and by adding paragraphs (d)(6) and (h) to read as follows:

§ 85.2114 Basis of certification.

* * * * *

(d) *For Parts Certifying on the Basis of Emission Test Results, Certification Compliance Shall Be Demonstrated as Follows*

(1) The emission test to be used is either the Federal Test Procedure as set forth in the applicable portions of 40 CFR Part 86, or the Cold 505 Test Procedure as defined in § 85.2113(1). Certification emission testing must be carried out using representative production aftermarket parts as provided in paragraph (e) of this section. The test results must demonstrate that the proper installation of the certified aftermarket part will not cause the vehicle to fail to meet any applicable Federal emission requirements under section 202 of the Act.

(2) When the aftermarket part manufacturer elects to use the Federal Test Procedure to certify a part, the following portions of the Federal Test Procedure are not required to be performed:

* * * * *

(3) Exhaust Emission Testing: Certification exhaust emission testing for aftermarket parts, using either the Federal Test Procedure or the Cold 505 Test Procedure, shall be carried out in the following manner:

(i) *For light-duty vehicle parts that accelerate deterioration of existing emission related parts*, at least one emission test is required.

(A) The test(s) shall be performed on the same test vehicle and aftermarket part combination that was previously aged as required. If multiple exhaust emission tests are conducted, all tests must follow either the Federal Test Procedure or the Cold 505 Test Procedure. The results of all valid tests performed on a vehicle shall be averaged for each emission constituent.

(*1*) When the Federal Test Procedure is used, the test results, or the average of the test results if multiple tests are conducted, shall meet all applicable Federal emission requirements under section 202 of the Act.

(*2*) When the Cold 505 Test Procedure is used, the test results, or the average of the test results if multiple tests are conducted, shall meet all applicable emission standards as set forth in paragraph (d)(6) of this section.

* * * * *

(ii) *For light-duty truck parts that accelerate deterioration of existing emission related parts*

(A) Emission testing shall be carried out by one of the following methods:

(*1*) By performing an emission test on an emission test vehicle at 4,000 miles and at 50,000 miles, with the part installed. Exhaust emission deterioration factors for the test vehicle shall be calculated from these two test results. The aftermarket part manufacturer may elect to perform additional emission tests at interim mileages. However, any interim tests must be spaced at equal mileage intervals. If more than one test is performed at any one mileage point, then all tests at this point shall be averaged prior to determining the deterioration factor. The deterioration factor shall be calculated using the least squares straight line method, in accordance with § 86.088–28(a). The deterioration factor for each emission constituent shall be used to linearly project the 50,000 mile test result out to 120,000 miles, or

(*2*) By durability aging the test vehicle and aftermarket part to 120,000 miles, and then performing at least one emission test.

(B) When certifying on the basis of test results conducted according to:

(*1*) The Federal Test Procedure, the projected 120,000 mile test result emission levels or the actual 120,000 mile (or average results, if more than one test is conducted) shall meet light-duty truck Federal Test Procedure emission standards.

(*2*) The Cold 505 Test Procedure, the projected 120,000 mile test result emission levels or the actual 120,000 mile (or average results, if more than one test is conducted) shall meet light-duty truck emission standards as set forth in paragraph (d)(6) of this section.

(iii) For parts demonstrated to not accelerate deterioration of existing emission related parts during normal operation:

(A) If parts cause no noticeable change in vehicle driveability, performance, and/or fuel economy when the part fails, the certification exhaust emission test vehicle need not be the

same vehicle as that used for durability demonstration.

(*1*) If the Federal Test Procedure is used for certification emission testing, upon completion of aging, one Federal Test Procedure test shall be performed with the aged aftermarket part installed on a test vehicle that has just completed one test in the original equipment configuration (i.e., before the aftermarket part or system is installed). If more than one test is performed either before or after the aftermarket part is installed, then an equivalent number of tests must be performed in both configurations. The results of all tests performed before the part is installed shall be averaged and the results of all tests performed after the part is installed shall be averaged for each emission constituent. The difference in Federal Test Procedure emission results between the tests with the aged aftermarket part installed and the test vehicle in the original equipment configuration shall be less than or equal to the certification vehicle emission margin of any and all of the certification test vehicles from the various configurations for which the aftermarket part is being certified.

(*2*) If the Cold 505 Test Procedure is used for certification emission testing, the aged aftermarket part shall be installed on a test vehicle with an accumulated mileage of 4,000 miles or more and the vehicle shall be emission tested. If more than one emission test is performed, then test results shall be averaged for each emission constituent. To determine compliance, each emission constituent from the emission test result (or average emission constituent value from multiple emission test results) shall be multiplied by the test vehicle's original certification exhaust emission deterioration factor. The resulting values shall be less than or equal to the appropriate standards of paragraph (d)(6) of this section.

(B) For parts demonstrated to cause a noticeable change in vehicle driveability, performance, and/or fuel economy when the part fails, no durability aging of the part is required before certification emission testing.

(*1*) If the Federal Test Procedure is used for certification, one emission test shall be performed on the test vehicle in its original equipment configuration (i.e., before the aftermarket part or system is installed) and one test with an aftermarket part representative of production (as provided in paragraph (e) of this section) installed on the test vehicle. If more than one test is performed either before or after the aftermarket part is installed, then an equivalent number of tests must be performed in both configurations. The results of all tests performed with the aftermarket part installed shall be averaged and the results of all tests performed in the original equipment configuration shall be averaged for each emission constituent. The difference in Federal Test Procedure emission results between the tests with the aftermarket part installed and the test vehicle in the original equipment configuration shall be less than or equal to the certification vehicle emission margin of any and all of the certification test vehicles from the various configurations for which the aftermarket part is being certified.

(*2*) If the Cold 505 Test Procedure is used for certification, the aftermarket part shall be installed on a test vehicle with an accumulated mileage of 4,000 miles or more and the vehicle shall be emission tested. If more than one emission test is performed, then test results shall be averaged for each emission constituent. To determine compliance, each emission constituent from the emission test result (or average emission constituent value from multiple emission test results) shall be multiplied by the test vehicle's original certification exhaust emission deterioration factor. The resulting values shall be less than or equal to the appropriate standards of paragraph (d)(6) of this section.

* * * * *

(6) Cold 505 Emission Standards: When the Cold 505 Test Procedure is used for certification, the useful life emission test standards are:

(A) For light duty vehicles: 0.46 grams per mile (g/mi) for hydrocarbon (HC), 4.3 g/mi for carbon monoxide (CO), and 0.7 g/mi for oxides of nitrogen (NO_x).

(B) For all light duty trucks (LDT's): 0.98 g/mi for HC and 13.0 g/mi for CO. For LDT's with loaded weights of 3,750 pounds or less, 1.0 g/mi for NO_x. For LDT's with loaded weights of 3,751 pounds or more, 1.7 g/mi for NO_x.

* * * * *

(h) *Emission Testing of Programmable Read Only Memory Chips and Certain Other Parts:* The Cold 505 Emissions Test Procedure shall not be allowed for the certification emission testing of programmable read only memory chips (PROM's) or other parts or calibration kits that the MOD Director determines may specifically alter an emission system control function of the control computer of the vehicle on which the part is installed. Only the Federal Test Procedure will be allowed for certification of these types of aftermarket parts.

(Approved by the Office of Management and Budget under the control number 2060-0016)

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federal register

Tuesday
August 8, 1989

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Establishment of the Charlotte Terminal Control Area and Revocation of the Charlotte/Douglas International Airport—Airport Radar Service Area; NC; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-AWA-1]

RIN 2120-AD08

Establishment of the Charlotte Terminal Control Area and Revocation of the Charlotte/Douglas International Airport—Airport Radar Service Area; NC

AGENCY: Federal Aviation Administration (FAA). DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes a Terminal Control Area (TCA) at Charlotte, NC. The TCA will consist of airspace from the surface or higher within a 30-mile radius of Charlotte/Douglas International Airport to and including 10,000 feet above mean sea level (MSL). This action will increase the capability of the air traffic control (ATC) system to separate all aircraft in the terminal airspace around Charlotte/Douglas International Airport while providing sufficient flexibility to permit aircraft operating under visual flight rules (VFR) to operate within or outside the TCA. Charlotte/Douglas International Airport is currently served by an Airport Radar Service Area (ARSA) which is rescinded concurrent with the establishment of this TCA.

EFFECTIVE DATE: 0901 UTC, August 24, 1989.

FOR FURTHER INFORMATION CONTACT: Alton D. Scott, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9252.

SUPPLEMENTARY INFORMATION:

Background

The TCA program was developed to reduce the midair collision potential in the congested airspace surrounding airports with high density air traffic by providing an area in which all aircraft will be subject to certain operating rules and equipment requirements.

The density of traffic and the type of operations being conducted in the airspace surrounding major terminals increase the probability of midair collisions. In 1970, an extensive study found that the majority of midair collisions occurred between a general aviation (GA) aircraft and an air carrier, military or another GA aircraft. The basic causal factor common to these conflicts was the mix of uncontrolled aircraft operating under VFR and controlled aircraft operating under instrument flight rules (IFR). TCA's provide a method to accommodate the increasing number of IFR and VFR operations. The regulatory requirements of TCA airspace afford the greatest protection for the greatest number of people by providing ATC with an increased capability to provide aircraft separation service, thereby minimizing the mix of controlled and uncontrolled aircraft.

On August 22, 1987, the Secretary of Transportation announced nine locations for which the FAA would issue Notices proposing the establishment of TCA's. The nine candidates cited qualify for TCA status by meeting the criteria published in FAA Handbook 7400.2C, "Procedures for Handling Airspace Matters." The criteria for establishing a TCA are based on factors which include the number of aircraft and people using that airspace, the traffic density, and the type or nature of operations being conducted. Accordingly, guidelines have been established to identify TCA locations based on two elements—the number of enplaned passengers and the number of aircraft operations.

To date, the FAA has established a total of 23 TCA's. The FAA is proposing to take action to modify or implement the application of these proven control techniques to more airports to provide greater protection of air traffic in the airspace regions most commonly used by passenger-carrying aircraft.

User Group Participation

The TCA adopted by this amendment is the product of discussion with a broad representation of the aviation community. In conjunction with this action, the FAA will continue to work cooperatively with local user groups to ensure that the TCA is effective for all users by identifying any adjustments or modifications that appear necessary. Through joint FAA and user cooperation, any problems that arise can then be identified and corrective action taken when necessary.

The TCA configuration adopted here has been developed through substantial public participation. Initially, informal airspace meetings were held on July 12 and 13, 1988, to allow local aviation interests and airspace users an opportunity to present input on the design of the proposed Charlotte TCA. Subsequently, a TCA Ad Hoc Committee was formed comprising a cross section of the aviation community with technical assistance and support supplied by Charlotte Tower personnel. After those initial meetings and after extensive coordination with the TCA Ad Hoc Committee, a tentative TCA configuration was prepared for public discussion. As a result of those efforts, further adjustments to the TCA configuration were made and were reflected in the FAA's modified configuration proposed formally for adoption. An additional opportunity for public participation was provided by a Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on May 8, 1989 (54 FR 19860). Comments were received in response to the Notice. Due consideration has been given to these comments as well as the comments received at the various meetings.

Discussion of Comments

In response to the TCA proposal, the FAA received eleven written comments from individuals, pilots and owners of aircraft, local government agencies, and aviation trade and industry associations. In addition, the FAA has had the benefit of considerable dialog at user group meetings. The FAA appreciates the thoughtful and meaningful contributions and the interest expressed by all of those who took time to participate in the several steps of this rulemaking proceeding. Following is an analysis of the comments received.

Several commenters, in lieu of the TCA, were supportive of the climb and descent corridor concept which would keep jets in a narrow area and at high altitudes until necessary to descend. They cited, "it would enable all pilots (private and commercial) to know exactly where the incoming and outgoing passenger jet aircraft would be located and would focus our attention in these four pathways." The primary concern in any proposed TCA action is providing the highest degree of safety while preserving the most efficient use of the available terminal airspace. A simulated test of the climb/descent corridor concept was conducted in the Boston, MA, area. One TCA and three corridor configurations were tested. It was concluded that, while corridors do provide a degree of safety to aircraft arriving and departing terminal areas, they do not provide adequate and/or sufficient airspace required to effectively vector, sequence, and meter the vast numbers of aircraft served in major terminal areas today. The use of corridors would result in a drop in the capacity for most terminal areas because of the different performance characteristics of aircraft.

Other commenters were critical of the Mode C veil (that airspace within 30 miles of a primary TCA airport, as established in 53 FR 23356, June 21, 1988) which would be established concurrent with the TCA. The Mode C rule requires pilots to have and operate a transponder with Mode C in their aircraft when operating within 30 miles of any designated TCA primary airport (commonly called Mode C veil) from the surface to 10,000 feet MSL. The advantages of transponder with Mode C are: (1) To provide automatic conflict alert and low-altitude alert warnings to controllers, which can be quickly relayed to the pilot; (2) to provide the controllers with a continuous, more complete traffic picture; (3) to reduce radio communications; and (4) to assist aircraft being controlled by ATC to avoid aircraft operating without ATC assistance.

