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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1

Administrative Regulations; Privacy Act Regulations

AGENCY: Office of the Secretary, USDA.
ACTION: Final rule.

SUMMARY: This rule amends 7 CFR 1.122 by exempting two systems of records from certain sections of the Privacy Act of 1974 (5 U.S.C. 552a) pursuant to 5 U.S.C. 552a(j).

EFFECTIVE DATE: September 27, 1989.

FOR FURTHER INFORMATION CONTACT: Paula Hayes, Assistant Inspector General for Policy Development and Resources Management, Office of Inspector General, USDA, Washington, DC 20250, (202–447–6979).

SUPPLEMENTARY INFORMATION: Proposed rulemaking was published on pages 11204–11206 of the **Federal Register** of March 17, 1989, and invited comments for 30 days ending April 17, 1989. Comments were received from two sources. The following summarizes the suggestions received and action taken.

It was suggested that the 5 U.S.C. 552a(j)(2) exemption of the Privacy Act should not be applied to records maintained by an Office of Inspector General unless "maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws." It was suggested that an Office of Inspector General criminal investigation unit could maintain a separate system of records that would qualify for the (j)(2) exemption.

The two systems of records that qualify for the (j)(2) exemption are maintained for the unit of the Office of Inspector General that has as its principal function the enforcement of criminal laws by criminal investigators (special agents) authorized to make arrests, execute warrants, and carry firearms. *See* 7 U.S.C. 2270. The exemption does not cover other systems of records. The Office of Inspector General will assert the (j)(2) exemption only over records contained in these two systems of records that are maintained for its criminal investigation unit.

This rule has been reviewed under Departmental Regulation 1512–1 and Executive Order No. 12291 and has been determined not to be a "major rule" since it will not have an annual effect on the economy of $100 million or more.

In addition, it has been determined that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 1

Privacy act.

For the reasons set out in the preamble on pages 11204–11206 of the **Federal Register** of March 17, 1989, 7 CFR, subtitle A, part 1, subpart G, is amended as follows:

PART 1—ADMINISTRATIVE REGULATIONS

1. The authority citation for subpart G continues to read as follows:

Authority: 5 U.S.C. 552a.

2. Section 1.122 is added as follows:

§ 1.122 General exemptions.

Pursuant to 5 U.S.C. 552a(j), and for the reasons set forth in 54 FR 11204–11206 (March 17, 1989), the systems of records (or portions thereof) maintained by agencies of USDA identified below are exempted from the provisions of 5 U.S.C. 552a, except subsections (b), (c) (1) and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (i).

Office of Inspector General, Intelligence Records, USDA/OIG–2.

Investigative Files and Subject/Title Index, USDA/OIG–3.

Done this 21st day of September 1989, at Washington, DC.

Clayton Yeutter,

Secretary of Agriculture.

[FR Doc. 89–22803 Filed 9–26–89; 8:45 am]
BILLING CODE 3410–23–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

RIN: 3245–AB85

Business Loan Policy

AGENCY: Small Business Administration.
ACTION: Final rule.

SUMMARY: The Small Business Administration Reauthorization and Amendment Act of 1988, Public Law 100–590 (102 Stat. 2989), enacted November 3, 1988 (1988 legislation), amends the Small Business Act (15 U.S.C. 636) to authorize a Certified Lenders Program (CLP). This final rule implements the 1988 legislation.

EFFECTIVE DATE: This rule is effective September 27, 1989.

FOR FURTHER INFORMATION CONTACT: Charles R. Hertzberg, Acting Associate Administrator for Finance and Investment, Small Business Administration, 1441 L Street NW., Washington, DC 20416, telephone (202) 653–6574.

SUPPLEMENTARY INFORMATION: On May 1, 1989, SBA published a notice of proposed rulemaking in the **Federal Register** (54 FR 18529) to implement the 1988 legislation. No comments were received so the proposed rule is adopted as the final regulation. For almost ten years, SBA has administratively operated a Certified Lenders Program (CLP) for selected participating lenders. Approximately 670 participating lenders are Certified Lenders presently. Certified Lenders are subject to all the rules and regulations applicable to participating lenders generally. The basic distinction between regular processing and CLP processing is that the SBA is committed to review and respond to CLP applications in three business days. CLP lenders may use regular processing when necessary. The branch and district offices are directed to focus their attention immediately on CLP applications while regular applications, even from CLP lenders, are processed by SBA in the order they are received by such offices.

Section 102 of Public Law 100–590 (102 Stat. 2989) authorizes the SBA to establish the CLP in a more formal posture. Accordingly, the SBA is publishing this final rule to implement the 1988 legislation.

The final regulation is placed in a new Subpart E to follow the present subpart which covers the Preferred Lenders Program (PLP). Section 120.500 sets forth Congressional intent to establish a CLP in which lenders may submit applications to SBA for guaranty and the SBA reviews such applications with a contemplated three business day turnaround.

Section 120.501 contains definitions of terms and words to be used in the CLP regulations. Section 120.502 explains the procedure by which a participating lender becomes a Certified Lender. An SBA branch, district or regional office may initiate the process, but two approvals are required for the nomination to be effective. Thus, the SBA regional administrator must agree with the SBA district director before the latter could execute an agreement with the participating lender. If the regional administrator and the district director disagree, they must send their recommendations to SBA Central Office for final decision by the Associate Administrator for Finance and Investment. This procedure ensures that the nomination would get a full and complete review.

Section 120.502–2 presents the factors which SBA considers in evaluating a recommendation that a participating lender be a Certified Lender. These include whether the lender has a proven ability to serve the credit needs of the small business community; whether the lender has a history of submitting to SBA complete, accurate and adequately analyzed loan guaranty application packages; whether the lender has shown the ability to work with the local SBA office and whether it has the ability to process, close, service or liquidate SBA loans; whether the lender has an SBA purchase rate that is acceptable to the local and regional SBA offices; whether the lender is prepared to commit at least 40 percent of its loan guaranty applications through CLP procedures; whether the lender has well-trained, qualified officers who are well-versed in SBA's lending policies. These criteria are general in order to allow SBA to take into account the wide variety of economic conditions and banking systems throughout the United States.

The thrust of CLP is to rely on the expertise of the Certified Lender's loan officers so that SBA can make informed reviews within a three-day period. That is why a lender must demonstrate its expertise before SBA can designate it as a Certified Lender. Section 120.503 states that all the general provisions in part 120 relating to the operations of participating lenders continue to apply to Certified Lenders. The main distinction between participating lenders as a group and Certified Lenders is that SBA will make a good faith attempt to review a CLP application within three business days. However, SBA's failure to meet this time frame has no effect on whether or not the CLP loan will be approved.

The 1988 legislation provides that SBA has the authority to suspend or revoke the designation of a lender as a Certified Lender if SBA determines that the lender is not adhering to SBA rules and regulations or that the lender's purchase rate is excessive to other lenders. SBA believes that this authority already exists in present § 120.305 of its regulations (13 CFR 120.305) which is incorporated into this subpart by § 120.500(b).

For purposes of the Regulatory Flexibility Act (5 U.S.C. 605(b)), SBA certifies that this final rule will not have a significant economic impact on a substantial number of small entities because the program is operational presently and this final regulation does not change the existing program. Similarly, SBA certifies that this final rule does not constitute a major rule for the purposes of Executive Order 12291, since its promulgation is not likely to result in an annual effect on the economy of $100 million or more.

This final rule would impose no additional reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

This final rule will not have federalism implications warranting the preparation of a Federal Assessment in accordance with Executive Order 12612.

List of Subjects in 13 CFR Part 120

Loan programs/Business.

Pursuant to the authority contained in section 5(b)(6) of the Small Business Act [15 U.S.C. 634(b)(6)] and section 136 of Public Law 100–590 (102 Stat. 2989), SBA hereby amends Part 120, Chapter I, Title 13, Code of Federal Regulations, as follows:

PART 120—BUSINESS LOAN POLICY

1. The authority citation for part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6) and 636 (a) and (h).

2. A new Subpart E, consisting of §§ 120.500–120.502–2, is added to read as follows:

Subpart E—Certified Lenders Program

Sec.

120.500 Objective and characteristics of certified lenders program.
120.501 Definitions as used in this subpart.
120.502 Eligibility of certified lender.
120.502–1 Procedures.
120.502–2 Factors which SBA shall consider.

Subpart E—Certified Lenders Programs

§ 120.500 Objective and Characteristics of certified lenders program.

(a) *Purpose.* The purpose of this subpart is to implement the intent of Congress as expressed in 15 U.S.C. 636(a)(19) to authorize designated Financial Institutions, hereinafter called Certified Lenders, to undertake loan processing, servicing, collection and liquidation functions and responsibilities with respect to SBA guaranteed loans with quick response time assured by SBA in approving loan applications.

(b) *Characteristics.* SBA will process a loan submitted under this program within three business days, but SBA's failure to meet this time frame will have no effect on whether or not such loan will be approved. All other rules in this part 120 relating to the operations of participating lenders shall apply to Certified Lenders.

§ 120.501 Definitions as used in this subpart.

(a) "Act" means the Small Business Act, 15 U.S.C. 631, *et seq.*

(b) "Administrator" means the Administrator of the Small Business Administration.

(c) "Certified Lender" means a Financial Institution (as defined in § 120.2–4 of these regulations) which has met the eligibility requirements prescribed in this subpart and which has executed with SBA the CLP Supplemental Guaranty Agreement (SBA Form 1186).

(d) "CLP" means the Certified Lenders Program.

(e) "SBA" means the Small Business Administration.

§ 120.502 Eligibility of certified lender.

§ 120.502–1 Procedures.

Nominations of a Financial Institution to be a Certified Lender may begin at the SBA branch, district or regional office, and two approvals are necessary for the nomination to be effective. If the district director of the regional administrator agree to certify a lender, the district director may certify the lender by executing with the Financial Institution the Supplemental Guaranty Agreement (SBA Form 1186). Before it can operate as a Certified Lender, the Financial Institution must execute such Supplemental Guaranty Agreement. If

the regional administrator and the district dfirector do not agree, each office shall transmit their recommendation to SBA Central Office where the Associate Administrator for Finance and Investment shall make the final decision.

§ 120.502–2 Factors which SBA shall consider.

In making the determination of whether a Financial Institution shall be a Certified Lender, SBA shall consider, but is not limited to, the following factors:

(a) Whether the Financial Institution has a proven ability to serve the credit needs to the small business community.

(b) Whether the Financial Institution has a history of submitting to SBA complete, accurate and adequately analyzed loan guaranty application packages.

(c) Whether the Financial Institution has shown the ability to work with the local SBA office in a cooperative and constructive manner.

(d) Whether the Financial Institution has the ability to process, close, service and liquidate SBA loans.

(e) Whether the Financial Institution has an SBA purchase rate that is acceptable to the local and regional SBA offices.

(f) Whether the Financial Institution is prepared to commit at least 40 percent of its loan guaranty applications through CLP procedures.

(g) Whether the Financial Institution has well-trained, qualified loan officers who are well-versed in SBA's lending policies and procedures.

(Catalog of Federal Domestic Assistance Programs No. 59.012, Small Business Loans)

Dated: August 23, 1989.

Susan Engeleiter,

Administrator.

[FR Doc. 89–22783 Filed 9–26–89; 8:45 am]

BILLING CODE 8025–01–M

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13 CFR Part 122

RIN 3245–AB81

Business Loans

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: This rule implements section 111 of Public Law 100–590 (102 Stat. 2989), enacted November 3, 1988 (1988 legislation), which amended section 7(a)(12) of the Small Business Act (15 U.S.C. 636(a)(12)) to authorize the Small Business Administration (SBA) to guaranty loans up to $1,000,000 to eligible small concerns for financing pollution control facilities.

EFFECTIVE DATE: September 27, 1989.

FOR FURTHER INFORMATION CONTACT: Charles R. Hertzberg, Acting Associate Administrator for Finance and Investment, 1441 L Street NW., Washington, DC 20416, telephone (202) 653–6574.

SUPPLEMENTARY INFORMATION: On April 28, 1989, SBA published in the Federal Register (54 FR 18300), a notice of proposed rulemaking to implement section 111 of the 1988 legislation. The Agency received two written comments in favor of the proposal. One commenter suggested additional language to broaden the definition of a pollution control facility, but the SBA believes the definition as proposed is broad and encompassing so the Agency is promulgating the final rule as proposed.

Accordingly, § 122.58–1 sets forth the policy of Congress to authorize SBA to provide guaranteed loans to eligible small concerns for pollution control facilities.

Section 122.58–2 defines a "pollution control facility" as set forth in the Small Business Investment Act of 1958 (15 U.S.C. 694–1) (SBI Act). Thus, it means such property (both real and personal) which is likely to help prevent, reduce, abate or control noise, air or water pollution or contamination by removing, altering, disposing or storing pollutants, contaminants, wastes or heat, and such property (both real and personal) which would be used for the collection, storage, treatment, utilization, processing, or final disposal of solid or liquid waste, including any related resource recovery property when such recovery property is stated to be useful for pollution abatement by a local, State or Federal environmental regulatory authority. The reference to "resource recovery property" means recycling in some form.

Section 122.58–3 requires that the small concern meet the criteria generally applicable to section 7(a) borrowers: Be independently owned and operated, not dominant in its field, and subject to the eligibility rules set forth in part 120 of SBA regulations. Further, the size standards in part 121 of SBA regulations applicable to section 7(a) borrowers generally would be applicable to borrowers under this program. The particular size standard in § 121.4(f) of the regulations presently (13 CFR 121.4(f)) which applied under the SBI Act authority would not be applicable under this new authority since Congress clearly intended to apply the section 7(a) rules and criteria to this program.

Section 122.58–4 states that the amount that can be guaranteed under this program cannot exceed $1,000,000 which is an expressed statutory exception to the $750,000 maximum applicable to section 7(a) borrowers generally. This regulation section also provides that a borrower who has obtained other section 7(a) financing first will be eligible for pollution control financing up to a limit of $1,000,000 less the amount of previous outstanding SBA section 7(a) financing.

For purposes of the Regulatory Flexibility Act (5 U.S.C. 605(b)), SBA certifies that this final rule will not have a significant impact on a substantial number of small entities. This is because, in recent years, when higher guaranty financing was available (up to $5,000,000 per facility), fewer pollution control applications had been submitted to SBA. SBA anticipates even fewer applications under the lower financing maximum under this program.

For the same reason, SBA certifies that this final rule does not constitute a major rule for the purposes of Executive Order 12291, since the change is not likely to result in an annual effect on the economy of $100 million or more.

The final rule does not impose additional reporting or recordkeeping requirements which would be subject to the Paperwork Reduction Act, 44 U.S.C. chapter 35.

This final rule will not have federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

List of Subjects in 13 CFR Part 122

Loan programs/Business.

Pursuant to the authority contained in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), SBA hereby amends part 122, chapter I, title 13, Code of Federal Regulations, as follows:

PART 122—BUSINESS LOANS

1. The authority citation for part 122 is the same:

Authority: 15 U.S.C. 634(b)(6) and 636(a).

2. New §§ 122.58, 122.58–1, 122.58–2, 122.58–3, and 122.58–4 are added to read as follows:

§ 122.58 Pollution Control Program.

§ 122.58–1 Policy.

The Act authorizes SBA to guaranty loans to assist a small concern to finance the planning, design, or installation of a pollution control facility. No direct financing by SBA is authorized.

§ 122.58-2 Pollution Control Facility.

A "pollution control facility" means such property (both real and personal) which is likely to help prevent, reduce, abate, or control noise, air or water pollution or contamination by removing, altering, disposing or storing pollutants, contaminants, wastes or heat, and such property (both real and personal) which will be used for the collection, storage, treatment, utilization, processing, or final disposal of solid or liquid waste, including any related resource recovery property when such recovery property is stated to be useful for pollution abatement by a local, State or Federal environmental regulatory authority.

§ 122.58-3 Eligibility.

In order to be eligible for a guarantee for a pollution control facility, the small concern must:

(a) Be independently owned and operated and not dominant in its field;

(b) Be eligible under SBA loan policy as set forth in part 120 of this title; and

(c) Together with its affiliates (as defined in § 122.3-2(a)) qualify as a small business as defined for section 7(a) borrowers generally in part 121 of this chapter. The provisions of § 121.4(f) of this chapter expressly do not apply to loans guaranteed in this section.

§ 122.58-4 Amount.

The guaranty by SBA shall not exceed $1,000,000 for financing a pollution control facility. The aggregate amount of $1,000,000 available from the business loan and investment fund under this section shall be reduced by any other financing from SBA pursuant to section 7(a) of the Small Business Act.

Dated: August 21, 1989.

Susan Engeleiter,

Administrator.

[FR Doc. 89-22790 Filed 9-26-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 134

[T.D. 89-88]

RIN 1515-AA66

Customs Regulations Amendment Relating to Country of Origin Marking of Native American-Style Jewelry

AGENCY: U.S. Customs Service.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations concerning the country of origin marking requirements for certain categories of merchandise. Specifically, this change adds to those categories imported jewelry in Native American styles, and requires for this jewelry more permanent methods of marking. The purpose of these requirements is to prevent the misrepresentation of imported Native American-style jewelry as genuine Native American Jewelry. The changes require that Native American-style jewelry be indelibly marked with the country of origin by cutting, die-sinking, engraving, stamping, or some other equally permanent method, or with a similarly marked plastic or metal tag. Adhesive labels or string tags will be permitted only when indelible marking is technically or commercially infeasible.

EFFECTIVE DATE: This amendment is effective with respect to merchandise entered or withdrawn from warehouse for consumption on or after October 27, 1989.

FOR FURTHER INFORMATION CONTACT: Lorrie Rodbart, Value, Special Programs & Admissibility Branch, U.S. Customs Service (202) 566-5765.

SUPPLEMENTARY INFORMATION:

Background

Section 304 of the Tariff Act, as amended (19 U.S.C. 1304), generally requires that every article of foreign origin imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article will permit in a manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article. Part 134, Customs Regulations (19 CFR part 134), implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304.

The Customs Service normally permits any reasonable method of marking that will remain on the article during handling until it reaches the ultimate purchaser (19 CFR 134.41 and 134.44). This includes the use of paper sticker labels and string tags. However, where it is shown that a particular method of marking is not sufficiently permanent to inform the ultimate purchaser of the country of origin of the article, the Custom Service may require another type of marking which will insure that in all foreseeable circumstances, the article will reach the ultimate purchaser with its country of origin marking intact.

An initial notice of proposed rulemaking requiring more strict methods of marking for Native American-style jewelry was published by the Customs Service in the **Federal Register** on July 15, 1986 (51 FR 25574). This was in response to allegations by representatives of the Native American handicraft industry that some jewelry and craft dealers and wholesalers remove country of origin labels from imported goods and sell them as authentic Native American products. While comments resulting from that notice were still being evaluated, the same problem was addressed in the Omnibus Trade and Competitiveness Act of 1988 enacted on August 23, 1988 (Pub. L. 100-418). Section 1907(c) of that act requires the Secretary of the Treasury to prescribe and implement within 1 year of enactment regulations which require indelible and permanent country of origin marking to the greatest extent possible on all imported Native American-style jewelry and arts and crafts.

A second notice of proposed rulemaking more specifically addressed to the statutory mandate was published in the **Federal Register** on February 10, 1989 (54 FR 6418). That notice contained a discussion of the comments received in response to our earlier notice, many of which favored extending the proposal to include either all jewelry or all silver jewelry, and noted that the requirements with respect to Native American-style arts and crafts would be dealt with in a separate rulemaking procedure. Also, refer to that notice and the following information for more details concerning the nature of our changed marking requirements for Native American-style jewelry.

Analysis of Comments

Customs requested comments on three alternative approaches to implementation of the statutory requirement that all Native American-style jewelry be permanently and indelibly marked with the country of origin: (1) Require indelible marking on Native American-style jewelry only (this is the proposal on which comments were previously received and would include imported jewelry that incorporates traditional Native American design motifs, materials, and/or construction); (2) require indelible marking on all silver and silver alloy jewelry and other jewelry that looks like Native American; and (3) require indelible marking on all jewelry without any reference to its relationship to Native American-style.

Although Customs proposed the third option, we indicated that the final decision would be based on the weight of the evidence. Comments were also requested concerning the additional costs that may be imposed on

consumers, importers, and others affected directly by the proposed marking requirements and ways in which the proportion of jewelry items subject to marking could be reduced while accomplishing the statutory objective of ensuring the permanent marking of imported Native American-style jewelry.

In response to the notice, 73 written comments were received. The largest group of commenters (46) favored the permanent marking of only Native American-style jewelry, 26 commenters favored the permanent marking of all foreign-made jewelry, and two commenters favored indelible marking of silver and silver alloy jewelry.

Commenters Favoring Indelible Marking of All Jewelry

Some of the commenters who favor indelible marking of all jewelry state that they do so because of the difficulty in separating Native American-style jewelry from other jewelry styles. The Department of the Interior, Indian Arts and Crafts Board, indicates that any definition of Native American-style jewelry that is based on design characteristics, materials, or on a specific list of products is doomed to failure because contemporary craftsmen necessarily develop new approaches to their art. Other commenters expressed similar concerns. The option to require indelible marking on all jewelry purportedly avoids the definition problem and also covers all jewelry that might be misrepresented as Native American. The Indian Arts and Crafts Board is also of the opinion that requiring indelible marking of all silver or silver alloy jewelry, does not go far enough since Native American craftsmen are increasingly making use of gold, brass, and other materials and that, therefore, this approach does not satisfy the statutory mandate that indelible marking of Native American-style jewelry be required "to the greatest extent possible."

Although most commenters who favored indelible marking of all jewelry do so because of their concerns about imported Native American-style jewelry, a few commenters indicate that this approach is necessary to address problems associated with the marking of all styles of jewelry, including items that are not Native American-style. One trade association of domestic jewelry manufacturers and their suppliers cites a study undertaken by the Customs Service in 1986 which showed a 21 percent marking violation rate for imported jewelry. Because the study was based on cargo examination at ports of entry, the association contends that it did not reveal the equally significant problems following entry of the jewelry when impermanent labels are removed. It claims that the indelible marking of all jewelry would eliminate the opportunity for deception, benefit the domestic industry and fully inform the consumer. One commenter supporting the proposal to require indelible marking on all jewelry states that tags will be removed before sale and notes that there are available technologies to mark all jewelry indelibly. Some commenters indicated that this option should be adopted just because the public needs to know the country of origin.

Commenters Favoring Indelible Marking of all Silver and Silver Alloy Jewelry

Two commenters favor this option because it would be a first step in protection of Native American artists.

Commenters Favoring Indelible Marking of Only Native American-Style Jewelry

1. *This approach is in accordance with congressional intent.* Most of the commenters favoring this approach are importers and retailers of both fine and costume jewelry. Some comments were also received from foreign governments and United States government agencies. The major reason cited by the commenters for limiting the regulation to Native American-style jewelry, as opposed to all jewelry or all silver and silver alloy jewelry, is that this is in accordance with congressional intent, as expressed in section 1907(c) of the Omnibus Trade and Competitiveness Act of 1988. According to the commenters, the statutory language is clear and unambiguous with regard to the fact that the only type of imported jewelry that must be indelibly marked to indicate its country of origin is Native American-style jewelry, and that any application of this provision to all imported jewelry is inconsistent with the statutory language.

These commenters also indicate that requiring indelible marking on all jewelry would not further legislative intent because the bulk of imported jewelry cannot be mistaken for Native American jewelry. Several commenters indicated that only a minute segment of the imported jewelry could possibly be mistaken for Native American jewelry.

2. *Indelible marking is more costly than presently used permissible methods.* Most of the commenters opposed to indelible marking of all jewelry indicated that indelible marking of jewelry would be far more costly than the methods permitted now (*i.e.*, adhesive labels and hang tags), ultimately resulting in higher resale prices. According to the commenters, the higher costs are due primarily to the costs to obtain needed dies and in applying them and the costs of permanently attaching metal or plastic tags to pieces which will not accommodate indelible marking themselves. One commenter indicated that fine jewelry generally cannot be marked by standard tooling and must be done by hand resulting in greater labor costs. One retailer estimates that additional piece marking would increase the cost between $.15 and $.50 per piece for fine gold jewelry requiring a link or tag. According to some costume jewelry importers, the costs to indelibly mark these items would be prohibitive, noting that in some cases, the marking could cost more that the article itself. One commenter indicates that a single company could require as many as 100 new molds.

According to a cost-benefit analysis submitted by the Federal Trade Commission, indelible marking of all jewelry would result in increased costs to manufacturers and importers and little corresponding increased benefits for consumers. The FTC indicates that since the volume of jewelry imported into the United States is very large, the aggregate costs (of marking all jewelry) to the manufacturers, and ultimately to consumers, will be substantial even if the costs per price are modest. It is also noted that in some instances the act of stamping the items (if the alternative of affixing a metal or plastic tag permanently is not feasible) may damage the item, in which case its value would be reduced and the effective cost of stamping would be increased. Finally, the FTC states that they have learned that at least some foreign manufacturers probably do not have the equipment that would be needed to mark items permanently.

3. *Present methods of marking are adequate.* Another argument of those commenters opposed to indelible marking of all jewelry is that the present methods of marking are adequate to inform the ultimate purchaser of the country of origin. They contend that the proposal to require indelible marking of all jewelry is overbroad and unnecessarily targets a general class of merchandise for special marking requirements without a requisite showing that the existing methods are inadequate. The commenters point out that for many years jewelry has been marked by means of stickers and tags without complaints. In fact, they note that Customs has recognized in rulings that a hang tag affixed to an article of jewelry may be a more conspicuous and

legible method of marking than small lettering on the article itself. Therefore, it is argued that the proposed regulations may actually be less effective in informing the ultimate purchaser than the present method of marking the country of origin.

Many of these commenters also point out that there are sufficient safeguards and remedies under existing laws regarding misrepresentation or the intentional removal of the country of origin marking. They indicate that any misrepresentation of the place of origin is an unfair trade practice in violation of 15 U.S.C. 41 *et seq.* and that the intentional removal of the requisite country of origin marking is a criminal offense under 19 U.S.C. 1304(h).

4. *Practical problems of broad option.* Another criticism raised by many commenters is that indelible marking would have an adverse effect on the aesthetic appearance of quality imported jewelry. It is feared that conspicuous marking might be seen when the piece of jewelry is worn, especially when the marking is affixed by means of a metal tag. Due to the aesthetic nature of jewelry articles, it is argued that marking by means of a removable hang tag, label or sticker is more practical than indelible marking.

Many commenters also indicated that most pieces cannot accommodate indelible marking. One large importer and retailer of costume jewelry indicates that the majority of pieces have no surfaces large enough to permit country of origin marking and that much jewelry cannot accommodate indelible marking for other reasons, *e.g.*, it is hollow or the piece is too delicate. Importers and retailers of fine jewelry inform us that the stamping of delicate and hollow items would damage the jewelry, and that the items are already marked with a trademark and quality markings so there is little room, if any, to mark the country of origin on a clasp or bezel. In addition, we are told by importers of costume jewelry that many of the materials used, such as bone, onyx and glass, do not lend themselves to permanent marking, regardless of the surface size.

Several commenters indicate that permanent tags will interfere with the aesthetic display and prevent customers from trying jewelry on before purchase. The tags will allegedly detract from the appearance of the jewelry and put it at competitive disadvantage to jewelry that is not so marked.

Another practical problem associated with the use of metal tags concerns weighing of jewelry. Several commenters indicated that a piece could not be properly weighed with a tag attached.

5. *Requiring indelible marking on all imported jewelry would increase trade friction.* Finally, several commenters, including the U.S. Trade Representative, the Delegation of the Commission of the European Communities, and some foreign governments indicate that requiring indelible marking on all jewelry would be inconsistent with international trade obligations and could be considered an unjustified trade barrier under the General Agreement of Tariffs and Trade. The FTC comments that a requirement to indelibly mark all jewelry could increase trade frictions because foreign countries could interpret increased marking required by Customs as an effort to exclude or increase the cost of imported jewelry under the guise of a consumer protection policy.

Customs Position

After considering all the comments, we have determined that Customs regulatory efforts should focus on the problem that has been identified relating to Native American-style jewelry.

First, it is unnecessary to require indelible marking on all imported jewelry in order to satisfy section 1907(c) of the Omnibus Trade and Competitiveness Act of 1988. This provision only pertains to the marking of Native American-style jewelry, not all jewelry. In addition, section 1907(c) requires that the regulations provide for the indelible marking of such jewelry to the greatest extent possible. Congress recognized by these words that there may be some practical limitations to be considered.

We believe that many of the concerns raised about indelible marking of all jewelry are legitimate. This type of marking will undoubtedly raise costs to both manufacturers and consumers, detract from the aesthetic appearance of the jewelry, and will, in some cases, result in marking which is more difficult to see than the present methods of marking. Considering the fact that the amount of imported jewelry which looks like Native American-style jewelry is small, the cost of requiring indelible marking on all jewelry is unwarranted.

Second, Customs agrees with those commenters who state that the present enforcement tools are generally sufficient to ensure that imported jewelry complies with the marking laws (*e.g.*, the issuance of marking notices, the assessment of marking duties, assessment of liquidated damages where improperly marked merchandise is not redelivered to Customs, and criminal penalties for the intentional removal of the required marking). Although Customs reported a high violation rate regarding country of origin marking of jewelry in 1986, since then, because of increased marking enforcement by Customs, we believe that this problem has been greatly reduced.

It should also be noted that our proposal to extend the indelible marking requirements to *all* jewelry was not based on evidence that the present method of marking all types of jewelry was not adequate, but rather, on a preliminary determination that the term "Native American-style" jewelry was not readily definable. For the reasons explained in the next section on identifying Native American-style jewelry, we are limiting this term to jewelry which incorporates "traditional" Native American design motifs, materials and/or construction. This approach greatly reduces the definition problem and is consistent with the legislative mandate to require indelible country of origin marking on Native American-style jewelry to the greatest extent possible.

Finally, we are of the opinon that absent a compelling reason for requiring indelible marking, tags or stickers are the preferable method of marking jewelry because they can be more readily seen by the consumer. In addition, they eliminate most of the practical problems associated with indelible marking of jewelry noted above. Of course, under present regulations, if Customs determines that in a given case the paper label or tag is not sufficiently permanent to reach the ultimate purchaser based on normal handling of the item, a more permanent method would be required.

In view of allegations by some commenters that the country of origin marking on imported jewelry is not reaching ultimate purchasers, Customs will continue to closely monitor the way jewelry is marked. Continued enforcement by Customs, accompanied by an increased public awareness of the country of origin marking requirements of jewelry resulting from the **Federal Register** notices, should also lead to a higher rate of compliance. While we are unaware of any specific instances of removal of country of origin marking, any information of this nature should be reported to Customs and the Federal Trade Commission for appropriate action.

In light of the numerous concerns raised about indelible marking of all jewelry, the fact that Congress determined that special marking requirements were warranted with

respect to Native American-style jewelry only, and the fact that imported Native American-style jewelry which looks like jewelry made by Native Americans constitutes a small segment of imported jewelry, the requirement of indelible and permanent marking for jewelry is limited to Native American-style jewelry.

Identifying Native American-Style Jewelry

Section 1907(c) requiring the implementation of regulations concerning country of origin marking of Native American-style jewelry resulted from a Senate floor amendment to the trade bill. In the discussion preceding the adoption of that amendment, Senator Domenici, the amendment's sponsor, inserted into the *Congressional Record* the following statement which he said was designed to provide guidance to Customs in defining Native American handicrafts.

> The most appropriate definition of what is *genuine* Native American handicraft product (arts, crafts, and jewelry) is found in 25 CFR 308.3a (emphasis added). It reads as follows:
> Objects produced by Indian craftsmen with the help of only such devices as allow the manual skill of the maker to condition the shape and design of each individual product.

The regulations proposed by the U.S. Customs Service in 1986 contain appropriate descriptive information regarding Native American arts, crafts and jewelry.

While it is clear that a detailed description of what these items look like is helpful to a Customs agent, such descriptions cannot be all encompassing. The thrust of the amendment is to ensure that consumers may distinguish between authentic Native American products and the look-alike from around the world.

The U.S. Customs Service is encouraged to coordinate with the Department of the Interior, Bureau of Indian Affairs to ensure that the intent of this provision is carried out. 133 Cong. Rec. S9443–4 (daily ed. July 8, 1987).

The definition of a *genuine* Native American handicraft found in 25 CFR 308.3(a), is a combination of the producer of the product (Indian craftsmen) and the method of production (with the help of only such devices as allow the manual skill of the maker to condition the shape and design of each individual product). We do not find this definition to be instructive in defining "Native American-style jewelry" as that term is used in section 1907(c).

First, the thrust of § 1907(c) is to require indelible marking on imported goods which look like jewelry made by Native Americans but in fact were *not* produced by Native Americans. Second, unlike genuine Native American handicrafts which are by definition produced with the help of only such devices as allow the manual skill of the maker to condition the shape and design of each individual product, as the legislative history makes clear, imported articles which look like Native American jewelry may have been mass produced rather than handcrafted. Thus, neither portion of the definition regarding the producer of the product nor the method of production is helpful in identifying imported Native American-style jewelry.

Considering the purpose of section 1907(c), which is to ensure that consumers can distinguish between genuine Native American products and imported look-alikes, the final regulation will define Native American-style jewelry as: Jewelry which incorporates traditional Native American design motifs, materials and/or construction and therefore, looks like, and could possibly be mistaken for, jewelry made by Native Americans. While we recognize that not all genuine Native American jewelry incorporates "traditional" design motifs, materials and/or construction, we are of the opinion that it will be the more traditional styles that sellers will try to pass off as authentic goods, the styles that consumers generally associate with Native American jewelry.

Numerous comments were received concerning the identification of traditional Native American-style jewelry. They indicate that most of this jewelry is plain silver or silver set with blue or green opaque material. Other commenters indicated that the pieces could also contain coral, onyx, lapis and the like. Regarding construction, a few commenters indicated that Native American-style jewelry gives the appearance of being crudely finished and is hand soldered and hand polished. Based on these comments, we anticipate that most of the imported jewelry that will be subject to these requirements will be silver-colored jewelry which is either plain or set with opaque blue or green stones, and which gives the appearance of being hand made.

The regulation, however, will not specify the characteristics of "traditional Native American-style" jewelry since those characteristics are likely to change over a period of time. While consumers presently are most likely to mistake silver jewelry with blue or green opaque stones as genuine Native American, this may not always be the case. Customs will issue guidelines to be used by importers and field officers in identifying imported Native American-style jewelry. As the need arises, the guidelines will be amended.

Additional Changes to the Proposed Regulation Exception to Indelible Marking Requirement

The proposed regulation states that a string tag or adhesive lable would be permitted as the only means of marking in the case of those few articles which are too small to be indelibly marked and do not permit the permanent attachment of a metal or plastic tag. Several commenters suggested that the structural characteristics as well as size of the jewelry should be considered in any indelible marking exceptions. For example, we are told that some jewelry is hollow and cannot be indelibly marked. Some suggest that allowance should be made for situations where permanent marking would be impractical, unreadable or ruin the value of the article. We believe these suggestions have merit and the final regulatioin permits marking by paper label or string tag where it would be technically or commercially infeasible to mark by the methods generally required for Native American-style jewelry.

The proposed regulation requires that where the indelible country of origin marking is necessarily so small that it can only be read with a magnifying glass, an additional country of origin adhesive label or hang tag be attached. Several commenters question why the indelible marking should be required at all when it is necessarily so small that it can only be read with a magnifying glass. It is argued that in such circumstances, the adhesive sticker or hang tag alone is sufficient.

The reason for requiring both methods of marking was to asure that the ultimate purchaser would be able to determine (albeit with difficulty) the country of origin even if the paper marking was removed. Upon reconsideration, we believe that this added precaution is not necessary since the use of paper labels is permitted in only those few cases where it is not possible to either legibly mark the item itself or to permanently attach a metal or plastic tag to the item. The final regulation is changed accordingly.

Finished Jewelry vs. Components

Several commenters asked if the regulation will apply to imported jewelry components in addition to finished jewelry. As explained below, imported components that will be substantially transformed in the United States prior to retail sale will not be

subject to the regulation. Section 305 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), the statute requiring country of origin marking, also specifies various exceptions from marking. For example, section 304(a)(3)(D) provides for an exception from marking an imported article if the marking of its container will reasonably indicate the country of origin to the ultimate purchaser. It is well established that imported articles which are to be substantially transformed in the United States prior to retail sale are excepted from individual marking under this provision. In such circumstances, the United States manufacturer that substantially transforms the article is considered the ultimate purchaser and the marking of the container instead of the article itself is permitted pursuant to section 304(a)(3)(D).

The country of origin marking regulations, including the regulation on Native American-style jewelry, cannot override the statutory exceptions. Therefore, this regulation is subject to the statutory exceptions, including section 304(a)(3)(D). We are clarifying the final regulation on this point.

Miscellaneous Comments

Several commenters suggested that all genuine Native American jewelry be marked with its own certifying mark to assure its authenticity and that the industry adopt a public relations program encouraging consumers to look for this mark. Another commenter suggested that all American jewelry be marked "Made in USA". These comments go beyond both the scope of the notice and Customs authority. We note however that a certifying mark on both the traditional and more contemporary styles of Native American jewelry would provide an alternative means for the consumer to identify genuine Native American jewelry and would alleviate some of the concerns that have been expressed regarding our decision to limit the requirements of § 134.43(c) to "traditional" Native American-style jewelry.

Finally, several commenters suggested that there should be a way for an importer to determine in advance whether jewelry to be imported is considered Native American-style jewelry and subject to the special marking requirements. In accordance with the provisions of part 177, Customs Regulations (19 CFR part 177), an importer or other interested party may request a ruling from Customs on this question with respect to any prospective transaction.

For the foregoing reasons, the proposed changes are adopted as modified.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the regulation amendment will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document was James C. Hill, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 134

Customs duties and inspection, Labeling, and Packaging and containers.

Amendment to the Regulations

PART 134—COUNTRY OF ORIGIN MARKING

1. The authority citation for part 134 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 8 Harmonized Tariff Schedule of the United States), 1304, 1624.

2. Section 134.43 is amended by adding a new paragraph (c) to read as follows:

§ 134.43 Methods of marking specific articles.

* * * * *

(c) *Native American-style jewelry*—(1) *Definition.* For the purpose of this provision, Native American-style jewelry is jewelry which incorporates traditional Native American design motifs, materials and/or construction and therefore looks like, and could possibly be mistaken for, jewelry made by Native Americans.

(2) *Method of Marking.* Except as provided in 19 U.S.C. 1304(a)(3) and in paragraph (c)(3) of this section, Native American-style jewelry must be indelibly marked with the country of origin by cutting, die-sinking, engraving, stamping, or some other permanent method. The indelible marking must appear legibly on the clasp or in some other conspicuous location, or alternatively, on a metal or plastic tag indelibly marked with the country of origin and permanently attached to the article.

(3) *Exception.* If it is technically or commercially infeasible to mark in the manner specified in paragraph (c)(2) of this section, the article may be marked by means of a string tag or adhesive label securely affixed, or some other similar method.

Michael H. Lane,

Acting Commissioner of Customs.

Approved September 21, 1989.

Salvatore R. Martoche,

Assistant Secretary of the Treasury.

[FR Doc. 89-22809 Filed 9-26-89; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. R-89-1456; FR-2646]

24 CFR Parts 50, 51, 200, 203, 220, 221, 222, 226, 234, 300, 390, 590, and 2700

Miscellaneous Nomenclature Changes to the Department's Regulations

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule makes nomenclature changes throughout Title 24 of the Code of Federal Regulations to reflect the new agency name for the "Department of Veterans Affairs" instead of the "Veterans' Administration" and the new title for the "Secretary of Veterans Affairs" instead of the "Administrator of Veterans' Affairs". These changes will conform HUD regulations to current terminology as required by recent legislation.

EFFECTIVE DATE: November 6, 1989.

FOR FURTHER INFORMATION CONTACT: David E. Pinsky, Assistant General Counsel, Home Mortgage Division, Department of Housing and Urban Development, Room 9258, 451 Seventh Street, SW., Washington, DC 20410, (202) 755-5303. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This final rule will make changes to HUD's regulations as required by section 10 of the Department of Veterans Affairs Act, Public Law 100-527 (October 25, 1988). The amendments changed references in the Act, and changed the agency name for the Veterans' Administration from the "Veterans' Administration" to the Department of Veterans Affairs". It also changed any reference to the Administrator of Veterans' Affairs from

the "Administrator of Veterans' Affairs" to the "Secretary of Veterans Affairs".

Tables following the Preamble to this rule show in list format the nomenclature changes being made by this rule to the various sections to Title 24 of the Department's regulations.

The Department has determined that this document need not be published as a proposed rule, as generally required by the Administrative Procedure Act (APA), since this rulemaking merely conforms HUD regulations to reflect legislative changes in terminology. As a rule relating to agency practice, it is exempt from the proposed rulemaking requirements of the APA (see 5 U.S.C. 553(b)(A).

A Finding of No Significant Impact with respect to the environment required by the National Environmental Policy Act (42 U.S.C. 4321–4347) is unnecessary, since this nomenclature change is categorically excluded under HUD regulations at 24 CFR 50.20(k).

This rule was not listed in the Department's Semiannual Agenda of Regulations published on April 24, 1989 (54 FR 16708).

Accordingly, the Department hereby amends Title 24 of the Code of Federal Regulations as follows:

PARTS—50, 51, 200, 203, 220, 221, 222, 226, 234, 300, 390, 590, AND 2700—[AMENDED]

1. The authority citations for Parts 50, 51, 200, 203, 220, 221, 222, 226, 234, 300, 390, 590, and 2700 continue to read as follows:

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

2. In the list below, for each entry indicated in the left column, remove the references indicated in the middle column from wherever it appears in the section and add the reference indicated in the right column:

Section	Remove	Add
50.36	Veterans Administration	Department of Veterans Affairs.
51.102(e)	Veterans Administration	Department of Veterans Affairs.
200.163(b)(3)	Veterans Administration	Department of Veterans Affairs.
200.163(b)(5)(i)	Veterans Administration	Department of Veterans Affairs.
200.926(a)(2)(iii)	Veterans Administration	Department of Veterans Affairs.
203.12(f)	Veterans Administration	Department of Veterans Affairs.
203.18(b)(2)	Veterans Administration	Department of Veterans Affairs.
203.18(b)(3)	Veterans Administration	Department of Veterans Affairs.
203.18(b)(3)(i)(B)(2)	Veterans Administration	Department of Veterans Affairs.
220.30(b)(2)	Veterans Administration	Department of Veterans Affairs.
220.30(b)(3)	Veterans Administration	Department of Veterans Affairs.
220.30(b)(3)(i)(B)(2)	Veterans Administration	Department of Veterans Affairs.
226.5(b)(2)	Veterans Administration	Department of Veterans Affairs.
226.5(b)(3)	Veterans Administration	Department of Veterans Affairs.
226.5(b)(3)(i)(B)(2)	Veterans Administration	Department of Veterans Affairs.
234.26(h)	Veterans Administration	Department of Veterans Affairs.
300.3	Veterans Administration	Department of Veterans Affairs.
390.1	Veterans' Administration	Department of Veterans Affairs.
390.21(a)	Veterans' Administration	Department of Veterans Affairs.
590.5, in definition for "VA"	Veterans Administration	Department of Veterans Affairs.
2700.10(a)	Veterans Administration	Department of Veterans Affairs.

3. In the list below, for each entry indicated in the left column, remove the reference indicated in the middle column from wherever it appears in the section and add the reference indicated in the right column:

Section	Remove	Add
200.507(b)	Administrator of Veterans Affairs	Secretary of Veterans Affairs.
203.17(d)(2)	Administrator of Veterans Affairs	Secretary of Veterans Affairs.
203.18(a)(2)(ii)	Administrator of Veterans Affairs	Secretary of Veterans Affairs.
203.18(d)(2)(iii)	Administrator of Veterans Affairs	Secretary of Veterans Affairs.
221.20(a)(2)(ii)	Administrator of Veterans Affairs	Secretary of Veterans Affairs.
221.30(b)	Administrator of Veterans Affairs	Secretary of Veterans Affairs.
222.4(a)(2)	Administrator of Veterans Affairs	Secretary of Veterans Affairs.
226.5(a)(1)(ii)	Administrator of Veterans Affairs	Secretary of Veterans Affairs.
234.27(a)(2)(ii)	Administrator of Veterans Affairs	Secretary of Veterans Affairs.
590.5, in definition for "Federally owned property"	Administrator of Veterans Affairs	Secretary of Veterans Affairs.

Date: September 21, 1989.

Jack Kemp,

Secretary.

[FR Doc. 89–22852 Filed 9–26–89; 8:45 am]

BILLING CODE 4210–32–M

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 811, 883 and 941

[Docket No. N–89–1999; FR–2586]

Tax-Exempt Construction Financing for Turnkey Public Housing Development Projects

AGENCY: Office of Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Statement of HUD policy.

SUMMARY: HUD is giving notice that is policy concerning tax-exempt construction financing for development of turnkey public housing projects is being rescinded. The original intent of the policy was to take advantage of the relatively lower tax-exempt rates (as compared to extreme high private

market rates at that time) to reduce development costs of public housing projects. The Department has assessed the effectiveness of tax-exempt financing for the development of public housing projects and has determined that there is no basis to continue this method of financing.

EFFECTIVE DATE: November 27, 1989.

FOR FURTHER INFORMATION CONTACT: Raymond W. Hamilton, Director, Project Development Division, Office of Public Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; (202) 426–0938 (This is not a toll free number).

SUPPLEMENTARY INFORMATION: On March 21, 1983 (48 FR 11775) and February 9, 1984 (49 FR 4940) HUD issued policy Notices authorizing tax-exempt construction financing for development of turnkey public housing projects. This policy was intended to take advantage of the relatively lower tax-exempt rates (as compared to extreme high private market rates at that time) to reduce development costs of public housing projects. After this policy had been in effect for 4 years, a survey was conducted to determine the extent to which this type of financing had been used and whether any savings had accrued to the Government. Six out of 10 Regional Offices responded that his method of financing had never been used. Three Regional Offices reported this method of financing was used for a total of 39 projects with an estimated savings of 3.5 million dollars to the Government. One Regional Office doubted that savings were actually realized due to difficulties that had been experienced in enforcing the adjustment provision for tax-exempt savings. Timely information was not submitted by State agencies and developers on the status of tax-exempt financing thereby preventing adjustment of the Contract of Sale price before completion.

Policy Statement

HUD has assessed the effectiveness of tax-exempt financing for the development of public housing projects and has determined that there is no basis to continue this method of financing. No substantial benefit accrues to the Government through the use of this mechanism, particularly given the decline in interest rates on private market financing in recent years. In addition, such financing, when provided by public housing agencies (PHAs) compromises the arms length relationship between the PHA and the developer which is the basic principle of the turnkey method. Therefore, effective 60 days after publication of this Notice, the provisions of the policy Notices published in the **Federal Register** on March 21, 1983 (48 FR 11775) and February 9, 1984 (49 FR 4940), authorizing PHAs to provide tax-exempt financing for turnkey developers constructing public housing projects will no longer be in effect.

While HUD has no authority to preclude State Housing Financing Agencies (SFHAs) or public bodies other than a PHA or an agency or instumentality from providing tax-exempt financing to a developer, it intends to modify the HUD Standard Form of Contract of Sale to require the disclosure of tax-exempt financing at any time before or after the execution of the Contract of Sale and require that savings from the lower interest rate be reflected in a reduced Contract of Sale price.

Applicability of this Policy:

The policy set out in this Notice is applicable to tax-exempt construction financing provided by a PHA, or an agency or instrumentality PHA for any turnkey project for which the executed Contract of Sale is approved by HUD after the effective date of this Notice.

Authority: Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

Dated: September 12, 1989.

Thomas Sherman,

Acting General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 89–22611 Filed 9–26–89; 8:45 am]

BILLING CODE 4210–33–M

POSTAL RATE COMMISSION

39 CFR Part 3001

Domestic Mail Classification Schedule: Mail Classification Schedule, 1988, Second Class Eligibility

[Docket Nos. RM89–6 and MC88–2; Order No. 846]

September 21, 1989

AGENCY: Postal Rate Commission.

ACTION: Final rule.

SUMMARY: In accordance with the September 11, 1989, adoption of the Postal Rate Commission's recommended Docket No. MC88–2 decision upon reconsideration by the Governors of the Postal Service, the Commission is publishing the corresponding changes for the Domestic Mail Classification Schedule (DMCS). The DMCS is found as Appendix A to subpart C of the Commission's rules of practice and procedure (39 CFR 3001.61 through 3001.68). This change concerns the eligibility requirements for entry into second-class mail.

EFFECTIVE DATE: October 1, 1989.

ADDRESS: Correspondence should be sent to Charles L. Clapp, Secretary, Postal Rate Commission, 1333 H Street NW., Suite 300, Washington, DC 20268–0001 (telephone: 202/789–6840).

FOR FURTHER INFORMATION CONTACT: David F. Stover, General Counsel, Postal Rate Commission, 1333 H Street NW., Suite 300, Washington, DC 20268–0001 (telephone: 202/789–6820).

SUPPLEMENTARY INFORMATION: On June 17, 1988, the Postal Service filed a request with the Commission to amend the Domestic Mail Classification Schedule for the purpose of excluding from second class "Plus" issues (*i.e.* supplements to "parent" publications which have met the requirements for second class) published on the same day as the parent. Plus issues consist primarily of advertising and they are distributed without regard to whether the addressee has subscribed or requested the publication. In Docket No. C85–1, after providing an opportunity for all interested parties to present their views, the Commission decided that it was not appropriate to permit Plus issues entry into second class if they could not meet the eligibility requirements without reference to the parent publication.

The amendment to the DMCS in Docket No. C85–1 was written in terms of Plus issues which are published the same day as the parent publication, because that was the practice at the time. The Postal Service filed Docket No. MC88–2 to address the problem that some publishers had begun issuing their Plus editions on a day that the parent publication was not issued. The Commission invited interested persons to comment and participate in the proceeding. 53 FR 24388 (June 28, 1989).

Eleven parties particpated in this proceeding. Hearings were held and the parties were given the opportunity to participate. After the Postal Service resubmitted its request following the Commission's June 23, 1989, recommended decision, the Commission issued its recommended decision upon reconsideration on July 25, 1989. The Governors approved the recommended

decision on September 11, 1989, and October 1, 1989, was set as the effective date for the change.