One commenter opposed the TCA because it did not include a buffer area. 1,200 feet above ground level (AGL) and 15 miles from the primary airport to the end of the Mode C veil, for instance, which would allow recreational and business aircraft which are not equipped with Mode C equipment to fly to feeder airports. The floor of the TCA from 11 miles to 20 miles from the primary airport is 3,600 feet MSL; this area has the greater concentration of satellite airports. This is more than adequate to allow VFR ingress/egress to satellite airports within the Charlotte terminal area. However, aircraft in these areas are required to comply with the Mode C transponder rule.

One commenter felt the proposal was acceptable, but suggested the use of long range navigation (LORAN) as a substitute for VOR or TACAN in the TCA. LORAN was originally developed for marine use and is presently being used for *supplemental* air navigation, primarily because of its low acquisition cost and area navigation coverage down to the surface. LORAN C is intended as an interim supplemental radio navigation system for aviation use providing at least single-level coverage for en route and terminal IFR navigation for the contiguous United States. The use of LORAN C does not offer the same navigational coverage throughout the United States as the present system.

Several commenters suggested Charlotte/Douglas International Airport does not have the volume of traffic to warrant a TCA. Although the criteria for establishing a TCA include the number of aircraft, it is also based on factors which include the people using that airspace, the traffic density, and the type or nature of operations being conducted. The annual enplaned passengers at Charlotte/Douglas International Airport almost double the 3.5 million necessary for consideration as a TCA candidate. Additionally, within the proposed boundaries, more than 700,000 flight operations are conducted annually.

The Gastonia Airport Authority (GAA) suggested postponing the TCA until a Remote Communication Outlet (RCO) could be installed at Gastonia Airport. The RCO would allow departing pilots to request and receive departure instructions while on the ground in their aircraft. The GAA suggests without the use of an RCO, aircraft arriving and departing Gastonia would be restricted to using the corridor to the west. The FAA agrees that the installation of an RCO would be beneficial to the operation at Gastonia Airport and will support the GAA's effort to install and operate this equipment. However, until this equipment is installed and operational, pilots can use a dedicated telephone hookup located at Gastonia Airport. This telephone line is a direct communication link provided between the Gastonia Airport and the Charlotte Approach Control. As this telephone line is used by pilots at Gastonia to obtain IFR clearance from Charlotte Approach Control, it can also be used to obtain TCA instructions before departure.

The Air Line Pilots Association (ALPA) suggested lowering the floor of Area C and D of the proposed TCA to 6,000 feet MSL and adding a 25- to 30-mile ring to include 8,000 to 10,000 feet. ALPA suggested this airspace was necessary to insure B–727 jet aircraft containment in the TCA during hot summer days. Conversely, The Soaring Society of America (SSA) suggested the elimination of Area D and all of Area C not aligned with Area E, the arrival descent corridors. Data developed by a local airline using its B–727 flight simulator indicated the necessity for the 20- to 25-mile ring to contain B–727 departures during hot weather. Additionally, data supplied by Charlotte Tower also indicates a need for this airspace to allow adequate airspace for departures and inbound mixing of aircraft.

The SSA also suggested that a cutout was not provided for Chester Airport as recommended by the TCA AD HOC committee. Although the Chester Airport was excluded from the TCA lateral boundaries, additional airspace will be provided for soaring activities in the vicinity of Chester Airport under a Letter of Agreement between Charlotte Tower and the Bermuda High Soaring School.

One commenter stated that Charlotte did not need a TCA with a 30-mile radius. It is the FAA policy to use only that airspace necessary to accomplish the objective of the TCA. The airspace configuration about the Charlotte TCA extends to 30 miles only in four critical arrival descent corridors. This airspace is necessary to allow for safe transition from the en route to the terminal environment while allowing adequate room for VFR operations.

One commenter suggested in lieu of a TCA, the airport trust fund should be used to build or invest in satellite airports close to the metropolitan area that can be used by all. There are plans for a new Gastonia Airport with improved facilities for GA, as well as, plans for a new reliever airport for Cabasas County, east of Charlotte, to accommodate GA in that area. Federal funds have already been used to make improvements in the Rock Hill and Monroe Airports, south and southeast of Charlotte.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations designates a Terminal Control Area (TCA) at the Charlotte/Douglas International Airport, NC, using NAVAID radials and distances where practical to accommodate current traffic flows and provide a greater degree of safety in known areas of congestion involving controlled IFR and uncontrolled VFR flights. Consequently, the FAA has determined that establishment of a TCA at Charlotte/Douglas International Airport is in the interest of flight safety and will result in a greater degree of protection for the greatest number of people during flight in that terminal area. Charlotte/Douglas International Airport is currently served by an ARSA which is rescinded with the establishment of this TCA.

Regulatory Evaluation Summary

The FAA is required to assess the benefits and costs of each proposed rulemaking action to assure that the public is not burdened with rules whose costs outweigh their benefits. This section contains an analysis which quantifies, to the maximum possible extent, the costs and benefits of establishing a TCA at Charlotte, NC.

This final rule is intended to lower the likelihood of midair collisions by increasing the capability of the ATC system to separate all aircraft in terminal airspace around the Charlotte/Douglas International Airport. This

action was prompted by data indicating that a high percentage of near midair collisions reported to the FAA in terminal areas involve VFR aircraft that are not required to be under the control of ATC. Thus, the overall objective of this rule is to substantially increase safety while accommodating the legitimate concerns of airspace users.

Costs-Benefits Analysis

a. Costs

The FAA estimates the total cost expected to accrue from implementation of this rule to be $6.1 million ($3.4 million, discounted) in 1987 dollars. Approximately $2.7 million (discounted) or 80 percent of the total estimated costs will be incurred by the FAA primarily for training and additional personnel. The remaining costs will be incurred by small GA aircraft operators who will be required under this rule to equip their aircraft with Mode C transponders sooner than they would have for the ARSA under the previous FAA rule: "Transponder With Automatic Altitude Reporting Capability Requirement (Mode C)" (53 FR 23356, June 21, 1988). This rule will be implemented in two phases. Phase I, which began July 1, 1989, will require a transponder with Mode C at and above 10,000 feet MSL and in the vicinity (30 nautical miles) of TCA primary airports. There are currently 23 TCA's.

Phase II will implement a transponder with Mode C requirement in the airspace in the vicinity (10 nautical miles) of ARSA primary airports. Phase II becomes effective on December 30, 1990, and will affect over 135 ARSA's. Also in Phase II, a transponder with Mode C will be required at other designated airports for which either a TCA or ARSA has not been adopted. Consequently, most aircraft without Mode C transponders will need ATC authorization to fly within 30 nautical miles of a primary TCA airport, within 10 nautical miles of a primary ARSA airport, or within controlled airspace of other designated airports that will also require Mode C transponders.

Thus, this evaluation, as well as the Mode C rule, assumes that all aircraft without Mode C will acquire such equipment rather than circumnavigate the subject airport. The only aircraft without this equipment will be those without electrical systems. Costs to these types of aircraft operators have already been accounted for by the Mode C rule. As a result, aircraft operators impacted by this rule will only incur the opportunity cost of capital by requiring them to acquire, install, and maintain Mode C transponders one and a half years earlier than they would be required to do so in accordance with Phase II of the Mode C rule.

b. Benefits

This final rule is expected to generate potential benefits primarily in the form of enhanced safety to the aviation community and the flying public. Such safety, for instance, would take the form of reduced casualty losses (namely, aviation fatalities and property damage) resulting from a lowered likelihood of midair collisions because of increased control in airspace to be established by the TCA. In addition, potential benefits are expected to accrue in the form of improved operational efficiency on the part of FAA air traffic controllers.

Ordinarily, the potential benefits of this rule will be the reduction in the probability of midair collisions resulting from converting the existing ARSA to a TCA. However, because of the recent Mode C rule (and to some extent, the rule for Traffic Alert and Collision Avoidance (TCAS), 54 FR 940, January 10, 1989), the number of potential midair collisions avoided by this rule is expected to be significantly lower. Nevertheless, this rule is still expected to accrue benefits in terms of enhanced safety, though on a much smaller scale.

This point can be illustrated with the use of statistical models based on actual and projected critical near midair collision (NMAC) incidents in lieu of actual midair collisions (A critical NMAC is an event involving two aircraft coming within 100 feet of each other; the fact that they do not collide is not due to an action on the part of either pilot; but, rather, it is due purely to chance.) Since midair collisions involving Part 135 aircraft and especially Part 121 aircraft are rare, the use of critical NMAC's will serve to illustrate, to some degree, the potential improvements in aviation safety of implementing this rule.

Simple regression analyses were prepared for this evaluation which focused on critical NMAC's and aircraft operations in the 23 existing TCA's and in a random sample of 23 of the existing 79 ARSA's (as of 1986 and 1987). The results of these analyses indicated that TCA's have approximately 68 percent fewer critical NMAC's annually, on average, than ARSA's. While there is no demonstrated relationship between NMAC's and actual midair collisions, the lower NMAC rate does indicate a more efficient separation of aircraft in congested airspace.

As the result of these findings, if the existing Charlotte ARSA were to remain unchanged (and the recent Mode C and TCAS rules were not in effect), the Charlotte Terminal Area would be expected to experience approximately 2.4 critical NMAC's annually (or 37 critical NMAC's over the next 15 years). If, however, the ARSA were to become a TCA, this figure would reduce to approximately 0.7 critical NMAC's annually (or 12 critical NMAC's over the next 15 years) Thus, over the next 15 years, this rule could result in the reduction of approximately 25 critical NMAC's. However, it is important to note that many, if not most, of these potential critical NMAC's would never materialize as predicted primarily because of the "Mode C" rule as it is applied to the Charlotte ARSA and, to some extent, the "TCAS" rule.

According to Phase II of the Mode C rule, all aircraft operating within 10 nautical miles (except for flights under the outer 5 mile "shelf") of an ARSA primary airport must be equipped with a Mode C transponder. Phase I of the Mode C rule requires, as of July 1989, aircraft operating within 30 nautical miles of a TCA to be equipped with a Mode C transponder. These requirements are expected to significantly reduce the risk of midair collisions in ARSA's and TCA's. For this reason, the primary safety benefit of this rule to create a TCA in 1989 at Charlotte is that the safety enhancements of the Mode C and TCAS requirements will occur one and a half years earlier than they otherwise would be expected without this rule. A second safety benefit would be in terms of the lowered likelihood of midair collisions as the result of expanding the lateral boundaries of positive ATC by 20 nautical miles through replacing the Charlotte ARSA with a TCA.

The safety benefits of the establishment of a new TCA, while positive, will be less than would otherwise accrue in the absence of the Mode C and TCAS rules. Since this rule essentially extends the effects of the Mode C rule, virtually all of its potential safety benefits are assumed to be part of that rule. Such benefits cannot be estimated separately and, therefore, are considered to be inextricably linked primarily to the Mode C rule. Over a 15-year period, the Mode C rule is expected to generate total potential safety benefits of $344 million (discounted, in 1987 dollars). (The Mode C rule benefits estimate of $310 million for 10 years has been adjusted to a 15-year period for the purpose of comparability with the TCAS rule and other FAA rulemaking actions.) It is important to note that part of these safety benefits would be attributed to the TCAS rule. Thus, the potential safety benefits of this rule, and the Mode C and

TCAS rules are considered to be inextricably linked.

Another potential benefit of this rule will be improved operational efficiency on the part of FAA air traffic controllers. Under this rule, Mode C transponder requirements will ease controller workload per aircraft being controlled because of the reduction in radio communications. The rule will also make potential traffic conflicts more readily apparent to the controller. As the result of improved operational efficiency, the impact of the controller workload increased by separation requirements in the TCA will be somewhat offset because of the controller's ability to adjust the volume of VFR traffic in any given portion of the TCA.

Improved operational efficiency should generate other types of benefits in the form of significant reductions in the number of VFR aircraft requests denied and VFR aircraft delayed during busy periods. As the result of converting the existing Charlotte ARSA to a TCA, the improved operational efficiency will accrue because of the availability of additional air traffic controllers. If the Charlotte ARSA were to remain intact, such air traffic personnel would not be required. Therefore, potential benefits of improved operational efficiency, which are not considered to be quantifiable in monetary terms in this evaluation, will be attributed to this rule rather than either the Mode C rule or TCAS rule.

c. Comparison of Benefits and Costs

The total cost that will accrue from implementation of this rule is estimated to be $3.4 million (discounted, in 1987 dollars). Approximately, 20 percent of this total cost estimate will fall on those GA aircraft operators without Mode C transponders in the form of opportunity costs by requiring them to acquire such avionics equipment, including maintenance, one and a half years sooner than they otherwise would under the status quo. The typical individual GA aircraft operator impacted will incur an estimated one-time cost ranging from $126 to $280 (discounted) under this rule. (As the result of the opportunity cost concept, the derivation of these cost estimates are too complex to discuss briefly. Therefore, the reader should refer to the detailed regulatory evaluation, which is contained in the docket, for a full explanation of the method by which these costs estimates were made.)