The change to the DMCS which is published in this order reflects the Governors' September 11, 1989, decision. Consistent with the Commission's explanation in the rulemaking (Docket No. RM85–1) which led to the publication of the DMCS in the Federal Register, this change is published as a final rule, since procedural safeguards and ample opportunities to have different viewpoints considered have already been afforded to all interested persons.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Postal Service.

PART 3001—RULES OF PRACTICE AND PROCEDURE

Subpart C—Rules Applicable to Requests for Establishing or Changing the Mail Classification Schedule

1. The authority citation for 39 CFR part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(b), 3603, 3622–3624, 3661, 3662, 84 Stat. 759–762, 764, 90 Stat. 1303; (5 U.S.C. 553), 80 Stat. 383.

2. The following change in the Domestic Mail Classification Schedule published as Appendix A to subpart C (39 CFR 3001.61 through 3001.68) of the Commission's rules of practice and procedure is adopted.

Revise § 200.0123 in Appendix A to subpart C of part 3001 to read as follows:

Appendix A

* * * * *

Classification Schedule 200—Second-Class Mail

200.01 Definition

* * * * *

200.0123 For purposes of determining second-class eligibility and postage under Classification Schedule 200, an "issue" of a newspaper or other periodical shall be deemed to be a separate publication when the following conditions exist:

a. The issue is published at a regular frequency more often than once a month either on (1) the same day as another regular issue of the same publication; or (2) on a day different from regular issues of the same publication, and

b. More than 10 percent of the total number of copies of the issue is distributed on a regular basis to recipients who do not subscribe to it or request it, and

c. The number of copies of the issue distributed to nonsubscribers or nonrequesters is more than twice the number of copies of any other issue distributed to nonsubscribers or nonrequesters on that same day, or, if no other issue that day, any other issue distributed during the same period. "During the same period" shall be defined as the periods of time ensuing between the distribution of each of the issues whose eligibility is being examined.

Such separate publications must independently meet the qualifications in section 200.0101 through 200.0109, or 200.0110.

* * * * *

By the Commission.

Charles L. Clapp,

Secretary.

[FR Doc. 89–22731 Filed 9–26–89; 8:45 am]

BILLING CODE 7710-FW

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

[AA–610–89–4111–02; Cir. No. 2616]

RIN 1004–AA96

Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order No. 4, Measurement of Crude Oil; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking; correction.

SUMMARY: This document corrects typographical and editorial errors in the final rulemaking issuing Onshore Oil and Gas Order No. 4, Measurement of Crude Oil, under the provisions of 43 CFR subpart 3164, published in the Federal Register on February 24, 1989 (54 FR 8086).

EFFECTIVE DATE: August 23, 1989.

ADDRESSES: Inquiries or suggestions should be sent to: Director (500), Bureau of Land Management, Room 5647, Main Interior Bldg., 1800 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Robert Kent, (202) 653–2174.

SUPPLEMENTARY INFORMATION: The following corrections are made in the final rulemaking issuing Onshore Oil and Gas Order No. 4, Measurement of Crude Oil, which was published on February 24, 1989 (54 FR 8086):

PART 3160—[CORRECTED]

1. On page 8092, left column, the authority citation is corrected by changing the date "1974" in line 4 to "1947".

§ 3164.1 [Corrected]

2. On page 8092, center column, § 3164.1 (b), the chart is corrected by adding under "Effective date" the date "Aug. 23, 1989", and under "FR Reference" the reference "54 FR 8086".

Appendix—[Corrected]

3. On page 8094, in the Appendix, left column, the date in line 6 of the second paragraph under "C. Oil Measurement by Tank Gauging" is corrected by changing it from "1985" to "1965".

4. On page 8095, in the Appendix, right column, the reference in the last line of the first paragraph under "D. Oil Measurement by Positive Displacement Metering System" is corrected by changing it from "43 CFR 3162.7–4" to "43 CFR 3162.7–5".

5. On page 8098, in the Appendix, left column, in the third line from the top of the column the word "working" is corrected to read "business."

6. On page 8098, in the Appendix, left column, the second sentence of paragraph E.1. is corrected by removing the word "lessee" and the slash (/) immediately following it.

7. On page 8098, in the Appendix, right column, the next to the last sentence of the first paragraph of section IV. and the last sentence of the third paragraph of section IV. are corrected by removing the word "lessee" and slash (/) immediately following it.

Dated: September 21, 1989.

James M. Hughes,

Deputy Assistant Secretary of the Interior.

[FR Doc. 89–22869 Filed 9–26–89; 8:45 am]

BILLING CODE 4310–84–M

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43 CFR Part 3160

[AA–610–89–4111–02; Cir. No. 2618]

RIN 1004–AB22

Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order No. 5, Measurement of Gas; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking; correction.

SUMMARY: This document corrects typographical and editorial errors in the final rulemaking issuing Onshore Oil and Gas Order No. 5, Measurement of Gas, under the provisions of 43 CFR subpart 3164, published in the Federal Register on February 24, 1989 (54 FR 8100).

DATES: March 27, 1989. This Order is applicable March 27, 1989 for new facilities, August 23, 1989 for existing facilities measuring 200 MCF or more per day of gas, and February 26, 1990 for existing facilities producing less than 200 MCF per day of gas.

ADDRESS: Inquiries or suggestions should be sent to: Director (500), Bureau of Land Management, Room 5647, Main Interior Bldg., 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Robert Kent, (202) 653–2174.

SUPPLEMENTARY INFORMATION: The following corrections are made in the final rulemaking issuing Onshore Oil and Gas Order No. 5, Measurement of Gas, which was published on February 24, 1989 (54 FR 8100):

1. On page 8103, left column, the third sentence of the discussion of Standard No. C.7 is corrected to read as follows:

* * * It is not intended to exempt any sales or allocation meters from temperature measurements of the flowing gas which are required by AGA for computing volumes. * * *

PART 3160—[CORRECTED]

§ 3164.1 [Corrected]

2. On page 8106, § 3164.1(b), the chart is corrected by adding under "Effective date" "March 27, 1989 for new facilities; August 23, 1989 for existing facilities measuring 200 MCF or more per day of gas; February 26, 1990 for existing facilities producing less than 200 MCF per day of gas," and under "Federal Register reference", "54 FR 8100".

Appendix—[Corrected]

3. On page 8106, in the appendix, left column, in line 14 of the first paragraph under "A. Authority", the phrase "implement or supplement" is corrected to read "implement and supplement."

4. On page 8107, in the appendix, left column, in line 6 of the first paragraph under "B. General", the phrase "unit participating areas," is inserted between the word "units," and the phrase "and communitization agreements."

5. On page 8109, in the appendix, right column, the second sentence of paragraph D.1.a. is corrected by removing the word "lessee" and the slash (/) immediately following it.

6. On page 8110, in the appendix, center column, the first sentence of the second paragraph of section IV. is corrected by removing the word "lessee" and the slash (/) immediately following it.

7. On page 8110, in the appendix, right column, the last sentence of the last paragraph of section IV. is corrected by removing the word "lessee" and the slash (/) immediately following it.

Dated: September 21, 1989.

James M. Hughes,

Deputy Assistant Secretary of the Interior.

[FR Doc. 89–22870 Filed 9–26–89; 8:45 am]

BILLING CODE 4310–84–M

RIN 1004–AB21

43 CFR Parts 3160

[AA–610–89–4111–02; Circular No. 2613]

Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order No. 2, Drilling Operations

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking; correction.

SUMMARY: This document corrects typographical and editorial errors in the final rulemaking issuing Onshore Oil and Gas Order No. 2, Drilling Operations under the provisions of 43 CFR subpart 3164, published in the **Federal Register** on November 18, 1988 (53 FR 46798).

EFFECTIVE DATE: December 19, 1988.

ADDRESS: Inquiries or suggestions should be sent to: Director (500), Bureau of Land Management, Room 5647, Main Interior Bldg., 1800 C Street, NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Robert Kent (202) 653–2174.

SUPPLEMENTARY INFORMATION: The following corrections are made in the final rulemaking issuing Onshore Oil and Gas Order No. 2, Drilling Operations, which was published on November 18, 1988 (53 FR 46798):

PART 3164—CORRECTED

§ 3164.1 [Corrected]

1. On page 46804, § 3164.1(b), in the chart in the middle of the page, the effective date is corrected to read "November 21, 1983".

Appendix—[Corrected]

2. On page 46806, in the appendix, left column, paragraph a.ii. is corrected by inserting the word "or," between "Annular preventer" and "double ram" in the second line of that paragraph.

Appendix—[Corrected]

3. On page 46806, in the appendix, middle column, in paragraph iv., the second item from the bottom of the column is corrected by changing the word "hand" to "handle".

Appendix—[Corrected]

4. On page 46808, in the appendix, left column, the paragraph designation of the second paragraph from the bottom of the column is corrected by changing it from "xi" to "ix."

Appendix—[Corrected]

5. On page 46809, in the appendix, left column, the beginning of paragraph 3. at the bottom of the column is corrected to read as follows: "3. When abnormal pressures are anticipated, electronic/mechanical mud monitoring equipment shall be required, * * *".

Appendix—[Corrected]

6. On page 46810, in the appendix, right column, paragraph 6. is corrected by changing the word "fresh" in the third line to "usable."

7. On pages 46812 and 46813, and on page 49663 of the correction notice published on December 9, 1988 (53 FR 49661), the caption of each diagram is corrected by inserting the words "OF CHOKES" between the word "CONFIGURATION" and the phrase "MAY VARY".

Dated: September 21, 1989.

James M. Hughes,

Deputy Assistant Secretary of the Interior.

[FR Doc. 89–22867 Filed 9–26–89; 8:45 am]

BILLING CODE 4310–84–M

43 CFR Part 3160

RIN 1004–AB24

[AA–610–89–4111–02; Circular No. 2616]

Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order No. 3, Site Security; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking; correction.

SUMMARY: This document corrects typographical and editorial errors in the final rulemaking issuing Onshore Oil and Gas Order No. 3, Site Security, under the provisions of 43 CFR subpart 3164, published in the **Federal Register** on February 24, 1989 (54 FR 8056).

EFFECTIVE DATE: March 27, 1989.

ADDRESS: Inquiries or suggestions should be sent to: Director (500), Bureau of Land Management, Room 5647, Main Interior Bldg., 1800 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Robert Kent (202) 653–2174.

SUPPLEMENTARY INFORMATION: The following corrections are made in the final rulemaking issuing Onshore Oil and Gas Order No. 3, Site Security, which was published on February 24, 1989 (54 FR 8056):

PART 3160—[Corrected]

1. On page 8060, left column, the authority citation for part 3160 is corrected in line 5 thereof by inserting "30" between the left parenthesis and "U.S.C. 301–306)."

§ 3164.1 [Corrected]

2. On page 8060, left column, § 3164.1(b) the chart is corrected by changing the effective date of Order No. 2, Drilling Operations, from "Mar. 27, 1989" to "Dec. 19, 1988", and by inserting the **Federal Register** reference for that Order: "53 FR 46798".

Appendix—[Corrected]

3. On page 8062, in the appendix center column, the reference to "Part III.B." 3 lines from the bottom of the page is corrected to read "Part III.C."

Appendix—[Corrected]

4. On page 8063, in the appendix left column, line 14 is corrected by inserting the word "prevents" between the words "sale arrangement" and the words "having all".

Appendix—[Corrected]

5. On page 8063, in the appendix center column, paragraph F.1. is corrected by changing the hyphen between "Operators" and "Lessees" in the first line thereof to a slash (/), and the "Normal Abatement Period" at the end of paragraph F.1. is corrected by inserting the word "business' between "20" and "days".

Appendix—[Corrected]

6. On page 8063, in the appendix, right column, the "Normal Abatement Period" at the end of paragraph H.1. is corrected by inserting the word "business" between "20" and "days", and the heading *"1. Site Facility Diagram"* is corrected to read *"I. Site Facility Diagram"*.

Dated: September 21, 1989.

James M. Hughes,

Deputy Assistant Secretary of the Interior.

[FR Doc. 89–22868 Filed 9–26–89; 8:45 am]

BILLING CODE 4310–84–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 22 and 90

[Common Carrier Docket No. 87–120; FCC 89–234]

Flexible Allocation of Frequencies for Paging and Other Services (Domestic Public Land Mobile Service)

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action affects licensees for mobile radiotelephone service on common carrier frequencies 470–512 Mhz in thirteen of the largest cities in the U.S. The Second Report and Order reallocates some of these frequencies in Boston, Chicago, Cleveland, New York-Northeastern N.J., Dallas-Ft. Worth, Detroit, Houston, Los Angeles, Miami, Philadelphia, Pittsburgh, San Francisco, and Washington DC for control purposes. Of these cities, Boston, Dallas-Ft. Worth, Houston, Los Angeles, and San Francisco also retain some of the frequencies for existing two-way mobile common carrier service. The Commission's reason for this action is that there are virtually no frequencies available in the largest cities for essential control functions for common carrier mobile services. The Commission also made some of the frequencies allocated to Los Angeles available for public safety (police and fire) purposes.

EFFECTIVE DATE: October 27, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Susan E. Magnotti, Mobile Services Division, Common Carrier Bureau, (202) 632–6450.

SUPPLEMENTARY INFORMATION: CFR parts amended: 47 CFR Part 22, "Public Mobile Service," and 47 CFR Part 90, "Private Land Mobile Radio Services."

This is a Summary of the Commission's second report and order, CC Docket No. 87–120, adopted July 13, 1989, and released August 18, 1989. The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, Northwest, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service (202) 857–3800, 2100 M Street, Northwest, Suite 140, Washington, DC 20037.

Summary of Second Report and Order

This order addresses issues pertaining to 47 U.S.C. 22.501(k) raised in the Notice of Proposed Rulemaking (NPRM) in this docket, 2 FCC Rcd. 2795 (1987). There were four such issues raised: (1) Legal authority to reallocate some or all of the UHF common carrier band frequencies; (2) the best use to be made of the UHF common carrier frequencies not needed for existing two-way mobile traffic; (3) the circumstances under which two-way common carrier use of this frequency band should continue; (4) application procedures for the reallocated channels.

As to the first issue, the Commission found that it has authority to decline to grant license renewal, without a hearing, if it has found in a rulemaking proceeding that the licensed frequencies should be reallocated, citing Transcontinent Television Corporation, 308 F.2d 339 (D.C.Cir. 1962).

As to the second issue, the Commission found that because there is little chance that demand for conventional two-way mobile telephone use will increase, and because the most acute control frequency needs are in the thirteen cities for which the UHF–TV band common carrier frequencies are allocated, the UHF common carrier frequencies not needed for existing two-way mobile service will be reallocated for common carrier control use.

As to the third issue, the Commission retained for two-way common carrier service the number of channels necessary to give a grade of service of .25 or less on each two-way system still in operation as of the time renewal applications were filed. No new licensees will be authorized to operate two-way systems except successors-in-interest to the existing licensees.

As to the fourth issue, the Commission determined that applications for the new control channels would be subject to the standard procedures set out in 47 CFR part 22. No application will be granted which does not propose at least four points for control by each frequency requested. Applications proposing services which are electrically mutually exclusive will be subject to random selection procedures in accordance with §§ 22.33 and 1.823 of the rules. (47 CFR 1.823,22.33).

In addition to the issues specified in the NPRM, the Commission also addressed a petition filed by five California cities in the Los Angeles basin: Burbank, Compton, Glendale, Torrance, and Whittier (the "municipalities" or "petitioners"). The municipalities requested that nineteen of the twenty-four pairs of UHF common carrier frequencies be reallocated to public safety in the Los Angeles area. The Commission partially granted their request, reallocating seventeen frequency pairs. The Commission also granted the municipalities' request to discontinue the split channel structure as to these frequencies and permit base and corresponding mobile operations within the same TV channel.

List of Subjects

47 CFR Part 22

Communications common carriers, Radio.

47 CFR Part 90

Emergency services, Radio.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Rules Section

Parts 22 and 90 of the Code of Federal Regulations are amended as follows:

PART 22—PUBLIC MOBILE SERVICE

1. The authority citation for part 22 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended (47 U.S.C. 154, 303), sec. 553 of the Administrative Procedure Act (5 U.S.C. 553), unless otherwise noted.

2. Section 22.501 is amended as follows:

A. Paragraphs (j)(1)–(6) are added.

B. Paragraph (l)(5) is redesignated as (j)(7).

C. In newly redesignated (j)(7)(i), Table A is revised and Table E is removed and reserved.

D. Paragraphs (l)(6)–(9) are redesignated as (j)(8)–(11).

E. Paragraph (l)(12) is redesignated as (j)(12) and revised.

F. Paragraph (l) is reserved.

G. Paragraph (k) is revised.

The added and revised text reads as follows:

§ 22.501 Frequencies.

* * * * *

(j) The channels below are assigned for common carrier trunked base-to-mobile communications within the listed urban areas.

Boston—Group 1:

470.0125	482.0125
470.0375	482.0375
470.0625	482.0625
470.0875	482.0875

Dallas-Fort Worth

482.0125	485.0125
482.0375	485.0375
482.0625	485.0625

Houston

488.0125	491.0125
488.0375	491.0375
488.0625	491.0625
488.0875	491.0875
488.1125	491.1125
488.1375	491.1375
488.1625	491.1625
488.1875	491.1875
488.2125	491.2125
488.2375	491.2375
488.2625	491.2625

Los Angeles–Group 1:

506.0125	470.0125
506.0375	470.0375

Group 2:

509.0125	473.0125
509.0375	473.0375

San Francisco—Group 1:

488.0125	482.0125

(1) Only those licensees presently authorized in each market are permitted to file for additional use of these channels.

(2) Channel usage reports are to be submitted as set forth in paragraph (j)(8) of this part. When channel blocking decreases below 25%, the Commission will reassign the channels which are not needed to maintain blocking at 25% or less. The number of channels necessary to maintain blocking below 25% will be determined from the usage reports & Erland C tables.

(3) The transmitter site(s) for base station(s) shall be located not more than 50 miles from the geographic center of an urbanized area as defined in table A.

(4) Mobile stations shall be operated not more than 80 miles from the "Geographic Center" of an urbanized area as defined in table A of this Section, nor beyond a 30-mile radii of the associated base station or stations.

(5) Base stations operating on the frequencies available for land mobile use in any listed urbanized area shall afford protection to co-channel and adjacent channel television stations in accordance with the values set out in tables B and C, of this section.

(i) Base stations shall be located a minimum of one mile from local television stations operating on TV channels separated by 2, 3, 4, 5, 7, and 8 TV channels from the television channel in which the base station will operate.

(ii) Mobile units operating on the frequencies available for land mobile use in any given urbanized area shall afford protection to co-channel and adjacent channel television stations in accordance with the values set out in tables D and G of this section.

(iii) The television stations to be protected in any given urbanized area, in accordance with the provisions of paragraph (j)(5)(i) and (ii) of this section, are identified in the Commission's publication "TV Stations To Be Considered in The Preparation of Applications for Land Mobile Facilities in the Band 470–512 MHz." The publication is available at the offices of the Federal Communications Commission at Washington, DC or upon the request of interested persons.

(6) For antenna heights between 500 feet and 3,000 feet above average terrain the effective radiated power must be reduced below 1 kilowatt in accordance with the values shown in the power reduction graph in figure A of this section. For heights of more than 500 feet above average terrain, the distance to the radio path horizon will be calculated assuming smooth earth. If the distance so determined equals or exceeds the distance to the grade B contour of a co-channel TV station, an authorization will not be granted unless it can be shown that actual terrain considerations are such as to provide the desired protection at the grade B contour, or that the effective radiated power will be further reduced so that, assuming free space attenuation, the desired protection at the grade B contour will be achieved.

(7) * * *

(i) Tables and Figures:

TABLE A (URBANIZED AREAS)

Urbanized area	Geographic center	
	N. latitude	W. longitude
Boston, Mass	42°21'24"	71°03'24"
Dallas, Tex	32°47'09"	96°47'37"
Houston, Tex	29°45'26"	95°21'37"
Los Angeles, Calif	34°03'15"	118°14'28"
San Francisco-Oakland, Calif	37°46'39"	122°24'40"

* * * * *

(12) The licensees in each market shall measure channel usage at least once every 3 months. These measurements shall be reported to the Commission within 30 days. Measurements shall be taken during the busiest 12-hour periods on 3 days (within a 7-day period) having normal usage. The information should be reported separately for each of the 3 days selected, should be reported by dates, and should disclose the following:

(i) The number of mobile units in service during each of the days specified;

(ii) The number of calls completed each hour;

(iii) The total number of minutes that the channels (base and mobile) were utilized for transmissions between the base station and land mobile units during each hour;

(iv) The average channel usage for the busiest hour for the 3 days being measured; and

(v) Such other additional information which may more accurately reflect channel usage.

(k) The frequencies listed in part 4 of this section are available for multiple address control of at least four remote base stations operating on the same frequency assignment. Tandem

operation of these control frequencies is not permitted.

(1) The location of the control station must be within 50 miles of the center city coordinates listed in part 3 of this section.

(2) Control stations are permitted to operate at 1000 watts effective radiated power with an antenna radiation center height above average terrain of 500'.

(3) Market Areas.

Urbanized area	Geographic center	
	N. latitude	W. longitude
Boston, Mass	42°21'24"	71°03'24"
Chicago, Ill	41°52'28"	87°38'22"
Cleveland, Ohio	41°29'51"	81°41'50"
Dallas, Tex	32°47'09"	96°47'37"
Detroit, Mich	42°19'57"	83°02'57"
Houston, Tex	29°45'26"	95°21'37"
Los Angeles, Calif	34°03'15"	118°14'28"
Miami, Fl	25°46'37"	80°11'32"
NY, NY	40°45'06"	73°59'39"
Philadelphia, PA	39°56'58"	75°09'21"
Pittsburgh, PA	40°26'19"	80°00'00"
San Francisco-Oakland, Calif	37°46'39"	122°24'40"
Washington, DC	38°53'51"	70°00'33"

(4)

Boston

Group 1:

470.0125	470.2125	482.1125
470.0375	470.2375	482.1375
470.0625	470.2625	482.1625
470.0875	470.2875	482.1875
470.1125	482.0125	482.2125
470.1375	482.0375	482.2375
470.1625	482.0625	482.2625
470.1875	482.0875	482.2875

Group 2:

473.0125	473.2125	485.1125
473.0375	473.2375	485.1375
473.0625	473.2625	485.1625
473.0875	473.2875	485.1875
473.1125	485.0125	485.2125
473.1375	485.0375	485.2375
473.1625	485.0625	485.2625
473.1875	485.0875	485.2875

Chicago, Cleveland, New York—Northeastern New Jersey

Group 1:

470.0125	470.2125	476.1125
470.0375	470.2375	476.1375
470.0625	470.2625	476.1625
470.0875	470.2875	476.1875
470.1125	476.0125	476.2125
470.1375	476.0375	476.2375
470.1625	476.0625	476.2625
470.1875	476.0875	476.2875

Group 2:

473.0125	473.2125	479.1125
473.0375	473.2375	479.1375
473.0625	473.2625	479.1625
473.0875	473.2875	479.1875
473.1125	479.0125	479.2125
473.1375	479.0375	479.2375
473.1625	479.0625	479.2625
473.1875	479.0875	479.2875

Dallas-Fort Worth

482.0125	482.2125	485.1125
482.0375	482.2375	485.1375
482.0625	482.2625	485.1625
482.0875	482.2875	485.1875
482.1125	485.0125	485.2125
482.1375	485.0375	485.2375
482.1625	485.0625	485.2625
482.1875	485.0875	485.2875

Detroit

Group 1:

482.0125	482.2125	476.1125
482.0375	482.2375	476.1375
482.0625	482.2625	476.1625
482.0875	482.2875	476.1875
482.1125	476.0125	476.2125
482.1375	476.0375	476.2375
482.1625	476.0625	476.2625
482.1875	476.0875	476.2875

Group 2:

485.0125	485.2125	479.1125
485.0375	485.2375	479.1375
485.0625	485.2625	479.1625
485.0875	485.2875	479.1875
485.1125	479.0125	479.2125
485.1375	479.0375	479.2375
485.1625	479.0625	479.2625
485.1875	479.0875	479.2875

Houston

488.2875		
491.2875		

Los Angeles

Group 1:

506.0625	506.0875	506.1125

Group 2:

509.0625	509.0875	509.1125

Miami

470.0125	470.2125	473.1125
470.0375	470.2375	473.1375
470.0625	470.2625	473.1625
470.0875	470.2875	473.1875
470.1125	473.0125	473.2125
470.1375	473.0375	473.2375
470.1625	473.0625	473.2625
470.1875	473.0875	473.2875

Philadelphia

Channel 19		*Channel 20*

Group 1:

500.0125	500.2125	506.1125
500.0375	500.2375	506.1375
500.0625	500.2625	506.1625
500.0875	500.2875	506.1875
500.1125	506.0125	506.2125
500.1375	506.0375	506.2375
500.1625	506.0625	506.2625
500.1875	506.0875	506.2875

Group 2:

503.0125	503.2125	509.1125
503.0375	503.2375	509.1375
503.0625	503.2625	509.1625
503.0875	503.2875	509.1875
503.1125	509.0125	509.2125
503.1375	509.0375	509.2375
503.1625	509.0625	509.2625
503.1875	509.0875	509.2875

Pittsburgh

Channel 14

470.0125	470.2125	473.1125
470.0375	470.2375	473.1375
470.0625	470.2625	473.1625
470.0875	470.2875	473.1875
470.1125	473.0125	473.2125
470.1375	473.0375	473.2375
470.1625	473.0625	473.2625
470.1875	473.0875	473.2875

San Francisco

Channel 17		*Channel 16*

Group 1:

488.0375	488.2375	482.1625
488.0625	488.2625	482.1875
488.0875	488.2875	482.2125
488.1125	482.0375	482.2375
488.1375	482.0625	482.2625
488.1625	482.0875	482.2875
488.1875	482.1125	
488.2125	482.1375	

Group 2:

491.0125	491.2125	485.1125
491.0375	491.2375	485.1375
491.0625	491.2625	485.1625
491.0875	491.2875	485.1875
491.1125	485.0125	485.2125
491.1375	485.0375	485.2375
491.1625	485.0625	485.2625
491.1875	485.0875	485.2875

Washington, DC

Channel 18		*Channel 17*

Group 1:

494.0125	494.2125	488.1125
494.0375	494.2375	488.1375
494.0625	494.2625	488.1625
494.0875	494.2875	488.1875
494.1125	488.0125	488.2125
494.1375	488.0375	488.2375
494.1625	488.0625	488.2625
494.1875	488.0875	488.2875

Group 2:

497.0125	497.2125	491.1125
497.0375	497.2375	491.1375
497.0625	497.2625	491.1625
497.0875	497.2875	491.1875
497.1125	491.0125	491.2125
497.1375	491.0375	491.2375
497.1625	491.0625	491.2625
497.1875	491.0875	491.2875

(5) Television protection is required as set forth below:

(i) Control stations operating on the frequencies available in subpart 4 of this section shall afford protection to co-channel and adjacent channel television stations in accordance with the values set out in tables B and C of § 22.501(j)(7), except for channel 15 in New York, and

Cleveland, Ohio and channel 16 in Detroit, Mich., where protection will be in accordance with the values set forth in tables C and F of § 22.501(j)(7).

(ii) Control stations shall be located a minimum of one mile from local television stations operating on TV channels separated by 2, 3, 4, 5, 7 and 8 TV channels from the television channel in which the control station will operate.

(iii) The television stations to be protected in each urban area, in accordance with the provisions of 5(a) and 5(b) of this section, are identified in the Commission's publications "TV Stations To Be Considered in the Preparation of Application for Land Mobile Facilities in the Band 470–512 MHz." The publication is available at the offices of the Federal Communications Commission of Washington, DC or upon the request of interested persons.

(iv) For antenna heights between 500 feet at 3,000 feet above average terrain the effective radiated power must be reduced below 1 kw in accordance with the values shown in the power reduction graph of figure A of § 22.501(j) except for channel 15 in New York, N.Y., and Cleveland, Ohio and channel 16 in Detroit, Mich., where the effective radiated power must be reduced in accordance with figure B. For heights of more than 500 feet above average terrain, the distance to the radio path horizon will be calculated assuming smooth earth. If the distance so determined equals or exceeds the distance to the grade B authorization will not be granted unless it can be shown that actual terrain considerations are such as to provide the desired protection at the grade B contour, or that the effective radiated power will be further reduced so that, assuming free space attenuation, the desired protection at the grade B contour will be achieved.

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for part 90 continues to read as follows:

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

2. 47 CFR 90.311 is amended by revising the entry in the Table following paragraph (a) under the Public Safety Pool frequencies on channel 14 in Los Angeles to read as follows:

§ 90.311 Frequencies.

(a) * * *

FREQUENCIES ASSIGNED IN SERVICE POOLS

Urbanized area (channel assignment)	Public safety pool—Fire, police, local government, highway maintenance, and Forestry Conservation Radio Service	
	Base and mobile	Mobile
* * * * *		
Los Angeles Ch. 14	470.0625 to 471.1375 and 506.1375 to 506.2875.	473.0625 to 474.1375 and 509.1375 to 509.2875
* * * * *		

[FR Doc. 89–22744 Filed 9–26–89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 69

[CC Docket No. 89–2; FCC 89–272]

Common Carrier Mergers and Acquisitions; Pooling; and Long Term and Transitional Support

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The FCC amends part 69 of its rules to clarify the effects of mergers and acquisitions among exchange carriers on the common line pooling status of the involved exchange carriers and the long term and transitional support arrangements.

EFFECTIVE DATE: October 27, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Douglas L. Slotten, Policy and Program Planning Division, Common Carrier Bureau, (202) 632–9342.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order amending part 69 of the Commission's rules, CC Docket No. 89–2, adopted August 4, 1989, and released August 23, 1989, and an Erratum released September 20, 1989.

The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Order

On April 1, 1989, changes in the mandatory common line pooling arrangements that had governed the recovery of the non-traffic sensitive costs of local exchange carriers (LECs) for nearly five years were implemented pursuant to recommendations developed by the Federal/State Joint Board in CC Docket No. 80–286 and subsequently adopted by the FCC with certain minor modifications in the proposed implementation schedule for subscriber line charge increases. The Joint Board recommendation did not address the effects that a merger or acquisition among LECs could have on the pooling status of surviving LECs, but instead recommended that the FCC address this issue in a separate proceeding.

On January 10, 1989, the FCC adopted a Notice of Proposed Rulemaking (*Notice*) (54 FR 4859, January 31, 1981) inviting interested persons to comment on specific proposals regarding the pooling status of LECs that have been involved in a merger or acquisition. *Amendment of part 69 of the Commission's rules relating to the common line pool status of local exchange carriers involved in mergers or acquisitions*, 4 FCC Rcd 740 (1989). The rules adopted by the FCC in this docket relate to the effect that mergers and acquisitions among LECs will have on the pooling status of those LECs and the Long Term and Transitional Support mechanisms adopted as part of the revised access charge rules that took effect on April 1, 1989.

The revised access charge rules allow LECs to leave the National Exchange Carrier Association (NECA) common line cost and revenue pool if they choose and file carrier common line (CCL) tariffs based on their own costs, subject to certain conditions. These conditions include the "affiliate withdrawal requirement," which provides that carriers that choose to leave the pool and file their own common line tariffs remove all their study areas, and that departing holding companies remove all their affiliated companies. Moreover, under the new rules, once a company (or group of affiliated companies) elects to leave the NECA common line pool and file its own common line tariff, it may not choose to participate in the NECA common line pool at a later date. LECs that withdraw from the NECA pool are required to contribute long-term support (LTS) to LECs that remain in the NECA pool to enable pooling companies to tariff a CCL charge equal to the charge that would have resulted if all LECs had remained in the pool. In addition, four years of transitional support (TRS) payments are provided to qualifying LECs that withdraw from the pool. TRS is paid by those nonpooling companies

that were not contributors to the pool in 1988. See, MTS and WATS market structure and amendment of part 67 of the Commission's rules and establishment of a Joint Board, 2 FCC Rcd 2953 (1987), *aff'd on recon.*, 3 FCC Rcd 4543 (1988), *appeal pending sub nom. Public Service Commission of the District of Columbia* v. *FCC*, D.C. Cir. No. 88–1661 (filed Sept. 12, 1988).

The FCC addressed three merger or acquisition scenarios involving LECs with different pooling positions. The three scenarios involve circumstances in which: (1) The surviving LEC(s) desire to operate outside the NECA common line pool, (2) the surviving LEC(s) desire to operate within the NECA common line pool, or (3) the involved LECs desire to retain their pretransaction common line pooling status. The FCC also discussed the regulatory treatment of LTS and TRS as a result of a merger or acquisition among nonpooling LECs. The FCC recognized the efficiency and cost-saving opportunities offered by mergers and acquisitions and sought to avoid creating regulatory obstacles or disincentives to mergers or acquisitions that offer public interest benefits. However, it noted that it remained mindful of the concerns expressed in the *Notice* and about the use by LECs of additional flexibility in the merger and acquisition area as a means to manipulate the rules in a manner that would undermine the revised pooling procedures.

The FCC observed that LECs with different pooling statuses could operate outside the NECA common line pool after a merger or acquisition under the existing rule. The FCC determined that in these cases, and those in which two LECs outside the pool merge, the 1988 base year data of the involved LECs should be adjusted to reflect the changed configurations of the LECs involved in the merger or acquisition, and the LTS and TRS amounts recalculated accordingly. The FCC found that this aproach would produce a more equitable result than the proposal contained in the *Notice* and will be easier for NECA to administer. Finally, while this approach will permit study areas of pooling LECs that are involved in mergers or acquisitions to be included in a nonpooling LEC's 1988 base year data and thus effectively receive TRS payments for the remaining one, two, or three years that the nonpooling LEC may be eligible to receive TRS payments, the FCC concluded that that result is not inequitable since substantial support dollars will not be affected. Additionally, the LTS requirement would be reduced and replaced with a smaller, declining TRS payment as a result of that LECs leaving the pool.

The FCC also concluded that, if a merger or acquisition among a pooling and a nonpooling LEC results in the LECs desiring to return properties to the NECA common line pool, a waiver of § 69.3(e)(9) would only be required if a net addition to the NECA common line pool and tariff of more than 50,000 lines would result from the transaction. The FCC concluded that such transactions will have a *de minimus* impact on the pool and will reduce the cost of completing such mergers or acquisitions.

The FCC decided that mergers or acquisitions proposing to allow more than 50,000 common lines to reenter the NECA common line pool would require a waiver before the common lines could reenter the pool. The FCC also found that the involved LECs would have the burden of demonstrating that the overall pooling structure would not be materially harmed. The FCC delegated to the Chief of the Common Carrier Bureau the authority to act on the waiver requests.

In the interest of administrative simplicity, the FCC adopted a streamlined approach to processing waivers required to allow more than 50,000 comon lines to reenter the NECA common line pool. Under this approach, such a waiver request will be deemed granted on the sixty-first day from the day of public notice inviting comment on the requested waiver unless the waiver request involves a merger or acquisition exhibiting certain specified conditions or certain events occur prior to the expiration of the sixty-day period. The FCC noted that such an approach provides in some administrative savings and offers an important planning horizon for the involved LECs. The FCC noted the adoption of this notice procedure does not alter the burden that the LECs involved in the merger or acquisition have to demonstrate that the overall pooling structure would not be materially harmed if the merger or acquisition were to be approved.

The FCC also concluded that LECs with different pooling statuses that are involved in a merger or acquisition may retain their pretransaction pooling positions indefinitely. The FCC noted that this was the most neutral approach, preserved the maximum flexibility for smaller LECs, and would not result in any increase in the support amount required for the NEGA common line pool since no LECs will be reentering the pool under this scenario.

The FCC determined that the involved LECs must either include in the pool, or remove from the pool, all of the common lines included in the merger or acquisition if some properties are to have their pooling status changed. The FCC stated that the flexibility in the rule is designed to permit carriers to have uniform treatment for their consolidated companies. The FCC found this requirement to be necessary to prevent selective actions that could adversely affect the NECA common line pool. The FCC also provided that, given the important of study areas to its regulatory framework, the rules adopted relate only to complete study areas.

Finally, the FCC concluded that any changes to the LTS or TRS payments can occur only on the date the annual access charge tariff filings become effective.

The FCC certified that the requirements contained in the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable to the rules adopted in this proceeding.

Paperwork Reduction

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

Ordering Clauses

Accordingly, *it is ordered*, Pursuant to section 1, 4 (i)–(j), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154 (i)–(j), and 403, and section 553 of the Administrative Procedure Act, 5 U.S.C. 553, that part 69 of the Commission's rules is amended as set forth below.

It is further ordered, That the Chief, Common Carrier Bureau, is delegated the authority to rule on the waiver requests described herein,

It is further ordered, That this proceeding is Terminated.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

List of Subjects in 47 CFR Part 69

Communications common carriers.

Part 69—Access Charges of title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 69 continues to read as follows:

Authority: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1070, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403.

2. Section 69.3 is amended by adding new paragraph (e)(11) to read as follows:

§ 69.3 Filing of access service tariffs.

* * * * *

(e) * * *

(11) Any changes in Association common line tariff participation and Long Term and Transitional Support resulting from the merger or acquisition of telephone properties are to be made effective on the next annual access tariff filing effective date following consummation of the merger or acquisition transaction, in accordance with the provisions of § 69.3(e)(9).

3. Section 69.3 is amended by adding new paragraph (g) to read as follows:

§ 69.3 Filing of access service tariffs.

* * * * *

(g) The following rules apply to telephone company participation in the Association common line pool for telephone companies involved in a merger or acquisition.

(1) Notwithstanding the requirements of § 69.3(e)(9), any Association common line tariff participant that is party to a merger or acquisition may continue to participate in the Association common line tariff.

(2) Notwithstanding the requirements of § 69.3(e)(9), any Association common line tariff participant that is party to a merger or acquisition may include other telephone properties involved in the transaction in the Association common line tariff, provided that the net addition of common lines to the Association common line tariff resulting from the transaction in not greater than 50,000, and provided further that, if any common lines involved in a merger or acquisition are returned to the Association common line tariff, all of the common lines involved in the merger or acquisition must be returned to the Association common line tariff.

(3) Telephone companies involved in mergers or acquisitions that wish to have more than 50,000 common lines reenter the Association common line pool must request a waiver of § 69.3(e)(9). If the telephone company has met all other legal obligations, the waiver request will be deemed granted on the sixty-first (61st) day from the date of public notice inviting comment on the requested waiver unless:

(i) The merger or acquisition involves one or more partial study areas;

(ii) The waiver includes a request for confidentiality of some or all of the materials supporting the request;

(iii) The waiver includes a request to return only a portion of the telephone properties involved in the transaction to the Association common line tariff;

(iv) The Commission rejects the waiver request prior to the expiration of the sixty-day period;

(v) The Commission requests additional time or information to process the waiver application prior to the expiration of the sixty-day period; or

(vi) A party, in a timely manner, opposes a waiver request or seeks conditional approval of the waiver in response to our public notice of the waiver request.

4. Section 69.612 is amended by adding new paragraph (c) to read as follows:

§ 69.612 Long term and transitional support.

* * * * *

(c) Long Term and Transitional Support shall be modified to take into account mergers and acquisitions on a prospective basis. The Association shall adjust the 1988 base year data of the surviving entity of entities or any merger or acquisition to reflect the changes effected by the merger or acquisition before calculating the Long Term and Transitional Support amounts pursuant to § 69.612 (a) and (b). For this purpose, the Association shall assume that the transaction occurred prior to 1988.

[FR Doc. 89-22737 Filed 9-26-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

Emergency Broadcast System

AGENCY: Federal Communications Commission.

SUMMARY: This document corrects a final rule published in the **Federal Register** at 53 FR 15398, April 29, 1988, concerning the emergency broadcast system.

EFFECTIVE DATE: September 27, 1989.

FOR FURTHER INFORMATION CONTACT: Frank Lucia, (202) 632-3906, Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

SUPPLEMENTARY INFORMATION: In FR Doc. 88-9391 published in the April 29, 1988, **Federal Register** on page 15398, the following correction is made in § 73.937 by removing the word "Level" from the heading of the section.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-22738 Filed 9-26-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

Radio Broadcasting Services; Unlimited-time Operation by Existing AM Daytime-only Radio Broadcast Stations; Discontinuance of Authorization of Additional Daytime-only Stations; and Minimum Power of Class III Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule concerning Radio Broadcasting Services published at 53 FR 1032, January 15, 1988.

EFFECTIVE DATE: September 27, 1989.

FOR FURTHER INFORMATION CONTACT: Louis Stephens, (202)-254-3394.

SUPPLEMENTARY INFORMATION: In FR Doc. 88-823, published in the January 15, 1988 **Federal Register** on page 1032 (53 FR 1032), in column 1, amendatory instruction number 14 is corrected to read "§ 73.3571 is amended by revising paragraph (d)(5) to read as follows:".

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-22765 Filed 9-26-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 97

[PR Docket No. 88-139; DA 89-1051]

Reorganization and Deregulation of the Rules Governing the Amateur Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rules; correction.

SUMMARY: This errata corrects errors and omissions in the final rules (54 FR 25857, June 20, 1989) adopted by the Commission on May 31, 1989. The errata is necessary so that amateur service stations and operators will have access to complete and accurate rules. By this action, the amateur community should be better able to understand and comply with the rules.

EFFECTIVE DATE: September 27, 1989.

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

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

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 97

Aliens, Amateur radio, Digital communications, Emissions, Frequencies, Radio.

Released: September 7, 1989.

In the matter of reorganization and deregulation of part 97 of the rules governing the amateur radio services.

The final rules published on June 30, 1989, at page 25857, in the above-entitled matter, are corrected as follows:

1. On page 25857, in the third column, in the table of contents for part 97—Amateur Radio Service, § 97–115 "Third-party traffic." is corrected to read "97.115 Third party communications."

2. On page 25858, in the first column, in the table of contents for part 97—Amateur Radio Service, § 97.309 "RTTY and data emission digital codes." is corrected to read "RTTY and data emission codes."

§ 97.5 [Corrected]

3. On page 25860, in the first column, in § 97.5(d)(2), the word "form" is corrected to read "Form."

§ 97.5 [Corrected]

4. Also on page 25860, in the first column, the final word in § 97.5(d)(5) is corrected to read "licensee."

§ 97.15 [Corrected]

5. Also on page 25860, in the third column, in § 97.15(b)(2) remove the word "longer" and substitute therefor the word "shorter."

6. On page 25862, in the second column, § 97.109 is correctly revised to read as follows:

§ 97.109 Station control.

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

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

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

(d) When a station is being automatically controlled, the control operator need not be at the control point. Only stations transmitting RTTY or data emissions on the 6 m or shorter wavelength bands, and stations specifically designated elsewhere in this part may be automatically controlled. Automatic control must cease upon notification by an EIC that the station is transmitting improperly or causing harmful interference to other stations. Automatic control must not be resumed without prior approval of the EIC.

(e) No station may be automatically controlled while transmitting third party communications, except a station retransmitting digital packet radio communications on the 6 m and shorter wavelength bands. Such stations must be using the American Radio Relay League, Inc. *AX.25 Amateur Packet—Radio Link—Layer Protocol, Version 2.0*, October 1984 (or compatible) which is available from American Radio Relay League, Inc., 225 Main Street, Newington, Connecticut 06111. The retransmitted messages must originate at a station that is being locally or remotely controlled.

7. On page 25863, in the third column, in § 97.119, correct paragraph (b)(3) and paragraph (c) to read as follows. Also, on page 25864, remove paragraph (g) of this section.

§ 97.119 Station identification.

* * * * *

(b) * * *

(2) * * *

(3) By a RTTY emission using a specified digital code when all or part of the communications are transmitted by a RTTY or data emission;

* * * * *

(c) An indicator may be included with the call sign. It must be separated from the call sign by the slant mark or by any suitable word that denotes the slant mark. If the indicator is self-assigned, it must be included after the call sign and must not conflict with any other indicator specified by the FCC Rules or by any prefix assigned to another country.

* * * * *

8. On page 25865, in the first column, § 97.207(c) (1) and (2) is corrected to read as follows:

§ 97.207 Space station.

(c) * * *

(1) The 17 m, 15 m, 12 m, and 10 m bands, 6 mm, 4 mm, 2 mm and 1 mm bands; and

(2) The 7.0–7.1 MHz, 14.00–14.25 MHz, 144–146 MHz, 435–438 MHz, 1260–1270 MHz, and 2400–2450 MHz, 3.40–3.41 GHz, 5.83–5.85 GHz, 10.45–10.50 GHz, and 24.00–24.05 GHz segments.

* * * * *

9. Also on page 25865, in the second column, § 97.209(b)(1) is corrected to read:

§ 97.209 Earth station.

* * * * *

(b) * * *

(1) The 17 m, 15 m, 12 m, and 10 m bands, 6 mm, 4 mm, 2 mm and 1 mm bands; and

* * * * *

10. Also on the same page, and in the same column, § 97.211(c)(1) is corrected to read:

§ 97.211 Telecommand station.

* * * * *

(c) * * *

(1) The 17 m, 15 m, 12 m and 10 m bands, 6 mm, 4 mm, 2 mm and 1 mm bands; and

* * * * *

11. On pages 25865, 25866, and 25867, in § 97.301, paragraph (a) is corrected by changing the first entry in the UHF wavelength band table; paragraph (c) is corrected by changing the ninth entry in the HF wavelength band table; and paragraph (d) is corrected by changing the second, third, and ninth entries in the HF wavelength band table as follows:

§ 97.301 Authorized frequency bands.

* * * * *

(a) * * *

Wavelength band	ITU—Region 1	ITU—Region 2	ITU—Region 3	Sharing requirements see § 97.303, Paragraph:
* * * * *	* * * * *	* * * * *	* * * * *	*
UHF	MHz	MHz	MHz	
70 cm	430–440	420–450	420–450	(a), (b), (f).
* * * * *	* * * * *	* * * * *	* * * * *	*

(c) * * *

Wavelength band	ITU—Region 1	ITU—Region 2	ITU—Region 3	Sharing requirements see § 97.303, Paragraph:
* * *	* * *	* * *	* * *	*
HF	MHz	MHz	MHz	
* * *	* * *	* * *	* * *	*
Do	21.225–21.450	21.225–21.450	21.225–21.450	

(d) * * *

Wavelength band	ITU—Region 1	ITU—Region 2	ITU—Region 3	Sharing requirements see § 97.303, Paragraph:
* * *	* * *	* * *	* * *	*
HF	MHz	MHz	MHz	
* * *	* * *	* * *	* * *	*
75 m		3.85–4.00	3.85–3.90	(a).
40 m	7.025–7.100	7.025–7.150	7.025–7.100	(a).
* * *	* * *	* * *	* * *	*
15 m	21.025–21.200	21.025–21.200	21.025–21.200	
* * *	* * *	* * *	* * *	*

§ 97.303 [Corrected]

12. On page 25867, in the second column, in § 97.303, paragraph (b), correct "24.05–24.24" to read "24.05–24.25."

§ 97.303 [Corrected]

13. On page 25868, in the first column, in § 97.303, paragraph (f)(4), correct "449.5–450 MHz" to read "449.75–450.25 MHz."

§ 97.303 [Corrected]

14. Also on page 25868, in the second column, in § 97.303, paragraph (k), add "GHz" after "145.45–145.75."

§ 97.303 [Corrected]

15. Also on page 25868, in the third column, in § 97.303, paragraph (n)(2), add "GHz" after "10.00–10.45."

16. On page 25869, in § 97.305(c), the entries in the MF, HF, and VHF wavelength band tables are corrected to read as follows:

§ 97.305 Authorized emission types.

* * * * *

(c) * * *

Wavelength band	Frequencies	Emission types authorized	Standards, see § 97.307(f), paragraph
MF:			
160 m	Entire band	RTTY, data	(3).
160 m	Entire band	Phone, image	(1), (2).
HF:			
80 m	Entire band	RTTY, data	(3), (9).
75 m	Entire band	Phone, image	(1), (2).
40 m	7.000–7.100 MHz	RTTY, data	(3), (9).
40 m	7.075–7.100 MHz	Phone, image	(1), (2), (9), (11).
40 m	7.100–7.150 MHz	RTTY, data	(3), (9).
40 m	7.150–7.300 MHz	Phone, image	(1), (2).
30 m	Entire band	RTTY, data	(3).
20 m	14.00–14.15 MHz	RTTY, data	(3).
20 m	14.15–14.35 MHz	Phone, image	(1), (2).
17 m	18.068–18.110 MHz	RTTY, data	(3).
17 m	18.110–18.168 MHz	Phone, image	(1), (2).
15 m	21.0–21.2 MHz	RTTY, data	(3), (9).
15 m	21.20–21.45 MHz	Phone, image	(1), (2).
12 m	24.89–24.93 MHz	RTTY, data	(3).
12 m	24.93–24.99 MHz	Phone, image	(1), (2).
10 m	28.0–28.3 MHz	RTTY, data	(4).
10 m	28.3–28.5 MHz	Phone, image	(1), (2), (10).
10 m	28.5–29.0 MHz	Phone, image	(1), (2).
10 m	29.0–29.7 MHz	Phone, image	(2).

—Continued

Wavelength band	Frequencies	Emission types authorized	Standards, see § 97.307(f), paragraph
VHF:			
6 m	50.1–51.0 MHz	RTTY, data	(5).
6 m	50.1–51.0 MHz	MCW, phone, image	(2).
6 m	51.0–54.0 MHz	RTTY, data, test	(5), (8).
6 m	51.0–54.0 MHz	MCW, phone, image	(2).
2 m	144.1–148.0 MHz	RTTY, data, test	(5), (8).
2 m	144.1–148.0 MHz	MCW, phone, image	(2).
1.25 m	Entire band	RTTY, data, test	(6), (8).
1.25 m	Entire band	MCW, phone, image	(2).

* * * * *

17. On page 25870, in the first column, in § 97.307, paragraphs (f) (5) and (6) are corrected to read as follows:

§ 97.307 Emission standards.

* * * * *

(f) * * *

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

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

* * * * *

18. Also on page 25870, in the second column, the title of § 97.309 is correctly revised to read as set forth below and paragraphs (a) (1), (2), and (3) are corrected to read as follows:

§ 97.309 RTTY and data emission codes.

(a) * * *

(1) The 5-unit, start-stop, International Telegraphs Alphabet No. 2 code, defined in International Telegraph and Telephone Consultative Committee Recommendation F.1, Division C.