The potential benefits of this rule will be the lowered likelihood of midair collisions from the conversion of the existing ARSA to a TCA. The number of midair collisions avoided and their respective monetary values cannot be estimated for this rule independent of the Mode C and TCAS rules, but the FAA believes the risk will be substantially reduced. An FAA analysis prepared for this evaluation, however, has shown that critical near midair collisions occur approximately two-thirds less frequently in a TCA than in an ARSA. The FAA believes that even after the aviation community complies with the Mode C and TCAS rules, locations converting from ARSA's to TCA's would continue to experience reduced critical NMAC's. In addition, this rule will generate improved operational efficiency benefits on the part of FAA air traffic controllers, though they are not considered to be quantifiable in monetary terms.

Clearly, in view of the cost of compliance relative to the significant reduction in the likelihood of midair collisions as well as improved operational efficiency in the Charlotte Terminal Area, the FAA firmly believes this rule is cost-beneficial.

The Regulatory Evaluation that has been placed in the docket contains additional detailed information related to the costs and benefits that are expected to accrue from the implementation of this final rule.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules which may have "a significant economic impact on a substantial number of small entities."

The small entities which could be potentially affected by the implementation of this rule are unscheduled operators of aircraft for hire who own nine or fewer aircraft.

Virtually all of the aircraft operators impacted by this rule will be those who acquire Mode C transponder capability. The FAA believes that all unscheduled aircraft operators (namely, air taxi operators) potentially impacted by this rule already have Mode C transponders due to the fact that such operators fly regularly in or near airports where radar approach control service has been established. Even if some of these operators were to acquire, install, and maintain Mode C transponders, the cost will not have a significant economic impact on a substantial number of them. The annual FAA threshold for significant economic impact is $3,700 (1987 dollars) for a small entity. According to FAA Order 2100.14A (Regulatory Flexibility Criteria and Guidance), the definition of a small entity, in terms of an air taxi operator, is one with nine aircraft owned, but not necessarily operated.

If we were to assume that a particular aircraft operator had nine aircraft without transponders, then the one-time cost per aircraft will be approximately $243. This figure represents the annualized cost for each impacted aircraft. The total cost per small entity will amount to an estimated $2,187. Thus, the annual worst case cost for a small entity will fall far below the FAA's annual threshold of $3,700. Therefore, the FAA believes this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

This final rule will neither have an effect on the sale of foreign aviation products or services in the United States, nor will it have an effect on the sale of U.S. products or services in foreign countries. This is because the rule will only potentially impact small GA aircraft operators without Mode C, and not aircraft manufacturers. The average cost of acquiring Mode C capability is estimated to range from $900 (to upgrade from a Mode A transponder) to $2,000 (to acquire a Mode C transponder without having a Mode A transponder). The cost of acquiring Mode C capability is not considered to be high enough to discourage potential buyers of small GA airplanes.

Federalism Implications

This regulation will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, preparation of a Federalism assessment is not warranted.

Conclusion

For the reasons discussed under "Regulatory Evaluation," the FAA has determined that this regulation is not a "major rule" under Executive Order 12291 This rulemaking is considered a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It is certified that this rule will not have a significant economic impact on a substantial number of small entities.

The FAA has determined that the users of the Charlotte/Douglas International Airport and surrounding

area will benefit from the implementation of the TCA. In order to obtain this benefit at the earliest time, the FAA will have the TCA charted on the next available charting date, which is August 24, 1989, and is making the implementation of the TCA effective on that charting date. Therefore, due to the need to implement the TCA at the earliest possible time, the FAA finds good cause for making this amendment effective in 16 days from the date of the publication of this amendment.

List of Subjects in 14 CFR Part 71

Aviation safety, Terminal control areas, Airport radar service areas.

Adoption of the Amendment

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

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

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

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

§ 71.403 [Amended]

2. § 71.403 is amended as follows:

Charlotte, NC [New]

Primary Airport
Charlotte/Douglas International Airport (lat. 35°12'52" N., long. 80°56'37" W.)
Charlotte/Douglas VOR (lat. 35°11'25" N., long. 80°57'07" W.)

Boundaries

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL within an 11-mile radius of the Charlotte/Douglas VOR, excluding that airspace within a 2-mile radius of the Gastonia Municipal Airport (lat 35°12'01" N., long. 81°09'04" W.).

Area B. That airspace extending upward from 3,600 feet MSL to and including 10,000 feet MSL between the 11- and 20-mile radius of the Charlotte/Douglas VOR, and that airspace within a 2-mile radius of the Gastonia Municipal Airport within the 11-mile radius of the Charlotte/Douglas VOR.

Area C. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL between the 20- and 25-mile radius of the Charlotte/Douglas VOR, excluding that airspace from the Charlotte/Douglas VOR 053° radial clockwise to the Charlotte/Douglas VOR 120° radial, and excluding that airspace from the Charlotte/Douglas VOR 242° radial clockwise to the Charlotte/Douglas VOR 293° radial.

Area D. That airspace extending upward from 8,000 feet MSL to and including 10,000 feet MSL between the 20- and 25-mile radius of the Charlotte/Douglas VOR, excluding that airspace contained in Area C.

Area E. That airspace extending upward from 8,000 feet MSL to and including 10,000 feet MSL between the 25- and 30-mile radius of the Charlotte/Douglas VOR, excluding that airspace from the Charlotte/Douglas VOR 053° radial clockwise to the Charlotte/Douglas VOR 120° radial' excluding that airspace from the Charlotte/Douglas VOR 147° radial clockwise to the Charlotte/Douglas VOR 218° radial, excluding that airspace from the Charlotte/Douglas VOR 242° radial clockwise to the Charlotte/Douglas VOR 293° radial, excluding that airspace northwest of a line from the Charlotte/Douglas 313° radial 30-mile fix to the Charlotte/Douglas 320° radial 28-mile fix, and excluding that airspace from the Charlotte/Douglas VOR 320° radial clockwise to the Charlotte/Douglas VOR 025° radial.

§ 71.501 [Amended]

3. § 71.501 is amended as follows:

Charlotte/Douglas International Airport, NC [Removed].

Issued in Washington, DC, on August 2, 1989.

James B. Busey,

Administrator.

[FR Doc. 89–18474 Filed 8–3–89; 9:56 am]

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federal register

Tuesday
August 8, 1989

Part V

Department of Health and Human Services

Food and Drug Administration

21 CFR Ch. I

Food Labeling; Advance Notice of Proposed Rulemaking

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Ch. I

[Docket No. 89N-0226]

RIN 0905-AD08

Food Labeling

AGENCY: Food and Drug Administration.

ACTION: Advance notice of proposed rulemaking; request for public comment.

SUMMARY: The Food and Drug Administration (FDA) requests public comment on possible changes in the labeling of food products regulated by FDA. The agency has long required certain labeling, such as ingredients and net weight on packaged foods, and in recent years has bolstered such labeling with requirements for label information about the nutritional quality of foods. Now, FDA believes it is timely to consider revising the food labeling requirements, and seeks public comment on five areas: (1) Whether to revise the requirements for nutrition labeling; (2) whether to change the nutrition label format on food packages; (3) whether to revise the requirements for ingredient labeling; (4) whether to formally define commonly used food descriptions and/or reconsider the use of standards of identity for foods; and (5) how to reasonably permit the use of messages on food labels that link food components to the prevention of disease.

DATES: Comments by December 6, 1989.

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

FOR FURTHER INFORMATION CONTACT: F. Edward Scarbrough, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-245-1561.

SUPPLEMENTARY INFORMATION:

I. Introduction

FDA is soliciting public comment on a wide range of food labeling issues to help the agency determine what changes in food labeling requirements, if any, should be proposed by this Administration. Although the food label has been the subject of considerable study and revision over the past 20 years, FDA believes it appropriate now to consider significant new improvements in food labeling.

Several factors underscore this belief. First, the recent "The Surgeon General's Report on Nutrition and Health" and the National Academy of Sciences' report entitled "Diet and Health: Implications for Reducing Chronic Disease Risk" provide authoritative current views on the evidence linking dietary patterns and health. Second, surveys demonstrate that consumers themselves want to play a more active role in self-care (see "Trends 1989: Consumer Attitudes in the Supermarket" by the Food Marketing Institute, Washington, DC) and that, specifically, they seek more useful and easily understood information about the nutritional characteristics of the foods they eat (see FDA's analysis of the 1988 Health and Diet Survey). Third, recognizing this interest by consumers, both consumer and industry groups have been striving to design what they consider to be more informative food labels; food manufacturers have also expressed increasing interest in using food labels to convey the relationship between diet and certain diseases. Finally, numerous bills have recently been introduced in Congress and in State legislatures that would amend the current food labeling requirements (e.g., mandatory nutrition labeling, cholesterol content, label identification of vegetable oils, and sodium and potassium content).

Accordingly, FDA solicits public comment on the ways to most effectively use the food label to promote sound nutrition for the Nation's consumers. In addition to specific questions listed throughout this notice, FDA requests comments on the following general questions:

1. Are the public health benefits likely to be derived from revised food labeling sufficient to warrant the economic costs associated with such revisions?

2. What should be the agency's priorities in deciding which changes to make in the food label, i.e., which changes are most important and which are least important?

3. What changes in the Federal Food, Drug, and Cosmetic Act (the act) should FDA seek to help the agency bring about reforms in food labeling; in the absence of legislative change, what should be FDA's priorities for changes in its regulations and policies?

4. What should be FDA's policy for permitting or restricting the use of food labels that link a food to prevention or treatment of disease?

5. Should FDA seek to expand nutrition labeling, particularly by making it mandatory for most packaged foods?

6. What areas need further research and evaluation before decisions can be reached on whether and how changes can be made?

7. What modifications can be made in the food label to help both ordinary consumers and the under-educated better understand and benefit from the information on the label?

8. How best can FDA harmonize its food labeling regulations with those of other nations, particularly the European Community and Canada? With other Federal agencies, such as the Department of Agriculture?

9. Are there any topics in this notice that would represent such a significant commitment of agency time and resources that consideration of them should be deferred?

10. Since food labeling concerns change over time, what mechanism might be used in the future to assure that evolving concerns are addressed and that food labeling requirements reflect current scientific knowledge and consumer information needs?

To maximize the public's responsiveness to these questions, FDA plans to hold public hearings in different areas of the country. The time and place of these hearings will be announced in future issues of the **Federal Register.** FDA plans to utilize both the written and oral comments to propose specific changes to the current food labeling requirements. Also, the National Academy of Sciences' Institute of Medicine has been commissioned by the Public Health Service and the Department of Agriculture's Food Safety and Inspection Service to review food labeling policy as administered by FDA and the Department of Agriculture and suggest options for improving Federal food labeling policy. That study will also complement this notice and the planned hearings by suggesting options for making improvements in Federal food labeling policy. Information gathered from written and oral comments will be shared with the Institute of Medicine for use in preparation of its report and recommendations.

II. Recent Food Labeling History

This current food labeling initiative must be viewed within the context of the food labeling developments of the past 20 years, beginning with the White House Conference on Food, Nutrition, and Health (the Conference) that took place in 1969. Following the Conference's recommendations, FDA implemented significant initiatives dealing with nutrition labeling, ingredient labeling, common or usual name labeling, imitation/substitute food labeling, fortification policy, and safe and suitable ingredient policy.

In 1973, FDA published final rules on nutrition labeling that permitted, and in

some cases required, foods to be labeled for their nutritional value.

In 1978, FDA, along with the Department of Agriculture and the Federal Trade Commission, conducted a basic reassessment of food labeling policy, out of concern that food labeling regulations had become overly complex and, in some cases, inconsistent. The three agencies held five public hearings across the nation, gathering public views on ingredient labeling, imitation/substitute foods, food fortification, the nutrition label, and other labeling issues. Over 450 persons appeared at the hearings and more than 9,000 written comments were received. The comments focused mostly on ingredient, nutrition, and open date labeling. This process resulted in a December 1979, notice announcing tentative agency positions. At that time, FDA also conducted a nationwide consumer survey on food labeling, the results of which were published in October 1979.

In 1981, however, as a result of concerns expressed to the Presidential Task Force on Regulatory Relief, FDA deferred consideration of a broad food labeling initiative, and proceeded instead on a regulation-by-regulation basis. The first such proposal was published the next year, 1982, when FDA proposed that sodium content be included as a mandatory part of nutrition labeling. That proposal also defined terms for describing the sodium content of foods, such as "low sodium," "reduced sodium," and "sodium free." The need for this kind of sodium labeling was triggered by the association between sodium consumption and hypertension. A final sodium regulation became effective in July 1986.