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

(3) The 7–unit code, defined in American National Standards Institute X3.4–1977 or International Alphabet No. 5, defined in International Telegraph and Telephone Consultative Committee Recommendation T.50 or in International Organization for Standardization, International Standard ISO 646 (1983), and extensions as provided for in CCITT Recommendation T.61 (Malaga-Torremolinos, 1984).

* * * * *

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–22766 Filed 9–26–89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

Department of the Army

48 CFR Parts 5145 and 5152

Federal Acquisition Regulation Supplement; Government Furnished Property

AGENCY: Department of the Army (DA), DOD.

ACTION: Final Rule.

SUMMARY: The Defense Acquisition Regulatory Council approved for a two-year test period, the final rule which revises the proposed rule published at 54 FR 15471 dated April 18, 1989. The proposed rule was a Department of the Army deviation to Defense Acquisition Regulation Supplement (DFARS) Subpart 245.3 and section 252.245. The deviation permits the Army to provide existing Government property under installation support services contracts without retaining the responsibility for replacement. There is one change which is in placement of coverage.

EFFECTIVE DATE: September 27, 1989.

SUPPLEMENTARY INFORMATION:

A. Background

The proposed rule solicited comments from interested parties. Comments were received from three sources. The following summarizes significant comments, suggestions and actions taken.

Time Limit

Concern was expressed that two-year test means two years opportunity to initiate contracts utilizing this mode of equipment provisioning. The deviation will authorize use of the procedures in solicitations/contracts issued during the test period. Procedures will be applicable to the entire contract period, including option periods.

Submission of Proposed Maintenance Plan

It was suggested that the proposed maintenance plan be provided with contractor proposals, and the successful contractor's plan updated within 30 days after contract start versus receiving the proposed maintenance plan 45 days after contract start. Agree, however, the proposed clause is referring to FAR 45.402, which requires the contractor's maintenance system to be approved in writing by the property administrator. A contractor cannot develop a complete maintenance plan until after contract award. If the contracting activity desires to have an outline of a proposed maintenance plan for use with evaluation, this could/should be so stated in the Schedule.

Inconsistent With General Contracting Principles

Normally "commingling" of government and contractor materials is not allowed. If exercised, it will be necessary for the government's materials to be properly marked and at Government expense. Nonconcur. DFARS 245.505–3 allows commingling of materials so long as the contractor has adequate controls to ensure that the requirements of 242.7206 are met. FAR 45.506 states that the "contractor shall identify, mark, and record all Government property * * *" Therefore, the deviation does not require any additional effort.

Current practice is that contractors may invoice items costing under $1000 as direct line item costs. When the contractor is reimbursed for such direct

line item costs, the government takes title. Agree, providing the contract states that the government will reimburse the contractor as a direct line item cost, the government retains title (FAR 52.245–2(c)(4) and 52.245–5(c)(2)). However, the government property clauses do not contain a dollar threshold regarding the government's responsibility for replacement. The practice referenced in the comments is derived from DODI 4100.33, Commercial Activities Program Procedures. This procedure is not incorporated in FAR contracting policy. Material, as defined in FAR 45.302, can be provided at the beginning of the contract, with a statement that the contractor will be responsible for replacement. Under the proposed deviation procedures, the government will not retain title of any items for which the contractor is responsible for replacement, regardless of cost.

Concern was expressed that no mention was made in the procedures regarding award or incentive fees to be applied to contractor replacements or provisioning. Unless otherwise waived, award and incentive fees are considered applicable to costs for contractor replacement of government property. This is not applicable to the procedures. Basic award and target incentive fees are negotiated and determined prior to award of the contract. This fee is based on the total estimated contract cost. The fee does not change when the contractor procures a replacement item. No change is necessary because acquisition of replacement items will be an allowable contract cost. The basic award fee and target incentive fee does not change.

Concern was expressed that the government would pay more than necessary for replacement equipment if the contractor requires more for the item than indicated in the cost proposal. No change is necessary as the contracting officer has the authority to challenge the contractor's cost under FAR 31.301–3.

It was suggested that there should be greater detailed data on differentiation between different types of equipment and material being provided which are expected to be replaced by the contractor. No change is necessary as the proposed 5145.301 defines "Other Property and Special Use Property." FAR 45.301 defines "Material." It is up to the command to determine which items should be considered under "other property" or "special use property" and/or what items of material the government should be responsible for replacing.

Stockage Levels and Reorder Points

It was suggested that volume discounts be encouraged as long as excessive volumes would not accrue and if contractors do not utilize government supply systems, what stockage levels and reorder points would be allowed or required for replacement operations. This is not applicable as a responsible contractor will establish stockage points, etc. If the contracting activity desires to know the contractor's procurement mechanisms for replacement operations for evaluation purposes, they should request that information as a part of the proposal. A request for the contractor's proposed plans for replacement operations for evaluation of offers is an in-house decision.

Mission Capability

Concern was expressed that procedure affords incumbent contractor an "edge" over other competing contractors and the Government at resolicitation time. The government could not compete again without repurchasing many items of equipment which is a problem in support of readiness training, testing and actual mobilization. No change is required as equipment required for readiness training, testing and actual mobilization should be determined to be "Special Use Property" for which the government will retain title.

Concern was expressed that if the contractor defaults or the Government elects to not exercise an option the installation could not support required missions. The government should have the right to purchase contractor equipment. No change is necessary as FAR 10.010 provides procedures for acquisition of used or reconditioned government property, which includes equipment.

Commercial Activities In-House Costing

Concern was expressed that there were no specific procedures to explain in-housing costing needs for this mode of operation. No change is necessary as guidance regarding preparation of the government cost estimate is provided by U.S. Army Organization of Efficiency Review Activity.

Clause Subject Matter

The title of 5145.302–6, Required Government Property Clauses for Facilities Contracts, is incorrect. The subject matter does not involve facilities contracts. Agree. The referenced paragraph has been revised to read 5145.302–3(S–91) Required Government Property Clauses for Other than Facilities Contracts.

B. Regulatory Flexibility Act

No comments were received pursuant to paragraph B of the proposed rule which appeared at 54 FR 15471, April 18, 1989.

C. Paperwork Reduction Act

This rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et. seq.

List of Subjects in 48 CFR Parts 5145 and 5152

Government procurement, Government property.

Mary M. Pearson,

Army AFARS Liaison with the Federal Register.

Therefore, 48 CFR Chapter 51 is amended to read as follows:

1. Part 5145 is added to read as follows:

PART 5145—GOVERNMENT PROPERTY

5145.301 Definitions.
5145.302–3 Other contracts.
5145.303 Providing material.

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

5145.301 Definitions.

"Other Government Property" means all property, other than Special Use Property as defined below, which may be offered to a contractor for use in performance of installation support services contracts.

"Special Use Property" means property that is (a) "agency peculiar property", (b) necessary for mobilization requirements; or (c) property for which it has been determined that title should remain with the Government.

5145.302–3 Other contracts.

(S–90)(1) When it is determined that contractor use of existing Government facilities, other than special use property, in the performance of installation support services contracts, is in the best interest of the Government, the Government facilities will be offered to a contractor for use in the performance of the Government contract. Facilities provided to a contractor under this authority will not be replaced by the Government when they can no longer be used by the contractor. Nevertheless, it will be the contractor's responsibility to continue performance in accordance with the terms of the contract.

(2)(i) New facilities shall not be purchased in order to provide them to

contractors. Prior to offering existing facilities under this authority, a contracting officer shall make a written determination, based on the detailed justification provided by the approving officials and program/project manager, that such use is in the best interest of the Government. The written determination shall be kept in the contract file. (ii) Existing facilities offered for contractor use will be offered to all bidders/offerors for their consideration in the preparation of their bids and offers. Bidders/offerors may choose to use any or all of the facilities offered.

(3) When it is determined that contractor use of special use property in the performance of installation support services contracts is in the best interest of the Government, such property will be provided. It will be accounted for and managed under the appropriate Government property clause. For example, FAR 52.245–2 for fixed-price contracts or FAR 52.245–5 for cost-reimbursement contracts and any appropriate provision from FAR 52.245–11, Facilities Use Clause.

(S–91) Required Government property clauses for other than facilities contracts.

(1) In addition to the clauses at FAR 52.245–2 and 52–245–19, the Contracting Officer shall insert the clause at 5152.245–9000, Government Property for Installation Support Services (Fixed-Price Contracts), in solicitations and contracts when a fixed-price contract is contemplated and Government property will be provided without being replaced by the Government.

(2) The Contracting Officer shall insert the clause at 5152.245–9001, Government Property for Installation Support Services (Cost-Reimbursement Contracts), in solicitations and contracts when a cost-reimbursement type contract is contemplated and the Government property will be provided without being replaced by the Government.

5145.303 Providing material.

(S–90) Existing Government material on hand or being used prior to conversion to contractor performance of commercial activities may be offered to contractors if it is determined to be in the best interest of the Government per FAR 45.303–1. If the material is to be provided without replacement by the Government, the solicitation must state that it will not be replaced. If it is determined that the Government will be responsible for replacement of any of the material, those items must be listed on a separate Technical Exhibit and the solicitation state that replacement will be by the Government. These items will be governed by the appropriate Government Property clause in the contract in accordance with FAR 52.245–2 for fixed-price and FAR 52.245–5 for cost-reimbursement type contracts.

2. Part 5152 is added to read as follows:

PART 5152—SOLICITATIONS PROVISIONS AND CONTRACT CLAUSES

5152.245–9000 Government property for installation support services (fixed-price contracts).

5152.245–9001 Government property for installation support services (cost-reimbursement contracts).

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

5152.245–9000 Government Property for Installation Support Services (Fixed-Price Contracts).

As prescribed in 5145.302–3(91), insert the following:

Government Property for Installation Support Services (Fixed-Price Contracts) (OCT) (1989) (DEV)

The Government property listed at Technical Exhibit ____ is provided "as is" to the contractor for use in the performance of this contract. This property may be used by the Contractor until the Contractor no longer desires to use it for contract performance or the Contracting Officer withdraws it from use under this contract in accordance with FAR 52.245–2(b). The Contractor will comply with instructions from the Contracting Officer relative to disposition of the property. No equitable adjustment or other claim will be payable to the Contractor based upon the condition or availability of the property, except as provided in FAR 52.245–19. The Contractor remains responsible for performance of the required services under this contract regardless of the length of time which the property provided hereunder remains operational. Property provided by or obtained by the Contractor under this contract remains Contractor property. Except as provided herein, the property listed at Technical Exhibit ____ will be governed by FAR 52.245–2, Government Property (Fixed-Price Contracts), and FAR 52.245–19, Government Property Furnished "as is".

(End of clause)

5152.245–9001 Government Property for Installation Support Services (Cost-Reimbursement Contracts).

As prescribed in 5145.302–3(S–91), insert the following clause:

Government Property for Installation Support Services (Cost-Reimbursement Contracts) (Oct 1989) (DEV)

(a) *Government-furnished property.* The Government property listed at Technical Exhibit ____ is provided to the contractor for use in the performance of this contract for installation support services. This property will be used, maintained and administered by the Contractor until it is no longer required by the Contractor. Cessation of such use of the property, and subsequent turn-in, must be approved by the Contracting Officer. The Contracting Officer will provide the Contractor with appropriate disposition instructions. The Contractor will continue to perform following such disposition with Contractor-owned property. No equitable adjustment or claim will be payable resulting from turn-in or unsuitability for intended use of this property. No change to this contract is indicated by approval of turn-in of the property. No delay claim or performance delay will be allowed based on unsuitability of property or turn-in. The Contractor's proposal includes an estimate of the costs for providing its own property for the period following turn-in of Government property.

(b) *Changes in Government-furnished property.* The Contracting Officer may, by written notice, decrease the Government-furnished property or substitute other property for the property being used by the contractor. In the case of this withdrawal of property by the Contracting Officer, an equitable adjustment may be appropriate. Nevertheless, even in the case of such withdrawal, the Contractor is obligated to continue performance under this contract.

(c) *Title in Government Property.* (1) Title to the Property shall remain in the Government. Title to parts replaced by the Contractor in carrying out its normal maintenance obligations under paragraph (g) of this clause shall pass to and vest in the Government upon completion of their installation in the property.

(2) Title to the property shall not be affected by their incorporation into or attachment to any property not owned by the Government, nor shall any item of the property become a fixture or lose its identity as personal property by being attached to any real property. The Contractor shall keep the property free and clear of all liens and encumbrances and, except as otherwise authorized by this contract or by the Contracting Officer, shall not remove or otherwise part with possession of, or permit the use by others of any of the property.

(3) The Contractor may, with the written approval of the Contracting Officer, install, arrange, or rearrange, on Government furnished premises, readily removable machinery, equipment and other items belonging to the Contractor. Title to any such item shall remain in the Contractor even though it may be attached to real property owned by the Government, unless the Contracting Officer determines that it is so permanently attached that removal would cause substantial injury to Government property.

(4) The Contractor shall not construct or install, at its own expense, any fixed improvement or structural alterations in Government buildings or other real property without advance written approval of the Contracting Officer. Fixed improvement or structural alterations as used herein, means any alteration or improvement in the nature of the building or other real property that, after completion, cannot be removed without

substantial loss of value or damage to the premises. The term does not include foundations for production equipment.

(d) *Location of the property.* The Contractor may use the property only at the installation location(s) specified in the schedule. Written approval of the Contracting Officer is required prior to moving the property to any other location. In granting this approval, the Contracting Officer may prescribe such terms and conditions as may be deemed necessary for protecting the Government's interest in the property involved. Those terms and conditions shall take precedence over any conflicting provisions of this contract.

(e) *Notice of use of the property.* The Contractor shall notify the Contracting Officer in writing whenever any item of the property is no longer needed or usable for performing under this contract. The contracting officer will then make a decision as to disposition if agreement is reached with the Contractor that the property is no longer usable or suitable for its intended use.

(f) *Property Control.* The Contractor shall maintain property control procedures and records, and a system of identification of the property, in accordance with the provisions of FAR Subpart 45.5 in effect on the date of this contract.

(g) *Maintenance.* (1) Except as otherwise provided in the Schedule, the Contractor shall protect, preserve, maintain (including normal parts replacement), and repair the property in accordance with sound industrial practice.

(2) No later than 45 days after the execution of this contract, the Contractor shall submit to the Contracting Officer a written proposed maintenance program, including a maintenance records system, in sufficient detail to show the adequacy of the proposed program. If the Contracting Officer agrees to the proposed program, it shall become the normal maintenance obligation of the Contractor. The Contractor's performance according to the approved program shall satisfy the Contractor's obligations under subparagraphs (g) (1) and (5) of this clause.

(3) The Contracting Officer may at any time direct the Contractor in writing to reduce the work required by the normal maintenance program. If such order reduces the cost of performing the maintenance, an appropriate equitable adjustment may be made.

(4) The Contractor shall perform any maintenance work directed by the Contracting Officer in writing. Work in excess of the maintenance required under (g)(1) through (g)(3) of this clause shall be at Government expense. The Contractor shall notify the Contracting Officer in writing when sound industrial practice requires maintenance in excess of the normal maintenance program. The Contracting Officer shall then make a determination whether to repair the facilities or whether the Contractor should provide contractor property while continuing to perform.

(5) The Contractor shall keep records of all work done on the property and shall give the Government reasonable opportunity to inspect such records. When property is disposed of under this contract, the Contractor shall deliver the related records to the Government, or, if directed by the Contracting Officer, to third persons.

(6) The Contractor's obligation under this clause for each item of property shall continue until the item is removed, abandoned, or disposed of in accordance with Contracting Officer's instructions.

(h) *Access.* The Government and any persons designated by it shall, at all reasonable times have access to the premises where any of the property is located.

(i) *Indemnification of the Government.* The Contractor shall indemnify the Government and hold it harmless against claims for injury to persons or damage to property of the Contractor or others arising from the Contractor's possession or use of the property under this contract. Nevertheless, this provision applies only to injury arising out of use of property provided under this clause.

(j) *Representation and warranties.* (1) The Government makes no warranty, express or implied, regarding the condition or fitness for use of any property. To the extent practical, the Contractor shall be allowed to inspect all the property to be furnished by the Government.

(2) If, however, the Contractor receives property in a condition not suitable for the intended use, the Contractor shall, within 30 days after receipt and installation thereof, so notify the Contracting Officer, detailing the facts, and, as directed by the Contracting Officer, and at Government expense, either return such item or otherwise dispose of it or effect repairs or modifications. If the determination is made by the Contracting Officer to require turn-in rather than repair of the property, then the Contractor will continue to perform the contract by using its own property, for which reimbursement will be made in accordance with applicable cost principles.

(k) *Limited risk of loss.* (1) The Contractor shall not be liable for loss or destruction of, or damage to, the Government property provided under this contract or for expenses incidental to such loss, destruction, or damage, except as provided in subparagraphs (k) (2) and (3) of this clause.

(2) The Contractor shall be responsible for loss or destruction of, or damage to, the Government property provided under this contract (including expenses incidental to such loss, destruction, or damage)—

(i) That results from a risk expressly required to be insured under this contract, but only to the extent of the insurance required to be purchased and maintained or to the extent of insurance actually purchased and maintained, whichever is greater;

(ii) That results from a risk that is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;

(iii) For which the Contractor is otherwise responsible under the express terms of this contract;

(iv) That results from willful misconduct or lack of good faith on the part of the Contractor's managerial personnel; or

(v) That results from a failure on the part of the Contractor, due to willfull misconduct or lack of good faith on the part of the Contractor's managerial personnel, to establish and administer a program or system for the control, use, protection, preservation, maintenance, and repair of Government property as required by paragraph (f) of this clause.

(3)(i) If the Contractor fails to act as provided by subdivision (k)(2)(v) of this clause, after being notified (by certified mail addressed to one of the Contractor's managerial personnel) of the Government's disapproval, withdrawal of approval, or nonacceptance of the system or program, it shall be conclusively presumed that such failure was due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel.

(ii) In such event, any loss or destruction of, or damage to, the Government property shall be presumed to have resulted from such failure unless the Contractor can establish by clear and convincing evidence that such loss, destruction, or damage—

(A) Did not result from the Contractor's failure to maintain an approved program or system; or

(B) Occurred while an approved program or system was maintained by the Contractor.

(4) If the Contractor transfers Government property to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for loss or destruction of, or damage to, the property as set forth above. However, the Contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of, or damage to, the property while in the subcontractor's possession or control, except to the extent that the subcontract, with the advance approval of the Contracting Officer, relieves the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for its use in accordance with the provisions of the prime contract.

(5) Upon loss or destruction of, or damage to, Government property provided under this contract, the Contractor shall so notify the Contracting Officer and shall communicate with the loss and salvage organization, if any, designated by the Contracting Officer. With the assistance of any such organization, the Contractor shall take all reasonable action to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the affected Government property in the best possible order, and furnish to the Contracting Officer a statement of—

(i) The lost, destroyed, or damaged Government property;

(ii) The time and origin of the loss, destruction, or damage;

(iii) All known interests in commingled property of which the Government property is a part; and

(iv) The insurance, if any, covering any part of or interest in such commingled property.

(6) The Contractor shall repair, renovate, and take such other action with respect to damaged Government property as the Contracting Officer directs. If the

Government property is destroyed or damaged beyond practical repair, or is damaged and so commingled or combined with property of others (including the Contractor's) that separation is impractical, the Contractor may, with the approval of and subject to any conditions imposed by the Contracting Officer, sell such property for the account of the Government. Such sales may be made in order to minimize the loss to the Government, to permit the resumption of business, or to accomplish a similar purpose. The Contractor shall be entitled to an equitable adjustment in the contract price for the expenditures made in performing the obligations under this subparagraph (k)(6). However, the Government may directly reimburse the loss and salvage organization for any of their charges. The Contracting Officer shall give due regard to the Contractor's liability under this paragraph (k) when making any such equitable adjustment.

(7) The Contractor shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance or of any reserve covering risk of loss or destruction of, or damage to, Government property, except to the extent that the Government may have expressly required the Contractor to carry such insurance under another provision of this contract.

(8) In the event the Contractor is reimbursed or otherwise compensated for any loss or destruction of, or damage to, Government property, the Contractor shall use the proceeds to repair, renovate, or replace the lost, destroyed, or damaged Government property or shall otherwise credit the proceeds to, or equitably reimburse, the Government, as directed by the Contracting Officer.

(9) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss or destruction of, or damage to, Government property. Upon the request of the Contracting Officer, the Contractor shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where a subcontractor has not been relieved from liability for any loss or destruction of, or damage to, Government property, the Contractor shall enforce for the benefit of the Government the liability of the subcontractor for such loss, destruction, or damage.

(l) *Disposition of the facilities.* (1) The provisions of this paragraph shall apply to facilities whose use has been terminated by either the Contracting Officer or the Contractor because the property is no longer suitable for intended use, no longer desired, or is withdrawn from use by the Government.

(2) The Contractor shall dispose of the property provided hereunder in accordance with guidance provided by the Contracting Officer.

(3) The Contracting Officer shall give disposition instructions within 60 days of agreement that the property should be returned to the Government.

(4) The Government may remove or otherwise dispose of any facilities for which the Contractor's authority to use has been terminated.

(5) When Government property is returned to the Government, upon termination of the contract relationship between Government and Contractor or when Government furnished property is replaced by Contractor property, the Contracting Officer may direct repair of Government property necessitated by the change from Government to Contractor property such as removal of fixtures. When Contractor property is removed from Government property at the end of contract performance, the Government property will be restored to its condition prior to installation of Contractor property in accordance with Contracting officer direction.

(End of clause)

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 218

[FRA Docket No. RSOR-7, Notice No. 1]

RIN 2130-AA48

Procedures for Protecting Camp Cars

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FRA is amending its railroad operating practices regulations to require that certain protective procedures be employed when railroad employees occupy camp cars (on-track vehicles where rest is provided). The procedures are intended to prevent injuries that can occur when such vehicles are moved without proper precautions to protect the occupants.

EFFECTIVE DATE: These amendments are effective on January 1, 1990.

FOR FURTHER INFORMATION CONTACT: J.A. McNally, Director of Safety Enforcement, Office of Safety, FRA, 400 Seventh St., SW., Washington DC 20590 (telephone (202) 366-9252) or Mary-Jo Cooney Spottswood, Office of Chief Counsel, FRA, 400 Seventh St., SW., Washington, DC 20590 (telephone (202) 366-0628)

SUPPLEMENTARY INFORMATION: On February 17, 1989, FRA published a notice of proposed rulemaking (NPRM) under Docket RSOR-7, Notice No. 1 (54 FR 7219). FRA proposed to amend its operating practices regulations to require that certain procedures be employed when railroad employees occupy camp cars. These actions are taken in response to a statutory mandate, Section 19(c) of the Rail Safety Improvement Act of 1988 (RSIA) (Pub. L. 100-342).

In response to the NPRM, FRA received comments addressing various portions of the proposed rule from the Brotherhood of Maintenance-of-Way Employes (BMWE) and the Association of American Railroads (AAR), and Amtrak. The BMWE and the AAR submitted a joint proposal that has been helpful in the formulation of this rule. Both these parties also filed separate comments. Interested parties took little exception to the proposed rule. The issue which prompted the most discussion concerned the imposition of a speed limit on trains passing occupied camp cars and a twenty-five foot envelope around occupied camp cars.

On April 5, 1989, the FRA held a public hearing in Washington, DC. The comments made at this hearing and those received in response to the publication of the proposed rule are discussed in the Section-by-Section Analysis long with some minor changes in the proposed rule.

Background

At present, railroads own 3,637 on-track vehicles that are typically used to provide housing for workers who are building or maintaining tracks, signals, or bridges. These vehicles are known by several names, *e.g.*, camp cars, outfit cars, and bunk cars. For convenience, these vehicles are referred to as "camp cars." The units range from modular homes mounted on flat cars to converted passenger and freight cars. There are approximately 1,309 flat cars, 422 converted passenger cars, and 1,869 converted freight cars. Nearly all are used by six Class I railroads: Atchison, Topeka and Santa Fe, Burlington Northern, Conrail, CSX Transportation Systems, Norfolk and Western, and Union Pacific.

Under current industry practice, sizeable groups of workers are organized in so-called "production gangs" to improve the speed, quality, and efficiency with which large scale maintenance can be accomplished. Such a group will move progressively over that section of rail lines on which work is being done. This is typically seasonal work that must be accomplished while weather permits. Railroads need to house workers in reasonable proximity to the work site; in many areas of the country, no feasible alternatives exist.

Railroads assemble groups of workers and mechanized (on-rail) equipment and assign a certain number of cars outfitted as mobile living quarters. That collective unit will station itself at a given site and

perform its work. At the end of the work day, crews return to the site of the sleeping quarters.

Camp cars are generally parked in yards. When space allows, they are placed on tracks to which they have exclusive access. However, in many cases camp cars must be located on tracks where switching is performed or to which other carrier equipment requires access.

When camp cars share a track or siding with other equipment, there is the risk that the cars will be struck by rolling stock and that the occupants will be injured. A number of railroads have rules addressing this hazard.

Current FRA regulations governing railroad operating practices, 49 CFR part 218, prescribe rules for protection of railroad employees assigned to inspect, test, and repair rolling stock. This rule will extend similar protection to workers occupying camp cars.

Section 19(c) of the Rail Safety Improvement Act of 1988 (RSIA) (Pub. L. 100–342) states:

> The Secretary shall, within one year after the date of the enactment of this Act, amend part 218 of title 49, Code of Federal Regulations, to apply blue signal protection to on-track vehicles where rest is provided.

The purpose of this provision is to require that the same type of protection now provided to workers on rolling stock be provided to all railroad employees. However, FRA's proposal does differ in some respects from both the existing regulatory formulation and from other existing methods for protecting rail workers because of the particular safety concerns that are present in this situation.

In formulating its proposal, FRA examined three distinct but related efforts to address the safety problems that are the focus of the legislative concern: (1) The historical industry approach to analogous safety concerns, now embodied in FRA's blue signal provisions in part 218; (2) the current individual railroad practices for worker protection; and (3) a joint recommendation submitted by a labor-management task force. FRA's final rule blends elements from each of these sources.

As noted in the NPRM, the BMWE/AAR submitted some suggestions on additional issues of camp car safety. One, a prohibition against humping occupied camp cars or flat switching them without being coupled to a locomotive, was so important that it is included in this rule. Another suggestion was to create a 25-foot "envelope" around camp cars to protect them from movements on adjacent tracks, at least movements in excess of a designated speed.

The issue of a speed restriction on trains passing within 25 feet of occupied camp cars generated more comment than any other matter. The BMWE recommended a limitation of 40 m.p.h. on passing trains. The AAR, although opposed to a speed restriction, indicated that it would support a limit fo 55 m.p.h. on freight trains because of the importance which the BMWE attached to this issue; the AAR opposed any limit on passenger trains. Amtrak opposed any speed restrictions on passing freight or passenger trains because of the disruption it anticipated in passenger train schedules and crew assignments. While there is an obvious correlation in railroad accidents between train speed and the extent on property damage, information supplied by the BMWE did not show a causal relationship between train speed and accidents involving camp cars. Because imposition of a speed restriction on passing trains would exceed the statutory mandate and because FRA has received no data to justify such a measure, no speed restriction will be imposed at this time.

FRA's basic safety purpose in this rule is to protect rail workers when they are occupying camp cars that have been parked on main track or other than main track. In such circumstances, the occupants of that equipment have a reasonable expectation that the equipment will not be moved without notice. If the equipment is unexpectedly moved, the workers risk being injured or killed. In one such instance, a freight train collided with several camp cars resulting in injuries to twenty-two people, including the four crew members of the locomotive and 18 maintenance-of-way employees. The cause was a failure to close a switch on the main track.

Since the camp cars themselves are not capable of self-propulsion, movement of these cars results either from the use of a locomotive or from the impact of other cars entering the track occupied by the camp cars. It is the risk posed by unanticipated movement of this nature that FRA is addressing in this rule.

Current Practices

Rail workers whose duties cause them to be on, under, or between rolling equipment for purposes such as inspecting, testing, or repairing that equipment have historically been afforded a method of protection that is commonly known as "blue flag" protection. The essential elements of this method of protecting workers are placing a warning signal near the ends of the equipment being worked on and physically limiting access to the segment of track on which such equipment is located. FRA has established clear minimums concerning each basic element of that method in subpart B of part 218.

Rail workers who occupy camp cars have historically been afforded varying methods of protection. This diversity is reflected in the current individual railroad practices that FRA examined in preparing this proposal. When specific system-wide methods for protecting such workers have been in effect, most railroads employed both a warning signal and some form of physical access deterrent.

Building on that historical precedent, the BMWE/AAR recommended use of both a warning signal and physical impediments to prevent the unanticipated movement of occupied camp cars.

FRA's Final Rule

Where railroads currently provide blue signal protection to camp cars, most use a white signal with black lettering warning of the camp cars' presence. We are aware, however, of at least one railroad that uses a blue tinted signal. In selecting the design of the warning signal, we considered the option of requiring one type of sign, while permitting the alternative coloration if the signal was otherwise deployed in accordance with the regulation. We were concerned, however, that permitting various railroads to use different colored signals for camp car protection would create a safety hazard, especially where a train crew operates over another railroad's territory. We note that adoption of a uniform tint could create at least a short-term risk on railroads required to shift to that coloration. But the designated signal mandated in this rule is premised on the belief that there is less danger in requiring one, or a small number, of railroads to experience a short-term adjustment than there is in allowing a system differing color codes to exist over the long-term.

The blue tint is recognized throughout the industry as a warning that movement beyond the signal will create a hazard of death or injury to workers on or about equipment on that track, and as a requirement to obtain the permission of those workers prior to any such movement. However, signals colored blue are normally employed for only relatively brief periods (hours rather than days) and only to denote a particular class of hazards (*i.e.*, that workers are on, under, or between

rolling equipment on that track). Uniform color coding of hazard signals is a long tradition in the railroad industry. Orange identifies a rear-end marker; yellow is used by many carriers for derails, and red represents a "stop signal." The color blue has long been associated with a particular risk—workers on, under, or between rolling equipment on an occupied track—and we are concerned that its use for long periods in relation to a different class of hazards could promote confusion counterproductive to the safety objectives of this proposal. We are also concerned that using the color blue to denote differing hazards could undermine the employees' confidence in the reliability of color coding for other hazards. Finally, our data indicate that more railroads use a white lettered disk to identify camp cars than a blue tinted warning, meaning that the adoption of a white disk will require less adjustment than endorsement of the color blue.

One final concern about the signal is the need to illuminate the device. Given the fact that workers tend to occupy camp cars during darkness and that such equipment contains a ready source of electrical power, FRA has mandated that the signal be illuminated during darkness.

The placement of a warning signal alone does not provide a sufficient level of protection for workers in camp cars. Any number of circumstances can render that signal ineffective. Oversight, inattention, inadvertent removal, and vandalism are some of the more common illustrations of what can nullify the effectiveness of such devices. FRA, therefore, is requiring that the signal display be supplemented with another method for physically limiting access to the track on which the camp cars are parked.

Any track on which camp cars are parked will be connected on at least one end to some other track. FRA proposes to physically restrict movement on the segment of track on which the camp cars are located by controlling such connections that could provide other cars or locomotives access to the camp cars. Access to track on which camp cars are located would be restricted either by installation of a locked derail or by lining, locking and spiking the connecting switches away from the segment of track where the occupied cars are placed. Physical restriction of access to the camp cars would occur either through placement of a locked derail at a specified distance from the end of the camp cars or by having the connecting switches spiked, lined away from the segment of track occupied by the camp cars, and locked in that position. The derails or switches would have to be locked with an effective locking device. FRA has previously defined such locking devices as excluding locks that multiple parties can operate, such as the typical switch lock, and requiring a special lock that is controlled only by the workers who are being protected by it. *See* 49 CFR 218.5(d). FRA previously discussed the meaning of this provision when it adopted the current rules (44 FR 2175, January 10, 1979).

In essence, FRA proposes to employ the same procedures for limiting access that are contained in its existing rules but with one important difference. The procedures for physically limiting access to the segment of track occupied by camp cars will be applied regardless of whether the cars are parked on main track or other than main track.

FRA will deviate from its existing regulatory approach to address the fact that camp cars, unlike employees assigned to work on, under, or between rolling equipment, tend to remain in a single location for lengthly periods of time. FRA will follow the practice of several railroads and require that the dispatcher be notified of camp car placement. The final rule allows the dispatcher flexibility in alerting operating personnel about the presence of the camp cars rather than dictate the manner in which that information will be disseminated. At present, one railroad issues train orders indicating the location of cars and the others use a combination of measures to notify affected personnel.

Section-By-Section Analysis

FRA is adding a new subpart E to part 218 that includes the provisions relating to camp cars. FRA recently initiated another rulemaking to prohibit tampering with locomotive safety devices that will become subpart D of this regulation (see the August 31, 1988 issue of the Federal Register, 53 FR 33786). FRA also is adding a new definition to existing § 218.5 to define the type of rolling equipment to which this subpart applies.

Two parties took exception to the definition of "camp car" as it appeared in the NPRM. They stated that the definition was over-inclusive as it included track geometry cars, business cars, research cars, Amtrak dormitory, cars and others. BMWE stated that the legislation was specifically targeted at providing protection for maintenance-of-way employees. AAR objected to the fact that the rule required the use of these protective procedures for cars other than camp cars, namely those listed above. The statute requires that protection be provided to "on-track vehicles where rest is provided." It does not exempt any cars when they are parked on the track. The only exception to the rule is wreck trains, because occupied cars in wreck trains are not left parked on the track, and wreck trains are under the exclusive control of the people working on them; they are not subject to movement by other crews. All other cars must receive protection when they are parked on a track. The rule does not apply when cars are in a train.

Section 218.71 states the scope of the subpart. The final rule stipulates that protection be provided to all on-track vehicles that house railroad employees. The BMWE/AAR objected to the scope of the proposed rule. The NPRM, in keeping with the statutory mandate, required that protection be provided to all employees housed in camp cars. The BMWE/AAR contended that the rule was intended to apply only to maintenance-of-way employees. FRA has determined that all railroad employees are entitled to this type of protection. Other crafts are occasionally housed in camp cars, and FRA declines to make craft distinctions in its regulations, especially where the safety of employees is at stake.

Section 218.73 requires that a signal be displayed whenever such cars are designated for occupancy, not only when crews would normally be resting or off-duty (such cars are also used to provide meals for crews or to house sick or injured workers). Once such signals have been displayed, camp cars could not be coupled to other rolling equipment or moved. As noted earlier, FRA has determined that this signal must be a white disk with the words "Occupied Camp Car" in black lettering. This section also indicates those persons authorized to display or remove such signals.

Comments were received on three elements of this section: nighttime illumination of the warning signals, the language regarding coupling of occupied camp cars, and the placement and removal of the warning signals.

Amtrak stated that since camp cars are often stored for long periods of time, there would be occasions when the illuminated white light would not function. They recommended that a highly reflectorized material be incorporated into the mounting of the light and that the sign be reflectorized. Under the final rule, railroads must provide an illuminated warning signal at night; a reflectorized mounting may be used to supplement the illumination

provided by a white light, but it cannot substitute for this requirement.

With respect to the coupling of occupied cars, the BMWE/AAR comented that a literal reading of the language in the proposed rule would mean that camp cars could not be coupled to generator cars, dining cars, water cars, etc., while warning signals were displayed. The intent to the rule is to prevent movement of occupied cars while the warning signals are in place. The rule does not preclude coupling of such cars before protection has been established. Neither does the rule preclude movement of such cars subsequently if signals are removed by designated persons in accordance with specified procedures. An authorized person who removes protective signals must ensure that the occupants are made aware that the cars are to be moved. The language of § 218.73(a)(1) has been amended to indicate that camp cars may be coupled to other equipment before warning signals are erected:

After signals have been displayed—

(1) The camp cars may not be moved for coupling to other rolling equipment.

The third comment on this section concerned necessary movements of occupied cars once the warning signals have been put in place. The NPRM provided that the placement and removal of warning signals indicating occupied camp cars may be performed only by those persons authorized under the rule. AAR interpreted the proposed rule to mean that when occupants had left camp cars for an assignment, the signals could be moved and the cars could be switched. It is permissible to do this. However, the signals may only be removed by designated persons as identified in this section. Any party seeking to move rolling equipment onto track where occupied cars are parked, must contact one of the parties designated in § 218.73(b) and arrange for that person to remove the warning signals. FRA recognizes the need that can arise, in the course of railroad operations, to have access to track on which occupied cars may be parked. At the same time, FRA must ensure that such movement does not pose any risk of injury to camp car occupants.

Section 218.75 requires that each switch providing access to the segment of track where camp cars are located be lined and secured with an effective locking device and tagged with an appropriate signal. This requirement applies regardless of whether camp cars are located on main track or other than main track. FRA will employ the same definitions for the terms "switch providing access," "main track," and "effective locking device" that it currently employs for the blue signal protection provisions of part 218. This section also contains FRA's requirement to provide notification that camp cars are occupying a segment of track.

The BMWE/AAR proposal endorsed the practice of spiking the switch. This practice is currently followed by several of the railroads that use camp cars. The proposed rule did not require the spiking of manually operated switches. Spiking, however, is a useful measure because it requires a deliberate effort to reverse its effects and ensures that the protection afforded employees will not be circumvented by simple negligence. Therefore, the requirement that switches be spiked has been included in the final rule. FRA recognizes that spiking is not practicable when ties are concrete. In such instances the use of clamps which secure the switch point and stock rail together would be acceptable.

Section 218.77 contains the details of establishing protection in areas where remotely controlled switches are present. The designated person, normally the camp car foreman, must notify the operator of the switches that camp cars have been placed in the area. The operator of each remotely controlled switch must inform the designated camp car employee that each switch has been lined against movement to that track and locked. The operator of each remotely controlled switch shall maintain for 15 days a written record of each notification with the requisite information. This requirement varies from FRA's approach to remotely controlled switches under the current blue signal rule in two ways. First, although the retention period for this written record remains the same, that period does not commence until the operator has been notified that protection is no longer needed. Second, FRA will modify slightly its methods of physical protection when the access switch is a remotely controlled switch. As noted earlier, FRA's current blue signal rule implicitly contemplated only relatively brief time periods when the use of a remotely controlled switch would be restrained. Since the locking devices for such switches do not have the same level of physical security as the locks required for manual switches, FRA is concerned that, with the passage of an extended period of time, such a remotely controlled switch could be inadvertently activated. FRA addresses this possible occurrence by requiring that a locked derail be installed at least 150 feet from the end of the camp cars.

The proposed rule would have required imposition of a locked derail only when occupied cars were to remain on tracks for more than 48 hours. In the final rule, FRA has eliminated this 48-hour window for the following reasons: It is rare that camp cars are on a track for less than 48 hours; there is no safety justification for this grace period; for enforcement purposes, it would be difficult to determine when the 48-hour period began. Most important, remotely controlled switches do not provide the same level of protection as manually locked switches.

Section 218.79 provides alternative methods of protection for occupied camp cars covered under section 218.77. When railroad operations demand that a portion of the track be used by other equipment, FRA will sanction the use of derails to subdivide the track in question, just as the current blue signal rules permit in servicing areas. Camp cars located on tracks where switching occurs or where other rolling equipment has access can be protected by use of a portable derail placed 150 feet from the end of the camp car and by use of the required signal. If speed within the area is restricted to not more than five miles per hour, a derail, capable of restricting access to that portion of the track where the occupied camp cars are located, will satisfy the requirements of a manually operated switch when placed at least 50 feet from the end of the equipment to be protected by the appropriate signal. When derails are so used, they must be locked with an effective locking device and flagged with an appropriate signal.

Regulatory Evaluation Pursuant To E.O. 12291 and DOT Policies

The rule has been evaluated in accordance with existing policies and procedures. It is considered to be a non-major rulemaking under Executive Order 12291, but significant under DOT policies and procedures (44 FR 11034, February 26, 1979).

At present, railroads own an estimated 3,637 camp car-type vehicles. Of this total, approximately 90 percent are owned by the following carriers, ordered by size of fleet: Burlington Northern (901), CSX (730), Conrail (539), Union Pacific (486), Norfolk and Western (362), and Santa Fe (327). These six railroads comprise the majority of the activity as well as ownership of camp cars. The remaining 10 percent of camp cars are owned by 16 railroads, with none of these owning more than 70 camp cars, or 2 percent of the total camp car fleet.

The majority of camp cars are currently afforded sufficient protection. The rule will further reduce the accident risk by mandating more uniform safety procedures for protecting workers housed in camp cars.

Projected potential benefits of the rule are based on avoidance of accidents. Historical data from FRA shows one major accident in the last ten years. Track and property damage from the accident mounted to $36,550 and 22 injuries (4 crew members and 18 maintenance-of-way employees). Each injured employee was estimated to be absent from work an average of almost 17 days.

The projected potential costs from the rule are expected to be minimal. Cost impacts will be limited to purchases of additional equipment that may be needed by railroads not already complying with the planned regulatory action. FRA estimates that manufacture and illumination of the proposed signal device will cost $94.95 per commercial device and approximately $20.00 per railroad-made device. The 760 estimated devices include all cases and may well overstate the actual cost of the proposal. Nevertheless, the total cost of this estimate does not exceed $34,178, assuming that a third of the devices are manufactured commercially and the remaining two thirds are produced by the railroads. There will be minimal costs resulting from the recordkeeping provisions. This rule will not have a significant economic impact since the basic protection mandated in the Rail Safety Improvement Act of 1988 is already practiced by most railroads using camp cars.

Regulatory Flexibility Act

These regulations will not have any economic impact on small entities. FRA therefore certifies that this proposal will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

The rule has information collection requirements. FRA is submitting these information collection requirements to the Office of Management and Budget for approval under the Paperwork Reduction Act of 1980. Any comments on these information collection requirements should be provided to Mr. Gary Waxman, Regulatory Policy Branch, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Washington, DC 20503. Copies of any such comments should also be submitted to the docket of this rulemaking at the address provided above. When the Office of Management and Budget approves the information collection requirements in § 218.77, the FRA will publish a document in the **Federal Register** adding the OMB control number.

Environmental Impact

The rule will not have any identifiable environmental impact.

Federalism Implications

This rule will not have a substantial effect on the states, on the relationship between the states and the national government, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

List of Subjects in 49 CFR Part 218

Occupational safety and health, Penalties, Railroad employees, Railroad safety, Railroads, Reporting and recordkeeping requirements.

The Rule

In consideration of the foregoing, FRA amends 49 CFR part 218 by amending subpart A and by adding a new subpart E to read as follows:

PART 218—[AMENDED]

1. The authority citation for part 218 continues to read as follows:

Authority: 45 U.S.C. 431 and 438, as amended; Pub. L. 100-342; and 49 CFR 1.49(m).

2. By amending § 218.5 by adding a new paragraph (n) to read as follows:

§ 218.5 Definitions.

* * * * *

(n) "*Camp car*" means any on-track vehicle, including outfit, camp, or bunk cars or modular homes mounted on flat cars used to house rail employees. It does not include wreck trains.

3. Add subpart E consisting of §§ 218.71 through 218.80 to read as follows:

Subpart E—Protection of Occupied Camp Cars

218.71 Purpose and scope.
218.73 Warning signal display.
218.75 Methods of protection for camp cars.
218.77 Remotely controlled switches.
218.79 Alternative methods of protection.
218.80 Movement of occupied camp cars.

Subpart E—Protection of Occupied Camp Cars

§ 218.71 Purpose and scope.

This subpart prescribes minimum requirements governing protection of camp cars that house railroad employees. The rule does not apply to such cars while they are in a train.

§ 218.73 Warning signal display.

(a) Warning signals, *i.e.*, a white disk with the words "Occupied Camp Car" in black lettering during daylight hours and an illuminated white signal at night, displayed in accordance with § 218.75, § 218.77, or § 218.79 signify that employees are in, around, or in the vicinity of camp cars. Once the signals have been displayed—

(1) The camp cars may not be moved for coupling to other rolling equipment or moved to another location;

(2) Rolling equipment may not be placed on the same track so as to reduce or block the view of a warning signal; and

(3) Rolling equipment may not pass a warning signal.

(b) Warning signals indicating the presence of occupied camp cars, displayed in accordance with § 218.75 and 218.79, shall be displayed by a designated occupant of the camp cars or that person's immediate supervisor. The signal(s) shall be displayed as soon as such cars are placed on the track, and such signals may only be removed by those same individuals prior to the time the cars are moved to another location.

§ 218.75 Methods of protection for camp cars.

When camp cars requiring protection are on either main track or track other than main track:

(a) A warning signal shall be displayed at or near each switch providing access to that track;

(b) The person in charge of the camp car occupants shall immediately notify the person responsible for directing train movements on that portion of the railroad where the camp cars are being parked;

(c) Once notified of the presence of camp cars and their location on main track or other than main track, the person responsible for directing train movements on that portion of the railroad where the camp cars are being parked shall take appropriate action to alert affected personnel to the presence of the cars;

(d) Each manually operating switch providing access to track on which the camp cars are located shall be lined against movement to that track and secured with an effective locking device and spiked; and

(e) Each remotely controlled switch providing access to the track on which the camp cars are located shall be protected in accordance with § 218.77.

§ 218.77 Remotely controlled switches.

(a) After the operator of the remotely controlled switch is notified that a camp car is to be placed on a particular track, he shall line such switch against movement to that track and apply an

effective locking device applied to the lever, button, or other device controlling the switch before informing the person in charge of the camp car occupants that protection has been provided.

(b) The operator may not remove the locking device until informed by the person in charge of the camp car occupants that protection is no longer required.

(c) The operator shall maintain for 15 days a written record of each notification that contains the following information:

(1) The name and craft of the employee in charge who provided the notification;

(2) The number or other designation of the track involved;

(3) The date and time the operator notified the employee in charge that protection had been provided in accordance with paragraph (a) of this section; and

(4) The date and time the operator was informed that the work had been completed, and the name and craft of the employee in charge who provided this information.

(d) When occupied camp cars are parked on main track, a derail, capable of restricting access to that portion of the track on which such equipment is located, shall be positioned no less than 150 feet from the end of such equipment and locked in a derailing position with an effective locking device, and a warning signal must be displayed at the derail.

§ 218.79 Alternative methods of protection.

Instead of providing protection for occupied camp cars in accordance with § 218.75 or § 218.77, the following methods of protection may be used:

(a) When occupied camp cars are on track other than main track:

(1) A warning signal must be displayed at or near each switch providing access to or from the track;

(2) Each switch providing entrance to or departure from the area must be lined against movement to the track and locked with an effective locking device; and

(3) If the speed within this area is restricted to not more than five miles per hour, a derail, capable of restricting access to that portion of track on which the camp cars are located, will fulfill the requirements of a manually operated switch in compliance with paragraph (a)(2) of this section when positioned at least 50 feet from the end of the camp cars to be protected by the warning signal, when locked in a derailing position with an effective locking device, and when a warning signal is displayed at the derail.

(b) Except as provided in paragraph (a) of this section, when occupied camp cars are on track other than main track:

(1) A derail, capable of restricting access to that portion of the track on which such equipment is located, will fulfill the requirements of a manually operated switch when positioned no less than 150 feet from the end of such equipment; and

(2) Each derail must be locked in a derailing position with an effective locking device and a warning signal must be displayed at each derail.

§ 218.80 Movement of occupied camp cars.

Occupied cars may not be humped or flat switched unless coupled to a locomotive.

Issued in Washington, DC August 21, 1989.

Gilbert E. Carmichael,

Administrator.

[FR Doc. 89-22607 Filed 9-26-89; 8:45 am]

BILLING CODE 4910-06-M

Federal Highway Administration

49 CFR Part 391

[FHWA Docket No. MC-116]

RIN 2125-AA79

Controlled Substances Testing; Technical Amendments

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Corrections to final rule.

SUMMARY: This document includes technical amendments to the final rule, Controlled Substances Testing that appeared in the **Federal Register** on Monday, November 21, 1988 (53 FR 47134). The error appeared in 49 CFR 391.83(c) regarding the applicability of the drug testing rules with respect to any person for whom a foreign government contends that application of this rule raises questions of compatibility with that country's domestic laws or policies. These amendments are necessary to allow sufficient time to resolve any conflicts between FHWA's drug testing rule and foreign laws and policies.

EFFECTIVE DATE: September 27, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas P. Kozlowski, Office of Motor Carrier Standards, (202) 366-2981, or Mr. Thomas P. Holian, Office of the Chief Counsel, (202) 366-1350, Federal Highway Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The final rule published in the **Federal Register** at 53 FR 47134 on November 21, 1988, stated that the applicability of this rule would not be effective until January 1, 1990, with respect to any person for whom a foreign government contends that application of this subpart raises questions of compatibility with that country's domestic laws or policies. It was the intention of the FHWA to allow an additional year, from the initial implementation date of regulation, in which to resolve conflict with foreign laws. Thus, it was intended that January 1, 1991, be the earliest date for testing for these persons. Inadvertently, the final rule published on November 21, 1988, contained an erroneous date of January 1, 1990. Recently this error was identified. Current discussions with foreign governments lead FHWA to conclude that the additional year intended for implementation for these persons is warranted. Accordingly, the FHWA has concluded that the error in the final rule should be corrected.

Therefore, the FHWA is amending § 391.83(c) to make the requirements of the final rule applicable to any person for whom a foreign government contends that application of this rule raises questions of compatibility with that country's domestic laws or policies on January 1, 1991. This section is being further amended to state that the FHWA will issue any necessary amendments resolving the applicability of the final rule to such persons on or before December 1, 1990.

List of Subjects in 49 CFR Part 391

Highway safety, Highways and roads, Financial responsibility, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program No. 20.217, Motor Carrier Safety)

Larry L. Thompson,

Chief Counsel, Federal Highway Administration.

In view of the above, the FHWA is amending 49 CFR part 391 as follows:

PART 391—[AMENDED]

1. The authority citation for part 391 continues to read as follows:

Authority: 49 U.S.C. App. 2505; 49 U.S.C. 504 and 3102; 49 CFR 1.48.

2. Section 391.83(c) is revised to read as follows:

§ 391.83 Applicability.

* * * * *

(c) This subpart is not effective until January 1, 1991, with respect to any person for whom a foreign government contends that application of this subpart raises questions of compatibility with that country's domestic laws or policies. On or before December 1, 1990, the Administrator shall issue any necessary amendment resolving the applicability of this subpart to such person on and after January 1, 1991.