In 1986, FDA published a similar proposal regarding cholesterol and fatty acid labeling, based on the relationship between blood cholesterol levels and heart disease. That proposal would establish definitions for the descriptive terms "cholesterol free," "low cholesterol," and "reduced cholesterol," and would require the inclusion of cholesterol and fatty acid content in nutrition labeling whenever a claim was made for either food component. A final rule based on the proposal is now in the final stages of development.

Lastly, in 1987, FDA published a proposal that would permit appropriate health messages on food labels. Given advances in knowledge about the relationships between diet and health, the agency has proposed that health-related messages, when appropriately formulated for use on food labels, could provide valuable information to health-conscious consumers. For reasons described further below, a final rule based on that proposal has not yet been promulgated.

III. Summary of Issues

The food label has developed so that it has several possible components, all of which are intended to convey accurate, useful information to consumers. The remainder of this notice solicits comments in the following five areas:

1. *Nutrition Labeling*—Nutrition labeling includes the list of a food's nutritional value—calories, protein, carbohydrate, fat, sodium, vitamins, and minerals. Because the basic nutrition labeling regulations were developed almost 20 years ago, FDA believes this may be an appropriate time to review the regulations to determine if certain required elements could be made voluntary (e.g., some vitamins) or if elements that are currently voluntary should be made mandatory (e.g., saturated fats) to ensure uniformity. Moreover, because nutrition labeling is voluntary for most foods, FDA is seeking comment on whether nutrition labeling should be mandatory for more foods and how this could best be accomplished.

2. *Nutrition Label Format*—FDA has long recognized that the current nutrition label might not be in the optimal format for conveying useable information to consumers. Industry and consumer groups have also argued that the information on the label should be in an easier-to-understand format so that consumers can readily identify foods suitable for their individual diets. FDA is seeking comment on how the current label format might be improved.

3. *Ingredient Labeling*—FDA seeks comment on whether the current ingredient labeling requirements that are not mandated by the act should be amended and whether legislative changes should be sought for mandated requirements (e.g., for more detailed ingredient information). The agency is also seeking comments on whether and how the format for ingredient labeling should be revised.

4. *Descriptions of Food*—There are a number of ways in which the food label is used to describe foods—names established by standards of identity, common or usual names, imitation or substitute foods, and descriptor labeling such as "low calorie." FDA has several regulations in each of these areas and standards are specifically provided for by law. Among the issues the agency is seeking comment on are: (1) The usefulness of food standards in assuring consumers that commonly purchased foods meet certain standards of identity and composition, and whether revisions should be made in specific standards themselves or in the procedures by which standards are adopted or amended; and (2) whether FDA should define, in a manner analogous to current regulatory definitions for "low sodium," other labeling such as "low fat" and "lite" that are being used by manufacturers.

5. *Health Messages*—There has been increasing use of food labels to impart health messages to consumers about such things as the relationship between high fiber foods and colon cancer risks, low cholesterol foods and heart disease, and high calcium foods' impact on osteoporosis. FDA has traditionally determined that foods may not make such "medical" claims; in recent years, however, scientific evidence has accumulated that may support certain claims. The agency is seeking public comment on how such messages can be properly conveyed to consumers.

IV. Major Issues Under Consideration

The specific issues and questions on which FDA is seeking public comment are discussed in the remainder of this notice.

A. Nutrition Labeling

When a food processor makes a claim about nutritional value of a food in labeling or advertising, or when a nutrient such as a vitamin is added to the food, nutrition labeling must be provided (21 CFR 101.9). Nutrition labeling may also be voluntarily provided. Whenever nutrition labeling is provided, the following must be included:

1. Serving size;
2. Number of servings;
3. Caloric content;
4. Protein, carbohydrate, and fat content in grams;
5. Sodium in milligrams; and
6. Protein, vitamins A and C, thiamine, riboflavin, niacin, calcium, and iron expressed as a percentage of the U.S. Recommended Daily Allowance (RDA).

Additionally, fatty acid composition (saturated and polyunsaturated) and cholesterol content may be voluntarily disclosed as part of the information on fat, and vitamins D, E, B_6, and B_{12} as well as folic acid, biotin, pantothenic acid, phosphorus, iodine, magnesium, zinc, potassium, and copper may be voluntarily disclosed. If a label claim is made about any of the latter nutrients, or if any are added, they must be included in nutrition labeling. All nutrient values are expressed on a per serving basis.

FDA seeks public comment on whether the current nutrition label

requirements should be changed. The questions to be addressed include:

1. Should nutrition labeling be voluntary or mandatory?

Currently, about 60 percent of FDA-regulated packaged foods bear nutrition labeling. However, many consumer advocacy groups, health professionals, and nutrition educators would like to see nutrition labeling on all foods. The agency believes that, although the act could be interpreted to permit FDA to require nutrition labeling on all foods, legislation explicitly mandating nutrition labeling would probably be most desirable. Thus, responses to the following questions are solicited:

a. Should the current system of nutrition labeling be retained (i.e., mandatory when a claim is made or when nutrients are added, otherwise voluntary), should it be made completely voluntary, or should FDA seek legislation that would make nutrition labeling mandatory? Alternatively, is the regulatory route for mandatory labeling preferable?

b. If the current system of nutrition labeling is retained, should the conditions that trigger mandatory nutrition labeling (i.e., added nutrients or nutritional claims) be revised?

2. What foods should be exempt from nutrition labeling?

If nutrition labeling were to become mandatory, FDA might wish to continue exemptions for certain foods. Thus, should FDA exempt, or require nutrition labeling for:

a. Foods that make insignificant nutritional contributions? (i.e., spices, coffee, tea, sugar, salt, condiments, etc.)

b. Fresh fruits and vegetables?

3. What nutrients should be declared in nutrition labeling?

When the list of nutrients required on nutrition labels was established in 1973, public health concerns generally had focused on nutrient deficiencies rather than, as is now the case, on the potentially adverse effects of over-consumption of certain food components. Also, at that time, analytical methodologies and RDAs were unavailable for many nutrients. Thus, there is considerable interest in reviewing the list of required nutrients to ensure that nutrition labeling provides the most salient, yet appropriately balanced, information from a public health perspective. Questions on which FDA seeks comments are:

a. *Are there currently required nutrients that could become optional elements?* Are there any nutrients that are currently required to be listed in nutrition labeling that have become of less public health significance (e.g., thiamine, riboflavin), and for which the listing should be made optional? If nutrients are to be identified as optional elements, what criteria should be used for determining which nutrients listings are optional?

b. *Are there currently optional nutrients that should be made required elements*? Has the public health significance of any nutrients that are currently permitted to be listed in nutrition labeling as optional elements changed to such a degree that they should now be made mandatory (e.g., fiber, fat, cholesterol)? What are the criteria upon which such decisions should be based?

c. *Are there other nutrients or food components that should now be made either optional or required?* Are there any additional nutrients or food components that should be considered for listing in nutrition labeling? What criteria should be used to make these determinations?

d. *Should fat labeling be revised?* Given that "The Surgeon General's Report on Nutrition and Health" and the National Academy of Sciences' report entitled "Diet and Health: Implications for Reducing Chronic Disease Risk" both focused on the level of fat consumption by Americans as the primary diet-related health issue, how should fat labeling of food within the context of the nutrition label be handled? Are there certain foods for which fat content labeling should be required? Should a detailed, quantitative listing of fatty acids (e.g., saturated, monounsaturated, polyunsaturated) be required? If so, what are the definitions and suitable methodologies for the appropriate fatty acids to be listed? What should be the labeling status of other components of fat (e.g., *omega*-3 and *omega*-6 fatty acids, *trans*-fatty acids, cholesterol)? Should the "and/or" policy for oil labeling be changed to focus only on the content of saturated and unsaturated oils, rather than naming the specific oils (see Section III C—Ingredient Labeling)?

e. *Should fiber be included in the nutrition label?* Although not a traditional "nutrient," the fiber content of food is receiving increased attention. How should the labeling of fiber be treated within the context of nutrition labeling? Is it appropriate to label separate components of fiber? What are the definitions and methodologies to be used for fiber labeling?

f. *Should carbohydrate labeling be revised?* How should the listing of components of carbohydrate be treated within the context of nutrition labeling (e.g., complex starches, total sugars)?

g. *Is it necessary for all foods to have the same nutrition labeling or is it possible to design nutritional labeling requirements that vary depending on the class or type of food?* Is an approach feasible that has certain required elements for all foods with additional elements that are required depending on factors such as food type, fortification, or claims? What are the decision criteria in designing such a system?

4. What criteria should be used in determining serving size?

There is continuing debate on how serving sizes, which are currently left to the manufacturer, are derived. In 1974, FDA attempted to impose serving sizes on several commodities but because of resources and complexity was never able to complete rulemaking. Now that consumers are more interested in nutrients associated with chronic diseases (e.g., fat, sodium), a few manufacturers are selecting smaller and smaller serving sizes. These changes become a problem if manufacturers claim multiple servings in obvious single-serving containers or fractional servings per container and when similar products have inconsistent serving sizes. Thus, FDA seeks comment on whether serving sizes should be determined by FDA (by regulation) or by manufacturers (following criteria established by FDA) or not included.

B. Nutrition Labeling Format

Section 403(f) of the Act requires that food information be conspicuously displayed and be presented in terms that the ordinary consumer is likely to read and understand under ordinary conditions of purchase and use. The details of features such as type size and location of information are contained in FDA's regulations (21 CFR Part 101).

FDA regulations specify that nutrition information is to appear in a format that consists of "columns of figures." In the years since those regulations were promulgated, numerous suggestions have been made for presenting the large quantity of information, mandatory and voluntary, that appears on packaged food labels. Nevertheless, after many years of experience with label formats in the marketplace, no consensus has emerged regarding the best ones to use. Food labeling surveys contracted by FDA in 1978 and 1982 revealed that many consumers believe the present system is too inflexible, complex, and difficult for the average consumer to understand.

Various alternative formats have been suggested to improve the usefulness of the food label. Consumers are increasingly reading food labels as they strive to improve their eating habits in accordance with guidelines set forth in such recent scientific reports as "The Surgeon General's Report on Nutrition and Health" and the National Academy of Sciences' report entitled "Diet and Health: Implications for Reducing Chronic Disease Risk." A more "user-friendly," format that is easier to read and understand will be crucial for improving the communication of diet-related information to consumers.

What is the best format for the nutrition label? FDA welcomes comments that address the types of label formats that could be used to convey to consumers the diverse technical information required. Format changes should result in simplification, clarity, flexibility, and standardization. Specifically, comments on or responses to the following questions are solicited:

1. Can nutrition labels be made more helpful? Are they easy to read?

2. Are there terms on the nutrition label that are not readily understandable? For example, is the current use of metric measurements (i.e., grams and milligrams) acceptable? What are the alternatives?

3. If the nutrition label were to be revised, should it maintain the numerical approach currently required? Would graphics such as pie graphs or bar charts be preferable, or would the use of some adjectival scale (e.g., fair, good, excellent) be preferable? Would a combination of numbers and illustrations or adjectives be useful?

4. Should the organization of the nutrition label be changed? For example, should the order in which nutrients are listed be changed? Should any of the nutrition label elements be highlighted or emphasized? If so, which ones and how?

5. Small packages and cans create a problem for manufacturers who are confronted with space limitations. What can or should FDA do to accommodate those situations?

6. It has become routine procedure in the food industry to consumer-test possible changes in marketing variables such as package design and label advertising. Should FDA and/or industry conduct such research before making any changes in the food label format?

C. Ingredient Labeling

Most packaged foods containing two or more ingredients must list those ingredients in descending order of predominance by weight (21 CFR 101.4). However, there are a few exceptions. Foods that are the subject of a food standard are exempt from declaring the mandatory ingredients, although optional ingredients must be labeled.

For fats and oils, each individual fat or oil ingredient of a food must be declared by its specific common or usual name in order of predominance in the food, except when the total fat and oil component of the food does not exceed the weight of the most predominant ingredient in the food. In this case, manufacturers are permitted to list fats or oils in combination irrespective of whether they are actually used in the product. Statements such as "contains one or more of the following" are followed by a listing of fats or oils that may be used in the product. The purpose of this "and/or" rule is to allow manufacturers to take advantage of shifting prices for the various fats and oils without a requirement to revise the label each time the fat or oil ingredient is changed.

Specific questions FDA wishes addressed include:

1. Should the existing order of predominance labeling be bolstered by a requirement that major ingredients be listed by percentage?

2. Should the agency's current "and/or" labeling regulations be modified?

a. Should "and/or" labeling be extended to permit such a labeling exemption for nutritive carbohydrate sweeteners?

b. Should "and/or" labeling for fats and oils be continued as currently permitted, or, should FDA:

i. Revoke the exemption?

ii. Modify the exemption so that it would apply only where the total fat and oil content constitutes a minor portion of the food product?

iii. Permit continued use of "and/or" labeling where the fats and oils are of like nutritional value (e.g., "and/or" for similar polyunsaturated vegetable oils)?

3. Should ingredient labeling be expanded?

a. Should legislation be sought to require the labeling of specific spices, colors, and flavors?

b. Should there be ingredient labeling for "fast" food? If so, how could this be accomplished?

c. Should FDA act, either administratively or by seeking legislation, to require ingredient labeling on all food?

4. How could the ingredient labeling format be revised to be more informative to consumers (e.g., through the use of graphics, such as bar charts)?

D. Description of Food

Describing a food in a way that accurately represents the food's characteristics and that does not deceive the consumer would seem to be a fairly straightforward task. However, how to do this has become quite controversial in recent years and also may be an appropriate focus for reform.

Nutritional labeling and ingredient labeling, which have both been discussed already, are two ways to describe a food. This section will discuss two other ways—naming a food and labeling statements about its characteristics.

1. Should the current methods of naming foods be changed? Congress' original approach to how foods should be named was to provide for standards of identity for foods in the act. The idea behind the standards concept was that there are certain traditional foods that everyone knows, such as bread, milk, and cheese, and that when consumers buy these foods, they should get the foods that they are expecting. Initially Congress authorized FDA to adopt standards of identity that define the composition of these foods and that thereby may prevent the debasement of these foods with new and cheaper ingredients. While Congress recognized that there may be some foods that would not be subject to standards, it specifically stated that if a food resembled a standardized food but did not comply with the standard, that food must be labeled as an "imitation."

Standards must be established and amended in accordance with the procedures set out in section 701(e) of the act. There must be a notice of a proposed standard and then a final rule. After the final rule is published, a person who objects to the final rule may be entitled to a formal evidentiary hearing. Moreover, the filing of an objection automatically stays the effect of the final rule until the Commissioner issues a final decision. Consequently, it is very difficult to adopt a standard or to amend one once it has been adopted. For example, it took almost a decade to adopt the peanut butter standard.

As a result, it has been almost impossible to keep the food standards up-to-date with advances in food technology and in nutrition. For example, fat, which was considered to be a valuable component of food at the time that the cheese standards were adopted, is now viewed by many as something to be reduced in the diet. However, the cheese standards are based largely on the fat content of the food. Thus, to be called "cheddar

cheese," a product still must contain a minimum of 50 percent milkfat, even though a reduced fat product would be more desirable to some (although the resulting product would not be the traditional "cheddar cheese"). Moreover, cheese meeting the standard is not required to declare its fat content.

The whole standards of identity approach may pose an additional problem for new food products with respect to market entry. Due to the tight recipe specifications and the inflexibility of the standards system, new products may be at a disadvantage when they enter the market because they can not be called something that is easily recognized or desired by consumers. For instance, low fat cheeses have to be named with something other than the standardized term. Consumers may be less willing to try such products.

To allow manufacturers to take advantage of advances in food technology, and thus to give them relief from the dilemma of either complying with an outdated standard or having to label their food as an "imitation," FDA sought to narrow the scope of food standards. The agency did so by adopting the so-called "imitation policy." By regulation, 21 CFR 101.3(e), FDA said that a food that resembles another food need not be labeled as an imitation if it is not nutritionally inferior to the food that it resembles, and if it bears a descriptive name that distinguishes from the standardized food.

In addition, to minimize the need for new standards, FDA has adopted, in 21 CFR Part 102, regulations that establish common or usual names for particular types of food. The common or usual names for particular types of food. The common or usual name that the agency adopts is a term that describes the basic nature or the characteristics of the type of food. For example, the common or usual name of shrimp in cocktail sauce is "shrimp cocktail, contains _____% shrimp." However, the common or usual name regulations are adopted and amended by notice and comment rulemaking, rather than by the formal rulemaking procedures of section 701(e) of the act, which must be followed for food standards. The controversy with respect to the labeling of dilute fruit juices demonstrates that a common or usual name that declares the percentage of juice in a beverage may still not adequately describe the product.

The agency is aware that some people strongly favor the current system of food standards. This support has been evidenced by State legislation that has sought to limit applicability of FDA's imitation policy. (See, e.g., *GMA* v. *Gerace*, 755 F.2d 993 (2d Cir.), *aff'd without opinion*, 474 U.S. 801, *cert. denied*, 474 U.S. 820 (1985).)

Given this situation, FDA seeks comments and suggestions on the current methods of naming foods. The agency requests comments on whether, and to what extent, food standards have continuing value in the 1990's. Should efforts be made to eliminate food standards and to replace them with a system under which foods are given common or usual names like those prescribed under 21 CFR 102.5?

The agency seeks comments on whether the problems with food standards can be addressed by administrative action or whether this matter should be included on the agency's legislative agenda. The agency also seeks comments on the possible approaches to standards that could be taken in legislation. One alternative to elimination would be to amend section 701(e)(1) of the act to delete the requirements for a formal evidentiary hearing for food standards. This change would subject food standards to notice and comment rulemaking and thus assure that the standards are more readily amendable.

The agency solicits any other comments that bear on how food is named.

2. Should any changes be made in how FDA prescribes use of descriptors?

Because of the growing public interest in eating healthy foods, manufacturers began to place statements on their labels that described their products in ways such as "fresh," "natural," "low in salt," "reduced fat," and "no cholesterol." FDA found, however, that these descriptions were not always in honest or consistent ways. For example, foods with various levels of sodium were all being described as "low sodium."

To bring some order to the marketplace and to ensure that consumers are not misled, FDA is developing a series of descriptors for use on the labels of foods. These regulations define such terms as "no," "low," and "reduced" for use in conjunction with a particular food component. For example, FDA has said that a food can be described as low in sodium if it contains 140 milligrams or less of sodium per serving (21 CFR 101.13(a)(3)). To date, FDA has adopted regulations that prescribe descriptors on calorie content (21 CFR 105.66) and sodium content (21 CFR 101.13). It has also proposed a set of cholesterol content descriptors (51 FR 42584; November 25, 1986).

FDA has approached descriptors on a food-component-by-food-component basis, selecting reduction values that are nutritionally significant. Thus, it has considered, for example, what level of sodium reduction is nutritionally significant, and what level of calorie reduction is significant. As a result, FDA regulations permit a reduced sodium claim to be made on the basis of a 75 percent reduction (21 CFR 101.13(a)(4)), while they permit a reduced calorie claim on the basis of a one-third reduction (21 CFR 105.66(d)(1)). Two specific questions the agency is seeking comment on are:

a. How should descriptors be defined?

FDA is aware that some believe that descriptors would be more understandable to consumers if they were consistent across categories of food components. Thus, for example, these people believe that a "reduced" claim should be permitted whenever there is a one-third reduction in a food component, without regard to whether that reduction is nutritionally significant. FDA's view has been that to permit a "reduced" claim in such circumstances would be misleading. FDA solicits comments on which approach to defining descriptors is the more appropriate one.

b. What other descriptors are necessary?

FDA is aware of public interest in descriptors for fat content, for fiber content, and in regulatory definitions for such terms as "lite," "fresh," and "natural." FDA solicits comments on the need for regulations defining these types of descriptors and on the priority that the agency should give to addressing these descriptors.

For example, FDA is aware that the Federal Trade Commission tried to develop standards for the use of the term "natural" and was unable to do so. Is an FDA regulation on "natural" needed?

FDA's traditional position is that the use of the term "fresh" on a food that has been processed in any way ("fresh pasteurized orange juice") is misleading. Is a regulation on the use of the term "fresh" necessary?

FDA also seeks comment on whether there are any other matters involving food descriptors that should be addressed or considered by the agency.

E. Health Messages

FDA has traditionally considered disease-related claims on food labeling to be drug claims that misbrand the food and subject it to the new drug provisions of the act. However, during the past few years, food manufacturers have

expressed their desire to utilize food labeling as a mechanism for providing consumers with information about the relationship between diet and health, particularly in the context of contributing to disease prevention. In addition, consumers have become increasingly aware that certain dietary habits have been associated with some chronic, serious conditions and that good nutrition and diet are essential to good health. Thus, consumers also have expressed the need for information about the relationship between specific food components and health and about how to select foods that may be used to improve their diets.

In response to industry and consumer requests for health-related information on food labeling, FDA proposed to amend the food regulations to establish criteria for exempting a food with a health-related nutrition claim from the new drug provisions of the act (August 4, 1987; 52 FR 28843). Most persons who have an interest in this proposal acknowledge that consumers should be provided with truthful and useful information about diet and health. However, this generally is the only point on which the various interest groups agree. On most other aspects of FDA's 1987 proposal, consumers and consumer advocacy groups, industry representatives, health professionals, and government officials generally are polarized in their opinions and expectations. Points of controversy associated with the proposal include:

1. Consideration of whether food labeling, in particular, is an appropriate vehicle for disseminating health-related dietary information concerning specific diseases;

2. The legal basis under the act for permitting health-related statements that traditionally would have rendered the food an unapproved new drug;

3. Consideration of the type of foods for which health-related statements would be permitted on the labeling;

4. Establishment of practical and enforceable guidelines or criteria for evaluating whether the health-related dietary information is false or misleading;

5. The level of scientific evidence that should be necessary prior to permitting health-related dietary information on food labeling;

6. Whether a regulation to permit health-related dietary information on food labeling would encourage over-fortification of foods with nutrients for which "positive" claims could be made;

7. Whether FDA has sufficient resources to adequately monitor and enforce compliance with a permissive regulation; and,

8. Whether, and to what extent, the health messages policy should apply to dietary supplements.

The extreme divergence of opinions on the legal, scientific, and practical aspects of the 1987 proposal have impeded the agency's progress toward a resolultion. Thus, FDA considers it appropriate to request further comments from interested persons. Specifically, the agency requests comments on the approach or process that should be utilized to assure resolution of the issue. Options for resolution that the agency currently considers to be available include:

1. Revise the 1987 proposal based on comments received and publish the revision as a reproposal.

2. Revise the 1987 proposed regulation based on comments received and publish the revision as a final rule.

3. Withdraw the 1987 proposal and publish a new proposal to permit food labeling to bear factual health-related statements on how, based on their normal use in a well-balanced diet, food components will affect the structure or function of the body to promote good health. This option, because it has not been discussed before by the agency, needs some explanation.

The 1987 proposal focused on health claims that conveyed information regarding the role of a food in the prevention, cure, mitigation, or treatment of a disease or a disease syndrome. The problem is that these types of effects are also the types of effects that can be considered drug attributes under section 201(g)(1)(B) of the act. Thus, the 1987 proposal created a tension in FDA's enforcement of the act because any food that is labeled in the manner permitted by the proposal could, by definition, also be viewed as a drug.

A label description of the effects that a food will have on the body need not, however, make that food a drug. For example, the claim "This product is high in calcium; dietary calcium is important to the maintenance of strong and health bones" would fit this category. The act specifically recognizes, in section 201(g)(1)(C), that foods affect the structure or function, and thus the health, of the body in ways that do not make them drugs. Foods have these effects by virtue of their nutritional qualities when consumed over time and not as the result of an immediate pharmacological response as expected of drugs.

The agency is interested in exploring the possibility of establishing a program that would permit manufacturers to make health claims that describe the nutritional qualities of a food and that explain, in a manner that is not false or misleading, how these nutritional qualities affect the structure or function of the body in ways that will contribute to good health.

FDA seeks comment on the feasibility and appropriateness of such a health message policy.

Interested persons may, on or before December 6, 1989, submit to the Dockets Management Branch (address above) written comments regarding this advance notice of proposed rulemaking; request for public comment. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This advance notice of proposed rulemaking; request for public comment is issued under sections 201, 401, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 343, 348, 371).

Frank E. Young,

Commissioner of Food and Drugs.

Louis W. Sullivan,

Secretary of Health and Human Services.

Dated: July 31, 1989.

[FR Doc. 89-18487 Filed 8-3-89; 10:46 am]

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Tuesday
August 8, 1989

Part VI

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

28 CFR Part 31

Formula Grants; Notice of Final Regulation

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

28 CFR Part 31

Formula Grants

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

ACTION: Notice of final regulation.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is publishing the final revision of the existing Formula Grants Regulation (28 CFR part 31), which implements part B of Title II of the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended by the Juvenile Justice and Delinquency Prevention Amendments of 1988, (subtitle F of title VII of the Anti-Drug Abuse Act of 1988, Pub. L. 100-690, 102 Stat. 4181, November 18, 1988). The 1988 Amendments reauthorize and modify the Federal assistance program of grants to state and local governments and private not-for-profit agencies for juvenile justice and delinquency prevention improvements authorized under part B of Title II of the JJDP Act (42 U.S.C. 5611 *et seq.*). The final revision to the existing Regulation provides guidance to states in the formulation, submission, and implementation of state formula grants plans.

EFFECTIVE DATE: This regulation is effective August 8, 1989.