[FR Doc. 89-22732 Filed 9-26-89; 8:45 am]

BILLING CODE 4910-22-M

Proposed Rules

Federal Register
Vol. 54, No. 186
Wednesday, September 27, 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 THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS-217-84]

RIN 1545-AH49

Golden Parachute Payments

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of public hearing on proposed regulations.

SUMMARY: This document contains a correction to the notice of public hearing on proposed regulations relating to golden parachute payments.

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

SUPPLEMENTARY INFORMATION:

Background

On September 13, 1989, the **Federal Register** at 54 FR 37815 published a notice of public hearing on proposed regulations under section 280(G) of the Internal Revenue Code of 1986.

Need for Correction

As published, the notice of public hearing did not include the beginning time of the public hearing.

Correction of Publication

Accordingly, the publication of the notice of public hearing in the **Federal Register** for Thursday, September 13, 1989, at page 37815, column 1, under the subheading "DATES", the paragraph should read: "The public hearing will be held on Friday, November 17, 1989, beginning at 10:00 a.m. Outlines of oral comments must be delivered by Friday, October 27, 1989."

Dale D. Goode,

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

[FR Doc. 89-22740 Filed 9-26-89; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 1

[PS-002-89]

RIN 1545-AM92

Research and Experimental Expenditures

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of public hearing on proposed regulations.

SUMMARY: This document contains a correction to the notice of public hearing on proposed regulations relating to research and experimental expenditures.

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

SUPPLEMENTARY INFORMATION:

Background

On September 14, 1989, the **Federal Register** at 54 FR 37947 published a notice of public hearing on proposed regulations under sections 41 and 170 of the Internal Revenue Code of 1986.

Need for Correction

As published, the notice of public hearing did not include the beginning time of the public hearing.

Correction of Publication

Accordingly, the publication of the notice of public hearing in the **Federal Register** for Thursday, September 14, 1989, at page 37947, column 2, under the subheading "DATES", the paragraph should read: "The public hearing will be held on Tuesday, December 5, 1989, beginning at 10:00 a.m. Outlines of oral comments must be delivered by Friday, November 17, 1989."

Dale D. Goode,

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

[FR Doc. 89-22741 Filed 9-26-89; 8:45 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPTS-50573; FRL-3651-3]

2,4-Pentanedione; Proposed Significant New Use of a Chemical Substance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) which will require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of 2,4-pentanedione (CAS Number 123-54-6) for use in a consumer product. EPA believes that this action is necessary because 2,4-pentanedione may be hazardous to human health and its use in a consumer product may result in significant human exposure. The required notice would provide EPA with the opportunity to evaluate the intended use and associated activities, and an opportunity to protect against potentially adverse exposure to the chemical substance before it can occur.

DATE: Written comments should be submitted to EPA by October 27, 1989.

ADDRESS: Since some comments may contain confidential business information (CBI), all comments should be sent in triplicate to: TSCA Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Room L-100, 401 M Street SW., Washington, DC 20460.

Comments regarding this proposed SNUR should include the docket control number OPTS-50573. Nonconfidential comments will be placed in the rulemaking record and will be available for public inspection. Unit X of this preamble contains additional information on submitting comments containing CBI.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room EB-44, 401 M Street SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: This proposed SNUR would require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of 2,4-pentanedione for use in a consumer product. The required notice would provide EPA with the information needed to evaluate an intended use and associated activities, and an opportunity to protect against potentially adverse exposure to the chemical substance before it can occur.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use.

Persons subject to this SNUR would comply with the same notice requirements and EPA regulatory procedures as submitters of premanufacture notices (PMNs) under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of section 5 (b) and (d)(1), the exemptions authorized by section 5(h) (1), (2), (3), and (5), and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities for which it has received a SNUR notice. If EPA does not take action, section 5(g) of TSCA requires EPA to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR part 707.

II. Applicability of General Provisions

In the **Federal Register** of September 5, 1984 (49 FR 35011), EPA promulgated general regulatory provisions applicable to SNURs (40 CFR part 721, subpart A). On July 27, 1988 (53 FR 28354), EPA promulgated amendments to the general provisions which apply to this proposed SNUR. The entire text of subpart A was published in that document; interested persons should refer to it for further information. In the **Federal Register** of August 17, 1988 (53 FR 31252), EPA promulgated a "User Fee Rule" (40 CFR part 700) under the authority of TSCA section 26(b). Provisions requiring persons submitting significant new use notices to submit certain fees to EPA are discussed in detail in that **Federal Register** document. On July 27, 1989 (54 FR 31298), EPA promulgated amendments to subpart A, and added new subparts B, C, and D to 40 CFR part 721. Certain provisions contained therein apply to this proposed SNUR; refer to it for further information.

III. Summary of This Proposed Rule

The chemical substance which is the subject of this proposed SNUR is 2,4-pentanedione. EPA is proposing to designate use in a consumer product as a significant new use of 2,4-pentanedione. Consumer product is defined at 40 CFR 721.3, 54 FR 31298, as "a chemical substance that is directly, or as part of a mixture, sold or made available for consumers for their use in or around a permanent or temporary household or residence, in or around a school, or in recreation." The rule would require persons who intend to manufacture, import, or process 2,4-pentanedione for use in a consumer product to submit a significant new use notice to EPA at least 90 days before such manufacture, import, or processing.

IV. Background Information on 2,4-Pentanedione

A. Production and Use Data

EPA review of the TSCA Chemical Substance Inventory Data Base and other information sources revealed that approximately 230,000 pounds of 2,4-pentanedione was produced in 1977. The sole U.S. producer reported domestic sales volumes of less than 5 million pounds of the substance in 1984 and 1985. 2,4-Pentanedione is produced in Japan, the United Kingdom, and West Germany; the amount imported into the U.S. has been claimed as confidential.

The major uses of 2,4-pentanedione are as an intermediate in the production of antibacterial agents, specifically sulfamethazine, and as a chelator or complexing agent for metals. Minor uses may include use as an analytical reagent, solvent, stabilizer for UV plastics, fuel octane booster, corrosion inhibitor, and as a radioactive labeling agent. EPA is aware of no ongoing use in consumer products.

B. Health Effects

2,4-Pentanedione has been reported to be a neurotoxin, producing a central nervous system disorder that is characterized by an irreversible cerebellar syndrome in experimental animals. Genotoxicity testing produced positive results in the following assays: CHO/sister chromatid exchange, CHO cytogenic, mouse, micronucleus, and dominant lethal. The dominant lethal study tests the ability of the substance to induce genotoxicity in the mammalian gonad, and thus is indicative of a potential to produce heritable mutations. Developmental toxicity data include altered growth and structural abnormalities in the offspring of rats exposed by inhalation to concentrations of 200 and 400 ppm. Other effects include the production of thymic atrophy at high doses and alterations in enzyme activity in experimental animals. In humans, 2,4-pentanedione is reported to cause contact dermatitis and contact urticaria. Further information regarding the human health effects of 2,4-pentanedione is contained in the public record for this proposed rule.

C. Exposure Data

The National Occupational Exposure Survey conducted by the National Institute for Occupational Safety and Health (NIOSH) indicated that 802 workers are exposed to 2,4-pentanedione. Occupational monitoring data were not available. EPA has little data on the numbers of persons exposed to 2,4-pentanedione outside of the workplace or the levels to which persons may be exposed.

V. Objectives and Rationale for the Proposed Rule

To determine what would constitute a significant new use of 2,4-pentanedione, EPA considered relevant information on the toxicity of the substance, likely exposures associated with possible uses, and the four factors listed in section 5(a)(2) of TSCA. Based on these considerations, EPA wishes to achieve the following objectives with regard to the significant new use that is designated in this proposed rule:

1. EPA wants to ensure that it would receive notice of any company's intent to manufacture, import, or process 2,4-pentanedione for use in a consumer product before that activity begins.

2. EPA wants to ensure that it would have an opportunity to review and evaluate data submitted in a significant new use notice before the notice submitter begins manufacturing, importing, or processing 2,4-pentanedione for use in a consumer product.

3. EPA wants to ensure that it would be able to regulate prospective manufacturers, importers, or processors of 2,4-pentanedione before its use in a consumer product occurs, provided that the degree of potential health risk is sufficient to warrant such regulation.

Data indicate that 2,4-pentanedione may be neurotoxic, genotoxic with possible potential to produce heritable mutations, and developmentally toxic. 2,4-Pentanedione has been reported to cause contact dermatitis and contact urticaria in humans. EPA believes that use of 2,4-pentanedione in a consumer product has a high potential to increase the magnitude and duration of exposure from that which currently exists. Considering the toxicity of and potential exposure to 2,4-pentanedione, EPA believes that individuals could suffer adverse effects from exposure to the substance if it were used in commercial products. Currently, 2,4-pentanedione is subject to no Federal regulation which would notify the Federal Government of activities that might result in adverse consumer exposures, or provide a mechanism that could protect potentially adverse consumer exposures before they occur.

2,4-Pentanedione has a low odor threshold (0.01 ppm) which affords good warning properties that may preclude overexposure to the chemical in the workplace. EPA has communicated information regarding workplace hazard concerns to NIOSH and the Occupational Safety and Health Administration for further evaluation of ongoing exposures and risks, if appropriate.

VI. Alternatives

Before proposing this SNUR, EPA considered the following alternative regulatory actions for 2,4-pentanedione.

1. Promulgate a section 8(a) reporting rule for 2,4-pentanedione. Under such a rule, EPA could require any person to report information to the Agency when they intend to manufacture, import, or process 2,4-pentanedione for use in a consumer product. However, in the case of this particular substance, the use of section 8(a) rather than SNUR authority would have several drawbacks. First, EPA would not be able to receive advance notification of the intended activity, nor would it be able to take immediate follow-up regulatory action under section 5(e) or 5(f) to prohibit or limit the activity. In addition, EPA may not receive important information from small businesses, because such firms are exempt from section 8(a) reporting requirements. In view of the level of health concern for 2,4-penthanedione, EPA believes that a section 8(a) rule for this substance would not meet EPA's regualtory objectives.

2. Regulate the substance under section 5 of TSCA. However, EPA may regulate under section 6 only if there is a reasonable basis to conclude that the manufacture, importation, processing, distribution in commerce, use, or disposal of a chemical substance or mixture "presents or will present" an unreasonable risk of injury to human health or the environment. There is insufficient information about prospective manufacturing, importation, or processing operations at this time to enable EPA to make a conclusive determination of risk. Therefore, EPA is not able at this time to take action under section 6 to regualte 2,4-pentanedione.

VII. Applicability of Proposed Rule to Uses Occurring Before Effective Date of the Final Rule

EPA believes that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of the proposal date of the SNUR rather than as of the effective date of the final rule. If uses begun during the proposal period of a SNUR were considered ongoing as of the effective date, it would be difficult for EPA to establish SNUR notice requirements, because any person could defeat the SNUR by initiating the proposed significant new use before the rule became final; this interpretation of section 5 would make it extremely difficult for EPA to establish SNUR notice requirements.

Persons who begin commercial manufacture, import, or processing of 2,4-pentanedione for use in a consumer product between proposal and the effective date of the SNUR may comply with this proposed SNUR before it is promulgated. If a person were to meet the conditions of advance compliance as codified at § 721.45(h) (53 FR 28354, July 17, 1988), the person will be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substance between proposal and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

VIII. Test Data and Other Information

EPA recognizes that under TSCA section 5, persons are not required to develop any particular test data before submitting a significant new use notice. However, in view of the potential health risk that may be posed by the use of 2,4-pentanedione in consumer products, EPA suggests potential SNUR notice submitters conduct tests that would permit a reasoned evaluation of risks posed by this substance when utilized in consumer products. SNUR notices submitted without accompanying test data may increase the likelihood that EPA would take action under section 5(e).

EPA encourages persons to consult with EPA before selecting a protocol for testing 2,4-pentanedione. As part of this optional prenotice consultation, EPA will discuss the test data it believes necessary to evaluate a significant new use of the substance. Test data should be developed according to TSCA Good Laboratory Practice Standards at 40 CFR Part 792. Failure to do so may lead EPA to find such data to be insufficient to evaluate reasonably the health or environmental effects of the substance.

EPA urges SNUR notice submitters to provide detailed information on human exposure that may result from the significant new use of 2,4-pentanedione. In addition, EPA encourages persons to submit information on potential benefits of the substance and information on risks posed by the substance compared to risks posed by potential substitutes.

IX. Economic Analysis

EPA has evaluated the potential costs of establishing SNUR reporting requirements for 2,4-pentanedione. EPA's complete economic analysis is available in the public record for this proposed rule.

X. Comments Containing Confidential Business Information

Any person who submits comments claimed as CBI must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as CBI at the time of submission will be placed in the public file. A complete public version must be submitted if the submitter claims any material CBI. Any comments marked as CBI will be treated in accordance with the procedures in 40 CFR part 2.

XI. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS–50573). The record includes basic information considered by EPA in developing this proposed rule. EPA will supplement the record with additional information as it is received and will identify the complete rulemaking record by the date of promulgation. A public version of this record containing nonconfidential materials is available for reviewing and copying from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, located at Rm. NE–G004, 401 M St., SW., Washington, DC.

XII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this proposed rule would not be a "major" rule because it would not have an effect on the economy of $100 million or more, and it would not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the total annual cost of compliance with this proposed rule, EPA estimates that the reporting cost for submitting a significant new use notice would be approximately $4,500 to $11,800 including a $2,500 user fee. EPA believes that, because of the nature of the proposed rule the and the substance involved, there would be few significant new use notices submitted. Furthermore, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact would be limited because such factors are unlikely to discourage an innovation that has high potential value.

This proposed rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this proposed rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by the rule would likely be small businesses. However, EPA expects to receive few SNUR notices for the substance. Therefore, EPA believes that the number of small businesses affected by the proposed rule would not be substantial, even if all of the SHUR notice submitters were small firms.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this proposed rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et. seq.*, and has assigned OMB control number 2070–0038.

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 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 the burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information requirements contained in this proposal.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: September 15, 1989.

Victor J. Kimm,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 27—[AMENDED]

1. The authority citation for part 721 would continue to read as follows:

Authority: 15 U.S.C. 2604 and 2607.

2. By adding new § 721.1535 to read as follows:

§ 721.1535 2,4-Pentanedione.

(a) *Chemical substance and significant new use subject to reporting.*

(1) The chemical substance 2,4,-pentanedione (CAS Number 123–54–6) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The Significant new use is: Use in a consumer product.

(b) [Reserved]

(Approved by the Office of Management and Budget under OMB control number 2070–0028)

[FR Doc. 89–22692 Filed 9–25–89; 8:45 am]

BILLING CODE 6560–50–M

Notices

Federal Register
Vol. 54, No. 186
Wednesday, September 27, 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

Office of the Secretary

Privacy Act of 1974; Systems of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Revision of Privacy Act Systems of Records.

SUMMARY: The United States Department of Agriculture (USDA) is revising the exemptions, routine uses, and procedures in its Privacy Act Systems of Records maintained by the Office of Inspector General (OIG).

The exemption revision applies to two systems of records: USDA/OIG–2, "Intelligence Records, USDA/OIG"; and USDA/OIG–3, "Investigative Files and Subject/Title Index, USDA/OIG." The revision reflects an amendment to 7 CFR 1.122 published elsewhere in today's issue of the **Federal Register** that provides a general exemption under 5 U.S.C. 552a(j)(2) for the two systems of records, and indicates that the preexisting exemption under 5 U.S.C. 552a(k) is more specifically under 5 U.S.C. 552a(k)(2) and (5).

The routine use revision applies to all OIG systems of records, USDA/OIG–1 through USDA/OIG–6, and replaces previous routine use provisions with revised and additional routine uses. Disclosure for routine use is authorized by the Privacy Act of 1974, 5 U.S.C. 552(b)(3), as amended.

The revision to the procedures for access to records or for contesting records applies to USDA/OIG–2, "Intelligence Records, USDA/OIG." These procedures are added to bring this system of records into conformity with other USDA/OIG systems of records procedures.

EFFECTIVE DATE: September 27, 1989.

FOR FURTHER INFORMATION CONTACT: Paula Hayes, Assistant Inspector General for Policy Development and Resources Management, Office of Inspector General, USDA, Washington, DC 20250 (202–447–6979).

SUPPLEMENTARY INFORMATION: Notice of revision of Privacy Act Systems of Records was published on pages 11253–11255 of the **Federal Register** of March 17, 1989, to become effective upon final publication of 7 CFR 1.122 published in proposed form n pages 11204–11206 of the **Federal Register** of March 17, 1989. Comments were received from two sources regarding proposed 7 CFR 1.122 and are published elsewhere with the final rule in today's issue of the **Federal Register**. The two sources also commented on the routine uses in the notice of revision. The following summarizes the suggestions received and actions taken.

It was suggested that routine use of (2) was necessary since the disclosures could be accomplished with the consent of the subject of the record. Obtaining the consent of the subject, however, often would be impracticable. For example, a subject could not be expected to give consent to release of information where the agency sought either to establish a claim or take an adverse personnel disciplinary action against the subject, or to bring a suspension or debarment action concerning the subject. It also should be noted that routine use (2) is not unique, but largely duplicates current routine uses in other agencies.

It also was suggested that routine use (3) was not compatible with the purpose for which the records were collected. The routine use provides for disclosure to assist governmental and nongovernmental agencies in taking responsible action. OIG is required by section 4(a)(4) of the Inspector Geneal Act of 1978, Public Law 95–452, 5 U.S.C. App., to coordinate with Federal, State, and local agencies, and nongovernmental entities, with respect to its mission and responsibilities. Therefore, disclosure of records to these entities in circumstances defined by the routine use would be consistent with the purpose for which the records were collected.

It was suggested further that routine use (3) was unnecessary since the disclosures could be accomplished with the consent of the subject of the record. Obtaining the consent of the subject, however, often would be impracticable, and otherwise notifying the person when a record is made available under the routine use could prematurely reveal an intestigation.

It also was suggested that the routine use concerning disclosures related to court proceedings (formerly (5)) could be overboard. That routine use has been deleted and relaced by two routine uses, (5) and (6), patterned after those developed by the Office of Management and Budget. In addition, routine use (8) (formerly (7)) has been changed to reflect this replacement.

It was suggested that the routine use concerning disclosures of medical information (formerly (9)) was unnecessary since subsection (b)(8) of the Privacy Act already provides for this. That routine use has been deleted.

It also was suggested that routine use (11) should note that any contractor receiving records must be subject to the Privacy Act under the provisions of subsection (m). Routine use (11) has been changed to note the requirement.

It was suggested that routine use (12) was unnecessary since subsection (b)(7) of the Privacy Act already provided for disclosure to a grant jury. Recent case law, however, raises concerns regarding the usefulness of subsection (b)(7). The Office of Inspector General collects records for law enforcement purposes. Routine disclosure for use by a grand jury, therefore, would be compatible with the purpose for which the records were collected.

It also was suggested that routine use (14) was overly broad in authorizing disclosure to recipients who take action that benefits the Government. Routine use (14) has been changed to clarify the requirement that information may be disclosed only when the action taken benefits the programs and operations of the United States Department of Agriculture.

Accordingly, USDA hereby amends the OIG Systems of Records last published beginning on page 50814 of the **Federal Register** of December 12, 1985, by revising the following sections:

USDA/OIG–1

SYSTEM NAME:

Employee Records, USDA/OIG.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) A record from the system of records, which indicates, either by itself or in combination with other information, a violation or potential violation of law, whether civil or criminal, and whether arising by statute, regulation, rule or order issued pursuant thereto, may be disclosed, as a routine use, to a Federal, State, local, or foreign agency or other public authority that investigates or prosecutes or assists in investigation or prosecution of such violation, or enforces or implements or assists in enforcement or implementation of the statute, rule, regulation or order.

(2) A record from the system of records may be disclosed, as a routine use, to a Federal, State, local, or foreign agency or other public authority, or professional organization, maintaining civil, criminal, or othe relevant enforcement records or other pertinent records, such as current licenses, or to a consumer reporting agency, in order to obtain information relevant to an agency investigation, audit, or other inquiry, or relevant to a decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, the issuance of a license, grant or other benefit, the establishment of a claim, or the initiation of administrative, civil, or criminal action.

(3) A record from the system of records may be disclosed, as a routine use, to a Federal, State, local, or foreign agency or other public authority, or professional organization, if relevant to the recipient's hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, the issuance of a license, grant or other benefit, the establishment of a claim, or the initiation of administrative, civil, or criminal action.

(4) A record from the system of records may be disclosed, as a routine use, to any source, private or public, to the extent necessary to secure from such source information relevant to a legitimate agency investigation, audit, or other inquiry.

(5) A record from the system of records may be disclosed, as a routine use, to the Department of Justice when the agency or any component thereof, or any employee of the agency in his or her official capacity, or any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation.

(6) A record from the system or records may be disclosed, as a routine use, in a proceeding before a court or adjudicative body, when the agency, or any component thereof, or any employee of the agency in his or her official capacity, or any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee, or the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the agency determines that use of such records is relevant and necessary to the litigation.

(7) A record from the system of records may be disclosed, as a routine use, to a Member of Congress from the record of an individual in response to an inquiry from the Member of Congress made at the request of that individual. In such cases, however, the Member's right to a record is no greater than the individual's right; thus, a record or any part of such record could be withheld if it contains information that otherwise would not be disclosed.

(8) A record from the system of records may be disclosed, as a routine use, to the Department of Justice for the purpose of obtaining its advice.

(9) A record from the system of records may be disclosed, as a routine use, to the Office of Management and Budget for the purpose of obtaining its advice regarding agency obligations under the Privacy Act, or in connection with the review of private relief legislation.

(10) A record from the system of records may be disclosed, as a routine use, in response to a subpoena issued by a Federal agency having the power to subpoena records of other Federal agencies.

(11) A record from the system of records may be disclosed, as a routine use, to a private contractor for the purpose of compiling, organizing, analyzing, programming, or otherwise refining records, subject to the same limitations applicable to U.S. Department of Agriculture officers and employees under the Privacy Act.

(12) A record from the system of records may be disclosed, as a routine use, to a grand jury agent pursuant either to a Federal or State grand jury subpoena, or to a prosecution request that such record be released for the purpose of its introduction to a grand jury.

(13) A record from the system of records may be disclosed, as a routine use, to a Federal agency responsible for considering suspension or debarment action where such record would be relevant to such action.

(14) A record from the system of records may be disclosed, as a routine use, to an entity or person, public or private, where disclosure of the record is needed to enable the recipient of the record to take action to recover money or property of the United States Department of Agriculture, where such recovery will accrue to the benefit of the United States, or where disclosure of the record is needed to enable the recipient of the record to take appropriate disciplinary action to maintain the integrity of the programs or operations of the Department of Agriculture.

(15) A record from the system of records may be disclosed, as a routine use, to a Federal, State, local, or foreign agency, or other public authority, for use in computer matching programs to prevent and detect fraud and abuse in benefit programs administered by any agency, to support civil and criminal law enforcement activities of any agency and its components, and to collect debts and overpayments owed to any agency and its components.

(16) A record from the system of records may be disclosed, as a routine use, to a public or professional licensing organization when such record indicates, either by itself or in combination with other information, a violation or potential violation of professional standards, or reflects on the moral, educational, or professional qualifications of an individual who is licensed or who is seeking to become licensed.

(17) A record from the system of records may be disclosed, as a routine use, to debt collection contractors for the purpose of collecting delinquent debts as authorized by law.

* * * * *

USDA/OIG-2

SYSTEM NAME:

Intelligence Records, USDA/OIG.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine uses (1) through (17) listed in the system of records designated USDA/OIG-1.

* * * * *

RECORD ACCESS PROCEDURES:

To request access to information in this system write to Director, Management Operations and Budget Staff, Office of Inspector General, U.S. Department of Agriculture, Washington, DC 20250.

CONTESTING RECORD PROCEDURES:

To contest information in this system, send request to Director, Management Operations and Budget Staff, Office of Inspector General, U.S. Department of Agriculture, Washington, DC 20250.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(j)(2), this system of records has been exempted from all provisions of the Privacy Act of 1974, 5 U.S.C. 552a, as amended, except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10) and (11), and (i).

Pursuant to 5 U.S.C. 552a(k)(2) and (k)(5), this system has been exempted from the following provisions of the Privacy Act of 1974, 5 U.S.C. 552a: subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

USDA/OIG-3

SYSTEM NAME:

Investigate Files and Subject/Title Index, USDA/OIG.

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine uses (1) through (17) listed in the system of records designated USDA/OIG–1.

* * * * *

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(j)(2), this system of records has been exempted from all provisions of the Privacy Act of 1974, 5 U.S.C. 552a, as amended, except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10) and (11), and (i).

Pursuant to 5 U.S.C. 552a(k)(2) and (k)(5), this system has been exempted from the following provisions of the Privacy Act of 1974, 5 U.S.C. 552a: subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

USDA/OIG-4

SYSTEM NAME:

Liaison Records, USDA/OIG.

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine uses (1) through (17) listed in the system of records designated USDA/OIG–1.

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USDA/OIG-5

SYSTEM NAME:

Management Information and Data Analysis System, USDA/OIG.

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine uses (1) through (17) listed in the system of records designated USDA/OIG–1.

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USDA/OIG-6

SYSTEM NAME:

Audit Information System, USDA/OIG.

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine uses (1) through (17) listed in the system of records designated USDA/OIG–1.

* * * * *

Done this 21st day of September 1989, at Washington, DC.

Clayton Yeutter,

Secretary of Agriculture.

[FR Doc. 89–22802 Filed 9–26–89; 8:45 am]

BILLING CODE 3410–23–M

Forest Service

St. Joseph Timber Sale; Bitterroot National Forest, Ravalli County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare an environmental impact statement.

SUMMARY: The notice of intent is hereby given that the Forest Service will prepare an EIS (Environmental Impact Statement) for a proposal to implement forest management actions, including timber harvest and road construction, in the St. Joseph Peak area. This area is located approximately 6 air miles northwest of Stevensville, Montana on the east face of the Bitterroot Mountains. Parts of these proposed actions are within portions of the Selway-Bitterroot Roadless Area #01067, allocated to Forest Plan Management Areas 3a and 3b.

DATE: Written comments concerning the scope of the analysis must be received on or before November 13, 1989.

ADDRESS: Send written comments to Herbert G. Spradlin, District Ranger, Stevensville Ranger District, 88 Main Street, Stevensville, MT 59870.

FOR FURTHER INFORMATION CONTACT: Questions concerning the proposed action and EIS should be directed to Dave Silvieus, Interdisciplinary Forester, Stevensville Ranger District, Phone: (406) 777–5461.

SUPPLEMENTARY INFORMATION: This EIS will tier to the Forest Plan and EIS (September 1987) which directs the management of all land and resources on the Bitterroot National Forest. The purpose and need for the proposed action is to meet Forest Plan goals and objectives (the desired future condition) which includes the harvest of timber stands to help: (1) Establish a mosaic and diversity of species, and stand size and age classes including saplings, poletimber, mature timber and old-growth habitat; and (2) maintain a viable timber industry by meeting Forest Plan schedules of management practices. Actions resulting from or associated with timber harvest may include site preparation and reforestation; road construction and reconstruction; insect and disease control; wildlife habitat improvement; recreation site development; trail construction and reconstruction; range improvements; soil and water stabilization practices; and interpretation of cultural resources.

The decision to prepare the Draft EIS results from public involvement and environmental analysis conducted during the period of June 1987 to March 1989. Scoping was begun June 10, 1987 and the public was notified of this proposed action in three local newspapers on June 10, 1987. Letters were sent to adjacent landowners and other potentially interested parties on June 19, 1987. A public meeting was held on February 25, 1988, and additional written comments have been received from that date until the present time. Tentative issues include:

1. Will the proposed action be compatible with the desired future condition of the area as described in the Bitterroot National Forest Plan?

2. Will increased sediment have an adverse effect on fish habitat?

3. Will water quality and quantity be adversely affected for downstream users?

4. How will road construction and timber management practices affect big game habitat and security?

5. What effects will timber harvest and road construction have on the visual resources within the area?

6. Can timber be harvested without irreversible damage to the soil and watershed conditions?

7. What will be the effects on nongame wildlife species?

8. What effect will this proposed action have on the unroaded portion of the area?

9. What effects will this proposed action have on the employment and income stability in the local forest products industry?

Review of the environmental analysis, which includes the development of issues and concerns, identified the need for an EIS based on the following findings of significance:

1. The effects of the associated proposed actions on water quality, quantity, and timing of runoff is likely to be highly controversial.

2. A significant portion of the area and associated proposed management practices are in the Selway-Bitterroot Roadless Area #01067.

3. The proposed action in conjunction with past management practices may have a cumulative effect on future actions.

Public comments received to date, the nine issues above, and comments received as a result of this notice will be utilized in analysis for the Draft EIS. Alternatives will be developed to meet the Forest Plan desired future condition for the area, as well as other reasonable alternatives outside the parameters of the Plan. The process used in preparing the Draft EIS will include:

1. Identification of issues, concerns, and management opportunities.

2. Identification of issues to be analyzed in depth.

3. Elimination of insignificant issues or those which have been covered by other relevant environmental analysis.

4. Identification of alternatives.

5. Identification of potential environmental effects of developed alternatives.

6. Determination of potential cooperating agencies and task assignments.

The agency invites written comments and suggestions on the issues and management opportunities in the area being analyzed. For the most effective use, comments should be sent to the agency within 45 days from the date of this publication in the **Federal Register.**

The Forest Plan provides the overall guidance for management activities in the potentially affected area through its goals, objectives, standards, guidelines and management area direction. The potentially affected area is within the following management areas:

Management Area 3a consists of lands suitable for timber management within visually sensitive foreground and middleground viewing areas. The goals are to: (1) Maintain the partial retention visual quality objective and manage timber, (2) emphasize roaded dispersed recreation activities, old growth, and big game cover, (3) provide moderate levels of timber, livestock forage, and big game forage, and (4) restrict road densities where necessary to meet the visual objective, but provide access as needed for mineral exploration.

Management Area 3b consists of lands suitable for timber management within the riparian areas. The goals are to: (1) Manage the riparian area to maintain flora, fauna, water quality and water-related recreation activities, (2) emphasize water and soil protection, dispersed recreation use, visual quality, and old growth, and (3) provide low levels of timber harvest, livestock forage, and big game forage in the fisheries riparian areas, and moderate levels of timber harvest and forage in the nonfisheries riparian areas. Roading in riparian areas will be restricted to meet water quality and fish objectives.

A range of alternatives will be considered. One of these will be the "no action" alternative, which would maintain the roadless character of the Selway-Bitterroot Roadless Area #01067. Additional alternatives will be developed that respond to: (1) Visual quality issue by analyzing various timber harvest amounts, unit sizes, location and silviculture, (2) big game habitat issue by analyzing the need for and location of cover and forage, and (3) watershed issue by analyzing road location, design, and density; and harvest amount, location and silviculture.

The Forest Service will analyze and disclose the direct, indirect, and cumulative environmental effects of the developed alternatives. This will include an analysis of the effects of alternatives on the roadless character of the area. In addition, the EIS will disclose the analysis of site specific mitigation measures and their effectiveness.

Public participation will be important during the analysis. People may visit with Forest Service officials at any time prior to the decision; however, two periods of time are identified for the receipt of comments on the analysis: during the scoping process (following publication of this notice) and in the review of the Draft EIS (July, 1990).

During the scoping process, the Forest Service is seeking information and comments from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. The Montana Department of Fish, Wildlife, and Parks will be invited to participate as a cooperating agency to evaluate potential impacts on the area.

The Draft Environmental Impact Statement (DEIS) is expected to be available for public review in July, 1990. The comment period on the DEIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.** The comments received will be analyzed and considered by the Forest Service in preparing the Final Environmental Impact Statement (FEIS). The FEIS is scheduled to be completed by January, 1991. The Forest Service will respond to all existing and new comments in the FEIS. The Forest Supervisor will be the responsible official for this EIS and will make a decision regarding this proposal considering the comments and responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies. The decision and reasons for the decision will be documented in a Record of Decision (ROD).

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of DEIS shall structure their participation in the environmental review of the proposal so that it clearly alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the DEIS stage but that are not raised until after completion of the FEIS may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so 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 FEIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address adequacy of the DEIS or the merits of the

alternatives formulated and discussed in the draft statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points).

Dated: September 18, 1989.

Bertha C. Gillam,

Forest Supervisor, Bitterroot National Forest.

[FR Doc. 89-22767 Filed 9-26-89; 8:45 am]

BILLING CODE 3410-11-M

Rural Electrification Administration

Oglethorpe Power Corp.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration.

ACTION: Finding of No Significant Impact relating to the construction of a 230 kV transmission line and a 115/12 kV substation in Cobb and Cherokee Counties, Georgia.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, as amended; the Council on Environmental Quality Regulations (40 CFR parts 1500-1508), and REA Environemntal Policies and Procedures (7 CFR part 1794), has made a Finding of No Significant Impact (FONSI) with respect to construciton of a 4.6 mile, 230 kV transmission line on single steel support structures and a new 230/23 kV substation. Oglethorpe Power Corporation (OPC), of Tucker, Georgia, has requested approval to use general funds to construct the project.

FOR INFORMATION CONTACT: Alex M. Cockey, Jr., Director, Southeast Area-Electric, Room 0270, South Agriculture Building, Rural Electrification Administration, Washington DC 20250, telephone (202) 382-8436.

SUPPLEMENTARY INFORMATION: REA, in conjunction with a request from OPC for approval to use general funds to construct the project, required that OPC develop a Borrower's Environmental Report (BER) reflecting the potential impacts of the project. The BER, which includes input from certain state and Federal agencies, has been adopted by REA as its Environmental Assessment (EA). REA has concluded that the BER represents an accurate assessment of the environmental impacts of the proposed project. The project will allow OPC to continue to meet its responsibilities to serve the load of its members in a reliable and economical manner.

The length of the proposed transmission line is approximately 4.6 miles. It will be constructed from the existing 230/12 kV Woodstock Substation in Cherokee County and terminate at a proposed 230/12 kV Hawkins Store Road Substation in Cobb County. Both counties are in Georgia. The 230 kV transmission line will require new right-of-way (ROW) 100 feet in width. The Hawkins Store Road Substation will require 4.2 acres of area that will be disturbed for grading, drainage and an access drive.

REA has concluded that the proposed project will have no significant impact on wetlands, prime farmland, floodplains, threatened or endangered species or critical habitat, property listed or eligible for listing in the National Register of Historic Places, air quality, water quality and the health of humans or animals. Floodplains, wetlands, and prime farmland are located in the preferred line ROW. Some transmission line support structures may be located within these areas; however, REA believes that transmission line structure placement will have no significant impact to them. No practical alternative routes that could avoid these areas were identified. The substation will not be located in the 100-year floodplain, wetlands or prime farmland. Certain other impacts resulting from the proposed project are unavoidable such as the cutting of trees and vegetation for the right-of-way clearing and the aesthetic impact on the visual quality of the area.

Alternatives examined for the proposed project included no action, electrical alternatives, alternative line routes and alternative substation sites. REA determined that there is a demonstrated need for the project and constructing it within the preferred line route and substation site will have no significant impact to the environment. Therefore, REA has concluded that its approval to allow OPC to use general funds to construct the proposed project does not constitute a major Federal action significantly affecting the quality of the human environment. REA has reached a FONSI with respect to the proposed project.

Copies of the EA can be obtained from the offices of REA in the South Agriculture Building, Room 0270, 14th and Independence Avenue SW., Washington, DC 20250 or at the office of Oglethorpe Power Corporation, P.O. 1349, Tucker, Georgia 30085-1349.

In accordance with the public notification requirements of REA Environmental Policies and Procedures, 7 CFR Part 1794, OPC had a notice and an advertisement published in the "Atlanta Journal and Constitution" which has a general circulation in Cobb and Cherokee Counties. The notice appeared in the August 11, 1989, issue. The notice described the project, announced the availability of the BER and gave information where the BER could be obtained for review and where comments could be sent. The advertisement appeared in the same issue of the newspaper and briefly described the project and referred the reader to the legal notice. The public was given at least 30 days to respond to the notice. No responses to the notice were received by OPC or REA.

Dated: September 20, 1989.

John H. Arnesen,

Assistant Administrator—Electric.

[FR Doc. 89-22804 Filed 9-26-89; 8:45 am]

BILLING CODE 3410-15-M

Soil Conservation Service

Yantic River Watershed, Connecticut; Finding

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Yantic River Watershed, New London and Tolland Counties, Connecticut.

FOR FURTHER INFORMATION CONTACT: Philip H. Christensen, State Conservationist, Soil Conservation Service, 16 Professional Park Road, Storrs, Connecticut 06268, telephone (203) 487-4011.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Philip H. Christensen, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for flood protection. The planned works of improvement include: the installation of six structural dikes along the Yantic River, the relocation or purchase of nine residences which are presently in the

high hazard zones, and the removal of approximately 3,150 cubic yards of accumulated sediment from approximately 1,130 feet of the river at three bridge locations. A State Only component which does not have any federal funding includes installation of two structural dikes, relocation of three businesses, and floodproofing of 49 individual residences.

The notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Philip H. Christensen, State Conservationist.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials.)

Dated: September 15, 1989.

Philip H. Christensen,

State Conservationist.

[FR Doc. 89-22770 Filed 9-26-89; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committee of the American Economic Association, et al.; Public Meeting

In the matter of Census Advisory Committee (CAC) of the American Economic Association (AEA), the CAC of the American Marketing Association (AMA), the CAC of the American Statistical Association (ASA), and the CAC on Population Statistics; Public Meeting.

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463 as amended by Pub. L. 94-409), we are giving notice of a joint meeting followed by separate and jointly held (described below) meetings of the CAC of the AEA, CAC of the AMA, CAC of the ASA, and CAC on Population Statistics. The joint meeting will convene on October 19, 1989 at the Old Colony Inn, 625 First Street, Alexandria, Virginia 22313.

The CAC of the AEA is composed of nine members appointed by the president of the AEA. It advises the Director, Bureau of the Census, on technical matters, accuracy levels, and conceptual problems concerning economic surveys and censuses; reviews major aspects of the Census Bureau's programs; and advises on the role of analysis within the Census Bureau.

The CAC of the AMA is composed of nine members appointed by the president of the AMA. It advises the Director, Bureau of the Census, regarding the statistics that will help in marketing the Nation's products and services and on ways to make the statistics the most useful to users.

The CAC of the ASA is composed of 12 members appointed by the president of the ASA. It advises the Director, Bureau of the Census, on the Census Bureau's programs as a whole and on their various parts, considers priority issues in the planning of censuses and surveys, examines guiding principles, advises on questions of policy and procedures, and responds to Census Bureau requests for opinions concerning its operations.

The CAC on Population Statistics is composed of four members appointed by the Secretary of Commerce and five members appointed by the president of the Population Association of America from the membership of the Association. The CAC on Population Statistics advises the Director, Bureau of the Census, on current programs and on plans for the decennial census of population.

The agenda for the October 19 combined meeting that will begin at 8:45 a.m. and end at 10:45 a.m. is: (1) Introductory remarks by the Deputy Director, Bureau of the Census; (2) 1990 census update; (3) Settlement of *City of New York et al.* v. *U.S. Department of Commerce et al.;* (4) Report of the Working Group on Economic Statistics; and (5) Experimental Consumer Price Index.

The agendas for the four committees in their separate and jointly held meetings that will begin at 10:45 a.m. and adjourn at 5:45 p.m. on October 19 are as follows:

The CAC of the AEA: (1) Foreign trade update (joint with CAC of the AMA and ASA), (2) plans for expansion of the 1992 census of service industries (joint with CAC of the AMA), (3) system of national accounts (joint with CAC of the AMA), (4) issues in measuring advance technology trade balance (joint with CAC of the AMA), and (5) Census Bureau response to recommendations and activities of special interest to the CAC of the AEA.

The CAC of the AMA: (1) Foreign trade update (joint with CAC of the AEA and ASA), (2) plans for expansion of the 1992 census of service industries (joint with CAC of the AEA), (3) system of national accounts (joint with CAC of the AEA), (4) issus in measuring advance technology trade balance (joint with CAC of the AEA), and (5) Census Bureau response to recommendations and activities of special interest to the CAC of the AMA.

The CAC of the ASA: (1) Foreign trade update (joint with CAC of the AEA and AMA), (2) SIPP income and poverty transitions (joint with CAC on Population Statistics), (3) uncertainty in demographic coverage estimates (joint with CAC on Population Statistics), (4) post enumeration survey dress rehearsal (joint with CAC on Population Statistics), and (5) Census Bureau response to recommendations and activities of special interest to the CAC of the ASA.

The CAC on Population Statistics: (1) Data on White, not Hispanic, population, (2) SIPP income and poverty transitions (joint with CAC of the ASA), (3) uncertainty in demographic coverage estimates (joint with CAC of the ASA), (4) post enumeration survey dress rehearsal (joint with CAC of the ASA), and (5) Census Bureau response to recommendations and activities of special interest to the CAC on Population Statistics.

The agendas for the October 20 meetings that will begin at 8:45 a.m. and adjourn at 1 p.m. are:

The CAC of the AEA: (1) Center for economic studies update on projects, (2) improving measure of capacity utilization (joint with CAC of the ASA), and (3) development and discussion of recommendations, and (4) closing session including (a) continued committee and staff discussions, (b) plans and suggested agenda for next meeting, and (c) comments by outside observers.

The CAC of the AMA: (1) TIGER: recent issues (joint with CAC on Population Statistics), (2) development and discussion of recommendations, and (3) closing session including (a) continued committee and staff discussions, (b) plans and suggested agenda for next meeting, and (c) comments by outside observers.

The CAC of the ASA: (1) Research, evaluation, and experimental (REX) program, (2) improving measure of capacity utilization (joint with CAC of the AEA), (3) development and discussion of recommendations, and (4) closing session including (a) continued committee and staff discussions, (b)

plans and suggested agenda for next meeting, and (c) comments by outside observers.

The CAC on Population Statistics: (1) TIGER: recent issues (joint with CAC of the AMA), (2) development and discussion of recommendations, and (3) closing session including (a) continued committee and staff discussions, (b) plans and suggested agenda for next meeting, and (c) comments by outside observers.

All meetings are open to the public, and a brief period is set aside on October 20 for public comment and questions. Those persons with extensive questions or statements must submit them in writing to the Census Bureau Committee Liaison Officer at least 3 days before the meeting.

Persons wishing additional information regarding these meetings or who wish to submit written statements may contact the Committee Liaison Officer, Mrs. Phyllis Van Tassel, Room 2423, Federal Building 3, Suitland, Maryland. (Mailing address: Washington, DC 20233), Telephone: (301) 763–5410.

Dated: September 22, 1989.

C.L. Kincannon,

Deputy Director, Bureau of the Census.

[FR Doc. 89–22796 Filed 9–26–89; 8:45 am]

BILLING CODE 3510–07–M

Foreign-Trade Zones Board

[Order No. 438]

Resolution and Order Approving the Application of the Board of County Commissioners of Sedgwick County, Kansas, for a General-Purpose Foreign-Trade Zone in Sedgwick County, Kansas

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

RESOLUTION AND ORDER

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 USC 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Board of County Commissioners of Sedgewick County, Kansas, filed with the Foreign-Trade Zones Board (the Board) on September 19, 1988, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in Sedgewick County, Kansas, within the Wichita Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to Section 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board for approval prior to the commencement of any manufacturing operation within the zone. The Secreary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority; To Establish, Operate, and Maintain a Foreign-Trade Zone in Sedgewick County, Kansas, Within The Wichita Customs Port of Entry

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board of County Commissioners of Sedgwick County, Kansas, (the Grantee) has made application (filed September 19, 1988, FTZ Docket 29–88, 53 FR 38045) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone in Sedgwick County, Kansas, within the Wichita Customs port of entry;

Whereas, notice of said application has been given and published, and full oppportunity has been afforded all interested parties to be heard; and

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 161, at the location mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also the following express conditions and limitations:

Operation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone site in the performance of their official duties.

The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 8th day of September 1989, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Robert A. Mosbacher,

Secretary of Commerce, Chairman and Executive Officer.

John J. Ponte, Jr.,

Executive Secretary.

[FR Doc. 89–22780 Filed 9–26–89; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[A–485–601]

Final results of Antidumping Duty Administrative Review; Solid Urea From Romania

AGENCY: International Trade Administration/Import Administration Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On May 16, 1989, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on solid urea from Romania. The review covers one manufacturer/exporter of this mechandise to the United States, I.C.E. Chimica ("Chimica"), and the period January 2, 1987 through June 30, 1988.

We invited interested parties to comment on our preliminary results. We received no comments. Based on our analysis, the final results are the same as those presented in the preliminary results of review.

EFFECTIVE DATE: September 27, 1989.

FOR FURTHER INFORMATION CONTACT: Dennis U. Askey or John R. Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377–3601.

SUPPLEMENTARY INFORMATION:

Background

On May 16, 1989, the Department of Commerce ("the Department") published the preliminary results of its administrative review of the antidumping duty order on solid urea from Romania (54 FR 21455). We have now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by this review are shipments of solid urea. During this review period such merchandise was classifiable under item number 480.3000 of the Tariff schedules of the United States Annotated. This merchandise is currently classifiable under Harmonized Tariff Schedule ("HTS") item number 3102.10.00. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one manufacturer/exporter of this merchandise to the United States, Chimica, and the period January 2, 1987 through June 30, 1988. There were no known shipments of this merchandise to the United States by Chimica during the period and there are no know unliquidated entires.

Final Results of Review

We invited interested parties to comment on the preliminary results. We received no comments. The final result are the same as those presented in our preliminary results of review. We have determined that the following margin exists for the period January 2, 1987 through June 30, 1988:

Manufacturer/exporter	Margin/ percent
Chimica	[1] 90.71

[1] No shipments during the period; margin from the last period in which there were shipments.

As provided for in section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties of 90.71 percent shall be required on all entries of this merchandise.

This deposit requirement is effective for all shipments of Romanian solid urea entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Department's new regulations (54 FR 12742, March 28, 1989) (to be codified at 19 CFR 353.22).

Dated: August 28, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89–22778 Filed 9–26–89; 8:45 am]

BILLING CODE 3510–DS–M

Export Trade Certificate of Review

ACTION: Notice of Application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Douglas J. Aller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the Federal Register identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1223H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 89–00015." A summary of the application follows.

Summary of the Application

Applicant: Airborne Business Cargo, Inc., 63530 Ridge Road Shafer Lake, Lawrence, Michigan 49064, Contact: Byron Crosse, Telephone: 616/674–8111.

Application No.: 89–00015

Date Deemed Submitted: September 14, 1989

Members (in addition to applicant): None.

Export Trade: Products.—General aviation aircraft, parts, components and materials.

Export Trade Facilitation Services (as they relate to the export of Products).—All trade-facilitating services, including consulting, financing, insurance, advertising, foreign exhibiting and demonstration, trade documentation, countertrade and offsetting services, packing and crating, assembly, customs brokerage, market research and coordination.

Export Markets: The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation: Airborne Business Cargo may:

1. Coordinate the participation of various Suppliers in foreign trade exhibitions through the sharing of trade information that is generally available to the public.

2. Provide Export Trade Facilitation Services to domestic Suppliers for the export of their Products to foreign customers.

3. Enter into exclusive agreements with domestic Suppliers to arrange for the export of Products to foreign customers in response to foreign invitations to bid.

4. Enter into exclusive agreements with foreign customers to select domestic Suppliers of Products in order to match foreign buyer specifications.

5. Meet and negotiate with domestic Suppliers concerning the terms of their participation in each bid, invitation or request to bid, or other sales opportunity in the Export Markets.

6. Establish export prices for domestic Suppliers seeking to respond to a foreign bid opportunity.

7. Contract with other Export Intermediaries and consultants for the arrangement of the export of the Products of domestic Suppliers to the Export Markets.

Definitions

1. "Export Intermediary" means a person who acts as a broker, distributor, sales representative, or sales or marketing agent, or who performs similar functions, including providing and arranging for the provision of Export Trade Facilitation Services, for sales in the Export Markets.

2. "Supplier" means a person who produces, provides or sells Products.

Dated: September 21, 1989.

Douglas J. Aller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 89-22781 Filed 9-26-89; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council; Meeting Cancellation

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The public meetings of the Caribbean Fishery Management Council, and the Council's Administrative Committee, scheduled to be held on September 26–28, 1989, at the Hotel Villa Parguera, Lajas, Puerto Rico, as publihsed in the **Federal Register** (54 FR 36849), have been cancelled due to recent hurricane activity in the Puerto Rico area. Information regarding rescheduling of the meetings will be published in the **Federal Register** at a later date.

For more information contact Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, Banco de Ponce Building, Suite 1108, Hato Rey, Puerto Rico 00918-2577; telephone: (809) 766-5926, or the Southeast Regional Office, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL; telephone: (813) 893-3141.

Dated: September 20, 1989.

David S. Crestin,

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

[FR Doc. 89-22736 Filed 9-26-89; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh

September 22, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 29, 1989.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of TEXTILES AND Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Categories 340/640 is being increased by application of swing and carryforward. The limit for Categories 638/639 is being reduced to account for the swing being applied.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 54 FR 4883, published on January 31, 1989; and 54 FR 7245, published on February 17, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 22, 1989.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directives issued to you on January 25, 1989 and February 14, 1989, by the Chairman, Committee for the Implementation of Textile Agreements. These directives concern imports of certain cotton and man-made fiber textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on February 1, 1989 and extends through January 31, 1990.

Effective on September 29, 1989, the directives of January 25, 1989 and February 14, 1989 are amended to adjust the limits for cotton and man-made fiber textile products in the following categories, as provided under the provisions of the current bilateral textile agreement between the Governments of the United States and Bangladesh:

Category	Adjusted Twelve-Month Limit [1]
340/640	1,771,264 dozen of which not more than 576,498 dozen shall be in Categories 340-Y/640-Y [2].
638/639	732,624 dozen.

[1] The limits have not been adjusted to account for any imports exported after January 31, 1989.

[2] In Categories 340-Y/640-Y, only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060 in Category 340-Y; and 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060 in Category 640-Y.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-22818 Filed 9-26-89; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Mauritius

September 22, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the agreement year.

EFFECTIVE DATE: October 2, 1989.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A copy of the current bilateral textile agreement between the Governments of the United States and Mauritius is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–1998.

Import charges in the amount of 36,966 dozen, for goods exported in Category 341 during a previous period, shall be charged to the limit being established for Categories 341/641.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 22, 1989.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of June 3 and 4, 1985, as amended, between the Governments of the United States and Mauritius; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on October 2, 1989, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Mauritius and exported during the twelve-month period which begins on October 1, 1989 and extends through September 30, 1990, in excess of the following restraint levels:

Category knit group	Twelve-month restraint level
345, 438, 445, 446, 645 and 646, as a group.	120,866 dozen
Levels not in a group	
237	134,832 dozen
331	357,304 dozen pairs
335/835	53,596 dozen
336	63,070 dozen
338/339	252,495 dozen
340/640	404,612 dozen of which not more than 250,136 dozen shall be in Categories 340–Y/640–Y [1]
341/641	284,652 dozen
342/642/842	185,394 dozen
347/348	506,182 dozen
352/652	1,060,000 dozen of which not more than 901,000 dozen shall be in Category 352
442	10,903 dozen
604–A [2]	277,182 kilograms
638/639	290,370 dozen
647/648/847	416,856 dozen

[1] In Categories 340–Y/640–Y, only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060 in Category 340–Y; and 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060 in Category 640–Y.

[2] In Category 604–A, only HTS number 5509.32.0000

Imports charged to these category limits for the periods which began on October 1, 1988 and January 1, 1989 extend through September 30, 1989 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for those periods have been exhausted by previous entries, such goods shall be subject to the limits set forth in this letter.

The limits set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement of June 3 and 4, 1985, as amended, between the Governments of the United States and Mauritius.

Also effective on October 2, 1989, you are directed to charge 36,966 dozen for Category 341 to the limit established in this letter for Categories 341/641.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–22817 Filed 9–26–89; 8:45 am]

BILLING CODE 3510–DR–M

Amendment of an Import Limit for Certain Wool Textile Products Produced or Manufactured in the Polish People's Republic

September 21, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: September 28, 1989.

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Governments of the United States and the Polish People's Republic agreed to increase the current designated consultation level for Category 434.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on Novmeber 7, 1988). Also see 53 FR 49584, published on December 8, 1988.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 21, 1989.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 2, 1988 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and

textile products, produced or manufactured in Poland and exported during the twelve-month period which began on January 1, 1989 and extends through December 31, 1989.

Effective on September 28, 1989, the directive of December 2, 1988 is amended to increase to 4,424 dozen the limit established for Category 434 in Group III.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.[1]

[FR Doc. 89-22816 Filed 9-26-89; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange's Proposal to List Additional Contracts for Trading Through Globex

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed additional contract market rule changes and request for comment.

SUMMARY: The Chicago Mercantile Exchange ("CME") has submitted to the Commodity Futures Trading Commission ("Commission") proposals to list certain stock index, interest rate, and precious metal contracts for trading through Globex, its automated trading system. The Commission has determined that publication of the proposals is in the public interest, will assist the Commission in considering the views of interested persons and is consistent with the purposes of the Commodity Exchange Act ("Act").

DATE: Comments must be submitted by October 27, 1989.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254-6314.

FOR FURTHER INFORMATION CONTACT: Lystra G. Blake, Attorney, or Michael B. Sundel, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION: By letter dated July 21, 1989, the CME submitted for Commission approval pursuant to Section 5a(12) of the Act and Commission Regulation 1.41(b) proposals to list additional contracts for trading through Globex. Globex is an automated system for trading CME futures and options outside regular trading hours. The Commission approved rule amendments implementing Globex on February 2, 1989. Commission approval included listing the following CME contracts for trading through Globex: the CME's Australian Dollar, British Pound, Canadian Dollar, Deutsche Mark, Swiss Franc, French Franc, Japanese Yen, Eurodollar, U.S. Treasury Bill, and Gold futures contracts. The CME Plans to start trading through Globex in December 1989.

The CME now proposes to list the following additional contracts: the CME's Standard and Poor's 500 Stock Price Index ("S&P 500") futures contract, options on the S&P 500 futures, the Nikkei Stock Average ("Nikkei") futures contract, options on the Nikkei futures, the Morgan Stanley Capital International ("MSCI") Europe, Australia, Far East Index futures contract, the Treasury Index futures contract, the Federal Funds Rate futures contract, the British Pound Sterling Euro-Rate Differential futures contract, the Deutsche Mark Euro-Rate Differential futures contract, the Japanese Yen Euro-Rate Differential futures contract, and the British Pound physical option contract.[1]

The Commission requests comments on any aspect of the proposal that members of the public believe may raise issues under the Act or the Commission's regulations. In particular, the Commission requests comment on whether the listing of any of these contracts outside regular CME hours for trading through an electronic system raises unique or novel issues not raised by the contracts which have been approved previously for listing through Globex.

Copies of the proposals and proposed rule amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies also may be obtained through the Office of the Secretariat at the above address or by telephoning (202) 254-6314.

Any person interested in submitting written data, views or arguments on the proposed rule amendments, or with respect to other materials submitted by the CME in support of its submission, should send comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, by the specified date.

Dated: Issued in Washington, DC, on September 21, 1989.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89-22845 Filed 9-26-89; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

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

Title, Applicable Form, and Applicable OMB Control Number: Questionnaire Items for Corps of Engineers Data Collection for Planning Purposes; ENG Form 3669 and ORH Form 706; and OMB Control Number 0702-0016.

Type of Request: Extension.

Average Burden Hours/Minutes Per Response: 30 minutes.

Frequency of Response: One response per respondent.

Number of Respondents: 4,000.

Annual Burden Hours: 2,000.

Annual Responses: 4,000.

Needs and Uses: These questionnaire items are designed to gather data essential for planning navigation, flood control, shore protection, water supply and water conservation projects. Respondents include individuals affected by or using the planning projects (e.g., flood plan, homeowners, shippers, etc.)

Affected Public: Individuals or households; Businesses or other for profit; and Small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Dr. J. Timothy Sprehe

Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at Office of

[1] The limit has not been adjusted to account for any imports exported after December 31, 1988.

[1] The CME also submitted a proposal to list the MSCI United Kingdom ("U.K.") Stock Index futures contract for trading through Globex. The CME, however, has not been designated as a contract market for the MSCI U.K. index. The CME had filed an application for designation as a contract market in the MSCI U.K. index. On August 24, 1989, however, that application was deemed withdrawn pursuant to procedures set forth in Part 5, Appendix C of the Commission's regulations.

Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison

Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302.

Dated: September 22, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-22808 Filed 9-26-89; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Establishment of a Capped Amount for Residential Treatment Center (RTC) Payment

AGENCY: Office of the Secretary, DoD.

ACTION: Notice.

SUMMARY: This document supplements the methodology and procedures for rebasing of RTC rates published in a final rule in the **Federal Register** on July 24, 1989 (54 FR 30732). It establishes a capped amount for payment of RTC care along with rationale for selection of the 75th percentile used in its calculation.

FOR FURTHER INFORMATION CONTACT: David E. Bennett, Office of Program Development, OCHAMPUS, Aurora, Colorado 80045-6900, telephone (303) 361-3537.

SUPPLEMENTARY INFORMATION: Based on a settlement agreement with the National Association of Psychiatric Treatment Centers for Children (NAPTCC), OCHAMPUS agreed to review additional data submitted by a cross-section of RTCs in support of "rebasing" the base period used in determining individual RTC reimbursement rates and capped amount. The data was found, in general, to be representative of a substantial portion of the CHAMPUS RTC population and showed significant increases in professional staff, in salary costs for those personnel, and in operating costs overall. Although a substantial portion of these cost increases could be accounted for in the accumulative annual update factors of 20.5 percent applied by OCHAMPUS to the original base period data, it fell short of the approximately 51 percent change in RTC cost per patient day for total personnel between the base period (March 1, 1984—February 28, 1985) and fiscal year 1988 reflected in data submitted by NAPTCC in support of rebasing.

Because of the approximately 30 percent difference between the update factor and actual experienced costs, OCHAMPUS decided to proceed with rulemaking for rebasing; however, during the negotiation process it was agreed that the capped percentile might be set lower than the 80th percentile based on previous cost data submitted in support of rebasing and on evaluation of the new base year data (July 1, 1987, through June 30, 1988). A proposed rule [54 FR 11966; March 23, 1989] and final rule [54 FR 30732; July 24, 1989], were published in the **Federal Register**, establishing the methodology and procedures for rebasing of the prospective all-inclusive RTC rates which went into effect on December 1, 1988.

The agency's decision to rebase required the development of a data collection form (CHAMPUS Form 771) which was sent out to all CHAMPUS authorized RTCs on June 20, 1989. The RTCs were requested to provide OCHAMPUS with the reimbursement information no later than July 21, 1989. The data collection period was extended an additional 30 days to assure that all RTCs had ample opportunity to supply the requested information. As of publication of this notice, 75 out of a total of 84 CHAMPUS authorized RTCs have submitted the required data for rebasing. Since the requested information has not been received from the remaining 9 RTCs, it is assumed that they are satisified with their all-inclusive rate implemented on December 1, 1988, for CHAMPUS beneficiaries admitted on or after December 1, 1988. More importantly, it was concluded that the data from the 75 RTCs that responded represented a sufficient number of RTCs and patient days for a reasonable data base.

Since OCHAMPUS' decision to rebase was predicated on NAPTCC's premise that increases in rates were directly attributable to changes in personnel costs, it is reasonable to conclude that the total percent change in personnel cost per patient day should be a determining factor in establishing a reasonable percentile for calculation of a maximum daily charge for RTC care.

Analysis of previous cost and staffing data collected by the National Association of Private Psychiatric Hospitals (NAPPH) indicated that the approximate percent change in cost per patient day for total personnel between the base period (March 1, 1984—February 28, 1985) and fiscal year 1988 was 51 percent, and the percent change in total charges per patient day rose some 54 percent. Using these figures, the projected rebased capped amounts would be $349 and $356, respectively.

Because of the delay between implementation of the prospective reimbursement system on December 1, 1988, and rebasing and the fact that RTCs cannot recoup for increases in cost-sharing resulting from retroactive adjustments, individual RTC rates established for the retroactive period (December 1, 1988, through September 30, 1989) were adjusted by a 2.6 percent inflation factor for the 5-month period ending November 30, 1988. These individual rates were used in establishing the capped amount. The following methodology was used in arraying individual RTC rates for selection of an appropriate percentile for establishment of a capped amount:

A. Rank the individual RTC per diem rates in descending order from highest to lowest.

B. Calculate the cumulative CHAMPUS patient days at each rate.

C. Multiply the total CHAMPUS patient days by .70, .75, and .80.

D. Analyze the cumulative rate corresponding to each of the percentiles.

The cap was established at the 75th percentile because of its consistency with increases in personnel costs extrapolated from previous RTC data submitted in support of rebasing. The rebased cap based upon the data submitted for the period of July 1, 1987, through June 30, 1988, is $355 per patient day.

Approximately 15 percent (13) of the CHAMPUS authorized RTCs will be limited by the new capped amount. The average weighted RTC rate for the base period of July 1, 1987, through June 30, 1988, is $309 per patient day, with a range of $82 per patient day to $531 per patient day.

The terms of the final rule published in the August 1, 1988, **Federal Register** (53 FR 28873) went into effect on December 1, 1988, with the agency's assurance that RTC rates would be rebased and applied retroactively to December 1, 1988. OCHAMPUS elected to use the base period of July 1, 1987, through June 30, 1988, since it: (1) Was representative of 1988 charging practices; (2) corresponded to the fiscal year of a number of RTCs; and (3) was prior to publication of the RTC final rule on August 1, 1988.

Retroactive adjustment of RTC claims will only apply for those CHAMPUS patients admitted on or after December 1, 1988. CHAMPUS patients admitted prior to December 1, 1988, will not be affected by the rebasing and will

continue to participate under the same conditions and rates as were in effect prior to the December 1, 1988, effective date for the all-inclusive per diem rate until discharge or until the care is no longer determined medically necessary or appropriate. Subject to the $355 cap discussed above, if an individual RTC's rebased rate is higher than the rate originally established on December 1, 1988, the CHAMPUS Contractor will retroactively adjust all claims for patients admitted on or after December 1, 1988, for services provided up through September 30, 1989. If rebasing resulted in an RTC's per diem rate being lower than the per diem rate implemented on December 1, 1988, a retroactive adjustment will not be required and no recoupment action will be initiated.

All rebased rates and the cap will be updated on October 1, 1989, for the remaining 7 months of the 12 month period (the 2.6 percent inflation factor for the first 5 months of the annual update has already been included) ending July 1, 1989, using the CPI–U inflation factor of 4.9 percent. The updated capped amount for services rendered on or after October 1, 1989, will be $373 per patient day.

In summary, implementation of the rebased rates will coincide with the scheduled October 1, update. Each RTC will be issued two separate rates: one to be used for payment of remaining claims and retroactive adjustments for CHAMPUS patients admitted on or after December 1, 1988, for services provided up through September 30, 1989 (subject to a $355 rate cap); and another updated rate for payment of claims for services rendered on or after October 1, 1989, for all CHAMPUS patients admitted to RTCs on or after December 1, 1989 (subject to a $373 rate cap).

The agency intends to update RTC rates on October 1 of each year using the annual Consumer Price Index—Urban Wage Earners for medical care for the reporting period of the previous July through June. This reporting period is being used due to the 2-to 3-month lag in publication of CPI–U statistics.

Dated: September 22, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–22807 Filed 9–26–89; 8:45 am]

BILLING CODE 3810–01–M

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: The DoD Advisory Group of Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Tuesday, 24 October 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: David Slater, AGED Secretariat, 201 Varick Street, New York, 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense of 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 a electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. II 10(d)(1982)), it has been determined that this Advisiry 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: September 22, 1989.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 89–22805 Filed 9–26–89; 8:45 am]

BILLING CODE 3810–01–M

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, Wednesday and Thursday, 25 & 26 October 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 Pub. L. 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: September 22, 1989

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–22806 Filed 9–26–89; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF ENERGY

Finding of No Significant Impact; SP–100 GES Test, Hanford Site, Richland, Washington

AGENCY: Department of Energy.

ACTION: Finding of no significant impact.

SUMMARY: The Department of Energy (DOE) has prepared an environmental assessment (EA) for the proposed ground testing of a prototype space nuclear reactor in a modified reactor containment building, Building 309, at the DOE Hanford Site, near Richland, Washington (DOE/EA–0318). The proposed action, the SP–100 Ground Engineering System (GES) test, is an important part of an overall program to develop nuclear reactor power system technology for use in space.

Based on the analyses in the EA, DOE issued a proposed finding of no significant impact (FONSI) on December 15, 1988, and distributed the EA and proposed FONSI for a 30-day public review period. The review period was later extended to 45 days.

Twenty-four people provided comments on the proposed FONSI and EA. Their comments addressed several

topics including: DOE's interpretation of the National Environmental Policy Act of 1969 (NEPA) requirements (i.e., whether an EA or environmental impact statement (EIS) was appropriate for the proposed action); safety and safeguard requirements; potential uses of the SP-100 technology; accident analyses; and several specific technical questions relating to the operation and testing of the prototype reactor. A summary of the comments and responses to these comments follow the text of the FONSI as an attachment. The U.S. Department of Health and Human Services reviewed the EA sections on readiological implications and found "* * * the proposed measures in these sections appear to be adequate for protecting human health." No other Federal agencies responded.

DOE has reviewed the comments received and has concluded that no new information has been made available which would change the determination that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA, 42 U.S.C. 4321 *et seq.* Therefore, an EIS will not be prepared.

Copies of the EA available from: John R. Hunter, Director, Operations Division, U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 99352, (509) 376-7471.

For Further Information About the Proposed Action Contact: Earl Wahlquist, Director, Office of Defense Energy Projects, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20545, (301) 353-3321.

For Further Information on the NEPA Process Contact: Carol Borgstrom, Director, Office of NEPA Project Assitance, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4600.

Description of the Proposed Action

The DOE, the National Aeronautics and Space Administration (NASA), and the Department of Defense (DOD) have entered into an agreement to jointly develop nuclear reactor power system technology for use in space. The purpose of the overall SP-100 program is to develop safe, compact, lightweight, durable, space reactor power system technology that can provide electrical power in the range of 10s to 100s of kilowatts for a broad class of emerging military and civilian space missions in the mid-1990s and beyond. DOE has primary responsibility for developing and ground testing the nuclear reactor power system within the SP-100 GES test element of the total SP-100 program.

DOE plans to ground test the nuclear reactor portions of the power system at the DOE Hanford Site near Richland, Washington. Modification of an existing 70 megawatt (MW) thermal reactor containment building (the decommissioned Plutonium Recycle Test Reactor (PRTR) containment building—Building 309) for the test will be required. The total SP-100 GES test duration consisting of facility engineering, construction, testing, and decommissioning is expected to last 9 years. Building 309 will be modified to support 2 years of reactor operations, but it is anticipated that actual reactor operations would last less than 2 years.

The SP-100 reactor, as designed, is a low pressure 2.5 MW fast reactor, fueled with uranium nitride as the heat source and cooled by liquid lithium. The nuclear reactor portions of the power system proposed for testing in Building 309 include: the SP-100 nuclear reactor, instrumentation and controls, the primary heat transport loop, and radiation shield subsystems.

The SP-100 flight system is being designed to ensure the safety of the general public and mission personnel during normal operation and in the event of low probability launch vehicle accidents, flight malfunctions, and inadvertent reentry.

A ground test of the assembled nuclear reactor power subsystem described above will be conducted at the Hanford Site to confirm the ability of the nuclear reactor power system to meet design requirements. The ground test will verify performance, reliability, and safety parameters of the nuclear reactor power system design. The date acquired during ground testing will assist in assuring safety and performance in the design of future flight systems.

Following the test, it is anticipated that the reactor and associated hardware would be disposed of as low-level waste on the Hanford Site and that the enriched fuel material would be reprocessed and reused. Any transuranic waste material generated from reprocessing will be stored on the Hanford Site and ultimately sent to the Waste Isolation Pilot Plant (WIPP) in New Mexico when it receives final authorization as a disposal facility. An alternative to reprocessing would be final disposal of the spent fuel at a DOE geologic repository constructed pursuant to the Nuclear Waste Policy Amendments Act. Test facility systems external to the reactor and associated hardware will be put in a safe condition pending future use or ultimate decommissioning. Alternatives for post-operation decontamination and decommissioning of Building 309 are still under review.

Alternatives

Consideration of alternatives to the proposed action, the ground test of the prototype SP-100 space reactor in Building 309 at the Hanford Site, included evaluation of alternative power system concepts, ground test sites other than the Hanford Site, evaluation of other potential test locations on the Hanford Site, and evaluation of the no-action alternative—no ground testing of the SP-100 reactor.

Four power system concepts were evaluated during Phase I of the SP-100 program. Design characteristics identified as part of the SP-100 system selection process included surety, performance, growth (to accommodate varying mission power requirements), survivability, cost/shcedule, user interface, and operations criteria. Evaluation objectives of the surety characteristic included health, safety, and environmental factors.

Four of the seven competing design characteristics (surety, survivability, user interface, and operations criteria) were found to be nondiscriminators among the four alternative system concepts. Therefore, although safety and environmental considerations were thoroughly considered throughout the system concept selection process, the final selection was driven by the design characteristics relating to performance, growth, and cost/schedule.

Five DOE laboratory sites were considered for the ground testing of the prototype SP-100 reactor system. The site evaluation process considered facilities and equipment, ability to obtain approval to operate, personnel and organization effectiveness, integration with other site and program activities, and management commitment. The approval-to-operate criterion addressed site-specific environmental considerations. The evaluation concluded that environmental considerations were not governing in the selection of the site. The evaluation narrowed the choice for the final selection to two sites, the Hanford Site and the Idaho Nuclear Engineering Laboratory in southeastern Idaho. The Hanford Site was selected as the preferred test site based on programmatic considerations.

Building 309 was one of ten potential facilities considered at the Hanford Site for the SP-100 GES test. Hanford Site facilities were examined for suitability based on operational, safety, safeguards, and environmental characteristics. Building 309 was

identified as the best Hanford Site facility for the proposed action based on the existing containment building, the ease with which the facility could be upgraded to meet current environmental and safety standards, and the overall ability to support program objectives.

The no-action alternative would eliminate ground testing of the SP–100 reactor and associated systems. Onsite environmental effects described in the EA would not occur but the impact to the SP–100 program would be development of a flight system with inadequate ground-based verification of operational and safety functions.

Description of Impacts

The proposed SP–100 GES test (maximum rating of 2.5 MW thermal, low pressure coolant system) will be located at the Hanford Site in existing containment Building 309. Building 309 was designed and built as a high pressure containment for the now decommissioned Plutonium Recycle Test Reactor, a pressurized water cooled, 70 MW thermal reactor. SP–100 reactor heat will be rejected by dump heat exchangers that will transfer heat from the secondary sodium coolant to air.

Building 309 consists of a welded steel containment vessel, three below-grade process cells (A, B, and C), and an attached services and utilities building. The containment vessel is lined by a concrete cylindrical shielding wall up to four feet thick that is in common with each of three process cells. The SP–100 GES nuclear reactor assembly and vacuum vessel will be located in cell A. Auxiliary systems will be in cells A, B, and C as well as outside containment and in the basement of the attached services building. Existing Hanford 300 Area utilities are adequate or will require only minor upgrades or extensions to support the SP–100 GES test. The estimated SP–100 GES test peak work force at the Hanford Site would be less than 100 people; less than 1 percent of current Hanford Site employment (about 12,000) and local area employment (about 75,000). No significant construction impacts would occur.

The SP–100 GES test program will routinely release small quantities of gaseous radioactive argon-41 and tritium (hydrogen-3). The projected annual airborne release of argon-41 is 3.7 curies and the projected release of tritium is 0.047 curies. The maximum whole body dose commitment to the nearest resident from these releases is projected to be 0.00045 mrem. the 50-year whole body dose commitment for the population within 83 kilometers (50 miles) is projected to be 0.0027 person-rem. The maximum off-site (public) individual whole body dose commitment is significantly smaller than the regulatory (40 CFR 61.92) limit of 25 mrem/year whole body dose commitment and the annual dose from background radiation of 100 mrem. The SP–100 GES test in Building 309 is being designed using the latest technology and with the design objective that no employee would be expected to receive a dose greater than 1 rem/year in normally occupied zones or during anticipated maintenance. Actual radiation exposure would be considerately less than 1 rem/year as a result of a DOE mandate to maintain radiation exposures as-low-as-reasonably-achievable (ALARA).

The SP–100 GES test activities will result in thermal discharges to the atmosphere. Reactor heat (up to 2.5 MW thermal) will be dissipated to the atmosphere using forced-air dump heat exchangers. In addition, air conditioning will be provided to remove heat from support areas. The potential effects of thermal discharges were analyzed by comparing the quantities to those discharged by the Fast Flux Test Facility (FFTF) located in the Hanford Site 400 Area. Although the FFTF rejects 160 times as much reactor heat as that projected for the SP–100 test facilities, no significant environmental consequences beyond the immediate FFTF area have occurred. Based on this comparison, minimal effect is expected within the immediate vicinity of the SP–100 GES test area.

SP–100 GES test activities will generate hazardous, radioactive, and mixed waste. The estimated annual radioactive solid waste volume is less than 1,000 cubic feet or 7 percent of the total presently generated in the Hanford 300 Area. The minimal radioactive liquid waste that will be generated (less than 300 gallons per year) will be solidified and disposed of as low-level solid radioactive waste (included in the 1,000 cubic feet discussed above). No liquid waste will be disposed of to the soil. Disposal of low-level radioactive and mixed solid waste will be accomplished by burial in the Hanford 200 Area Burial Ground. The amount of low-level radioactive and mixed solid waste projected amounts to less than 1 percent of the total volume presently handled by the Hanford 200 Area Burial Ground.

Hazardous material use will consist primarily of liquid alkali metals for cooling media and solid beryllium oxide as a reactor reflector. Building 309 will be modified to contain liquid metals and to minimize the effects of any liquid metal leakage. Commonly used hazardous materials, such as ethylene glycol, may be selected as the cooling medium in air conditioning systems. No normal release mechanism resulting in environmental impact was identified for any of these substances.

The SP–100 GES test facility is being designed to preclude routine particulate material releases to the environment. Particulate material in the form of liquid metal aerosols, which might result from an accidental sodium or lithium fire, will be precluded. Design features are being incorporated to limit leakage of alkali metal and to prevent fire if a leak did occur, thereby precluding the generation and release of particulate material. Analyses show that no risk to the general public would result from particulate material.

Analyses of accidental radionuclide releases, including extreme cases, show that the modified Building 309 facility meets DOE siting and safety criteria. Three extremely low probability accident scenarios (10^{-6} to 10^{-8} probability) were chosen as bounding events for assessing environmental impact. One of these accident scenarios was a sodium leak from the secondary coolant system with a resulting fire. For this scenario, the calculated offsite (public) maximum individual whole body dose is 0.021 rem and the calculated onsite (worker) individual maximum whole body dose is 0.19 rem. The calculated corresponding whole body population dose commitment is 0.53 person-rem. A second accident scenario evaluated was an accidental release of tritium from the tritium removal system. For this scenario, the calculated offsite maximum individual whole body dose is 0.22 rem, and the calculated onsite individual whole body dose is 2 rem. The calculated corresponding whole body population dose commitment is 5.6 person-rems. The third accident scenario evaluated was an irradiated fuel handling accident following extended operation and cooldown. For this scenario, the calculated offsite maximum individual whole body dose is 0.00048 rem and the calculated onsite individual whole body dose is 0.0042 rem. The calculated corresponding whole body population dose commitment is 0.17 person-rem.

A severe (beyond design basis) accident scenario was considered to permit evaluation of the consequences of an extremely improbable event. The system failures assumed to reach severe accident consequences include failure of the primary reactor coolant boundary with substantial loss of coolant, failure of emergency core cooling, failure of the core to maintain structural integrity, relocation of the core to provide a high energy recriticality, failure of the

vacuum vessel, and a concurrent nonmechanistic failure of containment by malfunction of the hearting and ventilation containment isolation exhaust valve. For this severe accident scenario, the calculated maximum whole-body dose for the Hanford Site boundary individual is 0.75 rem and the calculated corresponding whole body population dose commitment is less than 6 person-rem. Calculated onsite (worker) whole-body doses would not exceed 3.4 rem. Actual doses would be expected to be lower because of operator response and onsite personnel evacuation.

These accident scenarios predict that no significant radiological impacts on public health and safety or on the environment would result from the testing of the SP–100 nuclear reactor assembly at the Hanford Site.

SP–100 Program

The SP–100 program is laid out in three phases: (I) Technology assessment; (II) technology readiness; and (III) flight system production, qualification, and application.

Phase I, which ended in Fiscal Year 1985, resulted in the selection of: (1) A system concept for further development that included a uranium-nitride fueled, lithium-cooled reactor with a thermoelectric power conversion system, and (2) the selection of the proposed SP–100 GES test site at the Hanford Site.

Phase II was initiated in Fiscal Year 1986 and has four functional elements: (1) GES development, (2) advanced aerospace technology, (3) civilian missions analysis and requirements definition, and (4) military missions analysis and requirements definition. Of the four functional elements, GES development is the subject of this FONSI and supporting EA and is the only SP–100 element for which DOE has primary responsibility.

Phase III may be initiated prior to the completion of Phase II activities, depending on mission decisions and funding levels. Initial planning for the first application of an SP–100 power system in space by other agencies may begin in 1989 for a proposed launch in 1996.

Potential mission applications for an SP–100 space reactor system are many and diverse because of the flexibility and scalability in the system design. Missions that may employ the SP–100 power system include deep space probes, manned lunar and Mars bases, electrical propulsion for orbital transfer and interplanetary vehicles, space-based radar for surveillance, tracking and air/ocean traffic control, direct broadcasting, and global communications.

At this time, a specific mission has not been identified for the SP–100 nuclear reactor power system. Therefore, specific flight system design requirements and mission parameters are not available. However, it was appropriate in the EA to assess potential accident scenarios for reasonably foreseeable missions to provide insight into the possible environmental consequences of future space deployment of an SP–100 reactor. Accordingly, DOE performed a radiological risk assessment of potential accident scenarios to ensure that the SP–100 technology development efforts will be directed towards reducing any potential impacts. When a specific mission using an SP–100 nuclear reactor power system is proposed, the potential environmental impacts of that mission will require appropriate NEPA documentation by either NASA or DOD as part of the flight approval process.

Three hypothetical mission scenarios representative of the classes of missions for which the SP–100 would be applicable were analyzed for potential accidents: (1) Titan-launched high-orbit mission, (2) Shuttle-launched nuclear electric propulsion (NEP) mission, and (3) Shuttle-launched low-orbit mission. The risk assessment and analysis was based on the analytical approach used for the safety analysis of past and current missions employing nuclear power sources.

Using assumed mission scenarios and the latest SP–100 design information, accident scenarios and associated probabilities were generated and potential radiological impacts were evaluated in terms of population doses. The results of the risk assessment for the three hypothetical missions (expressed as statistically expected total population dose commitment and the probability of occurrence of that population dose) were 0.6 person-rem (probability 0.32), 0.5 person-rem (probability 0.01), and 3.0 person-rem (probability 0.0041) for the Titan launched high orbit mission, the shuttle launched NEP and the shuttle launched low orbit mission, respectively. These doses represent the total dose that would be received by the total population that would potentially be exposed to radiation. The average individual would receive a dose many thousands times smaller. Individual doses corresponding to these integrated doses, if detectable at all, would be much smaller than current regulatory standards for exposure of the general public to radiation.

Determination

Based on the information and analyses in the EA, the comments received on the propoed FONSI, and the DOE responses to those comments, the DOE has determined that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA. Therefore, preparation of an EIS is not required.

Issued at Washington, DC, September 20, 1989.

Peter N. Brush,

Acting Assistant Secretary, Environment, Safety and Health.

Attachment

Summary of Comments Received on the Proposed FONSI

A total of 24 people submitted comments on the proposed FONSI and supporting EA during the 45-day public review period. Although the comments raised questions concerning the proposed action, no significant new information having a bearing on environmental concerns was presented which affected the DOE's proposed NEPA determination. Those comments requiring a technical response are summarized below along with the DOE's respones.

Comment: Why is the SP–100 system (a generic space reactor power system) being developed; is there a need for the program; is the Strategic Defense Initiative (SDI) the primary impetus for the program; and why wasn't cancelling the program considered in the proposed FONSI as a part of the no-action alternative?

Response: The SP–100 technology is being developed by the DOE under the authority and direction of Congress to meet the power requirements of future NASA and DOD missions in space. Both NASA and DOD have identified future missions which would be enabled or enhanced by use of an SP–100 power system.

Currently, neither NASA nor DOD has an SP–100 system planned as the primary power system for any specific mission. However, both agencies have projected future missions that would require greater amounts of electrical power and the SP–100 is one potential means of meeting these higher power requirements. The SP–100 program is developing nuclear power technology that could be scaled from 10s to 100s of kilowatts to make it adaptable to a variety of future space missions. The lead time required to validate and demonstrate the readiness of an SP–100 reactor is greater than that of its

potential missions. SP–100 research, development, and testing must be undertaken now to assure that the technology will be available when required.

The EA evaluated the potential environmental impacts of ground testing the SP–100 reactor at the Hanford Site, As stated in EA section 3.2.3, the no-action alternative would consist of not performing this ground test. Cancelling the entire NASA/DOD sponsored SP–100 program is beyond the scope of this NEPA process.

Since the SP–100 program is sponsored by both NASA and DOD, the development program must consider both agencies' future needs. At the point either agency makes a definite proposal to use the SP–100 technology for a defined mission, a system would be tailored to meet requirements. Potential NASA and DOD missions are outlined in EA section 2.1.

Comment: Will public scoping meetings be held and an EIS be prepared prior to finalizing a decision to perform a ground test of a prototype SP–100 space nuclear reactor at the Hanford Site?

Response: In compliance with NEPA (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of the NEPA (40 CFR parts 1500–1508), and DOE NEPA guidelines of December 15, 1987 (52 FR 47662), DOE prepared an EA to assist in determining whether an EIS was required for the proposed action. Based on the analyses in the EA and after consideration of the comments received during the public review period for the proposed FONSI and supporting EA and the DOE responses to those comments, DOE found the proposed action to modify Building 309 and conduct ground tests of a small prototype reactor was not a major Federal action significantly affecting the quality of the human environment. Therefore, neither public scoping meetings nor an EIS is required.

When a specific mission or class of missions using an SP–100 power system is proposed, the potential environmental impacts of the proposed activity will be evaluated under NEPA by NASA or DOD as a part of the launch approval process.

Comment: Did DOE misinterpret NEPA requirements by only examining the potential environmental impacts of the proposed ground test?

Response: As stated in the EA, the goal of the SP–100 program is: "* * * to develop safe, compact, lightweight, durable, space reactor system technology providing electrical power in the range of 10s to 100s of kilowatts to make possible a broad class of emerging military and civil space missions in the early to mid-1990s and beyond * * * A ground test of a prototype reactor is necessary to demonstrate technology readiness * * *" The proposed ground test does not irrevocably commit the government to using this technology. The actual reactor to be ground tested could not be used for a light experiment, The only proposed action under consideration at this tme is the ground testing of a prototype SP–100 space nuclear reactor in a modified reactor containment building, Building 309, at the Hanford Site near Richland Washington, An EA was prepared to assist DOE in its determination of whether an EIS was required for the reactor test. Since the EA analyses do not predict significant environmental effects, an EIS is not required for the rector test. The potential environmental impacts associated with a specific NASA or DOD mission or class of missions utilizing an SP–100 power system will be evaluated in a separate NASA or DOD NEPA process as a part of the launch approval process when a mission is proposed.

Comment: Can the environmental impacts of the proposed action be adequatley addressed at this time since the detailed design of the prototype SP–100 reactor has not been completed?

Response: The intent of NEPA is to assure that timely environmental information is availble and is considered in decisionmaking. Where detailed design or data are unavailable, reasonable assumptions may be used to assess potential environmental impacts. An EA and FONSI are appropriate NEPA documentation for the proposed action.

Comment: The 30 day public review period should be extended an additional 60 days.

Response: CEQ regulations (40 CFR 1501.4e(2)) specify 30 days for public review of a proposed FONSI, Nevertheless, DOE formally extended the comment period an additional 15 days and considered all comments received.

Comment: There are no safety or safeguard requirements to be met before an SP–100 system could be launched into space.

Response: By Presidential Directive to the National Security Council (December 14, 1977), every nuclear power system considered for use in space must undergo a formal comprehensive safety review to identify and characterize the risks posed and the benefits to be derived from its use. At the center of this review process is the Interagency Nuclear Safety Review Panel (INSRP), a panel co-chaired by three appointees, one each, from DOD, NASA, and DOE. The panel has its own independent staff of technical experts to verify safety evaluations. The INSRP issues a Safety Evaluation Report which is forwarded to the President's Office of Science and Technology Policy (OSTP) along with the user agency's request for launch approval. Th final launch decision is made by either the President or the Director of the OSTP.

Comment: The level of design information used in the mission risk analysis, the probabilities used in the risk analysis, the specific missions chosen for analysis, and the analysis of the reentry of an SP–100 reactor from space are inadequate.

Response: The EA's risk analysis for a generic flight system was done as a preliminary overview for several different possible "classes" of future missions. The purpose of the analysis was twofold: (1) To determine if there were any outstanding safety issues which would have to be resolved during the ground test and (2) to determine if there were any system requirements which would have to be changed before the initiation of the reactor ground test.

The risk analysis shows that the radiological consequences, from the possible space mission scenarios that were assessed, would be very low. As noted in the EA, NASA or DOD will have to prepare project specific NEPA documentation before an actual mission could be approved.

Launch vehicle failure rates for the Shuttle and Titan vehicles were taken from the most recent and accepted data sources as described in EA Reference 6.1. Failure rate predictions were based on both past performance and projected potential failure mechanisms.

The three hypothetical missions analyzed are representative of the classes of missions for which SP–100 could be utilized. The purpose of considering the missions that were chosen was to test the sensitivity of the results to several different orbits and operating conditions. The flight approval process for each space nuclear power system is thorough and the risks associated with any proposed mission will be thoroughly reviewed.

Analysis of the inadvertent reentry before or after initial reactor operation can be done using the current level of design, knowledge of performance, and by allowing for uncertainty in the final results. A great deal of information is available on reentry characteristics based upon the past 30 years of analysis of radioisotope thermoelectric generator systems and other space systems.

Information on the reentry philosophy for the SP–100 is outlined in EA section 6.3.4. The potential for on-orbit collisions with debris or micrometeoroids has been considered in EA section 6.3.5 and in Reference 6.1.

Comment: Were environmental factors considered as a part of the SP–100 system selection process as well as in the test site selection process?

Response: Environmental considerations were included in the selection criteria developed for the reactor power system concept selection process. EA Appendix G, Section G.3 describes the seven criteria that were used to evaluate the alternative reactor power system concepts. Four of the seven competing design criteria (surety, survivability, user interface, and operations criteria) were found to be essentially nondiscriminators among the four alternative system concepts. Evaluation objectives included in the definition of the surety design criteria included health, safety, and environmental factors. All four of the alternative system concepts could meet the surety requirements.

The design characteristics of the candidate concepts were evaluated from the perspective of prelaunch activities and ultimate use in space. Although specific missions were not identified, the decision process focused on the ultimate use in space of the reactor power system.

Environmental factors were an element in the ground test site selection process (see EA Appendix E). Five evaluation criteria were utilized to assess each of the five candidate sites. One of the evaluation criteria, "Approval to Operate," included site specific requirements for environmental documentation or other approvals prior to modification of facilities and testing as well as an assessment of institutional, political, public safety, and environmental issues. The environmental factors relative to each candidate site were provided to the site evaluation committee, but were not governing in the final selection of the site.

Comment: Why was Building 309 selected for the SP–100 GES test considering its proximity to the Columbia River and the Hanford Site's main work force; what is the past operating history of Building 309?

Response: Environmental factors were considered in evaluating all Hanford siting alternatives. Population densities and related considerations for Building 309 are discussed in detail in EA section 4.1.1. Analyses in EA section 5.0 predict no significant impact on the local population, the Columbia River, or the surrounding agricultural areas. The decisive element for the selection of Building 309 was the degree of nuclear safety provided by an existing containment structure which would limit the risk to onsite personnel and the general public from a reactor accident. Building 309 could be easily upgraded to meet current nuclear safety and environmental protection standards and is capable of supporting program objectives. All other Hanford Site facilities would have required a substantial upgrade to provide a similar degree of containment for the ground test.

Discussion of the past operational history for activities previously conducted in Building 309 was not included in the EA because the previous reactor operated in Building 309, the Plutonium Recycle Test Reactor (PRTR), was significantly different in design and performance characteristics including power level and coolant pressure. A failure of a test apparatus within the PRTR reactor in 1965 did result in fission product release into Building 309's containment but the building's containment performed as designed and was not breached. The past operational history of Building 309 is readily available in *Plutonium Recycle Test Reactor (PRTR) Accident*, 1984 (NUREG/CR–3669, PNL–5003; Available from the National Technical Information Service, Springfield, VA, 22161).

Comment: Will DOE's management and monitoring of radioactive effluents be sufficient to adequately control the release under both normal and accident conditions; specifically, will tritium containment be adequate, was the AS-Low-As-Reasonably-Achievable (ALARA) standard used correctly, and was the maximum projected dose underestimated?

Response: Exhaust monitoring will be provided to assure compliance with current legal standards for radiation emission as described in EA sections 3.1.3.5 and 3.1.3.6.4. The automatic isolation system to provide for isolation of containment building ventilation in the event of abnormal radioactivity levels will be built, tested, and operated to standards currently applied to Nuclear Regulatory Commission (NRC) licensed reactors. Technologies for limiting the routine and accidental release of radioactive material have been incorporated into the design of the facility. Projections of emissions in the EA (both normal and accident conditions) were based on currently available technology and current industry practices. Methods discussed for control of radioactive materials (including fission product control and tritium containment technology) are commercially available within the nuclear power industry. Assumptions used in the EA analyses are consistent with both NRC licensed reactors and DOE owned reactor guidelines.

Operation assumptions, such as a 180-day cool down period prior to defueling, are made consistent with performing a meaningful ground test of the nuclear reactor. In keeping with both DOE and NRC practice, the actual controls applied on the test will be based on detailed safety analyses to be documented in the Preliminary Safety Analysis Report and Final Safety Analysis Report.

The EA projections of general public exposure are ALARA and easily meet the NRC standards given in 10 CFR 50 Appendix I: "Numerical Guides for Design Objectives and Limiting Conditions for Operations to Meet the Criterion of ALARA for Radioactive Material in Light Water Cooled Nuclear Power Reactor Effluents." One commenter questioned the ALARA discussion and stated that "* * * 1,000 mrem/year is way beyond traditional ALARA standards. 10 CFR 50 Appendix I defines ALARA as a few mrem for the public." This comment on ALARA practices for radiation workers was taken out of context; 1,000 mrem/year is consistent with current ALARA practices for radiation workers. A radiation worker is a facility worker who is qualified to use appropriate monitoring and protection measures.

A number of related radiation protection and release analyses issues were also raised. Comments suggested that some analyses were unfounded because technology does not exist for tritium control, for determining routine activation rates, for assuring High Efficiency Particulate Air (HEPA) filter performance, for achieving containment design basis leak rates, or for determining fission product release fractions. Tritium control technology, as discussed in the EA section 3.1.3.6.2, is currently being demonstrated in the FFTF at the Hanford Site. Excellent HEPA filter performance, as well as related protection from fires, has been achieved by the nuclear power industry and is consistent with the EA References from Appendix C. Containment design basis leak rates are identical to those for the FFTF. Fission product release calculations used conservative release fractions consistent with licensed reactor practice. Actual experience shows that these assumptions are conservative for releases in the presence of liquid metals. None of the technologies or

methodologies for facility design discussed in the EA are beyond the state of the art.

Comment: Isn't the generation rate and projected release of radioactive argon (Ar-41) low as compared to Argonaut-class research reactors used at universities; wouldn't the use of argon as a cover gas and for fire suppression for the secondary coolant loop increase the releases of radioactive Ar-41?

Response: The comment specifically referenced the generation and release rates of radioactive Ar-41 from the Argonaut-class research reactors used on college campuses and asserted that the Argonaut-class research reactor releases much higher levels of Ar-41 than will the SP–100 even though its power level is substantially lower than the SP–100. Therefore, the comment asserted that the estimated SP–100 release rate of Ar-41 is incorrect. However, this reasoning fails to consider the design differences between the two reactor systems. Specifically, some Argonaut research reactors have air filled central cavities and have air trapped within the graphite moderator. Air contains naturally occurring argon (Ar-40), that when irradiated, produces Ar-41. The production of Ar-41 is dependent upon the system design more than on the operating power level.

The EA estimates of Ar-41 generation and release levels are substantiated and confirmed by relevant, current reactor experience at the Hanford Site. As shown in EA Table 5.1, the FFTF, also at the Hanford Site, produces 160 times more power than will the SP–100 ground reactor and yet the annual Ar-41 release for extended power operation in the FFTF was only 20 curies. The EA conservatively estimated that Ar-41 emissions from SP–100 would only be one sixth of that emitted from FFTF. Based on the SP–100 intent to use technology similar to that used in the FFTF, it is likely that actual releases of Ar-41 would be substantially less than the conservative projections used in the EA. Ar-41 generation and release levels are not just directly released to reactor power level, but are dependent on a number of different variables.

Naturally occurring, nonradioactive argon gas (Ar-40) is being considered for two different functions for the reactor ground test. Ar-40 may be used as a reactor cover gas and for liquid metal fire suppression as described in EA section 3.1.3.6.5. Specific Ar-40 handling and storage procedures would be dependent on how the Ar-40 would be used.

If Ar-40 is chosen as the cover gas, the resulting Ar-41 would be stored until the level of radioactivity had decayed to an acceptable level for release as established by DOE Order 5480.1A, Chapter II (and additional guidance as presented in Appendix F). Ar-41 has a 1.83 hour half-life and adequate decay can be achieved in a relatively short time (e.g., if held for 24 hours, the radioactivity would drop by a factor of more than 4,000). Further, as shown by EA Figure 3.8, shielding will be provided to limit the neutron level in areas where argon is naturally present so that the actual production of Ar-41 would be limited by design.

Ar-40 is also being considered for the liquid metal fire suppression system for the secondary heat transfer system. This Ar-40 will be stored sufficiently far from the reactor core to ensure it will not become radioactive and could be safely released through the heating, ventilation, and air conditioning (HVAC) system if used for fire suppression.

As described in the EA, no single failure would result in radioactive argon being released in the containment building. In addition, liquid metal fires would not result in argon release to the containment building. However, if Ar-41 were released to containment as a result of a severe accident (requiring multiple failures), the exhaust monitoring system (discussed in EA section 3.1.3.6.4) will automatically isolate the containment if releases exceeded preset limits.

Comments: Site accident calculations use probabilities that have no basis.

Response: The site accident consequence calculations presented in the EA were based on postulated failure mechanisms. The accidents were grouped according to their probability of occurrence as described in EA section 5.1.4. The accident probabilities were based on standard practices for reactor and plant protection systems (ANSI/ANS–51.1–1983, *Nuclear Safety Criteria for the Design of Stationary Pressurized Water Reactor Plants;* ANS–54.6–1979, *LMFBR Safety Classification and Related Requirements*) and will be confirmed through analysis documented in the Preliminary Safety Analysis Report (PSAR) and Final Safety Analysis Report (FSAR). Loss of both primary and secondary power will also be covered in the test site PSAR and FSAR.

Comment: Why aren't noncancerous health effects covered separately? The discussion of health effects should include those of cancer incidence as well as those of cancer fatalities.

Response: A report by the National Academy of Sciences Committee on Biological Effects of Ionizing Radiation, commonly called the BEIR III report (EA Reference A.8), identifies the following three categories of radiation induced human health effects: (1) Cancer, (2) genetic disorders, and (3) somatic effects other than cancer. The BEIR committee judges that carcinomas are the most important effects of low dose radiation exposures. Noncancerous health effects were not covered separately in the EA based on the BEIR III report which shows that low dose exposures do not increase the risk of genetic disorders or somatic effects other than cancer. Somatic effects other than cancer include cataract induction and fertility impairment. In the BEIR III report, the term "low dose" refers to doses up to a few rem per person per year such as those doses characteristic of the potential accidents discussed in the EA.

DOE used the NRC criteria for nuclear accident evaluations in environmental reports and therefore did not include a discussion on cancer incidence in the EA. These criteria were expressed in terms of the increase in the risk of fatal cancers.

Comment: Will DOE use facility operators who are not qualified because they are unlicensed; will the SP–100 facility be licensed and regulated by an independent agency such as the NRC?

Response: DOE reactor operators, although not licensed by the NRC, will be trained and certified by DOE to operate the SP–100 GES reactor. The current standards for DOE operator qualifications are documented in DOE Order 5480.6, *Safety of Department of Energy-Owned Nuclear Reactors,* (September 23, 1986), which establishes operator certification requirements comparable to NRC licenses. These standards require initial certification and periodic recertification (including written, oral and operational examinations), experience with reactor operations appropriate for the level of operator responsibility (as specified in ANS 3.1), and medical as well as psychological examinations.

Under existing law, the NRC does not have licensing authority over DOE test reactors. The question of whether the law should be changed to subject DOE owned reactors to oversight by the NRC is beyond the scope of this NEPA process.

Comment: Doesn't poor past performance at the Hanford Site illustrate why the SP–100 system should not be tested there; shouldn't the Hanford Site be cleaned up before any further reactor testing is done; and have possible cumulative effects at the Hanford Site been considered?

Response: Past performance at the Hanford Site, although useful as an indicator, cannot be used as a predictor

of future performance especially with today's stricter regulatory process. The short term nature of the SP–100 ground testing activity, the limited Hanford Site resources affected by the testing and the minor impacts that are expected from the test activities are all addressed in the EA and lead to the conclusion that no significant cumulative effects would result from the test.

Significant progress is being made toward the cleanup of the Hanford Site. The DOE has addressed cleanup concerns and has initiated a cleanup process, as discussed in the *Final Environmental Impact Statement, Disposal of Hanford Defense High-Level, Transuranic and Tank Wastes* (DOE/EIS–0113; available from the National Technical Information Service, U.S. Department of Commerce, Springfield, VA, 22161). DOE intent is reflected in a DOE request for increased funding for cleanup activities in the Fiscal Year 1990 budget proposal. A significant portion of this money will be directed to funding major Hanford Site cleanup activities such as the Hanford Waste Vitrification Project.

Early defense activities of the U.S. Army Corps of Engineers and the Atomic Energy Commission (AEC) have been supplanted by today's more conservative approaches to reactor operation and radioactive material management. As shown in EA Table 5.1, operation of the FFTF at the Hanford Site (initial operation on February 9, 1980) has resulted in routine releases significantly below those of commercially licensed reactors, even when scaled for power rating. Quality assurance standards such as ANSI/ASME NQA–1 have been applied and the FFTF has been recognized for its technical excellence. Independent reviews, including one by the National Academy of Science (NAS) (*Safety Issues at the DOE Test and Research Reactors*, National Academy Press, Washington, DC, 1988) have not identified any quality issues at the FFTF. Most of the NAS recommendations dealt with future modifications being considered for FFTF rather than correction of past or present programmatic deficiencies. This is the Hanford Site operating history which is pertinent to the planned operation of the SP–100 GES Test Site. The DOE and the Westinghouse Hanford Company are strongly committed to safe, environmentally sound test operations applying the best available technology.

Comment: Will the highly enriched uranium fuel used for the reactor be safeguarded while at the Hanford Site?

Response: DOE has established stringent requirements for the handling and protection of nuclear materials. Hanford Site's security system is in full compliance with current DOE orders for safeguarding nuclear materials.

Comment: Will funding for decontamination and decommissioning of Building 309 upon completion of the ground test be adequate; is it appropriate to dispose of the fuel at the Waste Isolation Pilot Plant (WIPP)?

Response: Congress provides funding for DOE activities. The proposal to establish a fund for disposal for the Hanford Site's wastes requires a legislative action beyond DOE authority and beyond the scope of this NEPA process.

The SP–100 program has established a schedule and has projected costs for decontamination and decommissioning of the Building 309 facility and funds have been budgeted for facility restoration at the end of the ground test. However, as discussed in EA section 3.1.2.5, it is possible this facility could be useful for later programs and probably would not be fully decommissioned until it can no longer serve research needs.