FOR FURTHER INFORMATION CONTACT: Jeff Allison, Compliance Monitoring Coordinator, State Relations and Assistance Division, Office of Juvenile Justice and Delinquency Prevention (OJJDP), 633 Indiana Avenue, NW., Room 760, Washington, DC 20531; (202) 724-5924.

SUPPLEMENTARY INFORMATION:

Statutory Amendments

The 1988 reauthorization of the JJDP Act resulted in statutory amendments that impact the Formula Grants Program. These statutory changes include: A modified formula grant fund allocation minimum for participating states and territories; a funding pass-through requirement for Indian tribes; a plan requirement related to assessing and addressing the overrepresentation of minority juveniles in all types of secure facilities; extension through 1993 of the non-MSA exception to the jail and lockup removal requirement; an alternative substantial compliance standard for jail and lockup removal; and, a provision for the Administrator to waive termination of funding eligibility for states that have failed to achieve substantial or full compliance with the jail and lockup removal requirement. The final regulation details revised procedures and requirements for states participating in the Formula Grants Program resulting from the 1988 amendments to the JJDP Act.

Description of Major Changes

Formula Grant Allocations

Section 222(a) of the JJDP Act was amended to raise the minimum Formula Grant allocation from $225,000 per state and $56,250 per territory. The minimum allocations are now $325,000 per state and $75,000 per territory if the title II appropriation is less than $75 million (other than part D). If the title II appropriation is more than $75 million (other than part D), the minimum allocations are $400,000 per state and $100,000 per territory. State and territory allocations will be reduced prorata to the extent necessary to ensure that no state receives less than it was allotted in Fiscal Year 1988.

Indian Pass-Through

Section 223(a)(5) of the JJDP Act was amended to require that a portion of each participating state's 66⅔ percent Formula Grant pass-through be made available to fund programs of Indian tribes that perform law enforcement functions, and that agree to attempt to comply with the deinstitutionalization of status offenders, separation, and jail and lockup removal requirements of the JJDP Act. The proportion of pass-through funds made available for these programs must be the same as the proportion of the state's population under 18 years of age which resides in those geographical areas where Indian tribes perform such law enforcement functions. Each year, the Secretary of the Interior will provide OJJDP with an updated list of those tribes within states that perform law enforcement functions. The initial list is available through OJJDP.

A related provision, section 223(a)(8)(A) of the JJDP Act, was amended to require that each state's juvenile crime analysis, which is submitted annually as part of the Formula Grant Application and Plan, include an assessment of juvenile crime problems and prevention needs within the geographical areas in which Indian tribes perform law enforcement functions.

Minority Overrepresentation in Secure Facilities

Section 223(a)(23) of the JJDP Act was amended to require that each participating state's Formula Grant Plan address efforts to reduce the proportion of juveniles who are members of minority groups detained or confined in secure detention facilities, secure correctional facilities, jails, and lockups, if such proportion exceeds the proportion such groups represent in the general population.

Jail Removal

Section 223(a)(14) of the JJDP Act was amended to continue the non-MSA (low population density) exception to the jail and lockup removal requirement through 1993. The statutory criteria outlined in section 223(a)(14) (A), (B) and (C) that must be satisfied for a state to use this exception remain the same (28 CFR 31.303(f)(4)).

Section 223(c) of the JJDP Act was amended to create an alternative substantial compliance standard for those states unable to achieve a 75 percent reduction in jail and lockup removal violations, but which have made sufficient progress to merit continued funding. The new standard establishes four criteria which, if satisfied, may be used in lieu of achieving a 75 percent numerical reduction to demonstrate substantial compliance. The four criteria require that the state has: (1) Removed all status and nonoffender juveniles from adult jails and lockups; (2) made meaningful progress in removing other juveniles from adult jails and lockups; (3) diligently carried out the state's jail and lockup removal plan; and (4) historically expended and continues to expend an appropriate and significant share of Formula Grant resources to comply with section 223(a)(14) of the JJDP Act. As with the 75 percent reduction standard, for a state to be eligible for a finding of substantial compliance under this alternative standard the state must demonstrate an unequivocal commitment to achieving full compliance within a reasonable time, not to exceed three additional years, after the December 8, 1985, statutory deadline for achieving substantial compliance with the jail and lockup removal requirement.

The statutory deadlines for substantial and full compliance with section 223(a)(14) of the JJDP Act were not changed by the 1988 Amendments. Each participating state and territory's 1987 and 1988 Monitoring Reports (due by December 31, 1987, and December 31, 1988, respectively) must demonstrate either substantial or full compliance with the jail and lockup removal requirement in order for the state to be eligible (absent a waiver of termination)

for the FY 1989 and 1990 Formula Grant awards, respectively. Each participating state and territory's 1989 Monitoring Report (due by December 31, 1989), must demonstrate full compliance or full compliance with de minimis exceptions with section 223(a)(14) in order for the state to be eligible (absent a waiver of termination) for the FY 1991 Formula Grant award, and all subsequent awards.

Section 223(c) of the JJDP Act was also amended to provide the Administrator of OJJDP with the discretion to waive termination of funding eligibility for those states and territories that have not achieved substantial or full compliance with the jail and lockup removal requirement, provided that the state or territory agrees to expend all of its Formula Grant resources, except planning and administration, advisory group set aside, and Indian tribe pass-through funds, to achieve compliance with section 223(a)(14). This final revision of the Formula Grants Regulation sets forth standards that a state must demonstrate it meets in order to be considered by the Administrator for a waiver of the termination sanction. A state which satisfies these standards qualifies for a waiver on the basis that: (1) It has made significant progress to date; and (2) additional funding is likely to produce further progress toward compliance.

Discussion of Comments

The proposed revisions to the existing Formula Grants Regulation were published in the **Federal Register** on April 12, 1989 (54 FR 14768), for public comment. Written comments were received from eight states, two regional coalitions of state juvenile justice advisory groups, the National Coalition of State Juvenile Justice Advisory Groups, the University of Wisconsin School of Social Welfare, and the Subcommittee on Human Resources of the U.S. House of Representatives' Committee on Education and Labor. The National Coalition of State Juvenile Justice Advisory Groups submitted a resolution passed at their May 7-10, 1989 National Conference in Reno. All comments have been considered by OJJDP in the issuance of this final regulation.

The following is a summary of the comments and the responses by OJJDP:

1. *Comment:* The majority of respondents expressed concern that paragraphs (f)(6)(iii)(D)(1)(v) and (f)(6)(iii)(D)(2)(vii) of the proposed regulation only required states to demonstrate a "commitment" to achieving full compliance when seeking a waiver of termination of eligibility for failure to achieve substantial or full compliance with the jail and lockup removal provision, section 223(a)(14) of the JJDP Act. These respondents indicated that states should be required to demonstrate an "unequivocal commitment" to achieving full compliance in order to be eligible for a waiver of termination. The House Subcommittee on Human Resources commented that requiring a lesser commitment for a state in the context of an application for a waiver than is required for that state to achieve substantial compliance weakens the Act's compliance scheme, which was not the intent of the 1988 Amendments. The House Subcommittee further commented that only a requirement of unequivocal commitment will enable the Administrator to make the determination, with certainty, that additional funding is likely to produce further progress toward compliance when waivers are granted. The comments and the resolution of the National Coalition of State Juvenile Justice Advisory Groups supported this position.

Several respondents commented that the positive responses of state legislatures and governors to the requirement of an unequivocal commitment as a basis of eligibility for participation in the OJJDP sponsored Jail Removal Initiative I demonstrates the level of commitment that most states have already made to achieving the goals of jail removal. Within this context, respondents commented that OJJDP should remain consistent in its interpretation of requirements, as weakening the standard undermines gains already achieved by many states.

Finally, several respondents indicated that without requiring the higher, well defined standard of "unequivocal commitment," waivers of termination would practically be automatic, and the jail and lockup removal provision of the JJDP Act would be weakened.

One state supported the "commitment" language in the proposed regulation.

Response: It is the OJJDP position that the legislation itself is clear in that it does not require the Administrator to demand an "unequivocal commitment" but allows the Administrator discretion to waive termination of eligibility when a state is unable to meet the standard for substantial compliance, or the standard for full compliance. The Act imposes only one condition upon the Administrator in utilizing the waiver provision: That those states who are unable to demonstrate substantial or full compliance (as required by the Act) must commit all of their formula grant dollars to the issue of jail removal except as provided by the statute. This is a substantial requirement and is demonstrative of a state's willingness and commitment to comply with the jail removal mandate.

The Regulation incorporates this requirement and in addition requires states to: Have an adequate monitoring system, diligently carry out the state's jail and lockup removal plan, submit an acceptable plan to eliminate noncompliant incidents and to demonstrate a commitment to achieving full compliance. Therefore, the Regulation satisfies not only the clear language of the statute, it also satisfies the intent of Congress that the waiver be applied to those cases where the Administrator determines the states have made significant progress and additional funding is likely to produce further progress toward compliance. It is consistent with Congressional action in creating the waiver provision by assisting states that are committed to maintaining progress toward and achieving full compliance with 223(a)(14).

Based on these conclusions, paragraphs (f)(6)(iii)(D)(1)(v) and (f)(6)(iii)(D)(2)(vii) of the final regulation retain the original language from the proposed regulation requiring states seeking a waiver of termination of eligibility to demonstrate a "commitment" to achieving full compliance.

2. *Comment:* One respondent indicated that there was no justification for allowing the Administrator to waive termination of a state's eligibility for failure to achieve substantial compliance with the jail and lockup removal provision.

Response: Section 223(c)(2)(B) of the JJDP Act clearly applies the waiver of termination sanction to those states unable to achieve substantial compliance with the jail and lockup removal provision, pursuant to section 223(c)(2)(A). This interpretation of the statute is supported by the House Committee on Education and Labor Report (100-605) which states on page 11, "It should be noted that the bill makes this alternative sanction available with regard to enforcing the substantial and full compliance requirements."

It is the OJJDP's intention to apply the waiver provision carefully, as directed by Congress. This will occur in those situations where, although substantial compliance has not been achieved within the applicable time limit, the state has made significant progress in removing juveniles from adult jails and

lockups, and there is substantive evidence that additional funding is likely to produce further progress toward full compliance.

3. *Comment:* One respondent requested that the waiver maximum apply only to (f)(6)(iii)(D)(2), which relates to full compliance and not to (f)(6)(iii)(D)(1), which relates to substantial compliance. Thus the maximum number of waivers would only be counted for failure to achieve full compliance. Waivers applied to states for failure to achieve substantial compliance would not be counted toward the three waiver maximum.

Response: Although the standard for substantial compliance is different from the standard for full compliance no other distinction is made in the application of the three year waiver limitation. No state, regardless of whether the substantial compliance standard is used or the full compliance standard is used, is eligible for more than three waivers.

4. *Comment:* One respondent recommended that paragraph (j)(1), which requires that documentation be provided in the State Plan Juvenile Crime Analysis to indicate whether minority juveniles are disproportionately detained or confined, provide more specific information as to what kind of documentation is required.

Response: OJJDP agrees with this recommendation and will prepare supplemental information, including recommended data collection and analysis strategies. For those states whose Fiscal Year 1989 plan has already been submitted, separate instructions for supplementing the FY 1989 plan update to meet any new or modified requirements imposed by the final regulation will also be issued.

5. *Comment:* One respondent expressed concern about how the implementation of the workplan for addressing overrepresentation of minorities in the juvenile justice system will be monitored to ensure that the plan is being carried out.

Response: OJJDP intends to monitor implementation of workplans through site visits and through reviewing Performance Reports. In addition, OJJDP plans to develop an addendum to the Monitoring Compliance Report which is currently submitted annually to determine compliance with section 223(a)(12)(A), (13), and (14). This addendum will apply to the 1990 Monitoring Report due December 31, 1990, and all subsequent monitoring reports.

6. *Comment:* One respondent expressed concern about the interpretation of the statutory language in section 223(a)(23) of the Act that requires states to address the over-representation of minority youth in secure detention facilities. The basis for this concern is that the language "if such proportion exceeds the proportion such groups represent in the general population," if interpreted literally, might lead to a situation in which the proportion of minority youth in secure detention would be compared to the proportion of minority members in the general population. Such a comparison would be misleading because of the skewed age distributions of minority populations in the United States at the present. Minority populations tend to be composed of greater percentages of younger individuals. Thus, while in a given jurisdiction 25 percent of the overall population may be members of a minority group, 30 percent or more of the population could be under 20 years of age. If this were the case, and assuming equal risks of offense, apprehension and other decision making, it would still be the case that this hypothetical jurisdiction would appear to have an over-representation of minority youth.

The respondent recommends that for purposes of determining over-representation of minority youth in secure facilities, the general population be defined as youth at risk for such confinement.

Response: OJJDP also recognized the potential for misinterpretation of the statutory language. As a consequence, this language was clarified in § 31.303 (j)(1) of the proposed OJJDP Formula Grants Regulation. This clarification has been retained in the final Regulation.

7. *Comment:* The Subcommittee on Human Resources of the House Committee on Education and Labor commented on the definition of Indian tribes that perform law enforcement functions. Concern was expressed that the definition does not fully track the definition of "law enforcement and criminal justice" in section 103(6) of the Act. While the proposed definition specifically includes police efforts, it omits any specific reference to activities of courts, corrections, probation, or parole authorities. Concern was expressed that OJJDP not interpret the term "law enforcement functions" too narrowly and a suggestion made that this definition be expanded to more closely track the section 103(6) language. Two state respondents expressed similar concerns.

Response: In response to this comment, as well as to those from the two state respondents, the language for the definition of law enforcement functions has been expanded to include corrections, probation, and parole activities.

8. *Comment:* One state, which has only one Indian tribe that might be able to qualify for pass-through funds, expects that the population under 18 years is too small to warrant an individual grant. A question was raised about how OJJDP defines the term "larger tribal jurisdiction" as it relates to that situation?

Response: OJJDP recognizes the range of populations of Indian Tribes and Alaskan Native villages, and the Regulation is designed to give the State Agency flexibility in targeting funds where substantial impact can be anticipated through the funding of tribes attempting to achieve compliance with section 223(a) (12)(A), (13) and (14) of the JJDP Act. It also recognizes the variation in resources among Indian tribes to develop and manage projects, and, accordingly, provides for making pass-through funds available to organizations designated by tribes to represent them, or to combinations of eligible tribes. Where a state has only one tribe, that tribe, regardless of size would be the eligible tribe and would necessarily be the recipient or beneficiary of the Indian tribe pass-through, if it met the requirements of performing law enforcement functions and agreeing to attempt to achieve compliance with the statutory mandates.

An excerpt from The U.S. Census 1980 Report on the General Characteristics for American Indian Persons on Reservations, which provides data on juvenile populations under 18 residing on Indian Reservations by state and by Indian tribe is available through OJJDP. Data on Alaskan Native Organizations is also included. In addition, the 1980 Bureau of Census data for juvenile populations under 18 by state (the figure for each state is total juvenile population under 18, and includes Indian juvenile population under 18), is available through OJJDP. Given the fact that the 1980 Census data on Indian tribe population is the most recent data available at this time, states are expected to use the comparable 1980 census data for the general youth population under 18 to compute the proportion of the pass-through for Indian tribes performing law enforcement functions. The Indian population will need to be subtracted from the total juvenile population under 18 for each state. The 1980 data will be used until the 1990 Census Report is issued and provides more current data on Indian tribe youth populations. In the event that there are Indian tribes performing law enforcement functions that do not

appear on the Bureau of Census listing, the cognizant OJJDP State Representative should be contacted for assistance in securing other population data.

9. *Comment:* In the proposed regulations, numerous references are made to Indian tribes that perform law enforcement functions. There are Alaska Natives that are recognized by the Department of the Interior as having law enforcement functions, and it is important that references and definitions include these populations.

Response: In drafting this section OJJDP used the language of the Amendments. There is no intent to exclude any tribal unit, determined by the Secretary of the Department of the Interior as performing law enforcement functions. Moreover, section 103(18) of the 1988 Amendments defines "Indian tribe" as: (A) A Federally recognized Indian tribe or (B) An Alaskan Native organization. The Department of the Interior provided the OJJDP with a listing that will be used to determine Indian tribe eligibility to receive Formula Grant funds from the State agencies. Alaskan Native organizations are included in the list. The listing is entitled, "Indian Entities Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs," published by the Bureau of Indian Affairs, U.S. Department of the Interior, December 29, 1988. This is the list of tribes eligible to receive BIA services and presumed to perform law enforcement functions, pursuant to the definition provided in paragraph § 31.301(b)(2) of this regulation. While this list is more encompassing than Indian tribes performing law enforcement functions, this is the only list available from the Department of the Interior at this time. Thus, it will be used by State Planning Agencies until revised or updated by the Department of the Interior, for purposes of determining Indian tribes eligibility for the pass-through;

10. *Comment:* One comment reflected concern about the difficulty in defining tribes that perform law enforcement functions.

Response: Section 103(6) of the Act provides the definition of law enforcement and criminal justice for the purposes of OJJDP programs. This definition includes those activities that impact on section 223(a)(12)(A), (13) and (14). Section 223(a)(5) designates the Secretary of the Department of the Interior as the authority for determining which tribes perform law enforcement functions using this definition.

Executive Order 12291

This notice does not constitute a "major" rule as defined by Executive Order 12291 because it does not result in: (a) An effect on the economy of $100 million or more, (b) a major increase in any costs or prices, or (c) adverse effects on competition, employment, investment, productivity, or innovation among American enterprises.

Regulatory Flexibility Act

This final regulation, does not have a "significant" economic impact on a substantial number of small "entities", as defined by the Regulatory Flexibility Act (Pub. L. 96-354).

Paperwork Reduction Act

No collection of information requirements are contained in or effected by this regulation (See the Paperwork Reduction Act, 44 U.S.C. 3504(h)).

Intergovernmental Review of Federal Programs

In accordance with Executive Order 12372 and the Department of Justice's implementing regulation 28 CFR part 31, states must submit formula grant applications to the State "Single Point of Contact," if one exists. The State may take up to 60 days from the application date to comment on the application.

List of Subjects in 28 CFR Part 31

Grant programs—law, Juvenile delinquency, Grant programs.

For the reasons set out in the preamble, the OJJDP Formula Grants Regulation, 28 CFR part 31, is amended as follows:

PART 31—[AMENDED]

1. The authority citation for part 31 continues to read as follows:

Authority: Juvenile Justice and Delinquency Prevention Act of 1974, as amended (42 U.S.C. 5601 et seq.).

2. Paragraphs (a) and (b) of § 31.301, are revised to read as follows:

§ 31.301 Funding.

* * * * *

(a) *Allocation to States.* Each state receives a base allocation of $325,000, and each territory receives a base allocation of $75,000 when the title II appropriation is less than $75 million (other than part D). When the title II appropriation equals or exceeds $75 million (other than part D), each state receives a base allocation of $400,000, and each territory receives a base allocation of $100,000. To the extent necessary, each state and territory's base allocation will be reduced proportionately to ensure that no state receives less than it was allocated in Fiscal Year 1988.

(b) *Funds for Local Use.* At least two-thirds of the formula grant allocation to the state (other than the section 222(d) State Advisory Group set aside) must be used for programs by local government, local private agencies, and eligible Indian Tribes, unless the State applies for and is granted a waiver by the OJJDP. The proportion of pass-through funds to be made available to eligible Indian tribes shall be based upon that proportion of the state youth population under 18 years of age who reside in geographical areas where tribes perform law enforcement functions. Pursuant to section 223(a)(5)(C) of the JJDP Act, each of the standards set forth in paragraphs (b)(1) (i) through (iii) of this section must be met in order to establish the eligibility of Indian tribes to receive pass through funds:

(1)(i) The tribal entity must be recognized by the Secretary of the Interior as an Indian tribe that performs law enforcement functions as defined in paragraph (b)(2) of this section.

(ii) The tribal entity must agree to attempt to comply with the requirements of section 223(a)(12)(A), (13), and (14) of the JJDP Act; and

(iii) The tribal entity must identify the juvenile justice needs to be served by these funds within the geographical area where the tribe performs law enforcement functions.

(2) "Law enforcement functions" are deemed to include those activities pertaining to the custody of children, including, but not limited to, police efforts to prevent, control, or reduce crime and delinquency or to apprehend criminal and delinquent offenders, and/or activities of adult and juvenile corrections, probation, or parole authorities.

(3) To carry out this requirement, OJJDP will annually provide each state with the most recent Bureau of Census statistics on the number of persons under age 18 living within the state, and the number of persons under age 18 who reside in geographical areas where Indian tribes perform law enforcement functions.

(4) Pass-through funds available to tribal entities under section 223(a)(5)(C) shall be made available within states to Indian tribes, combinations of Indian tribes, or to an organization or organizations designated by such tribe(s), that meet the standards set forth in paragraphs (b)(1) (i)–(iii) of this section. Where the relative number of persons under age 18 within a geographic area where an Indian tribe

performs law enforcement functions is too small to warrant an individual subgrant or subgrants, the state may, after consultation with the eligible tribe(s), make pass-through funds available to a combination of eligible tribes within the state, or to an organization or organizations designated by and representing a group of qualifying tribes, or target the funds on the larger tribal jurisdictions within the state.

(5) Consistent with section 223(a)(4) of the JJDP Act, the state must provide for consultation with Indian tribes or a combination of eligible tribes within the state, or an organization or organizations designated by qualifying tribes, in the development of a state plan which adequately takes into account the juvenile justice needs and requests of those Indian tribes within the state.

* * * * *

3. Section 31.303 is amended by adding paragraphs (f)(4)(vi) and (k); and by revising paragraph (f)(6)(iii), introductory text of (g) and paragraph (j) to read as follows:

§ 31.303 Substantive requirements.

* * * * *

(f) * * *

(4) * * *

(vi) Pursuant to section 223(a)(14) of the JJDP Act, the nonMSA (low population density) exception to the jail and lockup removal requirement described in paragraphs (f)(4) (i) through (v) of this section shall remain in effect through 1993.

* * * * *

(6) * * *

(iii)(A) Substantial compliance with section 223(a)(14) requires:

(*1*) The achievement of a 75% reduction in the number of juveniles held in adult jails and lockups after December 8, 1985; or

(*2*) That a state demonstrate it has met each of the standards set forth in paragraphs (f)(6)(iii)(A)(*2*) (*i*)–(*iv*) of this section:

(*i*) Removed all status and nonoffender juveniles from adult jails and lockups. Compliance with this standard requires that the last submitted monitoring report demonstrate that no status offender (including those accused of or adjudicated for violating a valid court order) or nonoffender juveniles were securely detained in adult jails or lockups for any length of time; or, that all status offenders and nonoffenders securely detained in adult jails and lockups for any length of time were held in violation of an enforceable state law and did not constitute a pattern or practice within the state;

(*ii*) Made meaningful progress in removing other juveniles from adult jails and lockups. Compliance with this standard requires the state to document a significant reduction in the number of jurisdictions securely detaining juvenile criminal-type offenders in violation of section 223(a)(14) of the JJDP Act; or, a significant reduction in the number of facilities securely detaining such juveniles; or, a significant reduction in the number of juvenile criminal-type offenders securely detained in violation of section 223(a)(14) of the JJDP Act; or, a significant reduction in the average length of time each juvenile criminal-type offender is securely detained in an adult jail or lockup; or, that state legislation has recently been enacted and taken effect and which the state demonstrates will significantly impact the secure detention of juvenile criminal-type offenders in adult jails and lockups;

(*iii*) Diligently carried out the state's jail and lockup removal plan approved by OJJDP. Compliance with this standard requires that actions have been undertaken to achieve the state's jail and lockup removal goals and objectives within approved timelines, and that the State Advisory Group, required by section 223(a)(3) of the JJDP Act, has maintained an appropriate involvement in developing and/or implementing the state's plan;

(*iv*) Historically expended and continues to expend an appropriate and significant share of its Formula Grant funds to comply with Section 223(a)(14). Compliance with this standard requires that, based on an average from two (2) Formula Grant Awards, a minimum of 40 percent of the program funds was expended to support jail and lockup removal programs; or that the state provides a justification which supports the conclusion that a lesser amount constituted an appropriate and significant share because the state's existent jail and lockup removal barriers did not require a larger expenditure of Formula Grant Program funds; and

(*3*) The state has made an unequivocal commitment, through appropriate executive or legislative action, to achieving full compliance within a reasonable time but in no event may such time extend beyond December 8, 1988.

(B) Full compliance is achieved when a state demonstrates that the last submitted monitoring report, covering 12 months of actual data, demonstrates that no juveniles were held in adult jails or lockups in circumstances that were in violation of section 223(a)(14).

(C) Full compliance with de minimis exceptions is achieved when a state demonstrates that it has met the standard set forth in either of paragraphs (f)(6)(iii)(C) (*1*) or (*2*) of this section:

(*1*) *Substantive De Minimis Standard.* To comply with this standard the state must demonstrate that each of the following requirements have been met:

(*i*) State law, court rule, or other statewide executive or judicial policy clearly prohibits the detention or confinement of all juveniles in circumstances that would be in violation of section 223(a)(14);

(*ii*) All instances of noncompliance reported in the last submitted monitoring report were in violation of or departures from, the state law, rule, or policy referred to in paragraph (f)(6)(iii)(C)(*1*)(*i*) of this section;

(*iii*) The instances of noncompliance do not indicate a pattern or practice but rather constitute isolated instances;

(*iv*) Existing mechanisms for the enforcement of the state law, rule or policy referred to in paragraph (f)(6)(iii)(C)(*1*)(*i*) of this section are such that the instances of noncompliance are unlikely to recur in the future; and

(*v*) An acceptable plan has been developed to eliminate the noncompliant incidents and to monitor the existing mechanism referred to in paragraph (f)(6)(iii)(C)(*1*)(*iv*) of this section.