Because the SP–100 reactor fuel is highly enriched, it is anticipated that it would be reprocessed and reused, as discussed in EA Section 5.3. Any transuranic waste material generated from reprocessing would be stored on the Hanford Site and ultimately sent to the WIPP facility in New Mexico when it receives final authorization as a waste disposal facility. An alternative to reprocessing would be final disposal of the spent fuel at a DOE geologic repository constructed pursuant to the Nuclear Waste Policy Amendments Act.

Comment: Isn't the use of a "combustible liquid metal" coolant during the ground test dangerous; was the potential for flooding in the area near Building 309 adequately addressed, especially when considering the possibility of liquid metal/water reactions?

Response: Liquid metals have been successfully used as coollant in a number of research reactors. The DOE has a liquid metal reactor development program which has included the SEFOR and EBR II research reactors, both of which have demonstrated the capability to work safely with liquid metal coolants. The Westinghouse Hanford Company, the DOE Hanford Site operations and engineering contractor, has been involved in liquid metal research and development for a number of years, performing extensive liquid metal loop testing and liquid metal fire testing at the Hanford Site (including both sodium and lithium). Westinghouse managed the construction, start up, and currently manages the operation of the FFTF, a 400 Megawatt liquid-metal-cooled test reactor at the Hanford Site which initially went critical in 1980. Although commenters correctly identified early technical obstacles in the development of liquid-metal-cooled reactors, the industry has matured and the technology for safe handling of liquid metals exists, as discussed in EA section 5.1.4.4.

Although liquid metals at elevated temperatures will burn when exposed to air, they are not volatile. Unlike volatile materials (such as oil), liquid metals will not support a large flame column above the fire. As a result, an open liquid metal fire is a low lying fire which can be approached and extinguished by smothering it with an inert material. Facility design features discussed in the EA will assure that such fires are unlikely and that leak protection is provided. In the highly unlikely event that a liquid metal fire does develop, it will be contained in a steel lined concrete enclosure and extinguished as the enclosure's oxygen is consumed. The Hanford Site's fire department personnel are trained in extinguishing liquid metal fires.

Concern was also expressed about the risk of water reactions with liquid metal due to the proximity of the site to the Columbia River. This concern was considered in the siting of the facility. Historical flood information is included in EA section 4.1.4.2. The site is 11.5 meters (37 feet) above the 100 year flood and 3.5 ± 1.2 meters (11 ± 4 feet) above the probable maximum flood. Information for the probable maximum flood is taken from EA Reference 4.1.

Comment: The impacts of disposing of fire protection water were not addressed in the EA.

Response: Water will not be used for fire protection in the area where liquid metal will be present. Therefore, water will not be used for fire suppression in or around the reactor system and will not become contaminated. Fire protection water will only be used external to the primary and secondary containments structures and will not become contaminated. Therefore, the water can be disposed of through the existing drainage systems discussed in EA section 3.1.3.11. An inert gas will be used for fire suppression within the containment building where liquid metal is present.

Comment: Will the use of highly enriched fuel in the reactor cause a destructive power excursion like the SNAPTRAN excursion test in the early 1960s; is this covered in the EA; and does the reactor have any inherent negative feedback mechanisms?

Response: Due to both the design of the reactor and the reactor protection system, a reactor power excursion is not a credible event. The SP–100 reactor has redundant and highly reliable shutdown systems as well as a secondary backup coolant system. The control system is well understood and the reactor will automatically shut down if it begins operating beyond the preset conditions. The physical response of the system precludes the possibility of an explosively destructive power excursion during the reactor ground test which would cause a breach in primary containment. However, EA Section 5.1.5 contains a discussion of a postulated severe accident which represents a beyond design basis accident that considers this type of event.

The reactor contains highly enriched uranium and, therefore, has little or no doppler coefficient. However, it does have several other negative feedback mechanisms inherent to small reactor systems. As an example, loss of reactor coolant would result in increased neutron streaming from the core and will cause the reactor to automatically shut down. Therefore, given the inherent nature of the design, there are no physical mechanisms which would add reactivity sufficiently fast to cause an explosive power excursion similar to that of the SNAPTRAN excursion test done in the early 1960s. It is even less probable that a destructive power excursion could occur in space where gravity is not present.

Comments: The reactor "containment" structure is not adequate to withstand predicted pressures in the event of an accident and is not designed to meet current seismic standards.

Response: The test facility will have both a vacuum vessel and a containment system. An initial containment boundary will be provided by the vacuum vessel (EA section 3.1.3.3) which will meet current seismic standards and which will be designed to survive any pressures and temperatures resulting from reactor failure. In the highly unlikely event that the vacuum vessel failed, the existing Building 309 facility will provide secondary containment. Since the Building 309 containment was built to earlier standards, the approach to meeting current standards is outlined in EA section 3.1.3.1. As outlined in the EA, these upgrades will be made as part of the facility modification prior to conducting test activities.

The pressure that a containment is designed to sustain is a function of the reactor accidents that it is designed to protect against. As stated in the EA, the accidents which could potentially pressurize the containment during the SP–100 reactor test are significantly different from those associated with a commercial pressurized water reactor which have large inventories of superheated water as the primary coolant. If the water leaks, it flashes to steam and pressurizes the containment. In a reactor which uses liquid metal for coolant, the coolant is not superheated and would not pressurize containment by creating steam. Maximum pressurization of containment would result if a leak occurred and the fire protection system failed resulting in a liquid metal fire. However, maximum pressure is limited by the amount of liquid metal available to burn. In the case of the limited inventories of liquid metal associated with the SP–100, the worst possible fire results in containment pressures of less than 2 psig. This is substantially below the 15 psig design basis pressure for the original Building 309 containment design. Building 309 containment will have substantial margin to withstand the worst fire pressurization.

Comment: The EA did not adequately describe or present analysis on the transient testing planned for the ground test at the Hanford Site.

Response: Transient testing will be completed during the initial reactor startup, as described in EA section 3.1.2.3. The planned testing is intended to characterize the performance of the reactor system in space. The testing is limited to operational events and to demonstration of the flight system protective responses such as automatic shutdown systems. None of these transients challenge the design limits of the primary coolant boundary or the fuel cladding. Containment of the fission products within the multiple barriers of the fuel matrix, fuel cladding, and primary coolant boundary is assured for the full spectrum of testing. The SP–100 fuel, cladding, and structural materials will have been well characterized through testing within the FFTF and EBR–II reactors prior to the SP–100 GES test.

Comment: The EA analysis of the generic flight system did not adequately address the effectiveness of the heat removal system or the potential for control logic errors described in EA section 2.3.3.

Response: The generic flight system is a 100 kilowatt space reactor power system design that provides the basis for the ground engineering system activities. The design has been adapted as necessary for ground testing as outlined in EA section 2.2 and 2.3.

There are several key differences between the complete generic flight system and the ground test of the reactor. As an example, the reactor ground test at the Hanford Site will not include the space subsystem described in EA section 2.3.3.3 (e.g., the test will not include the power conversion system or the heat pipe radiator system).

The EA was prepared specifically for the reactor ground test and not for the generic flight system. NEPA documentation, including a specific analysis of the flight system, will be prepared by either NASA or DOD at the time of a proposal to utilize a space reactor in an actual mission. Accordingly, it is not appropriate at this time to address these issues within the EA and FONSI for the SP–100 GES Test.

[FR Doc. 89–22638 Filed 9–26–89; 8:45 am]
BILLING CODE 6450–01–M

Office of Fossil Energy

Corporate Directory; Opportunities for Coal Use

AGENCY: Office of Planning and Environment, Office of Fossil Energy, DOE.

ACTION: Notice of Industry Directory on New Opportunities for Coal Use in the United States.

SUMMARY: The U.S. Department of Energy, Office of Fossil Energy, in follow-up to a July 12–13, 1988 workshop on "Coal—Targets of Opportunity," is responding to industry's request for a comprehensive directory of organizations interested in exploring new opportunities for coal use in the United States. This reference document will target coal suppliers, fuel development organizations, equipment manufacturers, energy producers, the research community and end-users; and will focus on new concepts and innovative approaches to utilizing coal and coal-derived fuels with emphasis on the technologies that optimize the unique aspects of coal and coal-based fuels in the Residential, Commercial, Transportation, Industrial, and Power Generation sectors. Organizations interested in inclusion in this directory should contact Jan Lane in writing at the address below for a complete set of instructions, including a data template, sample page, and schedule requirements.

DATE: Please respond by October 10, 1989 to insure adequate time for inclusion in the directory.

FOR FURTHER INFORMATION CONTACT: Jan Lane (FE–4/GTN), Project Manager, Department of Energy, 1000

Independence Avenue, Southwest, Washington, DC 20585, (301) 353–2604.

Dated: September 21, 1989.

Michael R. McElwrath,

Acting Assistant Secretary, Fossil Energy.

[FR Doc. 89–22839 Filed 9–26–89; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

DOE/NSF Nuclear Science Advisory Committee Renewal

Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act (FACA), (Pub. L. 92–463) and in accordance with 41 CFR 101–6.10, and following consultation with the Committee Management Secretariat, General Services Administration (GSA), notice is hereby given that the DOE/NSF Nuclear Science Advisory Committee (NSAC) has been renewed for a two-year period ending September 22, 1991. Administrative responsibility for the Committee will be provided by the Department of Energy during this period.

NSAC provides advice to both the Department of Energy and the National Science Foundation on scientific priorities within the field of basic nuclear science research. Basic nuclear research is understood to encompass experimental and theoretical investigations of the fundamental interactions, properties, and structures of atomic nuclei.

The Committee members are chosen to ensure an appropriately balanced representation of the scientific community in basic nuclear research, taking into account: (1) The various subareas within nuclear science such as nuclear physics and nuclear chemistry, experiment and theory, low energy, medium energy, heavy ion research, etc.; (2) the various types of institutions involved in basic nuclear research such as universities and national laboratories, those engaged in small-scale and large-scale research projects, those engaged in user-group and in-house research; and (3) appropriate geographic distribution. Membership and representation of all interests will be determined in accordance with the requirements of the Federal Advisory Committee Act and section 624(b) of the Department of Energy Organization Act (Pub. L. 95–91) and implementing regulations.

The renewal of the DOE/NSF Nuclear Science Advisory Committee has been determined necessary and in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Committee will continue to operate in accordance with the provisions of the FACA, the Department of Energy Organization Act (Pub. L. No. 95–91), and the GSA Final Rule on Federal Advisory Committee Management, and other directives and instructions issued in implementation of those acts.

Further information regarding this advisory committee may be obtained from Elinor Donnelly at 586–3448.

Issued at Washington, DC, on September 22, 1989.

J. Robert Franklin,

Acting Advisory Committee Management Officer.

[FR Doc. 89–22837 Filed 9–26–89; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3651–5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collection and their expected costs and burdens.

DATE: Comments must be submitted on or before October 27, 1989.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382–2740.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: Phases 4 and 5 of the Pesticide Reregistration Process (EPA ICR #1504.01). This ICR requests clearance for a new information collection.

Abstract: Under Phases 4 and 5 of the pesticide reregistration process, registrants must generate new data so that pesticides registered prior to November, 1984, have data support equivalent to that required to new registrations. EPA will use this information to determine whether a pesticide causes unreasonable adverse effects to human health or the environment and whether it should be reregistered.

Burden Statement: The public reporting burden for this collection of information is estimated to average: 99,589 hours per response for registrants with List B, C, and D chemicals (assuming an average of 92 studies per chemical); 7,079 hours per response for registrants with List A chemicals (assuming an average of 18 studies per chemical); and 807 hours per response for registrants who must generate product-specific data (assuming an average of 18 studies per chemical). These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Pesticide manufacturers.

Estimated No. of Respondents: 785.

Estimated Total Annual Burden on Respondents: 9,755,586 hours.

Frequency of Collection: One time.

Office of Water

Title: Pesticides in Groundwater GIS Case Study (EPA ICR #1512.01)—Renotification.

Status Update: EPA has withdrawn its request for emergency processing (September 7, 1989) and has asked for clearance under normal procedures. Please submit any comments regarding this collection by October 16, 1989.

Abstract: Respondents will be asked to voluntarily answer questions concerning pesticide usage and the proximity of application points to water supplies. Data will be used to help develop State Pesticide in Groundwater Management Plans by demonstrating techniques for identifying vulnerable water supplies.

Burden Statement: The estimated public reporting burden for this collection of information is one hour per respondent, per year. This estimate includes the time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Farmers, County Agriculture Agent.

Estimated No. of Respondents: 151.

Estimated Total Annual Burden on Respondents: 156 hours.

Frequency of Collection: One-time only.

To obtain a copy of the ICR package contact Sandy Farmer on (202) 382–2740.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223), 401 M Street, SW., Washington, D.C. 20460

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, D.C. 20503, (Telephone (202) 395–3084).

OMB Responses of Agency PRA Clearance Request

EPA ICR #1390.01; State Revolving Fund Report to Congress Questionnaire; was approved 09/01/89; OMB #2040–0131; expires 10/31/90.

Dated: September 15, 1989.

Paul Lapsley,

Director, Information and Regulatory Systems Division.

[FR Doc. 89–22791 Filed 9–26–89; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3651–4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATE: Comments must be submitted on or before October 27, 1989.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer of EPA, (202) 382–2740.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: Date Call-In/Registration Standards Program (EPA ICR #0922.03; OMB #2070–0057). This ICR requests renewal of the existing clearance.

Abstract: Under section 3(c)(2)(B) of FIFRA, EPA may require pesticide registrants to generate and submit data on the risks and benefits of pesticide use. The Agency uses this information to assess whether the subject pesticide causes an unreasonable adverse effect on human health or the environment and to determine whether to maintain the registration. With the inception of the reregistration program under FIFRA '88, EPA will rely on this ICR primarily to conduct special chemical reviews and to complete collections of generic data begun prior to reregistration.

Burden Statement: The public reporting burden for this collection of information is estimated to average 9,456 hours per response for registrants with special review chemicals, 3 hours per response for registrants with generic data exemptions, and 35 minutes per response for registrants under other generic data call-ins. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Pesticide registrants

Estimated No. of Respondents: 25,408

Estimated Total Annual Burden on Respondents: 177,500 hours

Frequency of Collection: On occasion

Send comments regarding the burden estimates, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency Information Policy Branch (PM–223) 401 M Street, SW., Washington, DC 20460

and

Tim Hunt, Office of Management and Budget, Paperwork Reduction Project (2070–0057), Washington, D.C. 20503, (Telephone (202) 395–3084)

OMB Responses To Agency PRA Clearance Requests

EPA ICR #0270.15; Public Water System Program Information; was approved 08/03/89; OMB #2040–0090; expires 09/30/90.

EPA ICR #0270.16; Public Water System Program Information; was approved 08/02/89; OMB #2040–0090; expires 09/02/89/

EPA ICR #1230.04; New Source Review and Prevention of Significant Deterioration Permitting Programs; was approved 07/31/89; OMB #2060–0003; expires 07/31/90.

EPA ICR #0167.03; Letter of Verification of Test Parameters and Parts Lists—Light Duty Vehicles and Light Duty Trucks; was approved 07/31/89; OMB #2060–0094; expires 07/31/92.

EPA ICR #1418.01; Survey of Private Sector Randon Reduction Act; was approved 08/03/89; OMB #2060–0179; expires 03/31/90.

Dated: September 15, 1989.

Paul Lapsley,

Director, Information and Regulatory Systems Division.

[FR Doc. 89–22792 Filed 9–26–89; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3651–6]

Final Modifications of NPDES General Permit for Oil and Gas Operations on the Outer Continental Shelf (OCS) and in State Waters of Alaska; Beaufort Sea II

AGENCY: Environmental Protection Agency.

ACTION: Notice of Final Modification of NPDES General Permit.

SUMMARY: The Regional Administrator, Region 10 (the Region or EPA), is modifying the National Pollutant Discharge Elimination System (NPDES) general permit for the Beaufort Sea (No. AKG284100, hereafter referred to as the Beaufort Sea II general permit) which appeared in the **Federal Register** on September 28, 1988 (53 FR 37846). The Beaufort Sea II general permit authorizes discharges from offshore operations in all areas offered for lease by the U.S. Department of Interior's Minerals Management Service (MMS) during Federal Lease Sale 97.

The Region is modifying the Beaufort Sea II general permit by extending its coverage to include all areas now covered by the initial Beaufort Sea general permit (No. AKG284000, 49 FR 23734, June 7, 1984), which expired on May 30, 1989. The expired general permit authorized discharges from offshore facilities in areas offered and leased by (1) MMS during Federal Lease Sales 71 and 87, (2) the state of Alaska in State Lease Sales 36, 39, 43, and 43A, and (3) MMS or the state of Alaska in Federal/State Lease Sale BF and contiguous inshore state lease sales. Since the recently expired general permits covers nearshore areas, EPA also is modifying the permit to include a prohibition on discharge within 1000 meters of river mouths or deltas during unstable or broken ice or open water conditions ("the 1000 meter discharge prohibition"). The Region is also modifying the permit to include the Land Management Administrator of the North Slope Borough among the parties to be consulted by the Director during the development of environmental monitoring programs required in areas added under this permit modification.

These modifications do not affect facilities that are now covered by the Beaufort Sea II permit.

The area covered by the expired Beaufort Sea permit overlaps with, is adjacent to, or is nearly adjacent to the area covered by the Beaufort Sea II general permit. The expired Beaufort Sea permit addresses the same types of operations, discharges, and operating conditions as the Beaufort Sea II general

permit. Therefore, the Agency believes that the areas covered by the expired general permit (No. AKG284000) would be more appropriately controlled under the Beaufort Sea II general permit (No. AKG284100,) than under individual permits or a separate NPDES general permit.

A new administrative record has been developed to support the modifications.

The notice of the Beaufort Sea II general permit (53 FR 37846, September 28, 1988) set forth the principal facts and the significant factual, legal, and policy questions considered in the development of the terms and conditions of the original permit. Region 10 published a notice of proposed modification and a fact sheet on May 1, 1989 (54 FR 18587). The basis for the final modifications is given in the fact sheet for the proposed modifications (54 FR 18587, May 1, 1989) and in the supplementary information published below.

DATES: These modifications to the Beaufort Sea II general permit shall become effective October 27, 1989. The permit shall expire at midnight on September 27, 1993.

ADDRESS: The administrative record for the final modifications to the Beaufort Sea II permit is available for public review at EPA, Region 10, Ocean Programs Section, WD-137, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Anne Dailey, Region 10, at the above address or telephone (206) 442-2110. Copies of today's notice, the final modifications, response to comments, today's final notice, and the permit may be obtained by writing to the above address or by calling Kris Flint at (206) 442-8155.

SUPPLEMENTARY INFORMATION AND FACT SHEET

Organization of This Notice

I. Introduction
II. Final Modifications to the General Permit
III. Other Legal Requirements
A. Oil Spill Requirements
B. Endangered Species Act
C. Coastal Zone Management Act
D. Marine Protection, Research and Sanctuaries Act
E. State Water Quality Standards and State Certification
F. Executive Order 12291
G. Paperwork Reduction Act
H. Regulatory Flexibility Act
Appendix A—List of Changes Made in the Final Modifications

I. Introduction

The Regional Administrator of Region 10 is today issuing final modifications to the Beaufort Sea II NPDES general permit. The original Beaufort Sea II general NPDES permit (No. AKG284100, 53 FR 37853, September 28, 1988) authorized discharges from offshore oil and gas facilities operating in areas leased by Minerals Management Service (MMS) in Federal Lease Sale 97. Region 10 is making three modifications to the Beaufort Sea II general permit. The Region is modifying the permit to include the geographical area covered by the recently expired general permit for the Beaufort Sea (No. AKG284000, 49 FR 23734, June 7, 1984). The area covered by the expired permit overlapped with, was adjacent to, or was nearly adjacent to the area covered by the Beaufort Sea II general permit. Since the expired general permit covered nearshore areas, EPA is also including a prohibition on discharge within 1000 meters of river mouths or deltas during unstable or broken ice or open water conditions. In response to the Alaska Coastal Management Program's Conclusive Consistency Finding, the Region has also modified the permit to include the Land Management Administrator of the North Slope Borough among the list of parties to be consulted by the EPA Region 10 Water Division Director during the development of the specifics of each monitoring program required in areas added under this permit modification. Appendix A includes the language of the final modifications to the general permit.

On May 1, 1989 (54 FR 18587), the Agency published a notice of the proposed modifications to the Beaufort Sea II general permit, which are being issued in final form today. The public comment period closed on May 31, 1989. Comments and supporting documents on the proposed modifications were received from four parties. No public hearing was held since no request to hold a hearing was received.

Region 10 published a document containing supplementary information and a fact sheet for the proposed modifications (54 FR 18587, May 1, 1989). Part II of the fact sheet (Proposed Modifications to the General Permit) has been included by reference with further detail added below. The material in the above referenced document should be consulted in reviewing the applicability and scope of the final modifications.

A detailed listing of and response to public comments received on the proposed modifications is presented in the document entitled "Response to Comments Received on the Proposed Modifications to the Beaufort Sea II General Permit." The document and the original comment letters have been included in the administrative record for the permit modifications. The document is being sent to all commenters and is also available upon request for EPA Region 10 at the address listed above.

II. Final Modifications to the General Permit

The Director of a NPDES permit program may modify a NPDES permit upon receipt of new information not available at the time of permit issuance, if the new information would have justified the application of different conditions at the time of issuance (40 CFR 122.62[a][2]). Region 10 recently was informed by the Alaska Oil and Gas Association about upcoming exploration activities planned for 1989 in the lease sale areas covered by the expiring Beaufort Sea general permit. Had the Region been aware of this information at the time of issuance of the Beaufort Sea II general permit, the area of coverage would have been expanded to include these areas.

The Beaufort Sea II general NPDES permit (No. AKG284100) authorizes discharges from offshore oil and gas facilities in the area offered for lease in the Beaufort Sea under the Federal Lease Sale 97. EPA is modifying the geographic area covered by this general permit to include authorization to discharge on the tracts covered by the expired Beaufort Sea permit, No. AKG284000 (54 FR 18591, May 1, 1989). This modification continues authorization to discharge from oil and gas operations in areas which overlap, are adjacent to, or are nearly adjacent to those areas already covered by the Beaufort Sea II general permit.

The fact sheet accompanying the issuance of the Beaufort Sea II general permit (53 FR 37846, September 28, 1988) set forth the principal facts and the significant factual, legal, and policy questions considered in the development of the terms and conditions of the permit. EPA believes that these terms and conditions are also appropriate, with the exception of the provisions described in the following paragraph, for the areas covered by the expired Beaufort Sea permit.

Since the expired Beaufort Sea general permit covered nearshore areas within 1000 meters of river mouths or deltas, a provision prohibiting discharge within 1000 meters of river mouths or deltas during unstable or broken ice or open water conditions (part II.B.3.e.) has been included in the modified Beaufort Sea II general permit. Part II of the fact sheet (Proposed Modifications to General Permit) for the proposed notice describes the basis for this permit modification and is herein included by reference (54 FR 18588-89, May 1, 1989).

In response to the Alaska Coastal Management Program's Conclusive Consistency Finding, the EPA Region 10 Water Division Director will consult with the Land Management Administrator of the North Slope Borough during the development of the specifics of each environmental monitoring program required in areas added by this permit modification. This provision was necessary for the permit modification to be consistent with the Alaskan Coastal Management Program. The Region also believes that it is reasonable and appropriate to consult the Borough concerning development of the monitoring plans.

This provision applies only to areas offered and leased by (1) MMS during Federal Lease Sales 71 and 87, (2) the State of Alaska in State Lease Sales 36, 39, 43, and 43A, and (3) MMS or the State of Alaska in Federal/State Lease Sale BF and contiguous inshore state lease sales. This provision does not apply to tracts leased under Federal Lease Sale 97 since the Region did not reopen or propose to modify any permit conditions which are applicable to facilities covered by the existing Beaufort Sea II general permit (i.e., areas offered for sale under Lease Sale 97).

III. Other Legal Requirements

A. Oil Spill Requirements

Section 311 of the Clean Water Act ("the Act") prohibits the discharge of oil and hazardous materials in harmful quantities. Routine discharges specifically controlled by the permits are excluded from the provisions of section 311. However, these permit modifications do not preclude the institution of legal action or relieve permittees from any responsibilities, liabilities, or penalties for other unauthorized discharges of oil and hazardous materials which are covered by section 311 of the Act.

B. Endangered Species Act

Based on information in the Final Ocean Discharge Criteria Evaluations and in the Final Environmental Impact Statements prepared for the lease sales covered by the expiring Beaufort Sea and Beaufort Sea II general permits, Region 10 has concluded that this final permit modification is not likely to adversely affect any endangered or threatened species nor adversely affect its critical habitat. Region 10 requested comments from the U.S. Fish and Wildlife Service and the National Marine Fisheries Service. Both agencies concurred with EPA's determination.

C. Coastal Zone Management Act

The proposed modifications and consistency determinations were submitted to the State of Alaska for state interagency review at the time of public notice. The State of Alaska has concurred that the activities allowed by this permit are consistent with local and state Coastal Management Plans.

D. Marine Protection, Research and Sanctuaries Act

No marine sanctuaries as designated by this Act exist in the vicinity of the permit areas.

E. State Water Quality Standards and State Certification

The State of Alaska has certified pursuant to section 401 of the Act that the discharges authorized in state waters by this permit comply with state water quality standards and regulations.

F. Executive Order 12291

The Office of Management and Budget has exempted this action from the review requirements of Executive Order 12291 pursuant to section 8(b) of that order.

G. Paperwork Reduction Act

The information collection required by these permit modifications has 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.*, in submissions made for the NPDES permit program and assigned OMB control numbers 2040–0086 (NPDES permit application) and 2040–004 (discharge monitoring reports).

All facilities affected by these modifications will need to submit a request for coverage under the Beaufort Sea II general permit. EPA estimates that it will take an affected facility three hours to prepare the request for coverage. All affected facilities will be required to submit discharge monitoring reports (DMR's). EPA estimates the DMR burden to be 36 hours per facility per year. Facilities requesting coverage in areas of biological concern will be required to develop ocean discharge information (i.e., conduct an environmental monitoring program, see part II.B.4. of the Beaufort Sea II general permit) and submit a report. EPA estimates that each of these facilities will spend an average of 778 hours preparing these reports. All facilities affected by these modifications were subject to similar information collection burdens under the expired Beaufort Sea I permit that this modified permit replaces.

The public is invited to send comments regarding this 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 Management and Budget, Paperwork Reduction Project (2040–0086 and 2040–0004), Washington, DC 20503, marked "Attention: Desk Officer for EPA."

H. Regulatory Flexibility Act

After review of the facts presented in the notice of intent printed above, I hereby certify, pursuant to the provision of 5 U.S.C. § 605(b), that these permit modification will not have a significant impact on a substantial number of small entities. This certification is based on the fact that the regulated parties have greater than 500 employees and are not classified as small businesses under the Small Business Administration regulations established at 49 FR 5024 *et seq.* (February 9, 1984). These facilities are classified as Major Group 13—Oil and Gas Extraction SIC 1311 Crude Petroleum and Natural Gas.

Dated: September 12, 1989.

Robert S. Burd,

Acting Regional Administrator, Region 10.

Appendix A—Beaufort Sea II General Permit List of Changes Made in Final Permit Modifications

Preamble, third paragraph:

The existing permit reads (53 FR 37853, September 28, 1988): "The authorized discharge sites include all blocks offered for lease from the U.S. Department of the Interior's Minerals Management Service (MMS) in Federal Lease Sale 97 (Beafort and Chukchi seas). Some of the lease blocks offered but not leased in prior lease sales (BF, 71, and 87) may be reoffered in Lease Sale 97. In this case, EPA will grant coverage under this general permit rather than under the previous general permit (AKG284000, 49 FR 23734, June 7, 1984)."

The modified permit reads: "The authorized discharge sites include all blocks offered for lease from (1) the U.S. Department of the Interior's Minerals Management Service (MMS) in Federal Lease Sales 71, 87, and 97, (2) the State of Alaska in State Lease Sales 36, 39, 43, and 43A, and (3) MMS or the State of Alaska in Federal/State Lease Sale BF and contiguous inshore state lease sales."

Part II.B.3.e.:

The modified permit reads: "For areas offered and leased by (1) MMS during Federal Lease Sales 71 and 87, (2) the State of Alaska in State Lease Sales 36, 39, 43, and 43A, and (3) MMS or the State of Alaska in Federal/State Lease Sales BF and contiguous state lease sales, discharge is prohibited

within 1000 m of river mouths or deltas during unstable or broken ice or open water conditions."

(This provision was not part of the final Beaufort Sea II general permit, but was included in the draft general permit at Part II.B.3.b. and did read: "Discharge is prohibited within 1000 m of river mouths or deltas during unstable or broken ice or open water conditions.")

Part II.B.4.:

This provision was added as a result of the Alaska Coastal Management Program's Conclusive Consistency Finding.

The modified permit reads: "* * * and for the permittee. For environmental monitoring programs in areas offered and leased by (1) MMS during Federal Lease Sales 71 and 87, (2) the State of Alaska in State Lease Sales 36, 39, 43, and 43A, and (3) MMS or the State of Alaska in Federal/State Lease Sale BF and contiguous inshore state lease sales, the Land Management Administrator of the North Slope Borough shall be consulted by the Director in addition to the parties listed above. Such monitoring * * *"

[FR Doc. 89-22793 Filed 9-26-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

September 18, 1989.

The Federal Communications Commission has submitted the following information collection requirements of OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suit 140, Washington, DC 20037. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on these information collections should contact Eyvette Flynn, Office of Management and Budget, Room 3225 NEOB, Washington, DC 20503, (202) 395-3785.

OMB Number: 3060-0089.

Title: Application for Land Radio Station License in the Maritime Services.

Form No.: FCC 503.

Action: Extension.

Respondents: Individuals or households, state or local governments, non-profit institutions, businesses (including small businesses).

Frequency of Response: On occasion.

Estimated Annual Burden: 2,923 Responses; 2,923 Hours.

Needs and Uses: FCC Rules require that applicants submit the necessary data on an FCC 503 for evaluation for a new or modified station authorization in the Maritime Mobile Service or an Alaska Public Fixed Station. The technical data will be used by FCC staff to evaluate a request for station authorization.

OMB Number: 3060-0064.

Title: Application for Station Authorization in the Private Operational Fixed Microwave Radio Service.

Form No.: FCC 402.

Action: Extension.

Respondents: Individuals or households, state or local governments, non-profit institutions, businesses (including small businesses).

Frequency of Response: On occasion.

Estimated Annual Burden: 7,619 Responses; 45,714 Hours.

Needs and Uses: FCC 402 is used to apply for a new, modified or renewed station authorization for private operational fixed microwave stations. The technical data is necessary to evaluate a request for Microwave station authorizations, to coordinate that request, and to provide interference protection if the request is granted.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-22739 Filed 9-26-89; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 217-011250.

Title: Companhia de Navegacao Lloyd Brasileiro and Empresa Lineas Maritimas Argentinas S.A. Slot Charter Agreement.

Parties: Companhia de Navegacao Lloyd Brasileiro Empresa Lineas Maritimas Argentinas S.A.

Synopsis: The proposed Agreement would permit the parties to charter space to one another aboard their respective vessels in the trade between U.S. Atlantic and Gulf ports and ports in Brazil, Paraguay and Argentina.

By Order of the Federal Maritime Commission.

Dated: September 21, 1989.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 89-22751 Filed 9-26-89; 8:45 a.m.]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Wasington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200207-001.

Title: Tampa Port Authority Terminal Agreement.

Parties: Tampa Port Authority, Harborside Refrigerated Services, Inc., (Harborside).

Synopsis: The Agreement provides that the basic wharfage rate incentive agreement (Agreement No. 224-200207) is restricted to apply only to imported Chilean fruit and that other fruits moving through Harborside's leased cold storage terminal facility will be charged according to the Port's Terminal Tariff FMC No. 10.

Agreement No.: 224-200288.

Title: Port of Seattle Terminal Agreement.

Parties: Port of Seattle (Port), International Terminal Company (ITC).

Synopsis: The Agreement provides for ITC's lease and operation of a 27.5 acre break-bulk/neo-bulk facility at the Port's Terminal 115. ITC will also have non-exclusive use of berth at Terminal 28, and use of terminal 115 for loading and unloading of railcars. ITC agrees to

pay a minimum yearly rental of $687,500, payable in monthly payments of not less than $57,292. The term of the lease is five years.

By Order of the Federal Maritime Commission.

Dated: Sepetmber 21, 1989.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 89-22775 Filed 9-26-89; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Statement of Organization, Functions, and Delegations of Authority; Health Care Financing Administration

Part F of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services, Health Care Financing Administration (HCFA), 49 FR 35247, (September 6, 1984) is amended to include the Secretary's delegation to the Administrator, HCFA, of the following authority under the provisions of section 4103(b)(2) of the Omnibus Budget Reconciliation Act of 1987, Public Law 100-203, and sections 301(h)(2), 302(f)(3) and 303(g)(5) of the Medicare Catastrophic Coverage Act of 1988, Public Law 100-360.

The specific change to Part F is described below:

• Section F.30., Delegations of Authority, is amended by adding a new paragraph JJ. The new delegation of authority reads as follows:

JJ. The authority under section 4103(b)(2) of the Omnibus Budget Reconciliation Act of 1987, Public Law 100-203, to approve a delay in the effective date of State plan amendments until the first day of the first calendar quarter after the close of the State legislative session and under sections 301(h)(2), 302(f)(3), and 303(g)(5) of the Medicare Catastrophic Coverage Act, Public Law 100-360, to approve a delay in the effective date of State plan amendments until the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of the law if it is determined that State legislation (other than legislation appropriating funds) is required in order for a State to meet the requirements imposed by section 4103 of Public Law 100-203 and sections 301, 302, and 303 of Public Law 100-360.

Dated: September 13, 1989.

Louis W. Sullivan,

Secretary, Department of Health and Human Services.

[FR Doc. 89-22735 Filed 9-26-89; 8:45 am]

BILLING CODE 4120-03-M

Statement of Organization, Functions and Delegations of Authority; Office of Human Development Services

Pursuant to my authority under the Reorganization Plan No. 1 of 1953, and Reorganization Plan No. 3 of 1966, I hereby delegate to the Assistant Secretary for Human Development Services, with authority to redelegate, all authorities vested in me under:

(1) Chapter 1, sections 3501-3505 of title III of the Anti-Drug Abuse Act of 1988, the Drug Abuse Education and Prevention Program Relating to Youth Gangs (42 U.S.C. 11801-11805);

(2) Chapter 2, sections 3511-3515 of title III of the Anti-Drug Abuse Act of 1988, the Drug Abuse Education and Prevention Program Relating to Runaways and Homeless Youth (42 U.S.C. 11821-11825);

(3) The Comprehensive Child Development Centers Act, subchapter E, sections 670M-670S of the Omnibus Elementary and Secondary Education Act, Public Law 100-297, (42 U.S.C. 9871 *et seq.*);

(4) The Abandoned Infants Assistance Act, Public Law 100-505, (42 U.S.C. 670);

(5) Sections 201-207 of the Temporary Child Care for Handicapped Children and Crisis Nurseries Act, title II of the Children's Justice and Assistance Act of 1986 (42 U.S.C. 5117);

(6) Section 9442 of the Omnibus Budget Reconciliation Act of 1986 (42 U.S.C. 679a);

(7) Section 761 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11471);

(8) The Child Development Associate Scholarship Assistance Act, sections 601-605 of title VI of the Human Services Reauthorization Act of 1985, Public Law 99-425, (42 U.S.C. 10903-10905); and

These delegations do not include the authority to issue regulations or make reports to the Congress. These delegations are effective upon date of signature. In addition, I hereby affirm and ratify any actions taken by the Assistant Secretary for Human Development Services or other Office of Human Development Services officials which, in effect, involved the exercise of these authorities prior to the effective date of this delegation.

Dated: September 5, 1989.

Louis W. Sullivan, M.D.,

Secretary.

[FR Doc. 89-22747 Filed 9-26-89; 8:45 am]

BILLING CODE 4130-01-M

Public Health Service

Privacy Act of 1974; New System of Records

AGENCY: Public Health Service, HHS.

ACTION: Notification of a new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is publishing a notice of a new system of records, 09-15-0057, "Scholarships for the Undergraduate Education of Professional Nurses Grant Program, HHS/HRSA/BHPr." We are also proposing routine uses for this new system.

DATES: PHS invites interested parties to submit comments on the proposed routine use(s) on or before October 27, 1989. PHS has sent a Report of a New System of Records to the Congress and to the Office of Management and Budget (OMB) on September 15, 1989. The system of records will be effective 60 days from the date submitted to OMB unless PHS receives comments which would result in a contrary determination.

ADDRESS: Please submit comments to: Privacy Act Officer, Health Resources and Services Administration, Room 14A20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-3780.

Comments received will be available for inspection at this same address from 8:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Chief, Student and Institutional Support Branch, Division of Student Assistance, BHPr, HRSA, Room 8-34, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (303) 443-4776.

The telephone numbers listed above are not toll free.

SUPPLEMENTARY INFORMATION: The Health Resources and Services Adminstration (HRSA) proposes to establish a new system of records: 09-15-0057 "Scholarships for the Undergraduate Education of Professional Nurses Grant Program, HHS/HRSA/BHPr." This grant program will be administered by schools of nursing for the awarding of Scholarships for the Undergraduate Education of Professional Nurses. This proposed

system of records will include applications submitted by individuals requesting participation in the program.

The purposes of the records maintained in this system are to: (1) Maintain all information relative to the application for the awarding of scholarship(s) to an individual; (2) monitor recipient's continued eligibility; (3) monitor recipients's employment in nursing shortage areas in fulfillment of recipient's service obligations; (4) monitor all repayment actions until the repayment obligation is satisfied; and (5) compile and generate managerial and statistical reports.

HRSA will permit disclosure of the records to third parties pursuant to a routine use as follows: The first routine use permits disclosure to a congressional office, to allow subject individuals to obtain assistance from their representatives in Congress, if they so desire. The second routine use allows disclosure to the Department of Justice or a court, in the event of litigation.

The third routine use allows disclosure to debt collection agents, other Federal agencies, and other third parties who are authorized to collect a Federal debt. The fourth routine use allows disclosure to authorized persons employed at educational institutions to assist in identifying defaulted scholarship recipients. The fifth routine use allows disclosure to a Federal, State or local agency charged with the responsibility of investigating or prosecuting violations or potential violations of law. The sixth routine use allows disclosure to another Federal agency so that the agency can effect a salary offset, or an authorized administrative offset. The seventh routine use allows disclosure to the General Accounting Office and the Office of Management and Budget for auditing financial obligations. The eighth routine use allows disclosure to another agency that has asked the Department to effect an administrative offset to help collect a debt owed to the United States. The ninth routine use allows disclosure to the Treasury Department, Internal Revenue Service, of the written-off amount of a debt owed by an individual to the Federal Government as taxable income. The tenth routine use allows disclosure to a third party for the purpose of obtaining the current address.

Under the authority of executive Order 9397, individuals will be required to supply Social Security numbers in order to receive payments.

The following notice is written in the present tense, rather than the future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the system has become effective.

Dated: September 19, 1989.

John C. West,

Acting Deputy Assistant Secretary for Health Operations and Director, Office of Management.

09-15-0057

SYSTEM NAME:

Scholarships for the Undergraduate Education of Professional Nurses Grant Programs, HHS/HRSA/BHPr.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Room 8-23, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Division of Compter Research and Technology, National Institutes of Health, Building 12, 9000 Rockville Pike, Bethesda, Maryland 20205.

CATEGORIES OF INDIVIDUALS IN THE SYSTEM:

Applicants for and recipients of Scholarships for the Undergraduate Education of Professional Nurses Grant Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains name, Social Security number, school identifier, grant number, birthdate, demographic background, educational status, school location, employment status, payback status, and financial information about the individual for whom the record is maintained.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, as amended, section 843 (42 U.S.C. 297j). This section authorizes the establishment of a grant program to be administered by schools of nursing for the awarding of Scholarships for the Undergraduate Education of Professional Nurses. Executive Order 9397 regarding the use of Social Security number.

PURPOSE(S):

1. To maintain all information relative to the application for an awarding of scholarship(s) to an invididual.

2. To monitor recipient's continued eligibility.

3. To monitor recipient's employment in nursing shortage acres in fulfillment of recipient's service obligations.

4. To monitor all repayment actions until the repayment obligation is satisfied.

5. To compile and generate managerial and statistical reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual, in response to an inquiry from the congressional office made at the request of the individual.

2. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other 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 a 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 court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in such case HHS determines that such disclosure is compatible with the purpose for which the records were collected.

3. HRSA will disclose to debt collection agents, other Federal agencies, and other third parties who are authorized to collect or compromise a Federal debt, information necessary to identify a delinquent debtor. Disclosure will be limited to the debtor's name, address, Social Security number, and other information necessary to identify him/her; the amount, status, and history of the claim, and the agency or program under which the claim arose.

4. Records may be disclosed to authorized persons employed at educational institutions where the recipient received a scholarship. The purpose of this disclosure is to assist institutions in identifying defaulted scholarship recipients (hereafter called debtors) in order to enforce the conditions and terms of such scholarships.

5. In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in

nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred to the appropriate agency, whether Federal, State or local, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute or rule, regulation or order issued pursuant thereto.

6. HRSA will disclose from this system of records a debtor's name, address, Social Security number, and other information necessary to identify him/her; the amount, status, and history of the claim, and the agency or program under which the claim arose, as follows: (a) To another Federal agency so that agency can effect a salary offset for debts owed by Federal employees; if the claim arose under the Social Security Act, the employee must have agreed in writing to the salary offset; (b) to another Federal agency so that agency can effect an authorized administrative offset (i.e., withhold money payable to or held on behalf of debtors other than Federal employees); (c) to the Treasury Department, Internal Revenue Service (IRS), to request a debtor's current mailing address to locate him/her for purposes of either collecting or compromisng a debt, or to have a commercial credit report prepared.

7. Records may be disclosed to the General Accounting Office and to the Office of Management and Budget for auditing financial obligations to determine compliance with programmatic, statutory, and regulatory provisions.

8. HRSA may disclose information from this system of records to another Federal agency that has asked the Department to effect an administrative offset to help collect a debt owed to the United States. Disclosure is limited to the individual's name, address, Social Security number, and other information necessary to identify the individual; information about the money payable to or held for the individual, and other information concerning the administrative offset.

9. HRSA will report to the Treasury Department, Internal Revenue Service (IRS), as taxable income, the written-off amount of a debt owed by an individual to the Federal Government when a debt becomes partly or wholly uncollectable—either because the time period for collection under the statute of limitations has expired, or because the Government agrees with the individual to forgive or compromise the debt.

10. HRSA will disclose information from this system of records to any third party that may have information about a delinquent debtor's current address, such as a U.S. post office, a State motor vehicle administration, professional organization, alumni association, etc., for the purpose of obtaining the debtor's current address. This disclosure will be strictly limited to information necessary to identify the individual without any reference to the reason for the agency's need for obtaining the address.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 522a(b)(12): Disclosures may be made from this system to 'consumer reporting agencies' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purpose of disclosure is to provide an incentive for debtors to repay delinquent Federal Government debts by making these debts part of their credit records. Disclosure of records will be limited to the individual's name, Social Security number, and other information necessary to establish the identity of the individual, the amount, status, and history of the claim, and the agency or program under which the claim arose.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Files of individual borrowers are maintained in a standard upright file cabinet. All original borrower contracts are kept in a fire-proof file safe. Records are maintained in file folders, on magnetic tape, and on computer disc packs.

RETRIEVABILITY:

All record files are maintained and indexed alphabetically by last name and can be retrieved accordingly. Records will also be retrieved by Social Security number.

SAFEGUARDS:

1. Authorized Users: Administrative and staff personnel of the Division of Student Assistance and other components of the HRSA who have responsibility for implementing the Scholarship Program.

2. Physical Safeguards: Magnetic tapes, disks, other computer equipment, and other forms of personal data are stored in area where fire and life safety codes are strictly enforced. Twenty-four hour, 7-day security guards perform random checks on the physical security of the data. All documents are protected during lunch hours and nonworking hours in locked file cabinets or locked storage areas.

3. Procedural Safeguards: A password is required to access the computer system and data set name controls the release of data to only authorized users. All users of personal information in connection with the performance of their jobs protect information from public view and from unauthorized personnel entering an unsupervised office. Access to records is strictly limited to those staff members trained in accordance with the Privacy Act.

4. Implementation Guidelines: DHHS Chapter 45–13 and supplementary Chapter PHS.hf: 45–13 of the General Administration Manual; and the DHHS Information Resources Management Manual, Part 6, "ADP Systems Security."

RETENTION AND DISPOSAL:

Records will be retained for 6 years (1 year on site and 5 years at the National Records Center) after completion of the service obligation or repayment to the Secretary in cases of default. Records on magnetic tape are retained for 5 years and then they are destroyed. Records are disposed of in accordance with the Records Control Schedule of the Health Resources and Services Administration. Contact the System Manager for disposal standard.

SYSTEMS MANAGER(S) AND ADDRESS:

Chief, Student and Institutional Support Branch, Division of Student Assistance, BHPr, HRSA, Room 8–34, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

NOTIFICATION PROCEDURES:

Requests must be made to the System Manager.

Request in Person: A subject individual who appears in person at a specific location seeking access or disclosure of records relating to him/her shall provide his/her name, current address, and at least one piece of tangible identification such as driver's license, passport, voter registration card, or union card. Identification papers with current photographs are preferred but not required. Additional identification may be requested when there is a request for access to records which contain an apparent discrepancy between information contained in the record and that provided by the individual requesting access to the record. No verification of identity shall be required where the record is one which is required to be disclosed under the Freedom of Information Act.

Requests by mail: Requests for information and/or access to records

received by mail must contain information providing the identity of the writer and a reasonable description of the record desired. Written requests must contain the name and address of the requester, his/her date of birth and at least one piece of information which is also contained in the subject record, and his/her signature for comparison purposes.

Requests by telephone: Since positive identification of the caller cannot be established, telephone requests are not honored.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request an accounting of disclosure that have been made of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the System Manager at the address specified under the Notification Procedures above and reasonably identify the record, specify the information being contested, and state the corrective action and the reason(s) for requesting the correction, along with supporting justification to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Individual scholarship recipients, recipient's nursing school.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 89-22776 Filed 9-26-89; 8:45 am]

BILLING CODE 4160-15-M

Privacy Act of 1974; Minor Alteration to an Existing System of Records

AGENCY: Public Health Service, DHHS.

ACTION: Notification of a minor alteration.

SUMMARY: The National Institutes of Health is publishing a minor alteration to an existing system of records, 09-25-0156, "Records of Participants in Programs and Respondents in Surveys Used to Evaluate Programs of the National Institutes of Health, HHS NIH/OD. This alteration reflects a change in the official designated as the Policy Coordinator and in one of the system managers listed for this umbrella system. We are also reinstating the routine use permitting disclosure to the Department of Justice in case of litigation, which was inadvertently ommitted in the last publication.

This system notice was last published in the **Federal Register**, Vol. 53, No. 225, pp. 47343 on November 22, 1988.

Date: September 15, 1989.

Wilford J. Forbush,

Deputy Assistant Secretary for Health Operations, and Director, Office of Management.

09-25-0156

SYSTEM NAME:

Records of Participants in Programs and Respondents in Surveys Used to Evaluate Programs of the National Institutes of Health, HHS/NIH/OD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

This system of records is an umbrella system comprising separate sets of records located either in the organizations responsible for conducting evaluations or at the sites of programs or activities under evaluation. Locations include National Institutes of Health (NIH) facilities in Bethesda, Maryland, or facilities of contractors of the NIH. Write to the appropriate System Manager below for a list of current locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system are those who provide information or opinions that are useful in evaluating programs or activities of the NIH, other persons who have participated in or benefited from NIH programs or activities; or other persons included in evaluation studies for purposes of comparison. Such individuals may include (1) participants in research studies; (2) applicants for and recipients of grants, fellowships, traineeships or other awards; (3) employees, experts and consultants; (4) members of advisory committees; (5) other researchers, health care professionals, or individuals who have or are at risk of developing diseases or conditions studied by NIH; (6) persons who provide feedback about the value or usefulness of information they receive about NIH programs, activities or research results; (7) persons who have received Doctorate level degrees from U.S. institutions.

CATEGORIES OF RECORDS IN THE SYSTEM:

This umbrella system of records covers a varying number of separate sets of records used in different evaluation studies. The categories of records in each set depend on the type of program being evaluated and the specific purpose of the evaluation. In general, the records contain two types of information: (1) Information identifying subject individuals, and (2) information which enables NIH to evaluate its programs and services.

(1) Identifying information usually consists of a name and address, but it might also include a patient identification number, grant number, Social Security Number, or other identifying number as appropriate to the particular group included in an evaluation study.

(2) Information used for evaluation varies according to the program evaluated. Categories of evaluative information include personal data and medical data on participants in clinical and research programs; personal data, publications, professional achievements and career history of researchers; and opinions and other information received directly from individuals in evaluation surveys and studies of NIH programs.

The system does not include any master list, index or other central means of identifying all individuals whose records are included in the various sets of records covered by the system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for this system comes from the authorities regarding the establishment of the National Institutes of Health, its general authority to conduct and fund research and to provide training assistance, and its general authority to maintain records in connection with these and its other functions (42 U.S.C. 203, 241, 289l-1 and 44 U.S.C. 3101).

PURPOSE OF THE SYSTEM:

This system supports evaluation of the policies, programs, organization, methods, materials, activities or services used by NIH in fulfilling its legislated mandate for (1) conduct and support of biomedical research into the causes, prevention and cure of diseases; (2) support for training of research investigators; (3) communication of biomedical information.

This system is not used to make any determination affecting the rights, benefits or privileges of any individual.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors and collaborating researchers, organizations, and State and local officials for the purpose of conducting evaluation studies or collecting, aggregating, processing or analyzing records used in evaluation studies. The recipients are required to

protect the confidentiality of such records.

2. Disclosure may be made to organizations deemed qualified by the Secretary to carry out quality assessments, medical audits or utilization review.

3. Disclosure may be made 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.

4. The Department may disclose information from this system of records to the Department of Justice, to 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 or any of its components, is a 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 record were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data may be stored in file folders, bound notebooks, or computer-accessible media (e.g., magnetic tapes or discs).