(*2*) *Numerical De Minimis Standard.* To comply with this standard the state must demonstrate that each of the following requirements under paragraphs (f)(6) (iii)(C)(*2*) (*i*) and (*ii*) of this section have been met:

(*i*) The incidents of noncompliance reported in the state's last submitted monitoring report do not exceed an annual rate of 9 per 100,000 juvenile population of the state;

(*ii*) An acceptable plan has been developed to eliminate the noncompliant incidents through the enactment or enforcement of state law, rule, or statewide executive or judicial policy, education, the provision of alternatives, or other effective means.

(*iii*) Exception. When the annual rate for a state exceeds 9 incidents of noncompliance per 100,000 juvenile population, the state will be considered ineligible for a finding of full compliance with de minimis exceptions under the numerical de minimis standard unless the state has recently enacted changes in state law which have gone into effect and which the state demonstrates can reasonably be expected to have a substantial, significant and positive impact on the state's achieving full (100%) compliance or full compliance with de minimis exceptions by the end

of the monitoring period immediately following the monitoring period under consideration.

(*iv*) Progress. Beginning with the monitoring report due by December 31, 1990, any state whose prior full compliance status is based on having met the numerical de minimis standard set forth in paragraph (f)(6)(iii)(C)(*2*)(*i*) of § 31.303, must annually demonstrate, in its request for a finding of full compliance with de minimis exceptions, continued and meaningful progress toward achieving full (100%) compliance in order to maintain eligibility for a continued finding of full compliance with de minimis exceptions.

(*v*) Request Submission. Determinations of full compliance and full compliance with de minimis exceptions are made annually by OJJDP following submission of the monitoring report due by December 31 of each calendar year. Any state reporting less than full (100%) compliance in any annual monitoring report may request a finding of full compliance with de minimis exceptions under paragraph (f)(6)(iii)(C) (*1*) or (*2*) of this section. The request may be submitted in conjunction with the monitoring report, as soon thereafter as all information required for a determination is available, or be included in the annual state plan and application for the state's Formula Grant Award.

(D) *Waiver.* (*1*) Failure to achieve substantial compliance as defined in this section shall terminate any state's eligibility for Formula Grant funds unless the Administrator of OJJDP waives termination of the state's eligibility. In order to be eligible for a waiver of termination, a state must submit a waiver request which demonstrates that it meets the standards set forth in paragraph (f)(6)(iii)(D)(*1*) (*i*)–(*v*) of this section:

(*i*) Agrees to expend all of its Formula Grant Award except planning and administration, advisory group set aside, and Indian-tribe pass-through funds, to achieve compliance with section 223(a)(14); and

(*ii*) Diligently carried out the state's jail and lockup removal plan as set forth in paragraph (f)(6)(iii)(A)(*2*)(*iii*) of this section; and

(*iii*) Submitted an acceptable plan, based on an assessment of current jail and lockup removal barriers within the state, to eliminate noncompliant incidents; and

(*iv*) Achieved compliance with section 223(a)(15) of the JJDP Act; and

(*v*) Demonstrates a commitment, through appropriate executive or legislative action, to achieving full compliance.

(*2*) Failure to achieve full compliance as defined in this section shall terminate any state's eligibility for Formula Grant funds unless the Administrator of OJJDP waives termination of the state's eligibility. In order to be eligible for this waiver of termination, a state must request a waiver and demonstrate that it meets the standards set forth in paragraphs (f)(6)(iii)(D)(*2*) (*i*)–(*vii*) of this section:

(*i*) Agrees to expend all of its Formula Grant Award except planning and administration, advisory group set aside, and Indian tribe pass-through funds, to achieve compliance with section 223(a)(14); and

(*ii*) Removed all status and nonoffender juveniles from adult jails and lockups as set forth in paragraph (f)(6)(iii)(A)(*2*)(*i*) of this section; and

(*iii*) Made meaningful progress in removing other juveniles from adult jails and lockups as set forth in paragraphs (f)(6)(iii)(A)(*2*)(*ii*) of this section; and

(*iv*) Diligently carried out the state's jail and lockup removal plan as set forth in paragraph (f)(6)(iii)(A)(*2*)(*iii*) of this section; and

(*v*) Submitted an acceptable plan, based on an assessment of current jail and lockup removal barriers within the state, to eliminate noncompliant incidents; and

(*vi*) Achieved compliance with section 223(a)(15) of the JJDP Act; and

(*vii*) Demonstrates a commitment, through appropriate executive or legislative action, to achieving full compliance.

(E) Waiver Maximum. A state may receive a waiver of termination of eligibility from the Administrator under paragraph (f)(6)(iii)(D) (*1*) and (*2*) of this section for a combined maximum of three Formula Grant Awards. No additional waivers will be granted.

* * * * *

(g) Juvenile Crime Analysis. Pursuant to section 223(a)(8) (A) and (B), the state must conduct an analysis of juvenile crime problems, including juvenile gangs that commit crimes, and juvenile justice and delinquency prevention needs within the state, including those geographical areas in which an Indian tribe performs law enforcement functions.

* * * * *

(j) Minority Detention and Confinement. Pursuant to section 223(a)(23) of the JJDP Act, states must address efforts to reduce the proportion of juveniles detained or confined in secure detention facilities, secure correctional facilities, jails and lockups who are members of minority groups if such proportion exceeds the proportion such groups represent in the general population, viz., youth at risk for secure confinement. It is important for states to approach this in a comprehensive manner. Compliance with this provision is achieved when a state has met the requirements set forth in paragraphs (j)(1)–(3) of this section:

(1) Provide documentation in the State Plan Juvenile Crime Analysis to indicate whether minority juveniles are disproportionately detained or confined in secure detention or correctional facilities, jails, or lockups in relation to their proportion of the at risk youth population;

(2) Where documentation is unavailable, or demonstrates that minorities are disproportionately detained or confined in relation to their proportion in the at risk youth population, states must provide a strategy for addressing the disproportionate representation of minority juveniles in the juvenile justice system, including but not limited to:

(i) Assessing the differences in arrest, diversion, and adjudication rates, court dispositions other than incarceration, and the rates and periods of commitment to secure facilities of minority youth and non-minority youth in the juvenile justice system;

(ii) Increasing the availability and improving the quality of diversion programs for minorities who come in contact with the juvenile justice system such as police diversion programs;

(iii) Providing support for prevention programs in communities with a high percentage of minority residents with emphasis upon support for community-based organizations that serve minority youth;

(iv) Providing support for reintegration programs designed to facilitate reintegration and reduce recidivism of minority youths;

(v) Initiate or improve the usefulness of relevant information systems and disseminate information regarding minorities in the juvenile justice system.

(3) Each state is required to submit a supplement to the 1988 Multi-Year Plan for addressing the extent of disproportionate representation of minorities in the juvenile justice system. This supplement, which will be submitted as a component of the 1989 Formula Grant Application and Multi-Year Plan Update, must include the state's assessment of disproportionate minority representation, and a workplan for addressing this issue programmatically. Where data is insufficient to make a complete assessment, the workplan must include provisions for improving the information

collection systems. The workplan, once approved by OJJDP, is to be implemented as a component of the state's 1990 Formula Grant Plan.

(4) For purposes of this plan requirement, minority populations are defined as members of the following groups: Asian Pacific Islanders; Blacks; Hispanics; and, American Indians.

(k) Pursuant to section 223(a)(24) of the JJDP Act, states shall agree to other terms and conditions as the Administrator may reasonably prescribe to assure the effectiveness of programs assisted under the Formula Grant.

Terrence S. Donahue,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 89-18482 Filed 8-7-89; 8:45 am]

BILLING CODE 4410-18-M

federal register

Tuesday
August 8, 1989

Part VII

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Draft Environmental Impact Statement on the Proposed Permit Application, Black Mesa-Kayenta Mine, Navajo and Hopi Indian Reservations, AZ; Cancellation of Public Meeting

Federal Register

Tuesday
August 6, 1985

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[OSMRE-EIS-25]

Draft Environmental Impact Statement on the Proposed Permit Application, Black Mesa-Kayenta Mine, Navajo and Hopi Indian Reservations, AZ; Cancellation of Public Meeting

In the matter of cancellation of public meeting in Window Rock, Arizona, August 11, 1989, North Conference Room, Navajo Tribal Council Chambers, for the Draft Environmental Impact Statement on the Proposed Permit Application, Black Mesa-Kayenta Mine; Navajo and Hopi Indian Reservations, Arizona (OSMRE-EIS-25).

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

ACTION: Cancellation of a public meeting in Window Rock, Arizona.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) published in the **Federal Register**, Vol. 54, No. 114, June 15, 1989, a notice of availability and notice of public meetings for the Black Mesa-Kayenta Mine draft environmental impact statement (EIS). Five public meetings were scheduled to receive public comments on the draft EIS. The meeting scheduled for Window Rock, Arizona, on August 11, 1989, is hereby cancelled. Four public meetings will therefore be held as scheduled on the dates and locations given under "DATES." Written comments on the draft EIS must be received by 4:00 p.m. (MDT), August 18, 1989, at the location listed below under **"ADDRESSES."**

DATES: *Public Meetings:* The meeting scheduled for Window Rock, Arizona, on August 11, 1989, at 2:00 p.m. (local time) is hereby cancelled. The following public meetings will be held to receive comments on the draft EIS—

August 7, 1989: Flagstaff, Arizona; 7 p.m. (local time), Best Western Little America Motel, American "B" Conference Room, 2515 East Butler Avenue.

August 8, 1989: Moenkopi, Arizona; 7 p.m. (local time), Moenkopi Community Building.

August 9, 1989: Kykotsmovi, Arizona; 2 p.m. (local time), Hopi Tribe Council Chambers.

August 10, 1989: Kayenta, Arizona; 7 p.m. (local time), Kayenta Chapter House.

ADDRESSES: Written comments on the draft EIS must be received by 4:00 p.m. (m.d.t.), August 18, 1989, and be hand-delivered or mailed to Peter A. Rutledge, Chief, Federal Programs Division, Office of Surface Mining Reclamation and Enforcement, Western Field Operations, Brooks Towers, Second Floor, 1020 15th Street, Denver, Colorado, 80202, Attention: Sarah E. Bransom.

FOR FURTHER INFORMATION CONTACT: Sarah E. Bransom, Black Mesa-Kayenta mine EIS Project Leader (Telephone: (303) 844-2891) at the Denver, Colorado, location given under **"ADDRESSES."**

Dated: August 4, 1989.

Brent Wahlquist,

Assistant Director, Program Policy.

[FR Doc. 89-18671 Filed 8-7-89; 8:45 am]

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Reader Aids

Federal Register

Vol. 54, No. 151

Tuesday, August 8, 1989

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, AUGUST

31645-31796.....1
31797-31932.....2
31933-32034.....3
32035-32332.....4
32333-32432.....7
32433-32628.....8

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6002.....31794
6003.....31931
6004.....31933
6005.....32033

Executive Orders:
12685.....31796

7 CFR

29.....31797
58.....31646
910.....32035
945.....31798
947.....32433
1076.....31799

Proposed Rules:
51.....32419
911.....31843
929.....31844
967.....31845
993.....31846

8 CFR

Proposed Rules:
210.....31966

9 CFR

51.....32434
92.....31800

10 CFR

7.....31646

Proposed Rules:
430.....32349

12 CFR

33.....31935
207.....31646
220.....31646
221.....31646
224.....31646
229.....32035

Proposed Rules:
226.....32089

14 CFR

39.....31649, 31651-31653, 31803-31809, 31935, 32435-32437
71.....31654, 31936, 31937, 32439, 32440, 32603
73.....31655
75.....31937
217.....31810
241.....31810

Proposed Rule:
39.....31693, 31694, 31847
43.....32563
65.....32563
71.....31696-31704, 31966, 32452
75.....31705, 31967
145.....32563

15 CFR

773.....31812

17 CFR

140.....31814
211.....32333, 32334
270.....31850, 32048
274.....32048
275.....32048, 32441
279.....32048

Proposed Rules:
230.....32226
239.....32226
240.....31850, 32229
249.....32226
260.....32226
269.....32226

18 CFR

271.....31938

Proposed rules:
37.....31706

20 CFR

Proposed Rules:
208.....32163
219.....31939
220.....32163
230.....32163
260.....32163
327.....31968
416.....31656

21 CFR

133.....32050
179.....32335
520.....32336

Proposed Rules:
Ch. I.....32610
133.....32091
522.....31949
556.....31949
1308.....31815, 31855
1310.....31657
1313.....31657
1316.....31669

22 CFR

60.....31815
61.....31815
62.....31815
63.....31815
64.....31815
65.....31815

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List: August 3, 1989

Public Laws

are now available for the 101st Congress, 1st Session, 1989

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