RETRIEVABILITY:

Information is retrieved by name and/or participant identification number within each evaluation study. There is no central collection of records in this system, and no central means of identifying individuals whose records are included in the separate sets of records that are maintained for particular evaluation studies.

SAFEGUARDS:

A variety of safeguards is implemented for the various sets of records in this system according to the sensitivity of the data each set contains. Information already in the public domain, such as titles and dates of publications, is not restricted. However, sensitive information, such as personal or medical history or individually identified opinions, is protected according to its level of sensitivity. Records derived from other systems of records will be safeguarded at a level at least as stringent as that required in the original systems. Minimal safeguards for the protection of information which is not available to the general public include the following:

1. Authorized Users: Regular access to information in a given set of records is limited to NIH or to contractor employees who are conducting, reviewing or contributing to a specific evaluation study. Other access is granted only on a case-by-case basis, consistent with the restrictions required by the Privacy Act (e.g., when disclosure is required by the Freedom of Information Act), as authorized by the system manager or designated responsible official.

2. Physical Safeguards: Records are stored in closed or locked containers, in areas which are not accessible to unauthorized users, and in facilities which are locked when not in use. Records collected in each evaluation project are maintained separately from those of other projects. Sensitive records are not left exposed to unauthorized persons at any time. Sensitive data in machine-readable form may be encrypted.

3. Procedural Safeguards: Access to records is controlled by responsible employees and is granted only to authorized individuals whose identities are properly verified. Data stored in computers is accessed only through the use of keywords known only to authorized personnel. Contracts for operation of this system of records require protection of the records in accordance with these safeguards; NIH project and contracting officers monitor contractor compliance.

These practices are in compliance with the standards of chapter 45–13 of the HHS General Administration Manual, supplementary chapter PHS hf: 45–13, and Part 6, Systems Security, of the HHS ADP Systems Manual.

RETENTION AND DISPOSAL:

Studies, analyses, reports, and statistical compilations created or collected in evaluation of NIH mission-related activities are scheduled for permanent retention by the National Archives as part of the historical record of the NHI, as provided by the NIH Records Control Schedule, section 1100–C–2. Working papers, extra copies, or records not used in evaluations of major programs of the NIH or any of its Bureaus, Institutes or Divisions are destroyed no later than 5 years after completion of the evaluation study (NIH Records Control Schedule, items 1100–C–12d, 1100–C–14b, 1100–C–15b).

POLICY COORDINATION FOR THIS SYSTEM IS PROVIDED BY:

Director, Division of Planning and Evaluation, National Institutes of Health, Building 31, Room 4B25, 9000 Rockville Pike, Bethesda, MD 20892.

SYSTEM MANAGERS AND ADDRESSES:

See Appendix 1.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the official of the organization responsible for the evaluation, as listed in Appendix 2. If you are not certain which component of NIH was responsible for the evaluation study, or if you believe there are records about you in several components of NIH, write to: NIH Privacy Act Coordinator, Building 31, Room 3B07, 9000 Rockville Pike, Bethesda, MD 20892.

Requesters must provide the following information:

1. Full name;

2. Name and location of the evaluation study or other NIH program in which the requester participated or the institution at which the requester was a student or employee, if applicable;

3. Approximate dates of participation, matriculation or employment, if applicable.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquistion of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical record shall, at the time the request is made, designate in writing, a responsible representative, who may be a physician, other health profesional, or other responsible individual, who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. You may also request a list of accountable disclosures that have been made of your record.

CONTESTING RECORD PROCEDURES:

Write to the official specified under notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Information contained in thee records is obtained directly from individual participants; from systems of records 09–25–0036, "Grants: IMPAC (Grants/Contract Information), HHS/NIH/DRG;" 09–25–0112, "Grants: Research, Research Training, Fellowship and Construction Applications and Awards, HHS/NIH/OD"; NSF–6, "Doctorate Record File", NSF–43, "Doctorate Work History File" (previously entitled "NSF–43, "Roster and Survey of Doctorate Holders in the United States" and other records maintained by the operating programs of NIH; the National Academy of Sciences and other contractors; grantees or collaborating researchers; or publicly available sources such as bibliographies.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

APPENDIX 1: SYSTEM MANAGERS

National Institutes Health, Office of the Director, Director, Division of Planing and Evaluation, Building 31, Room 4B25, 9000 Rockville Pike, Bethesda, MD 20892

National Heart, Lung and Blood Institute (NHLBI): Director, Office of Program Planning & Evaluation, Building 31, Room 5A03, Bethesda, MD 20892

National Library of Medicine (NLM): Special Assistant for Operations Research, Office of the Director, Building 28, Room 2S18, Bethesda, MD 20892

National Eye Institute (NEI): Associate Director for Program Planning, Analysis and Evaluation, Building 31, Room 6A25, Bethesda, MD 20892

National Cancer Institute (NCI), Privacy Act Coordinator, National Institutes of Health, Building 31, Room 4B43, Bethesda, MD 20892

National Institute on Aging (NIA): Chief, Office of Planning, Analysis, Technical Information and Ealuation, Federal Building, Room 6A09, 7550 Wisconsin Avenue, Bethesda, MD 20892

National Institute of Allergy and Infectious Diseases (NIAID): Chief, Information Technology and Evaluation Branch, Office of Administrative Management, Building 31, Room 7A17, Bethesda, MD 20892

National Institute of Child Health and Human Development (NICHD): Chief, Office of Planning and Evaluation, Building 31, Room 2A10, Bethesda, MD 20892

National Institute of Dental Research (NIDR): Chief, Office of Planning, Evaluation Section, Building 31, Room 2C36, Bethesda, MD 20892

National Institute of Environmental Health Sciences (NIEHS): Program Analyst, Office of Program Planning and Evaluation, P.O. Box 12233, Research Triangle Park, N.C. 27709

National Institute of General Medical Sciences (NIGMS): Associate Director for Evaluation, Westwood Building, Room 9A18, 5333 Westbard Avenue, Bethesda, MD 20892

Fogarty International Center (FIC): National Institutes of Health, Assistant Director for Planning and Evaluation, Building 38A, Room 607, Bethesda, MD 20892

Division of Research Grants (DRG), Assistant Director for Special Projects, Westwood Building, Room 457, 5333 Westbard Avenue, Bethesda, MD 20892

Division of Research Rsources (DRR): Evaluation Officer, Office of Program Planning and Evaluation, NIH, Building 31, Room 5B54 Bethesda, MD 20892

National Center for Nursing Research (NCNR), Chief, Office of Program Planning and Evaluation, Building 38, Room B2E17, Bethesda, MD 20892

APPENDIX 2: NOTIFICATION AND ACCESS OFFICIALS

NIH, Office of the Director: Director, Division of Planning and Evaluation, Building 31, Room 4B25, 9000 Rockville Pike, Bethesda, MD 20892

National Heart, Lung and Blood Institute (NHLBI): Privacy Act Coordinator, Building 31, Room 5A29, Bethesda, MD 20892

National Library of Medicine (NLM): Special Assistant for Operations Research, Office of the Director, Building 38, Room 2S18, Bethesda, MD 20892

National Eye Institute (NEI): Executive Officer, Building 31, Room 6A25, Bethesda, MD 20892

Fogarty International Center (FIC): Assistant Director for Planning and Evaluation, Building 38A, Room 607, Bethesda, MD 20892

Division of Research Grants (DRG): Assistant Director for Special Projects, Westwood Building, Room 457, 5333 Westbard Avenue, Bethesda, MD 20892

Division of Research Resources (DRR): Program Analyst, Office of Program Planning and Evaluation, Building 31, Room 5B54, Bethesda, MD 20892

National Cancer Institute, Privacy Act Coordinator, National Institutes of Health, Building 31, Room 10A30, Bethesda, MD 20892

APPENDIX 2: NOTIFICATION AND ACCESS OFFICIALS

NIH, Office of the Director: Director, Division of Planning and Evaluation, Building 31, Room 4B25, 9000 Rockville Pike, Bethesda, MD 20892

National Heart, Lung and Blood Institute (NHLBI): Privacy Act Coordinator, Building 31, Room 5A29, Bethesda, MD 20892

National Library of Medicine (NLM): Special Assistant for Operations Research, Office of the Director, Building 38, Room 2S18, Bethesda, MD 20892

National Eye Institute (NEI): Executive Officer, Building 31, Room 6A25, Bethesda, MD 20892

Fogarty International Center (FIC): Assistant Director for Planning and Evaluation, Building 38A, Room 607, Bethesda, MD 20892

Division of Research Grants (DRG): Assistant Director for Special Projects, Westwood Building, Room 457, 5333 Westbard Avenue, Bethesda, MD 20892

Division of Research Resources (DRR): Program Analyst, Office of Program Planning and Evaluation, Building 31, Room 5B54, Bethesda, MD 20892

National Cancer Institute Privacy Act Coordinator, National Institutes of Health, Building 31, Room 10A30, Bethesda, MD 20892

[FR Doc. 89–22777 Filed 9–26–89; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–89–2054]

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: This Notice informs the public that the Department of Housing and Urban Development has submitted to OMB, for emergency processing, an information collection package with respect to the Commonwealth of Massachusetts and public housing agencies (PHAs) and localities in the Boston SMSA pursuant to section II.A of the June 23, 1989, decree entered in *NAACP, Boston Chapter* v. *Kemp*, Civil Action No. 78–0850–S (D. Mass.).

Pursuant to the decree cited above, HUD needs to obtain the following information from the Commonwealth of Massachusetts and the public housing agencies and localities in the Boston Metropolitan Statistical Area: A description of all available programs in their jurisdictions "designed to facilitate access to subruban housing opportunities for low-income minority households now living" in Boston, and the identities of all "owners and managers of any assisted public or private housing" within their jurisdiction. In order to meet the requirements of the decree, the Department has requested OMB to complete its review by October 2, 1989.

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).

This 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: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 21, 1989.

David S. Cristy,

Deputy Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Information Request to the Commonwealth of Massachusetts and PHA's and Localities in the Boston SMSA Pursuant to Section II.A. of the June 23, 1989, Decree Entered In *NAACP, Boston Chapter* v. *Kemp*

Office: General Counsel, HUD

Description of the Need For the Information and Its Proposed Use: In order to implement Section II.A. of the June 23, 1989, decree entered in *NAACP, Boston Chapter* v. *Kemp*, C.A. No. 78–0850–S (D. Mass.), HUD must identify all owners and managers of assisted housing in the Boston Metropolitan Statistical Area, as well as all programs designed to facilitate access to suburban housing opportunities for low-income minorities living in Boston.

Form Number: None

Respondents: State or Local Governments and Federal Agencies or Employees

Frequency of Submission: Other

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information request to the Commonwealth of Mass. and PHA's and Localities in the Boston SMSA Pursuant to Section II.A of the June 23, 1989, Decree Entered in *NAACP, Boston Chapter* v. *Kemp*.....	205		1		5		1,025

Total Estimated Burden Hours: 1,025

Status: New

Contact: Ellen Dole, (617) 565–5126; John Allison, OMB, (202) 395–6880.

Dated: September 21, 1989.

[FR Doc. 89–22850 Filed 9–26–89; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–89–2055]

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.C 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 20, 1989.

John T. Murphy,

Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Application for Approval as a Section 223(f) Coinsuring Lender—Category A.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: The Department will review a lender's financial, technical, and organizational capacity to carry out the program before approving a coinsuring lender. HUD also will review the approved lender's first three cases before endorsing the lender.

Form Number: None.

Respondents: Businesses or Other For-Profit.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Lender	10		1		320		3,200

Total Estimated Burden Hours: 3,200.

Status: Extension.

Contact: James L. Hamernick, HUD, (202) 755–6500; John Allison, OMB, (202) 395–6880.

Dated: September 20, 1989.

[FR Doc. 89–22851 Filed 9–26–89; 8:45 am]

BILLING CODE 4210–01–M

Office of the Secretary

[Docket No. N–89–2030; FR 2596]

Federally Mandated Exclusions From Income in the Rent Supplement, Section 236, Section 8 and Public and Indian Housing Programs

AGENCY: Office of the Secretary, HUD.

ACTION: Notice.

SUMMARY: Rules concerning the definition of income used in HUD's Rent Supplement, section 236, section 8, and Public and Indian Housing Programs provide that the definition of income does not include amounts of other benefits precluded by Federal law from being considered in HUD assisted housing programs. This Notice supersedes a previously published notice (53 FR 6036), clarifying that the value of food stamps currently qualifies for the income exclusion, whether provided in the form of coupons or in some other form, such as cash. Additionally, this notice updates the exclusion of Federally funded scholarships to reflect the changes made by the Higher Education Technical Amendments Act of 1987 (Pub. L. 100–50, 101 Stat. 335, 353, section 14(27)). That Act simplifies the determination of the amount of assistance attributable to attendance costs and, therefore, the amount that is excludable.

EFFECTIVE DATE: September 27, 1989.

FOR FURTHER INFORAMTION CONTACT: For Rent Supplement, section 236, and section 8 programs administered under 24 CFR parts 880, 881, and 883 through 886: James J. Tahash, Director, Program Planning Division, Office of Multifamily Management, Department of Housing Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 426–3944.

For section 8 programs administered under 24 CFR part 882 (Existing Housing, Moderate Rehabilitation) and under part 887 (Vouchers), and for the Public and Indian Housing programs: Edward Whipple, Chief, Rental and Occupancy Branch, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 426–0744. (These are not toll-free numbers.)

Any member of the public who becomes aware of any other benefit believed to be excluded from consideration as income in these programs should submit information about the other benefit program to one of the persons listed as a contact or to the Rules Docket Clerk, Attention N–89–2030, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410

SUPPLEMENTARY INFORMATION: Excluded from the definition of "annual income" under 24 CFR 215.21(c)(10), 236.3(c)(10), 813,106(c)(10) and 913.106(c)(10) are "amounts specifically excluded by any other Federal statute from consideration for purposes of determining eligibility or benefits under a category of assistance programs that includes [these HUD programs]."

These rules themselves no longer contain the list of specific program benefits that qualify under that exclusion. Instead, HUD publishes a notice in the **Federal Register** to inform the public of the benefits that qualify for the exclusion. See the notices published on September 9, 1987 (52 FR 34116) and on February 29, 1988 (53 FR 6036).

The list of program benefits published in the February 29, 1988 notice included "the value of the allotment provided to an eligible household for coupons under the Food Stamp Act of 1977 (7 U.S.C. 2017(b))." The Food Stamp Act itself does not refer to coupons. It provides that "the value of the allotment provided any eligible household shall not be considered income or resources for any purpose under any Federal, State, or local laws, including, but not limited to, laws relating to taxation, welfare, and public assistance programs, and no participating State or political subdivision thereof shall decrease any assistance otherwise provided an individual or individuals because of the receipt of an allotment under this chapter."

It has come to our attention that several states are experimenting with providing Food Stamp allotments in cash. The language of our previous notice would appear not to exclude this form of Food Stamp assistance, although the Food Stamp Act would require its exclusion. Consequently, this notice revises the exclusion for food stamp assistance (paragraph (ii)) to eliminate any reference to the form in which it is provided.

An exclusion for scholarships has been included in HUD regulations as a matter of policy before the exclusion became mandated in 1986 with respect to certain Federally funded scholarships. Since 1975, the Department's regulations governing the public housing and

Section 8 programs have excluded from income scholarship assistance provided "for *use* in meeting the costs of tuition, fees, books, and equipment." (Emphasis added.) Under this language PHAs and other assisted housing program administrators attempted to determine how much of a particular grant was actually used to meet attendance costs, and excludable, and how much was actually used for room and board and similar expenses, and therefore not excludable from income.

The most recent Notice which was applicable to the public and Indian housing, section 8, section 236 and Rent Supplement programs, implemented the 1986 statutory exclusion for scholarships funded under title IV of the Higher Education Act of 1965, using similar language. Title IV is the principle source of Federal funding for higher education. It includes funding for scholarships, including basic education opportunity grants, supplemental education opportunity grants, and special programs for students from disadvantaged backgrounds, and for work-study programs and for Bureau of Indian Affairs student assistance programs.

In 1987, Congress amended section 479B of the Higher Education Act of 1965, codified at 20 U.S.C. 1087uu, to provide that student financial assistance furnished under Title IV of that statute or under Bureau of Indian Affairs student assistance programs "that is *made available* for attendance costs shall not be considered as income or resources in determining eligibility for assistance under any other program funded in whole or in part with Federal funds." (Emphasis added.) Under the revised statutory language, a housing administrator must exclude the portion of assistance that is intended by the educational institution to cover attendance costs. It is not authorized to trace the actual use of funds and limit the exclusion to the amount actually expended for attendance costs. This notice revises the title IV scholarship exclusion in paragraph (x) under the list of program benefits that are excluded from income, to reflect the statutory language change that simplifies the determination of the amount of scholarship assistance to exclude.

Under the revised language, assisted housing administrators should seek information from the educational institution concerning the purpose of a particular grant to determine what portion is made available for attendance costs and what portion is made available for other expenses. Where the purpose of the grant is unspecified, assisted housing administrators will have the discretion to adopt any reasonable method of allocating the grant between attendance costs and other expenses, such as room and board, so long as the method adopted will not produce a result contrary to section 479B. That section does not authorize the administrator to investigate how the student actually spends the assistance.

Neither of these changes in the list of income exclusions require a change in the information collection requirements (which are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980) contained in the referenced regulations. Information about scholarships was routinely sought from educational institutions under the exclusion as contained in the previous notice. If a particular housing administrator experiences any change in information collection burden, it will be a reduction in burden (for those who may have sought information from students about actual expenses).

The following list of program benefits is the comprehensive list of benefits that currently qualify for the income exclusion stated in 24 CFR 215.21(c)(10), 236.3(c)(10), 813.106(c)(10) and 913.106(c)(10):

(i) Relocation payments made pursuant to Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4636);

(ii) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017(b));

(iii) Payments to volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 1626(a));

(iv) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(a));

(v) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e);

(vi) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f));

(vii) Payments received under programs funded in whole or in part under the Job Training Partnership Act (29 U.S.C. 1552(b));

(viii) Income derived from the disposition of funds of the Grand River Band of Ottawa Indians (Pub. L. 94-540, 90 Stat. 2503-2504);

(ix) The first $2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the Grant of Claims (25 U.S.C. 1407-1408) or from funds held in trust for an Indian tribe by the Secretary of the Interior (25 U.S.C. 117b, 1407);

(x) Amounts of scholarships funded under Title IV of the Higher Education Act of 1965, including awards under the Federal work-study program or under the Bureau of Indian Affairs student assistance programs, that are made available to cover the costs of tuition, fees, books, equipment, materials, supplies, transportation, and miscellaneous personal expenses of a student at an educational institution (20 U.S.C. 1087uu).

(xi) Payments received from programs funded under title V of the Older Americans Act of 1965 (42 U.S.C. 3056(f)).

Dated: September 12, 1989.

Jack Kemp,

Secretary.

[FR Doc. 89-22748 Filed 9-26-89; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE INTERIOR

Draft Natural Resource Damage Assessment Plan and Restoration Strategy for the Exxon Valdez Oil Spill

AGENCY: Department of the Interior.

ACTION: Draft Natural Resource Damage Assessment Plan and Restoration Strategy for the *Exxon Valdez* Oil Spill; extension of comment period to October 30, 1989.

SUMMARY: This Notice announces a 30 day extension of time for comments on the draft assessment plan prepared by the Trustee Council, composed of representatives of the federal and State natural resource damage trustees, in response to the *Exxon Valdez* oil spill of March 24, 1989. The draft plan was made available to the public on August 18, 1989, by notice published in the **Federal Register** on August 15, 1989, 54 FR 33618, that required all comments to be submitted by September 30, 1989.

DATE: Comments must be received at the following address by October 30, 1989: Trustee Council, P.O. Box 20792, Juneau, Alaska 99802.

ADDRESSES: A copy of the draft assessment plan may be obtained by contacting the Trustee Council at one of the following addresses: Trustee Council, P.O. Box 20792, Juneau, Alaska 99802 (telephone (907) 276-3550), or Trustee Council, c/o Deputy Director, U.S. Fish and Wildlife Service, Room 3340, 18th and C Streets NW.,

Washington, DC 20240 (telephone (202) 343–8286).

FOR FURTHER INFORMATION CONTACT: Mary Fitzgerald-Jones or Barbara Hyder, (907) 276–3550.

SUPPLEMENTARY INFORMATION: The March 24, 1989, grounding of the tanker *Exxon Valdez* in Alaska's Prince William Sound caused the largest oil spill in U.S. history. Approximately 11 million gallons of North Slope crude moved through the southwestern portion of the Sound and along the coast of the western Gulf of Alaska, causing extensive harm to natural resources.

The draft plan describes the process by which that harm will be evaluated so that compensation can be sought from those potentially responsible for the spill. The State of Alaska and three federal agencies (the Departments of Agriculture and the Interior and NOAA) are the responsible trustees to protect and assess injuries to natural resources as provided by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Clean Water Act (CWA). The Environmental Protection Agency (EPA) is a consultant to the Trustee Council. The Trustees, through representatives on the Trustee Council, have prepared a draft Natural Resource Damage Assessment Plan and Restoration Strategy, and following public review, will adopt a final plan and implement it.

The trustee council has received comments requesting that the comment period be extended an for additional 30 days. This notice announces that extension of the comment period until October 30, 1989. Comments are being solicited to ensure that: Important resource concerns are not omitted from the assessment; the methodologies are given an independent review and that the appropriate methodologies are chosen for the assessment; and that the costs of assessment are reasonable.

Martin J. Suuberg,

Associate Solicitor Conservation and Wildlife.

Randall Luthi,

Attorney—Dept. of Interior Office of the Solicitor.

[FR Doc. 89–22984 Filed 9–26–89; 9:59 am]

BILLING CODE 4310–10–M

Bureau of Land Management

[CO–010–9–4351–08]

Closure and Restriction; CO

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of closure and restriction.

SUMMARY: Notice is hereby given that pursuant to the authority of the Code of Federal Regulations, title 43, part 8300, subpart 8364, § 8364.1 (Closure and Restriction Orders), which provides, in part, for the authorized officer to close or restrict use of designated public lands for the protection of persons, property, and public lands and resources, and policy direction provided by the 1987 Memorandum of Understanding between the Colorado Division of Wildlife and the Bureau of Land Management which, in part, strives to resolve policy and management differences between the two agencies and encourages establishment of a variety of wildlife-related recreational use opportunities, this order will be in effect immediately upon publication in the **Federal Register.**

To allow big game animals, particularly elk, the uninhibited use of crucial winter and spring habitats, to minimize displacement of wintering big game animals onto adjoining agricultural lands, and to resolve conflicting recreation management policies on Bureau inholdings within Colorado Division of Wildlife's Oak Ridge State Wildlife Area, the areas described below will bve subject to the following closures and use restrictions:

1. General public access is by foot or horseback only. Motor vehicles are prohibited except on designated roads.
2. Camping is prohibited except in designated areas.
3. Areas will be closed to all public use from 1 December to 15 July yearly.

Township 1 North, Range 92 West of the 6th Principal Meridian

Section 35: SE¼NE¼, SE¼NW¼, NE¼ SE¼.

Township 1 South, Range 91 West of the 6th Principal Meridian

Section 7: E½NW¼, Lots 1 and 2.

Township 1 South, Range 92 West of the 6th Principal Meridian

Section 2: SE¼.
Section 3: N½SE¼, SE¼SE¼.
Section 4: Lots 1–4.
Section 8: S½NE¼, SE¼NW¼, S½.
Section 9: W½NW¼.
Section 10: E½NE¼.
Section 11: NW¼.
Section 12: N½, NW¼SW¼, E½SE¼.
Section 13: NW¼NE¼.
Section 17: N½, N½S½.
Section 18: NE¼, E½NW¼, NE¼SW¼, Lots 1–3.
Section

Township 1 South, Range 93 West of the 6th Principal Meridian

Section 13: S½NE¼.

These resctricted areas comprise approximately 2,995.74 acreas located about 10 miles southeast of Meeker, Colorado and are within or immediately adjacent to Colorado Division of Wildlife's Oak Ridge State Wildlife Area.

These closure and access restrictions shall not preclude authorized use of public lands, nor administrative use by BLM or Colorado Division of Wildlife personnel.

Any person failing to comply with this closure and restricted use order may be subject to the penalties provided in 8360.0–7 of title 43, Code of Federal Regulations.

FOR FURTHER INFORMATION CONTACT: Edward J. Hollowed, Wildlife Biologist, Bureau of Land Management, White River Resource Area, Meeker, Colorado 81641; telephone (303) 878–3601.

Dated: September 18, 1989.

B. Curtis Smith,

Areas Manager.

[FR Doc. 89–22768 Filed 9–26–89; 8:45 am]

BILLING CODE 4310–84–M

[900163]

Iditarod National Historic Trail Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting.

SUMMARY: Notice is hereby given in accordance with Public Law 90–543 that a meeting of the Iditarod National Historic Trail Advisory Council will be held October 24 and 25, 1989 at the Chamai Center in McGrath, Alaska. The council will discuss rights-of-ways, trail administration and other management issues.

The agenda is as follows:

October 24, 1989

1. Introduction.
2. Approve last meeting's minutes.
3. Staff reports.
4. Lunch.
5. Agency and organization reports: BLM, Fish and Wildlife Service, Forest Service, State of Alaska, Iditarod Trail Blazers.
6. Adjourn.

October 25, 1989

1. Discussion.
2. Public Comment.
3. Resolutions.
4. Field trip.

Adjournment.

The meeting is open to the public. The public may present oral testimony to the Council by contacting Danielle Allen at (907) 267–1258 prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Dean Littlepage, (907) 267–1225, BLM Anchorage District, 6881 Abbott Loop Road, Anchorage, Alaska 99507.

Richard J. Vernimen,

Anchorage District Manager.

[FR Doc. 89–22769 Filed 9–26–89; 8:45 am]

BILLING CODE 4310–JA–M

[UT–943–09–4212–13; U–61678]

Issuance of Land Exchange Conveyance Document, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction notice.

SUMMARY: The purpose of this notice is to correct an error in a **Federal Register** Notice published on September 7, 1989.

FOR FURTHER INFORMATION CONTACT: Mike Barnes, BLM Utah State Office, 324 South State Street, Salt Lake City, Utah 84111, 801–539–4119.

SUPPLEMENTARY INFORMATION: **Federal Register** Volume 54, Number 172, page 37159 and 37160, dated September 7, 1989, is corrected by inserting between section 33, T. 11 N., R. 16 W., SLM, and paragraph 3, the following:

Salt Lake Meridian

T. 9 N., R. 17 W.,
Sec. 13, NE¼, NE¼NW¼.
T. 4 N., R. 19 W.,
Sec. 15, W½W½.
T. 4 N., R. 19 W.,
Sec. 1, lots 1,2,3,4, S½N½, S½;
Sec. 13, W½;
Sec. 15, W½W½;
Sec. 25, W½.
T. 5 N., R. 19 W.,
Sec. 9, E½, N½NW¼, S½SW¼;
Sec. 17, lots 1,2,3;
Sec. 21, E½E½, NW¼NE¼, SW¼SE¼;
Sec. 25, all;
Sec. 33, E½NE¼, SW¼NE¼, E½SW¼, SE¼.
T. 6 N., R. 19 W.,
Sec. 11, all;
Sec. 13, all;
Sec. 15, lots 1,2,3,4, E½, SE¼NW¼, SW¼;
Sec. 21, all;
Sec. 25, all;
Sec. 35, all;
T. 7 N., R. 19 W.,
Sec. 25, all;
Sec. 27, all.
T. 8 S., R. 7 W.,
Sec. 12, SE¼SE¼;
Sec. 13, NE¼NE¼, NE¼SE¼;
Containing 12,461.06 acres.

2. At 7:45 a.m., on September 25, 1989, the lands described in paragraph 1 will be opened to the 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 7:45 a.m., on September 26, 1989, will be considered simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

Ted D. Stephenson,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 89–22813 Filed 9–26–89; 8:45 am]

BILLING CODE 4310–DQ–M

[U–942–09–4214–10; U–54908]

Cancellation of Proposed Land Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice of the Bureau of Land Management application U–61675 for the withdrawal and reservation of public land from all forms of appropriation under the public land laws, including the mining laws, was published in the **Federal Register** on September 21, 1987, (52 FR 182, pages 35486 & 35487). The Bureau of Land Management has cancelled its application in its entirety as to the following described lands:

Salt Lake Meridian

T. 1 N., R. 8 W.,
Sec. 5, All;
Sec. 6, Lots 1–4, 7, S½NE¼, SE½NW¼, E½SW¼, SE¼;
Sec. 7, 8, 17–20, 29, 30, 31, All.
T. 2 N., R. 9 W.,
Sec. 19–21, All;
Sec. 22, N½N½, N½S½N½, S½SW¼ NW¼, SW¼SE¼NW¼, W½NE¼ SW¼, W½SW¼, SE¼SW¼, S½SW¼ SE¼, SW¼SE¼SE¼;
Sec. 23, N½, N½SW¼, E½SW¼SW¼, SE¼SW¼, SE¼;
Sec. 24, NW¼NE¼, W½, W½SE¼;
Sec. 25, All;
Sec. 26, E½, E½NW¼, E½NW¼NW¼, SW¼NW¼, SW¼;
Sec. 27, W½NE¼NE¼, SE¼NE¼NE¼, W½NE¼, SE¼NE¼, W½, SE¼;
Sec. 28–31, 33, 34, All;
Sec. 35, N½, SW¼, W½W½SE¼.
T. 2N., R. 10 W.
Secs. 19–31, 33–35, All.
T. 2 N., R. 11 W.,
Secs. 19–31, 33–35, All
T. 1 N., R. 14 W.,
Secs. 4–9, 17–21, 28–31, 33, All.
T. 1 S., R. 8 W.,
Secs. 1, 3, 4, All;
Sec. 5, Lots 1–4, S½NE¼, SE¼NW¼, S½;
Secs. 6–15, 17–31, 33–35, All.
T. 2 S., R. 8 W.,
Secs. 1–11, All;
Sec. 12, N½N½, SW¼NW¼, W½SW¼;
Sec. 13, W½NW¼;
Secs. 14, 15, 17–21, All;
Sec. 22, N½, SW¼, N½SE¼, SW¼SE¼;
Sec. 23, NW¼, N½SW¼;
Sec. 28–31, 33, All.
T. 3 S., R. 8 W.,
Secs. 5–8, All;
Sec. 17, W½;
Sec. 18, All.
T. 3 S., R. 9 W.,
Secs. 19–31, 33–35, All.
T. 3 S., R. 10 W.,
Secs. 19–13, 33–35, All.
T. 3 S., R. 11 W.,
Secs. 19–31, 33–35, All.
T. 1 S., R. 14 W.,
Secs. 4–9, 17–21, 28–31, 33, All.
T. 2 S., R. 14 W.,
Secs. 5–9, 17, 18, All.

The area described contains 132,150.26 acres in Tooele County, Utah.

EFFECTIVE DATE: At 7:45 a.m. on September 20, 1989, the lands described above will be relieved of their segregative effect in accordance with the regulations under 43 CFR 2310.2–1(c), and opened to such forms of disposition as may be made by law including location and entry under the United States mining laws.

FOR FURTHER INFORMATION CONTACT: Mike Barnes, BLM Utah State Office, 324 South State Street, Suite 301, Salt Lake City, Utah 84111, (801) 539–4119.

Ted D. Stephenson,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 89–22812 Filed 9–26–89; 8:45 am]

BILLING CODE 4310–DQ–M

Minerals Management Service

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Phillips Petroleum Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 2412, Block A–317, High Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Grand Chenier, Louisiana.

DATES: The subject DOCD was deemed submitted on September 18, 1989. Comments must be received on or before October 12, 1989, or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of

Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans and Pipeline Section, Exploration/ Development Plans Unit; Telephone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this notice is to inform the public, pursuant to § 930.61 of title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of title 30 of the CFR.

Dated: September 19, 1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89–22771 Filed 9–26–89; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Concession Contract Negotiations; Ogden Food Service Corp.

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to negotiate a concession contract with Ogden Food Service Corporation authorizing it to continue to provide Snack Bar and Souvenir facilities and services for the public at Valley Forge National Historical Park, Pennsylvania for a period of Five (5) years from January 1, 1990, through December 31, 1994.

EFFECTIVE DATE: November 27, 1989.

ADDRESS: Interested parties should contact the Superintendent, Valley Forge National Historical Park, Valley Forge, Pennsylvania 19481, for information as to the requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: This contract renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on December 31, 1989, and therefore pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Dated: August 24, 1989.

Sandra C. Rosencrans,

Acting Regional Director, Mid-Atlantic Region.

[FR Doc. 89–22753 Filed 9–26–89; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 16, 1989. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by October 12, 1989.

Carol D. Shull,

Chief of Registration, National Register.

GEORGIA

Habersham County

Demorest Commercial Historic District, Georgia St. and Cenral Ave., Demorest, 89001713

KENTUCKY

Boyle County

Forest Hill, KY 34, 3 mi. NE of Danville, Danville vicinity, 89001712

LOUISIANA

St. John The Baptist Parish

Garyville Historic District, Roughly bounded by Main, Bluebird, West, Azalea, Cypress, St. Francis, and N. Railroad Sts., Garyville 89001711

MAINE

Androscoggin County

Webster Rubber Company Plant, Greene St., Sabattus, 89001701

Aroostoock County

Clase, Nicholas P., House, Capitol Hill Rd., New Sweden, 89001699

Cumberland County

Back Cove, Roughly Baxter Blvd. along Back Cove from Baxter to Veranda Sts., Portland, 89001706

Deering Oaks, Roughly bounded by I–295, Forest St., Park Ave., and Deering Ave., Portland, 89001708

Eastern Promenade, Roughly bounded by Eastern Promenade and Casco Bay, Portland, 89001707

Lincoln Park, Bounded by Pearl, Franklin, Market, and Federal Sts., Portland, 89001709

Western Promenade, Roughly Westener Promenade from Maine Medical Center to Valley St., Portland, 89001710

Kennebac County

Cushnoc (ME 021.02), Address Restricted, Augusta vicinity, 89001703

Penobscot County

Zions Hill, 37 Zions Hill, Dexter, 89001705

Piscataquis County

Chandler—Parsons Blacksmith Shop, Dawes Rd., Dover-Foxcroft vicinity, 89001702

Somerset County

Embden Town House, Cross Town Rd., Embden vicinity, 89001704

Waldo County

Tiffany, George S., Cottage, Off Main Rd., Dark Harbor, 89001700

MINNESOTA

Beltrami County

Lake Bemidji State Park CCC/NYA/Rustic Style Historic Resources (Minnesota State Park CCC/WPA/Rustic Style MPS), Off

Co. Hwy. 20 NE of Bemidji, Bemidji vicinity, 89001674

Blue Earth County

Minneopa State Park WPA/Rustic Style Historic Resources (Minnesota State Park CCC/WPA/Rustic Style MPS), Off US 169 W of Mankato, Mankato vicinity, 89001663

Brown County

Flandrau State Park CCC/WPA/Rustic Style Historic Resources (Minnesota State Park CCC/WPA/Rustic Style MPS), Off Co. Hwy. 13 SE of New Ulm, New Ulm vicinity, 89001658

Carlton County

Cooke, Jay, state Park CCC/Rustic Style Historic Resources (Minnesota State Park CCC/WPA/Rustic Style MPS), Off MN 210 E of Carlton, Carlton vicinity, 89001665

Chisago County

Interstate State Park WPA/Rustic Style Historic Resources (Minnesota State Park CCC/WPA/Rustic Style MPS), Off US 8, Taylors Falls vicinity, 89001664

Clay County

Buffalo River State Park WPA/Rustic Style Historic Resources (Minnesota State Park CCC/WPA/Rustic Style MPS), Off US 10 E of Glyndon, Glyndon vicinity, 89001671

Clearwater County

Itasca State Park CCC/WPA/Rustic Style Historic Resources (Minnesota State Park CCC/WPA/Rustic Style MPS), Off US 71, Park Rapids vicinity, 89001660

Douglas County

Lake Carlos State Park WPA/Rustic Style Historic Resources (Minnesota State Park CCC/WPA/Rustic Style MPS), Off MN 29 at NW end of Lake Carlos, Carlos vicinity, 89001654

Itasca County

Scenic State Park, CCC/WPA/Rustic Style Historic Resources (Minnesota State Park CCC/WPA/Rustic Style MPS), Off Co. Hwy. 7 E of Bigfork, Bigfork vicinity, 89001670

Kandiyohi County

Sibley State Park CCC/Rustic Style Historic Resources (Minnesota State Park CCC/WPA/Rustic Style MPS), Off US 71 W of New London, New London vicity, 89001673

Kittson County

Lake Bronson State Park WPA/Rustic Style Historic Resources (Minnesota State Park CCC/WPA/Rustic Style MPS), Off Co. Hwy. 28 E of Lake Bronson, Lake Bronson vicinity, 89001659

Lake County

Gooseberry Falls State Park CCC/WPA/Rustic Style Historic Resources (Minnesota State Park CCC/WPA/Rustic Style MPS), Off US 61 ME of Two Harbors, Two Harbors vicinity, 89001672

Lyon County

Camden State Park CCC/WPA/Rustic Style Historic Resources (Minnesota State Park CCC/WPA/Rustic Style MPS), Off MN 23 SW of Lynd, Lynd vicinity, 89001669

Marshall County

Old Mill State Park WPA/Rustic Style Historic Resources (Minnesota State Park CCC/WPA/Rustic Style MPS), Off Co. Hwy. 39 E of Argyle, Argyle vicinity, 89001667

Morrison County

Lindbergh, Charles A., State Park WPA/Rustic Style Historic Resources (Minnesota State Park CCC/WPA/Rustic Style MPS), Off Co. Hwy. 52 S of Little Falls, Little Falls vicinity, 89001655

Murray County

Lake Shetek State Park WPA/Rustic Style Historic Resources (Minnesota State Park CCC/WPA/Rustic Style MPS), Off Co. Hwy. 37 on E side of Lake Shetek, Currie vicinity, 89001656

Nicollet County

Fort Ridgely State Park CCC/Rustic Style Historic Resources (Minnesota State Park CCC/WPA/Rustic Style MPS), Off Co. Hwy. 30 NW of New Ulm, New Ulm vicinity, 89001668

Pine County

St. Croix State Park CCC/WPA/Rustic Style Historic Resources (Minnesota State Park CCC/WPA/Rustic Style MPS), Off MN 48 E of Hinckley, Hinckley vicinity, 89001662

Rock County

Blue Mounds State Park WPA/Rustic Style Historic Resources (Minnesota State Park CCC/WPA/Rustic Style MPS), Off US 75 N of Luverne, Luverne vicinity, 89001657

Swift County

Monson Lake State Park CCC/WPA/Rustic Style Historic Resources (Minnesota State Park CCC/WPA/Rustic Style MPS), Off Co. Rd. 95 SE of Sunburg, Sunburg vicinity, 89001666

Winona County

Whitewater State Park CCC/WPA/Rustic Style Historic Resources (Minnesota State Park CCC/WPA/Rustic Style MPS), Off MN 74 SW of Elba, Elba vicinity, 89001661

NORTH DAKOTA

Benson County

St. Boniface Cemetery, Wrought-Iron Cross Site (German-Russian Wrought-Iron Cross Sites in Central North Dakota MPS), Address Restricted, Selz vicinity, 89001686

Emmons County

Holy Trinity Cemetery, Wrought-Iron Cross Site A (German-Russian Wrought-Iron Cross Sites in Central North Dakota MPS), Address Restricted, Strasburg vicinity, 89001692

Holy Trinity Cemetery, Wrought-Iron Cross Site B (German-Russian Wrought-Iron Cross Sites in Central North Dakota MPS), Address Restricted, Strasburg vicinity, 89001693

Holy Trinity Cemetery, Wrought-Iron Cross Site C (German-Russian Wrought-Iron Cross Sites in Central North Dakota MPS), Address Restricted, Strasburg vicinity, 89001694

Holy Trinity Cemetery, Wrought-Iron Cross Site D (German-Russian Wrought-Iron Cross Sites in Central North Dakota MPS), Address Restricted, Strasburg vicinity, 89001695

Old St. Mary's Cemetery, Wrought-Iron Cross Site (German-Russian Wrought-Iron Cross Sites in Central North Dakota MPS), Address Restricted, Hague vicinity, 89001679

Sacred Heart Cemetery, Wrought-Iron Cross Site (German-Russian Wrought-Iron Cross Sites in Central North Dakota MPS), Address Restricted, Linton vicinity, 89001691

St. Aloysius Cemetery, Wrought-Iron Cross Site A (German-Russian Wrought-Iron Cross Sites in Central North Dakota MPS), Address Restricted, Hague vicinity, 89001696

St. Aloysius Cemetery, Wrought-Iron Cross Site B (German-Russian Wrought-Iron Cross Sites in Central North Dakota MPS), Address Restricted, Hague vicinity, 89001697

St. Mary's Cemetery, Wrought-Iron Cross Site A (German-Russian Wrought-Iron Cross Sites in Central North Dakota MPS), Address Restricted, Hague vicinity, 89001676

St. Mary's Cemetery, Wrought-Iron Cross Site B (German-Russian Wrought-Iron Cross Sites in Central North Dakota MPS), Address Restricted, Hague vicinity, 89001677

St. Mary's Cemetery, Wrought-Iron Cross Site C (German-Russian Wrought-Iron Cross Sites in Central North Dakota MPS), Address Restricted, Hague vicinity, 89001678

Tirsbol Cemetery, Wrought-Iron Cross Site (German-Russian Wrought-Iron Cross Sites in Central North Dakota MPS), Address Restricted, Strasburg vicinity, 89001698

McHenry County

Old Saint John Nepomocene Cemetery, Wrought-Iron Cross Site (German-Russian Wrought-Iron Cross Sites in Central North Dakota MPS), Address Restricted, Orrin vicinity, 89001683

Old Saints Peter and Paul Cemetery, Wrought-Iron Cross Site (German-Russian Wrought-Iron Cross Sites in Central North Dakota MPS), Address Restricted, Karlsruhe vicinity, 89001682

McIntosh County

St John's Cemetery, Wrought-Iron Cross Site A (German-Russian Wrought-Iron Cross Sites in Central North Dakota MPS), Address Restricted, Zeeland vicinity, 89001687

St. John's Cemetery, Wrought-Iron Cross Site B (German-Russian Wrought-Iron Cross Sites in Central North Dakota MPS), Address Restricted, Zeeland vicinity, 89001688

St. John's Cemetery, Wrought-Iron Cross Site C (German-Russian Wrought-Iron Cross Sites in Central North Dakota MPS), Address Restricted, Zeeland vicinity, 89001689

St. John's Cemetery, Wrought-Iron Cross Site D (German-Russian Wrought-Iron Cross Sites in Central North Dakota MPS), Address Restricted, Zeeland vicinity, 89001690

McLean County

Zion Lutheran Cemetery, Wrought-Iron Cross Site (German-Russian Wrought-Iron Cross Sites in Central North Dakota MPS), Address Restricted, Mercer vicinity, 89001684

Pierce County

Old Mt. Carmel Cemetery, Wrought-Iron Cross Site (German-Russian Wrought-Iron Cross Sites in Central North Dakota MPS), Address Restricted, Balta vicinity, 89001685

St. Anselm's Cemetery, Wrought-Iron Cross Site (German-Russian Wrought-Iron Cross Sites in Central North Dakota MPS), Address Restricted, Berwick vicinity, 89001681

St. Mathias Cemetery, Wrought-Iron Cross Site (German-Russian Wrought-Iron Cross Sites in Central North Dakota MPS), Address Restricted, Orrin vicinity, 89001680

Ramsey County

Devils Lake Commercial District, Roughly bounded by 2nd Ave., 5th St., 5th Ave., 3rd St., and Railroad Ave., Devils Lake, 89001675

OHIO

Lawrence County

Vesuvius Furnace, Co. Hwy. 29 at Storms Creek in Vesuvius Recreation Area of Wayne National Forest, Ironton vicinity, 89001714

[FR Doc. 89-22754 Filed 9-26-89; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-297]

Certain Cellular Radiotelephones and Subassemblies and Component Parts Thereof; Determination Not To Review Initial Determination Amending the Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has determined not to review the presiding administrative law judge's (ALJ) initial determination (ID) amending the complaint and notice of investigation in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Judith M. Czako, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1093.

SUPPLEMENTARY INFORMATION: The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in section § 210.22 of the Commission's Interim Rules of Practice and Procedure (53 FR 33034, Aug. 29, 1988).

On August 16, 1989, complainant Motorola filed a motion to amend the complaint and notice of investigation in the above-captioned investigation to add claims of U.S. Letters Patent 4,829,274 (the Green patent) to, and remove all claims of U.S. Letters Patent 4,800,348 (the Rosar patent) from, the scope of the investigation. The Commission investigative attorney (IA) supported the motion, and no respondent opposed the motion. The Nokia respondents and the IA contended, however, that the withdrawal of the Rosar patent claims should be with prejudice to any subsequent assertion of that patent against the products and parties involved in this investigation.

On August 30, 1989, the presiding administrative law judge (ALJ) issued an initial determination (ID) granting Motorola's motion, amending the notice of investigation to add the asserted claims of the Green patent and removing the asserted claims of the Rosar patent, with the condition that Motorola is foreclosed from re-asserting the claims of the Rosar patent against the named respondents in the absence of a showing of changed circumstances.

No petitions for review of government comments were filed.

The ID amended paragraph 1 of the "Scope of Investigation" section of the notice of investigation (54 FR 23292, May 31, 1989) to read as follows:

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain cellular radiotelephones and subassemblies and component parts thereof by reason of alleged direct infringement of (1) claims 62, 64, 65, 67, 77, 79, 80 or 82 of U.S. Letters Patent 4,523,155, (2) claims 16, 17, 18, 19 or 20 of U.S. Letters Patent 4,636,593, (3) claim 1 of U.S. Letters Patent Des. 269,873, (4) claims 22, 23, 24 or 26 of U.S. Letters Patent 4,431,977, (5) claims 1 or 42 of U.S. Letters Patent Re. 32,768, (6) claims 14 or 18 of U.S. Letters Patent 4,742,562, or (7) claims 1, 2, 3, 6, 16, or 17, of U.S. Letters Patent 4,829,274, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

Copies of all nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

By order of the Commission.

Issued: September 18, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-22772 Filed 9-26-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-276 (Advisory Opinion Proceeding)]

Certain Erasable Programmable Read Only Memories, Components Thereof, Products Containing Such Memories, and Processes for Making Such Memories; Decision Adopting Recommended Determination Terminating Advisory Opinion Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has determined to adopt the recommended determination of the administrative law judge in the above-captioned proceeding and terminate the proceeding.

FOR FURTHER INFORMATION CONTACT: Judith M. Czako, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1093.

SUPPLEMENTARY INFORMATION: The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337).

On March 16, 1989, the Commission issued its final determination in the above-captioned investigation. The Commission determined *inter alia,* that certain imported EPROMs infringe valid U.S. patents owned by complainant Intel Corporation, including U.S. Letters Patent 4,223,394 (the '394 patent) and U.S. Letters Patent 4,519,050 (the '050 patent). On March 31, 1989, respondent Atmel Corporation filed two requests for advisory opinions as to whether its redesigned EPROMs infringe either the '394 or '050 patents. On June 23, 1989, the Commission instituted an initial advisory opinion proceeding concerning the requests, and delegated the requests to the Chief Administrative Law Judge

for issuance of an initial advisory opinion.

On July 18, 1989, after a hearing had been scheduled for November with the agreement of the parties, Atmel filed a motion to terminate the proceeding. No party opposed the motion.

On July 28, 1989, the presiding administrative law judge (ALJ) issued a recommended determination (RD) terminating the advisory opinion proceeding, noting that Atmel had represented that due to the lapse of time between its requests and the institution of the proceeding, the designs involved had become obsolete. The ALJ recommended that the Commission terminate the proceeding on the ground that no party wants a hearing, and that the Commission can decide whether to institute any further advisory opinion proceedings should Atmel file a new request.

Having considered the RD, and the record in this proceeding, we determine to adopt the recommended determination and terminate the advisory opinion proceeding.

Copies of the RD and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

By order of the Commission.

Issued: September 21, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89–22773 Filed 9–26–89; 8:45 am]

BILLING CODE 7020-02-M

[Inv. No. 337-TA-299]

Certain Food Treatment Ovens, Components Thereof and Processes Carried Out Therein; Decision Not To Review an Initial Determination Terminating the Investigation on the Basis of a Settlement Agreement; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S International Trade Commission has determined not to review an initial determination (ID) (Order No. 3) issued by the presiding administrative law judge (ALJ) terminating the above-captioned investigation on the basis of a settlement agreement.

ADDRESSES: Copies of the settlement agreement, the ID, and all other nonconfidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000.

FOR FURTHER INFORMATION CONTACT: Elizabeth C. Hafner, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1113.

Hearing-impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202–252–1810.

SUPPLEMENTARY INFORMATION: On August 2, the presiding ALJ issued an ID granting the joint motion of complainant Heat and Control, Inc., and respondents Koppens Machinefabriek B.V. and Koppens, Industries, Inc., to terminate the investigation on the basis of a settlement agreement.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 210.53 of the Commission's Interim Rules of Practice and Procedure (53 FR 33070, August 29, 1988).

By order of the Commission.

Issued: September 15, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89–22774 Filed 9–26–89; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Etheredge Manufacturing Co., Holly Creek Road, P.O. Box 128, Iron City, TN 38463.

2. Wholly-owned subsidiaries which will participate in the operations, and State of incorporation: Iron City Stamping, Inc., TN corporation.

Noreta R. McGee,

Secretary.

[FR Doc. 89–22795 Filed 9–26–89; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31524]

Hillsdale County Railway Company, Inc; Operation Exemption of Consolidated Rail Corp., Rail Line

Hillsdale County Railway Company, Inc. (HCRC) has filed a notice of exemption to operate and at some future date to acquire 10.40 miles of rail line abandoned in 1985 by the Consolidated Railroad Corporation (Conrail), between milepost 376.56 east of Quincy, MI, where the present HCRC operation ends, westward to milepost 386.96 located west of Coldwater, MI. This track comprises the eastern end of a 30.33-mile line of railroad abandoned by Conrail and purchased on August 1, 1989, by the Branch-St. Joseph Counties Rail Users Association (RUA), of which HCRC is a member. HCRC has contributed $115,000 to RUA, which represents about 30 percent of RUA's ownership of the line. HCRC has an operating agreement with RUA giving HCRC operating rights on and the option to purchase the 10.4 miles of track involved here. The remaining 19.93 miles of abandoned track purchased by RUA (extending westward to Sturgis, MI) has no known rail business and is thus of no interest to HCRC (although HCRC believes that RUA may have found another short line carrier to operate that segment). In the future, HCRC expects to exercise its option and to purchase, in its own name, this portion of trackage from RUA.This exemption was to become effective on or about September 7, 1989.

Any comments must be filed with the Commission and served on Charles J. Lapp, President, Hillsdale County Railroad Company, Inc., 50 Monroe Street, Hillsdale, MI 49242.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: September 11, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-22566 Filed 9-26-89; 8:45]

BILLING CODE 7035-01-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on Presidential Libraries; Meeting

Notice is hereby given that the Committee on Presidential Libraries will meet on Wednesday, November 15, 1989, from 2:30 p.m. to 4:30 p.m. and Thursday, November 16, 1989, from 9:30 a.m. to 11:30 a.m., at the Franklin D. Roosevelt Library, 259 Albany Post Road, Hyde Park, New York.

This will be the third meeting of the committee. The agenda for the meeting will be the development of Presidential library core programs.

The meeting will be open to the public. For further information, call John Fawcett on (202) 523-3212.

Dated: September 20, 1989.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 89-22810 Filed 9-26-89; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Change in Program Panel Meeting

The meeting of the Humanities Panel scheduled for October 30-31, 1989 and published in the **Federal Register** on September 19, 1989, at page 38571, has been changed. The meeting was to review applications submitted to the Humanities Projects in Libraries and Archives Program, is now to review applications submitted to Public Humanities Projects Programs, Division of General Programs for the September 1989 deadline. The meeting is to be held at the National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Washington, DC, Room 430 from 9:00 a.m. to 5:30 p.m.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 89-22814 Filed 9-26-89; 8:45 am]

BILLING CODE 7536-01-M

Cancellation of Meeting of Humanities Panel

The meeting of the Humanities Panel scheduled for October 23-24, 1989, and published in the **Federal Register** on September 19, 1989, at page 38571, has been cancelled. The meeting was to review applications submitted to the Humanities Projects in Libraries and Archives Program, Division of General Programs for the September 1989 deadline. The meeting was to be held at the National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Washington, DC, Room 430 from 9:00 a.m. to 5:30 p.m.

Stephen J. McCleary,

Advisory Committee, Management Officer.

[FR Doc. 89-22815 Filed 9-26-89; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

Agency Clearance Officer: Herman G. Fleming, (202) 357-9520, Division of Personnel and Management, National Science Foundation, Washington, DC 20550.

OMB Desk Officer: Written comments to: Office of Information and Regulatory Affairs, Attn: Jim Houser, Desk Officer, OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

Title: Higher Education Surveys (HES).

Affected Public: Non-profit institutions.

Responses/Burden Hours: 400 respondents; 6 responses each; One hour and thirty minutes each response.

Abstract: The panel surveys are responsive to a variety of policy issues. Topics are not predetermined. Survey instruments are designed specifically for each survey. Recent individual surveys served program management needs, research objectives, and general purposes not available through existing information sources.

Dated: September 22, 1989.

Herman G. Fleming,

NSF Reports Clearance Officer.

[FR Doc. 89-22762 Filed 9-26-89; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Animal Behavior; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Animal Behavior.

Date and Time: October 18-20, 1989, 8:30 a.m.-5:00 p.m. each day.

Place: National Science Foundation, 1800 G Street, NW., Room 643, Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Fred Stollnitz, Program Director, Animal Behavior Program, Room 320, National Science Foundation, Washington, DC 20550, Telephone (202) 357-7949.

Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning support for research in Animal Behavior.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of the Government in the Sunshine Act.

Dated: September 22, 1989.

M. Rebecca Winkley,

Committee Management Officer.

[FR Doc. 89-22757 Filed 9-26-89; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Social Psychology; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Social Psychology.

Date and Time: October 19-20, 1989: 9:00 a.m.—5:00 p.m. each day.

Place: National Science Foundation, 1800 G Street, NW., Room 642. Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. William D. Crano, Program Director, Social Psychology, Room 320, National Science Foundation, Washington, DC 20550. Telephone (202) 357-9485.

Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To provide advice and recommendation concerning support for research in social psychology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of the Government in the Sunshine Act.

Dated: September 22, 1989.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89-22758 Filed 9-26-89; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Genetics Program; Meeting

The National Science Foundation announces the following meeting.

Name: Advisory Panel for Genetics.

Date and Time: Wednesday, Thursday, and Friday October 18, 19, and 20, 1989 8:30 to 5:00 p.m.

Place: The National Science Foundation, 1800 G. St. NW., Room 1243.

Type Meeting: Closed.

Contact Person: Robert Karp, Associate Program Director, Eukaryotic Genetics, Room 325J, Telephone: (202) 357-0112.

Minutes: May be obtained from the Contact Person at the above address.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemption (4) and (6) of proposals U.S.C. 552b(c), Government in Sunshine Act.

Dated: September 22, 1989.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89-22759 Filed 9-26-89; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Physics; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Committee for Physics Meeting.

Date and Time: October 23, 1989; 9:00 a.m. to 5:00 p.m. (Open); October 24, 1989; 8:30 a.m. to 10:00 a.m. (Closed); 10:00 a.m. to 5:00 p.m. (Open).

Place: Room 540, National Science Foundation, 1800 G Street, NW., Washington, DC 20550

Type of Meeting: Part open.

Contact Person: Dr. Marcel Bardon, Director, Division of Physics, Room 341, National Science Foundation, Washington, DC 20550, (202) 357-7985.

Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning support for research and education in physics.

Agenda: Open: October 23, 1989 a.m. and p.m.—Discussion of FY 1990 and FY 1991 Budgets, Long Range Planning issues, future review topics and other items of interest to the administration of programs of the Division of Physics.

Closed: October 24, 1989 8:30-10:00 a.m.—To review and evaluate research proposals, as part of the selection process for awards.

Open: October 24, 1989 p.m.—Continuation of discussions of previous day.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information data, and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of the Government in the Sunshine Act.

Dated: September 22, 1989.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89-22760 Filed 9-26-89; 8:45 am]

BILLING CODE 7555-01-M

Task Force on Women, Minorities and the Handicapped in Science and Technology; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Task Force on October 12, 1989.

MEETING

Name: Task Force on Women, Minorities and the Handicapped in Science and Technology.

Date: Thursday, October 12, 1989.

Time: 9:00 a.m. to 1:00 p.m.

Place: American Association for the Advancement of Science, 1333 H Street, NW., 1st Floor Conference Room, Washington, DC 20005.

Type of Meeting: Open.

Purpose: Discussion (1) dissemination of the task force interim report; (2) progress on data collection by agencies; and (3) status of each agency's plans for implementation of the task force interim report.

Dated: September 18, 1989.

Sue Kemnitzer,

Executive Director, (202) 245-7477.

[FR Doc. 89-22761 Filed 9-26-89; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Procedures for Meetings

Background

Procedures to be followed with respect to meetings conducted pursuant to the Federal Advisory Committee Act by the Nuclear Regulatory Commission's Advisory Committee on Reactor Safeguards, which were published October 27, 1986 (53 FR 43487), are renewed by this notice. These procedures are set forth in order that they may be incorporated by reference in future individual meeting notices.

The Advisory Committee on Reactor Safeguards (ACRS) is an independent group established by Congress to review and report on each application for a construction permit and on each application for an operating license for a nuclear power reactor facility and on certain other nuclear safety matters. The Committee's reports become a part of the public record. Although ACRS meetings are ordinarily open to the public and provide for oral or written statements from members of the public to be considered as a part of the Committee's information gathering procedure, they are not adjudicatory hearings such as are conducted by the Nuclear Regulatory Commission's Atomic Safety and Licensing Board as part of the Commission's licensing process. ACRS reviews do not normally encompass matters pertaining to environmental impacts other than those pertaining to radiological safety. ACRS full meetings are conducted in accordance with the Federal Advisory Committee Act.

General Rules Regarding ACRS Meetings

An agenda is published in the **Federal Register** for each full Committee meeting and for each Subcommittee meeting which is partially or fully open to public attendance. Practical considerations may dictate some alterations in the

agenda. The Chairman of the Committee or Subcommittee which is meeting is empowered to conduct the meeting in a manner that, in his judgment, will facilitate the orderly conduct of business, including provisions to carry over an incomplete session from one day to the next.

With respect to public participation in ACRS meetings, the following requirements shall apply:

(a) Persons wishing to submit written statements regarding the agenda items may do so by providing a readily reproducible copy at the beginning of the meeting. When meetings are held at locations other than Washington, DC, reproduction facilities are usually not available. Accordingly, 15 additional copies should be provided for use at such meetings. Comments should be limited to safety-related areas within the Committee's purview.

Persons desiring to mail written comments may do so by sending a readily reproducible copy addressed to the Designated Federal Official specified in the **Federal Register** notice for the individual meeting in care of the ACRS, NRC, Washington, DC 20555. Comments postmarked no later than one calendar week prior to a meeting will normally be received in time for reproduction, distribution, and consideration at the meeting.

(b) Persons desiring to make an oral statement at the meeting should make a request to do so prior to the beginning of the meeting, identifying the topics and desired presentation time so that appropriate arrangements can be made. The Committee will receive oral statements on topics relevant to its purview at an appropriate time chosen by the Chairman.

(c) Further information regarding topics to be discussed, whether a meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call, on the working day prior to the meeting, to the Office of the Executive Director of the Committee (telephone: 301/492–4516, ATTN: the Designated Federal Official specified in the **Federal Register** Notice for the meeting) between 7:30 a.m. and 4:15 p.m., Washington, DC time.

(d) Questions may be asked only by ACRS Members, Consultants, and Staff.

(e) The use of still, motion picture, and television cameras, the physical installation and presence of which will not interfere with the conduct of the meeting, will be permitted both before and after the meeting and during any recess. The use of such equipment will be allowed while the meeting is in session at the discretion of the Chairman to a degree that is not disruptive to the meeting. When use of such equipment is permitted, appropriate measures will be taken to protect proprietary or privileged information which may be in documents, folders, etc., being used during the meeting. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept.

(f) A copy of the transcript of the open portions of the meeting where factual information is presented will be available at the NRC Public Document Room, 2120 L Street NW., Washington, DC 20555, for inspection within one week following the meeting. A copy of the minutes of the meeting will be available at the same location on or before three months following the meeting. Copies may be obtained upon payment of appropriate charges.

Special Provisions When Proprietary Sessions Are To Be Held

If it is necessary to hold closed sessions for the purpose of discussing matters involving proprietary information, persons with agreements permitting access to such information may attend those portions of ACRS meetings where this material is being discussed upon confirmation that such agreements are effective and relate to the material being discussed.

The Executive Director of the ACRS should be informed of such an agreement at least three working days prior to the meeting so that it can be confirmed and a determination made regarding the applicability of the agreement to the material that will be discussed during the meeting. The minimum information provided should include information regarding the date of the agreement, the scope of material included in the agreement, the project or projects involved, and the names and titles of the persons signing the agreement. Additional information may be requested to identify the specific agreement involved. A copy of the executed agreement should be provided to the Designated Federal Official prior to the beginning of the meeting.

Dated: September 22, 1989.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 89–22841 Filed 9–26–89; 8:45 am]

BILLING CODE 7590–01–M

Docket No. 50–155

Consumers Power Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 101 to Operating License No. DPR–6 issued to Consumers Power Company, which revised the Technical Specifications for operation of the Big Rock Point Plant located in Charlevoix County, Michigan.

The amendment is effective as of the date of issuance. The amendment revises the calibration frequency for the portable gamma and neutron dose-rate measuring instruments and changes the source check on each scale or decade normally used (instead of on only one scale) on a daily basis or prior to use of the instrument.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on March 29, 1989 (54 FR 12976). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action, see (1) the application for amendment dated October 24, 1988, (2) Amendment No. 101 to License No. DPR–6, and (3) the Commission's related Safety Evaluation and Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC, and at the North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770. A copy

of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects III, IV, V & Special Projects.

Dated at Rockville, Maryland, this 14th day of September 1989.

For the Nuclear Regulatory Commission.

Robert Pulsifer,

Project Manager, Project Directorate III-1, Division of Reactor Projects—II, IV, V & Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-22844 Filed 9-26-89; 8:45 am]

BILLING CODE 7590-01-M

POSTAL SERVICE

Implementation of a Change in the Domestic Mail Classification Schedule Provision Ragarding Second-Class Mail

AGENCY: Postal Service.

ACTION: Notice of implementation of a change in the Domestic Mail Classification Schedule provision regarding second-class mail requiring that "Plus" publications independently qualify for second-class mail privileges.

SUMMARY: This gives notice that the Domestic Mail Classification Schedule is amended to provide specifically that "Plus" issues of second-class publications, whether or not published on the same day as another regular issue of the publication, are separate publications for purposes of qualifying for entry as second-class mail.

EFFECTIVE DATE: October 1, 1989.

FOR FURTHER INFORMATION CONTACT: Crayson M. Poats, (202) 268-2981.

SUPPLEMENTARY INFORMATION: On June 17, 1988, the United States Postal Service, pursuant to 39 U.S.C. 3623, filed a request with the Postal Rate Commission for a change in the mail classification schedule to make clear its authority to prevent the abuse of second-class mail through the mailing of "Plus" issues of publications. The Commission assigned the case Docket No. MC88-2 and published a notice in the **Federal Register** on June 28, 1988 (53 FR 24388) describing the request and offering interested parties an opportunity to intervene.

On September 11, 1989, the Governors of the Postal Service, pursuant to their authority under 39 U.S.C. 3625, approved a Recommended Decision of the Postal Rate Commission to amend the Domestic Mail Classification Schedule ot provide that certain issues of second-class publications, whether or not published on the same day as another regular issue of the publication, are separate publications for purposes of qualifying for entry as second-class mail.

Pursuant to the Decision of the Governors, section 200.0123 of the Demestic Mail Classification Schedule will be amended to read as follows:

200.0123 For purposes of determining second-class eligibility and postage under Classification Schedule 200, an "issue" of a newspaper or other periodical shall be deemed to be a separate publication when the following conditions exist:

a. The issue is published at a regular frequency more often than once a month either on (1) the same day as another regular issue of the same publication; or (2) on a day different from regular issues of the same publication, and

b. More than 10 percent of the total number of copies of the issue is distributed on a regular basis to recipients who do not subscribe to it or request it, and

c. The number of copies of the issue distributed to nonsubscribers or nonrequesters is more than twice the number of copies of any other issue distributed to nonsubscribers or nonrequesters on that same day, or, if no other issue that day, any other issue distributed during the same period. "During the same period" shall be defined as the periods of time ensuring between the distribution of each of the issues whose eligibility is being examined.

Such separate publications must independently meet the qualifications in section 200.0101 through 200.0109, or 200.0110.

Pursuant to 39 U.S.C 3625(f), the Board of Governors of the Postal Service, by Resolution No. 89-1, determined to implement the change in the Domestic Mail Classification Schedule, as set forth above, effective at 12:01 a.m. on October 1, 1989. Implementing regulations (sections 428.225 and 428-226 of the Domestic Mail Manual) also become effective on October 1, as noticed elsewhere in this issue.

Paul Kemp,

Supervisory Attorney, Legislative Division.

[FR Doc. 89-22843 Filed 9-26-89; 8:45 am]

BILLING CODE 7710-12-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-27268; File No. SR-Amex-89-19]

Self-Regulatory Organizations; Proposed Rule Change by the American Stock Exchange, Inc. Relating to Intermarket Trading System Rules on the Determination of the "Previous Day's Consolidated Closing Price," and Pre-Opening Responses and Third Participating Market Center Trade Throughs

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 3, 1989, the American Stock Exchange, Inc. ("Amex") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Exchange Rules 232 and 236 to conform the Intermarket Trading System ("ITS") Rules with recent amendments to the ITS Plan agreed to by ITS Participants. The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.[1]

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 Amex 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 Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The ITS Plan ("Plan") enables Participants, including national

[1] The appendix to this notice contains the specific rule changes.

securities exchanges and the National Association of Securities Dealers, to act jointly in planning, developing, operating and regulating the ITS system in furtherance of the objectives of Congress as set forth in section 11(A)(a) of the Securities Exchange Act of 1934 ("Act"). The ITS Participants have agreed to amend the Plan and the Exchange proposes to amend the following Amex rules in order to conform with those changes in the Plan.

Rule 232(a)(viii)

The Exchange proposes to amend the definition of "Previous Day's Consolidated Closing Price" to provide that during unusual market conditions, the Exchange may specify that the previous day's consolidated closing price shall be the last price at which a transaction in the stock was reported at the Amex. The Amex closing price would be used for purposes of determining whether the specialist opening the stock is required to send a "pre-opening notification" to other markets to permit participation at the opening in those markets.

Rule 232(c)(vi)

The procedures regarding pre-opening applications are proposed be amended to impose specific responsibilities on an exchange member to determine the extent of his participation at the opening. Specifically, the proposed amendments provide that (1) on or following trade date, if an exchange member who has participated at the opening requests a report from the executing exchange before 4:00 p.m. as to the amount of his participation, and he does not receive a response by 9:30 a.m. the next trading day, he does not have to accept a later report; and (2) if the exchange member fails to request a report, he must accept a report from the executing exchange until 4:00 on the third day following trade date. These procedures are not intended to relieve the member of his obligation to request a report if he does not receive one promptly following the opening.

Rule 236(b)

The Exchange proposes to amend Rule 236(b) with respect to procedures for third party trade-throughs. Rule 236(b)(3)(H) would require the market causing a third party trade-through to send an administrative message to the market traded-through before sending a commitment to satisfy the trade-through. The message would state that the commitment to send is to satisfy a third party trade-through. As a result, if the appropriate administrative message is sent and the commitment is cancelled by the market traded-through, the sender has no further obligation to satisfy.

Rule 236(b)(3)(G) has been amended to limit the rule to exchange trade-throughs and to reposition subparagraph (ii) into new Rule 236(b)(3)(H).

(2) Basis

The proposed rule changes are consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that they will help to facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Amex consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex.

All submissions should refer to the file number in the caption above and should be submitted by October 18, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 20, 1989.

Jonathan G. Katz,

Secretary.

Appendix

American Stock Exchange Inc.

(Brackets indicate deletions; italics indicates new language.)

Rule 232 *Pre-Opening Application Rule*

(a) Definitions

(i)–(vii) No change.

(viii) "Previous day's consolidated closing price" means the last price at which a transaction in a security was reported by the consolidated last sale reporting system on the last previous day on which transactions in the security were reported by such system; *Provided, however, that the Exchange may specify that the "previous day's consolidated closing price" for all Network B Eligible Securities shall be the last price at which a transaction in the stock was reported by the Amex, if, because of unusual market conditions, the Amex price is designated as such pursuant to the ITS Plan.*

(b) No change.

(c) Openings in Other Participant Markets

(i)–(v) No change

(vi) *Request for Participation Reports—The ITS Plan anticipates that an Exchange member who has sent one or more obligations to trade in response to a pre-opening notification will request a report through the System as to his participation if he does not receive a report as required promptly following the opening. If, on or following trade date, he does request a report through the system as to his participation before 4:00 p.m. Eastern Time, and he does not receive a response by 9:30 a.m. Eastern Time on the next day, he need not accept a later report. If he fails to so request a report, he must accept a report until 4:00 p.m. Eastern Time on the third trading day following the trade date (i.e., on T+3). The Exchange does not intend this paragraph (c)(vi) to relieve him of the obligation, when he does not receive a report, to request a report as soon as he*

reasonably should expect to have received it.

Rule 236 *Trade Through Rule*

(a) No change.

(b) Trade Throughs

(1)–(2) No change.

(3) Paragraph (b)(2) above shall not apply under the following conditions:

(A)–(E) No change.

(F) the bid or offer traded-through had caused a locked market in the ITS Security which was the subject of such bid or offer; [or]

(G) *in the case of an Exchange trade-through,* a complaint with respect to the trade-through was not received by the Exchange through the System from the aggrieved party promptly following the trade-through and, in any event, [(i)] within five (5) minutes from the time the report of the transaction that constituted the trade-through was disseminated over the high speed line of the consolidated last sale reporting system; or [(ii) in the case of a third participating market center trade-through within ten (10) minutes from the time the aggrieved party sent a complaint through the System to the ITS participating market center that received the commitment to trade that caused the trade-through, which first compliant must have been received within five (5) minutes from the time the report of the transaction that constituted the trade-through was disseminated over the high speed line of the consolidated last sale reporting system.]

(H) in the case of a third participating market-center trade-through, either:

(i) the member who initiated the trade-through (a) had sent a commitment to trade promptly following the trade-through that satisfies the bid or offer traded-through and (b) preceded the commitment with an administrative message stating that the commitment was in satisfaction of a third participating market center trade-through, or

(ii) a complaint with repect to the trade-through was not received by the Exchange through the System from the aggrieved party promptly following the trade-through, and, in any event, within ten (10) minutes from the time the aggrieved party sent a complaint through the system to the ITS participating market center that received the commitment to trade that caused the trade-through, which first complaint must have been received within five (5) minutes from the time the report of the transaction that constituted the trade-through was disseminated over the high speed line of the consolidated last sale reporting system.

[FR Doc. 89-22823 Filed 9-26-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27271; File No. SR-MSE-89-4]

Self-Regulatory Organizations; Proposed Rule Change by the Midwest Stock Exchange, Incorporated Relating to the Operation of the Intermarket Trading System ("ITS")

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 13, 1989, the Midwest Stock Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to Rule 19b–4 of the Securities Exchange Act of 1934, (the "Act") the Midwest Stock Exchange, Incorporated (the "Exchange") proposes to amend portions of its Rules concerning the operation of the Intermarket Trading System ("ITS"). Attached as Exhibit A is the text of the proposed amendments.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed amendments were recently approved by the participating members of the Intermarket Trading System which is comprised of all national security exchanges and the NASD. The proposed changes are designed to clarify various procedures affecting the operation of ITS. Specifically the proposed changes will:

(i) Permit the exchanges to utilize the closing price of the primary market if unusual market conditions exist.

(ii) Encourage members to request reports promptly in order to resolve potential disputes as soon after trade date as possible.

(iii) Clarify the obligations of an exchange member who initiates a third market center trade-through.

The proposed rule changes are consistent with section 6(b)(5) of the Act in that they facilitate transactions in securities and remove impediments to and perfect the mechanism of a free and open national market system, while protecting investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Stock Exchange, Incorporated does not believe that any burden will be placed on competition as a result of the proposed rule changes.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW.,

Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 18, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 20, 1989.

Jonathan G. Katz,

Secretary.

Exhibit A

(Italized language indicates additions—bracketed language indicates deletions)

MSE Article XX, Rule 36(a) (VIII)

(viii) "Previous day's consolidated closing price" means the last price at which a transaction in a security was reported by the consolidated last sale reporting system on the last previous day on which transactions in the security were reported by such system; *Provided, however, that the Exchange may specify that the "previous day's consolidated closing price" for all Network A or Network B Eligible Securities shall be the last price at which a transaction in the stock was reported by the New York Stock Exchange, Inc. ("NYSE") or the American Stock Exchange, Inc. ("AMEX"), if, because of unusual market conditions, the NYSE or AMEX price is designated as such pursuant to the ITS Plan.*

MSE Article XX, Rule 36 (d)(vi) "Request for Participant Reports"

(vi) Request for Participation Reports—The ITS Plan anticipates that an exchange member who has sent one or more obligations to trade in response to a pre-opening notification will request a report through the System as to his participation if he does not receive a report as required promptly following the opening. If, on or following trade date, he does request a report through the System as to his participation before 3:00 p.m. central time, and he does not receive a response by 8:30 a.m. central time on the next trading day, he need not accept a later report. If he fails to so request a report, he must accept a report until 3:00 p.m. central time on the third trading day following the trade date (e.g., on T+3). The Exchange does not intend this paragraph (d)(vi) to relieve him of the obligation, when he does not receive a report, to request a report as soon as he reasonably should expect to have received it.

MSE Article XX, Rule 37(b)(3) (F) & (G) and New Section (H) and Subsection (H)(i)

(Subsections A through E remain unchanged)

(F) The bid or offer traded-through had caused a locked market in the ITS Security which was the subject of such bid or offer; [or]

(G) in the case of an Exchange trade-through, a complaint with respect to the trade-through was not received by the Exchange through the System from the aggrieved party promptly following the trade-through and, in any event, within five (5) minutes from the time the report of the transaction that constituted the trade-through was disseminated over the high speed line of the consolidated last sale reporting system; or

(H) in the case of a third participating market-center trade-through, *either:*

(i) the member who initiated the trade-through (a) had sent a commitment to trade promptly following the trade-through that satisfies the bid or offer tranded-through and (b) preceded the commitment with an administrative message stating that the commitment was in satisfaction of a third participating market center trade-through, or

(ii) a complaint with respect to the trade-through was not received by the Exchange through the System from the aggrieved party promptly following the trade-through, and, in any event, within ten (10) minutes from the time the aggrieved party sent a complaint through the system to the ITS participating market center that received the commitment to trade that caused the trade-through, which first complaint must have been received within five (5) minutes from the time the report of the transaction that constituted the trade-through was disseminated over the high speed line of the consolidated last sale reporting system.

[FR Doc. 89-22819 Filed 9-26-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27272; File No. SR-NASD-89-33]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Intermarket Trade System Rules on Pre-Opening Responses and Trade-Throughs.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78(s(b)(1), notice is hereby given that on July 12, 1989, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

1. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposed to amend its ITS/CAES Rules [1] to be consistent with the ITS plan changes agreed upon by all other ITS participants.[2] The two proposed amendments clarify requirements to address certain pre-opening and opening communication problems as well as third party trade-through problems. Specifically, the proposed changes clarify: (1) The responsibility of a market maker to seek a report of execution after the opening if a report has not been issued by the exchange that sent the pre-opening notification; and (2) the procedures for resolving third participating market center trade-throughs.[3]

II. Self-Regulatory Organization's Statement of the Purposes of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the

[1] NASD Rules, ¶ 2501 et seq.

[2] The appendix to this notice contains the specific rule changes.

[3] A third participating market center trade-through occurs whenever a member of an exchange or the NASD initiates the purchase of an ITS security by send a commitment to trade through the System and such commitment results in an execution at a price which is higher than the price at which the security is being offered (or initiates the sale of such a security by sending a commitment to trade through the System and such commitment results in an execution at a price which is lower than the price at which the security is being bid for) at the time of the purchase (or sale) in another ITS participating market center.

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 NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The ITS was created pursuant to the provisions of section 11A(a)(3)(B) of the Securities Exchange Act of 1934 ("Act") in order to achieve the regulatory goals established by section 11A, including, among others, the facilitation of transactions and the removal of impediments to a free and open market. Since it was initially created, the structure of the ITS Plan has been restated and amended because of developments and changes in the marketplace, as well as the participating exchanges' continuing reevaluation of the structure of the System within the context of its original goals.

With this in mind, the participating market centers that utilize the ITS system have recently approved certain amendments to the System.

The first proposed rule change concerns the responsibility of market makers to seek a report of execution when the market center that sent a pre-opening notification has not issued such a report. In the past, because of some ambiguities in the ITS Plan it was not clear that a market maker (specialist) who had issued a response to a pre-opening notification also had a responsibility to inquire through the System as to whether or not he had participated in the opening. The amendment now more clearly places responsibility on a market maker (specialist) to seek a report of execution if a report has not been issued by the opening market place. This change also absolves the market maker (specialist) who has requested a report in a timely fashion to accept the report if a reponse has not been promptly forthcoming.

The second proposed rule change concerns third party trade-throughs. the ITS Plan and Association rules define trade-throughs as well as certain exceptions which may justify a particular trade as not requiring satisfaction as trade-through. This particular amendment relates to the circumstances when an exception from satisfaction of a trade-through from a third participating market center exists. In particular, satisfaction is not required if the market center that initiated the trade-through send a commitment to trade promptly following the trade-through that satisfies the bid or offer traded through and preceeded the commitment with an administrative message stating that the commitment was in satisfaction of a third participating market center trade-through.

The NASD believes the proposed rule change is consistent with section 15A(b)(6) of the Act because it is designed to facilitate transactions in securities and perfect the mechanism of a national market system. Further, as noted herein, the NASD believes the proposed changes to its ITS-CAEs Rules are consistent with the objectives of Congress as set forth in Section 11A(a) of the Act.

B. Self-Regulatory Organization's Statement of Burden on Competion

The NASD believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Securities Exchange Act of 1934, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designated up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change; or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by October 18, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: September 20, 1989.

Jonathan G. Katz,

Secretary.

Appendix

Text of Proposed Rule Change ITS/CAES Rules, ¶ 2501 et seq. (additions are italicized, deletions are bracketed).

¶ 2506

(f) Pre-Opening Application—Openings on Other Participant Markets.

(6) Request for Participation Report—The ITS Plan anticipates that an ITS/CAES Market Maker who has sent one or more obligations to trade in response to a pre-opening notification will request a report through the System as to his participation if he does not receive a report as required promptly following the opening. If, on or following trade date, he does request a report through the System as to his participation before 4:00 p.m. eastern time, and he does not receive a response by 9:30 a.m. eastern time on the next trading day, he need not accept a later report. If he fails to so request a report, he must accept a report until 4:00 p.m. eastern time on the third trading day following the trade date (i.e., on T+3). The Association does not intend this paragraph to relieve him of the obligation, when he does not receive a report, to request a report as soon as he reasonably should expect to have received it.

¶ 2507

(a) Definitions.

(8) A "third participating market center trade-through", as that term is used in this Rule, occurs whenever an ITS/CAES Market Maker initiates the purchase of an ITS Security by sending a commitment to trade-through the System and such commitment results in an execution at a price which is higher than the price at which the security is

being offered (or initiates the sale of such a security by sending a commitment to trade through the System and such commitment results in an execution at a price which is lower than the price at which the security is being bid for) at the time of the purchase (or sale) in another ITS participating market center as reflected by the offer (bid) then being displayed by ITS/CAES Market Makers from such other market center. The member described in the foregoing sentence is referred to in this Rule as the "member who initiated a third participating market center trade-through."

¶ 2508

(h) Trade Throughs.

(1)*(H) In the case of a third participating market center trade-through, either:*

(1) the ITS/CAES Market Maker who initiated the trade-through (a) had sent a commitment to trade promptly following the trade-through that satisfies the bid or offer traded-through and (b) preceded the commitment with an administrative message stating that the commitment was in satisfaction of a third participating market center trade-through; or

(2) a complaint with respect to the trade-through was not received by the Association through the System from the aggrieved party promptly following the trade-through, and, in any event, within ten (10) minutes from the time the aggrieved party sent a complaint through the System to the ITS participating market center that received the commitment to trade that caused the trade-through, which first complaint must have been received within five (5) minutes from the time the report of the transaction that constituted the trade-through was disseminated over the high speed line of the consolidated last sale reporting system.

[FR Doc. 89-22820 Filed 9-26-89; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-27259; File No. SR-NASD-89-37]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to NASD Assessments and Fees

Pursuant to section 19(b)(1) of the Securities Exchange act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 7, 1989 the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated this rule change as one establishing or changing a fee under section 19(b)(3)(A)(ii) of the Act, which renders the fee effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The change to section 1(b) of Schedule A to the NASD By-Laws provides that, in addition to the minimum annual $500.00 fee imposed by section 1(a), members shall be assessed a minimum fee on gross income of $350.00. The change to section 1(d) extends the 50% credit against the annual assessment on gross income through Fiscal Year 1990; provided, however, that there shall be a minimum payment of $350.00. Thus, each member will pay a minimum annual assessment of $850.00. Further, the credit will no longer apply to the $10.00 fee imposed annually for each of the member's registered principals and representatives pursuant to section 1(c). The full fee of $10.00 per registered person will be assessed.

The change to section 2(c) raises the registered representative examination fee from $50.000 to $60.000. The change to section 2(d) raises the General Securities-Sales Supervisor Examination fee from $100.00 to $110.00 and the fee for any principal examination from $50.00 to $75.00. The change to section 2(f) provides that persons who fail to appear for, or fail to cancel in a timely manner, an appointment for a computer-based examination will pay a service charge equal to the examination fee. The change to section 2(h) changes the current $1,500 membership application fee, as follows: applicants that will be self-clearing broker-dealers will pay $5,000; those that will be introducing broker/dealers will pay $3,000; and all other applicants will pay $1,500.

The change to section 6(a) does not change the rate imposed for the review of documents by the Corporate Financing Department, but raises the ceiling on which the fee is collected from $150 million to $300 million, thereby raising the maximum fee collected from $15,500 to $30,500 (inclusive of the base fee). The change to section 7 maintains the basic service charge for processing extension of time requests made pursuant to Regulation T and SEC Rule 15c3-3(n) at $2.00, but establishes a $1.00 service change for requests filed electronically by members using the Association's Automated Regulatory Reporting System. The change to section 13 raises from $15.00 to $25.00 the service fee charged for the review of advertisements and sales literature submitted to the NASD Advertising Department. New section 14 codifies NASD's practice of: (1) Passing through the charge imposed by the Department of Justice through the FBI for processing fingerprint cards; and (2) assessing a fee to help defray the cost of administering the processing of fingerprint cards by the FBI. For Fiscal Year 1990, the NASD fee is being raised from $1.00 per fingerprint card to $2.50 for each original submission and $1.50 for each re-submission.

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 NASD 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 NASD 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 setting the assessment and fee rates for Fiscal Year 1990, the NASD has attempted to align revenues with related costs where appropriate. Excluding the cost of a new separately funded initiative, the NASD's Fiscal Year 1990 operating expense budget is $107.7 million, an increase of less than nine percent over the Fiscal Year 1989 budget. This includes a budgeted personnel increase of only 3.5 full-time equivalent positions over the 1989 authorized level. The Board of Governors has determined that the fee increases described below will yield revenue sufficient for the NASD to continue its practice, stated at section 1(d) of Schedule A, of allowing a proportionate credit (50%) in the rate of the assessment on gross income in Section 1(b) income; however, there will be a minimum assessment on gross income of $350.00, and the credit will no longer apply to the annual assessment on registered personnel in section 1(c) of Schedule A.

The change to section 1(b) of Schedule A is intended to cover the minimum average annual cost of servicing a member, and provides that, in addition to the minimum annual $500.00 fee imposed by section 1(a), members shall be assessed a minimum fee from gross income of $350.00. Coupled with the basic membership fee of $500.00, each member will pay a minimum annual assessment of $850.00.

The fee increases in sections 2(c), 2(d), and 2(f) reflect the impact of general cost increases and the cost of improved service quality. Fees for qualifications examinations have not been increased since 1985. The change to section 2(c) raises the registered representative examination fee from $50.00 to $60.00. The change to section 2(d) raises the General Securities-Sales Supervisor Examination fee from $100.00 to $110.00 and the fee for any principal examination from $50.00 to $75.00.

Section 2(f) presently provides that persons who fail to appear for, or fail to cancel in a timely manner, an appointment for a computer-based examination must pay a $30.00 service charge. The change to section 2(f) replaces the $30.00 fee with a fee equal to the examination fee in order to recover more of the cost incurred by the NASD as a result of missed appointments.

The change to section 2(h) replaces the current $1,500 membership application fee with a fee that is based on the type of business in which the applicant proposes to engage. The new structure takes into account the amount of effort on the part of NASD staff that has typically been necessary in processing the application of the different types of new members. Applicants that will be self-clearing broker/dealers will pay $5,000; those that will be introducing broker/dealers will pay $3,000; and all other applicants will pay $1,500.

The change to section 6(a) does not change the rate imposed for the review of documents by the Corporate Financing Department, but, by raising the ceiling on which the fee is collected from $150 million to $300 million, raises the maximum fee collected from $15,500 to $30,500 (inclusive of the base fee). Although the ceiling was raised from $50 million to $150 million last year, that increase was the first adjustment in that fee since 1970.

The change to section 7, which establishes a $1.00 service charge for processing extension of time requests made pursuant to Regulation T and SEC Rule 15c3–3(n) that are filed electronically, reflects the lower costs associated with processing electronically filed requests.

The change to section 13 raises from $15.00 to $25.00 the service fee charged for the review of advertisements and sales literature submitted to the NASD Advertising Department, in order to recover a larger portion of the cost of the service.

As noted in section I of this notice, new section 14 codifies NASD's practice of: (1) Passing through the charge imposed by the Department of Justice through the FBI for processing fingerprint cards; and (2) assessing a fee to help defray the cost of administering the processing of fingerprint cards by the FBI. For Fiscal Year 1990, the NASD fee is being raised from $1.00 per fingerprint card to $2.50 for each original submission and $1.50 for each re-submission.

The NASD believes that the rule change is consistent with the provisions of section 15A(b)(5) of the Securities Exchange Act of 1934, which requires that the rules of the Association provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system the Association operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association believes that these rule changes do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received with respect to the rule changes contained in this filing.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The rule change is effective on filing, pursuant to section 19(b)(3)(A) of the Act in that it affects assessments and fees imposed by the Association exclusively upon its members. Imposition of the fees will, however, be delayed until October 1, 1989.

At any time within 60 days of the filing of a rule change pursuant to 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by October 18, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: September 19, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–22821 Filed 9–26–89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27279; File No. SR-Phlx-89-48]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Enhancements to the CIP Contract

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 30, 1989 the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange ("PHLX" or "Exchange") hereby submits as a proposed rule change amendments to its rules regarding Cash Index Participations ("CIPs"). In summary,

PHLX is proposing to reduce to zero all open interest in its current CIP contracts, contracts which were approved by the Commission in SR–PHLX–88–07, and terminate all trading in those contracts. Simultaneous with these events, the PHLX is announcing its exclusive license to file for receive trading privileges in a new CIP contract that permits a holder to exercise the cash-out privilege on a daily basis without a penalty and receive the next business day's opening index value of the Blue Chip CIP Index and the Standard & Poor's 500 Index. The following are proposed amendments to the text of CIP trading rules approved by the Commission on April 11, 1989.[1] Proposed new language is italicized and deletions are in brackets.

Rules Applicable to Trading of Cash Index Participations Applicability and Definitions

Rule 1000B. (a) No change.
(b) No change.

Designation of the Index

Rule 1001B. (a) No change.

CIP Index Calculation

Rule 1002B. No change.

Dissemination of Information

Rule 1003B. (a) The Exchange shall assure that the current index value is disseminated from time-to-time on days on which transactions in CIPs are made on the Exchange and that the [closing] *opening* index value is disseminated as promptly as it is available. [at the quarterly cash-out time.]
(b) No change.

Cash-Out Privilege

Rule 1004B. The purchaser of a CIP may exercise the CIP cash-out privilege at any time after establishing a CIP position. Exercise of the CIP cash-out privilege entitles the holder of a long CIP position to obtain the CIP [closing] *opening* index value as specified in Rule 1008B relating to exercise of the cash-out privilege.

Position Limits

Rule 1005B. No change.

Exercise Limits

Rule 1006B. No change.
Rule 1007B. No change.

Exercise of Cash-Out Privilege

Rule 1008B. (a) Exercise of the cash-out privilege shall entitle the holder of the CIP to receive the CIP index value [less one half of one percent of that value] as calculated at the [close] *open* of trading on the business day following the date of the exercise of the cash-out privilege. [For exercises occurring on the business day preceding the third Friday of March, June, September and December (or when the third Friday is not a trading day, the business day preceding the third Thursday) ("Quarterly Expiration Day"), the exercise of the cash-out privilege shall entitle the holder of the CIP to receive the closing index value of the CIP, based on the opening prices of each of the component stocks of the index on the Quarterly Expiration Day. If one or more of the underlying securities that are the basis of the index do not open for trading on the Quarterly Expiration Day, the closing index value shall be calculated based on the last reported price of such securities prior to that day.]

(b) [Except as provided in paragraph (c) below, notice] *Notice* of exercise of the CIP cash-out privilege must be provided by a purchaser of a CIP in accordance with the rules and procedures of The Options Clearing Corporation. An exercise notice may be tendered to The Options Clearing Corporation only by the clearing member in whose account with The Options Clearing Corporation the CIP is carried. Members and member organizations, to the extent that they do not conflict with the rules and procedures of the Exchange and The Options Clearing Corporation, shall establish fixed procedures as to the latest hour at which they will accept exercise notices from their customers.
(c) All text withdrawn in full.

Delivery and Payment

Rule 1008B–1. No change.

Allocation of CIP Exercise Notices

Rule 1009B. No change.

Bids and Offers

Rule 1010B. No change.

Limitation of Exchange Liability

Rule 1011B. Neither the Exchange, the Reporting Authority nor any Agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating the current index value or the [closing] *opening* index value and tracking dividend payout dates or computing proportionate dividend payouts resulting from an act, condition or cause beyond the reasonable control of the Exchange or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; any error, omission or delay in the reports of transactions in one or more underlying securities; or any error, omission or delay in the reports of the current index value or the [closing] *opening* index value by the Exchange or the Reporting Authority.

Reserve Authority

Rule 1012. No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

On February 25, 1989, the PHLX filed SR–PHLX–88–07, a proposed rule change to list and trade CIPs, an innovative new instrument developed exclusively by the PHLX. As initially filed, PHLX's CIPs contained a cash-out privilege that permitted a CIP holder to exercise such privilege on a quarterly basis to receive the full index value from an assigned holder of a CIP short position. Specifically, a CIP holder could exercise the cash-out privilege on the business day preceding the third Friday of March, June, September and December, the dates coinciding with the quarterly expirations of the major stock index futures and options instruments. An exercise would have entitled the holder of the CIP to receive the opening index value determined on those quarterly third Fridays.

Shortly after the PHLX's initial CIP rule filing became public, the American Stock Exchange, Inc. ("AMEX") and the Chicago Board Options Exchange, Inc. ("CBOE") filed with the Commission proposals to trade Equity Index Participations ("EIPs") and Value of Index Participations ("VIPs"), respectively. The EIP and VIP filings

[1] *See* Securities Exchange Act Release No. 26709 (April 11, 1989), 54 15280.

closely resembled PHLX's CIP filing. In particular, both EIP and VIP filings mimicked the PHLX filing by incorporating the quarterly cash-out feature.[2]

On September 23, 1988, the PHLX amended its CIP filing by incorporating a daily cash-out privilege that would entitle CIP holders to receive the CIP index value less one half of one percent of that value as calculated at the close of trading on the business day following the date of the exercise of the cash-out privilege. *See* Amendment No. 2 to SR-PHLX-88-07. The amendment did not alter, but kept in place, the quarterly cash-out privilege. The PHLX believed that the addition of the daily cash-out privilege assured that the CIP would closely track the index value upon which a CIP is based. Additionally, the amendment to the filing was expressly copyrighted by the PHLX.

The AMEX and the CBOE did not submit parallel amendments to their rule proposals to provide for a daily cash-out privilege. Accordingly, on April 11, 1989, the Commission approved the AMEX and CBOE rule changes with EIP and VIP instruments containing quarterly and semi-annual cash-out privileges, respectively.

Shortly after the Commission approved CIPs, EIPs and VIPs (all three instruments denoted generically as "IPs") as securities under the Securities Exchange Act of 1934 ("Act"), the Chicago Mercantile Exchange ("CME") and the Board of Trade of the City of Chicago ("CBT") filed suit against the Commission in the U.S. Court of Appeals for the Seventh Circuit, alleging that these instruments were futures contracts to be regulated under the Commodity Exchange Act ("CEA") by the Commodity Futures Trading Commission ("CFTC"). Thereafter, the PHLX, AMEX and CBOE intervened as respondents.

On August 18, 1989, the Court issued a decision setting aside the Commission's order approving IPs and held that IPs were futures contracts under the CFTC's exclusive regulatory jurisdiction over such contracts. Determining that an essential feature of a futures contract is futurity, the Court believed that both the quarterly and semi-annual cash-out privileges, primarily associated with the AMEX's EIP and CBOE's VIP instruments, resembled the key ingredient in a futures contract in that "[t]he short's obligation is to pay the value of the index *on that date*—which lies in the future to the same extent as the settlement date of any futures contract." [3] Of key significance, the Court noted the difference that "[t]he daily cash-out-at-a-penalty feature of the Philadelphia's IP may oblige the short to pay *'current' value* less 0.5%, but none of the parties to the case suggests that the Philadelphia's product should be treated differently on this account. We therefore do not pursue it." (emphasis added) [4]

In point of fact, the PHLX did pursue this matter expressly in its Reply Brief. In that brief, the PHLX stated that:

> It is important to note that the CIP has a daily, not quarterly, cash-out provision. Id. at 22-23. Therefore, assuming *arguendo* as true the CME's and CBT's notion that a quarterly cash-out carries with it an element of futurity, a daily cash-out cannot be equated with a futures contract's quarterly expiration. Even in a stock transaction, the settlement period for delivery of the stock is 5 days.

See e.g., New York Stock Exchange Rule 64. A daily cash-out, which is a feature unique to the CIP, eliminates any element of futurity.[5]

Hence, the PHLX believes that the Court would have distinguished PHLX's CIPs from AMEX's EIPs and CBOE's VIPs should it have pursued the analysis of CIPs' unique daily cash-out feature. The PHLX had indeed developed CIPs as securities to be based on the spot value of an underlying stock index. In this regard, the PHLX continues to believe, for arguendo, that even with a quarterly cash-out privilege, CIPs lack the element of futurity because unlike stock index futures contracts, a purchase or sale of a CIP does not entail a commitment by an investor to buy or sell the value of the underlying index at some time in the future. Rather, a purchase or sale of the CIP involves an actual purchase or sale of the spot value of the underlying index, similar to an actual transfer of ownership of the underlying stocks. And, like stocks, CIPs can be held indefinitely.

Nevertheless, the U.S. Court of Appeals for the Seventh Circuit has determined generally that because a long IP holder can compel the payment of and a short is obligated to pay, the index value only on a future quarterly date that falls on the same expiration/settlement date as certain well-known stock index futures contracts, the IP is substantively a stock index futures contract. Acknowledging these narrow Court guidelines, the PHLX has contracted the Stock Clearing Corporation of Philadelphia ("SCCP") to consider amendments to PHLX's CIP contract specifications that would provide more economic and legal definition to the fact that a CIP is a security possessing spot not futures instrument characteristics. The text contained in this proposed rule filing represents the concepts that SCCP developed to underscore the spot nature of CIPs. PHLX and SCCP have entered into a licensing agreement whereby PHLX receives the exclusive rights to use these unique and key concept modifications in changing PHLX's CIP contract.

Accordingly, the PHLX hereby proposes three changes to the CIP contract specifications approved by the Commission regarding SR-PHLX-88-07. In summary, the modificatons include the following: (1) Removal of the 0.5% penalty on the daily cash-out; (2) abolition of the quarterly cash-out provision; and (3) exercise of the daily cash-out to entitle the long CIP holder to receive the following business day's *opening* index value as opposed to the closing index value.[6]

PHLX has been advised by SCCP that the above amendments will assure to the greatest extent practicable that CIPs will track their underlying stock indicies and trade at prices reflecting the current value of those indices. In this regard, the PHLX notes that the underlying purpose of the modified daily cash-out feature is to maintain CIP pricing in line with the spot stock index value on a daily basis. Indeed, during the past four month CIP trading experience, the daily cash-out feature appears to have kept CIP quotation and transaction prices closely in line with spot index values to the extent that exercises of the daily cash-out privilege were apparently deemed unnecessary by CIP holders who unwound their positions in the market. Hence, the daily cash-out feature is merely a mechanism that disciplines CIP pricing and is not the economic *raison d'etre* for parties to engage in CIP transactions.

The proposed rule change is consistent with section 6(b)(5) of the Act which provides in pertinent part that the rules of the exchange are designed to foster cooperation and coordination

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[2] On November, 1988, the CBOE amended its proposal to provide for a semi-annual rather than a quarterly cash-out feature. *See* File No. SR-CBOE-88-09, Amendment No. 1.

[3] *See* Decision at p. 17.

[4] Decision at p. 16, n. 3.

[5] *See* Reply Brief for Intervening Respondent Philadelphia Stock Exchange, Inc. at 12.

[6] Aside from these changes, this proposed rule change incorporates by reference SR-PHLX-88-07 as approved by the Commission, including the authorization to trade a CIP based on the Blue Chip CIP Index and the S&P 500 Index. *See* Securities Exchange Act Release No. 26709 (April 11, 1989). The PHLX and Standard & Poor's Corporation are reviewing whether current licensing arrangements countenance and do not conflict with the PHLX's ability to base the CIP contract, as proposed to be modified, on the S&P 500 Index.

with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. The proposal, if approved, also assures the removal of impediments to and the perfection of the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest.

The proposed rule change is intended to underscore the spot characteristic and exclusive security's nature of the CIP instrument. The Exchange believes that, particularly in light of the proposed CIP enhancements, CIPs will be very attractive to the investing public and thereby may ameliorate some of the volatility that has been associated with investor trading in the more highly leveraged derivative index products.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The PHLX has prepared this rule change in close coordination with The Options Clearing Corporation and the SCCP.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or,

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted October 18, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 20, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-22822 Filed 9-26-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27280; File No. SR-PHLX-89-27]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to a Hedged Position Limit Exemption for Utility Index Options

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 10, 1989, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange submits a proposed rule change to provide for a one-year pilot program during which public customers may apply for a hedge exemption from Utility Index Option ("UTY") position limits. The following is the full text of the proposed rule change (italics indicate additions; brackets indicate deletions).

OPTIONS RULES

* * * * *

Position Limits

Rule 1001A. No change in text.

. . . *Commentary*

.01 For purposes of position limits for public customers in Utility Index Options ("UTY") only, positions in which each UTY contract is "hedged" by share positions in at least ten component stocks of the UTY of which no one component stock position accounts for more than 15 percent of the stock portfolio hedging the UTY position shall be exempted from established limits. In no event may position limits for any hedged UTY position exceed three times the limits established under Rule 1001A(b)(i) and the maximum size of the exempt position cannot exceed the unhedged value of the underlying stock portfolio. This exemption requires that both the options and stock positions must be initiated and liquidated in an orderly manner. Specifically, a reduction of the options position must occur at or before the corresponding reduction in the stock portfolio position. Those utilizing the hedge exemption must still abide by prevailing UTY exercise limits except in expiring series from the last business day prior to expiration until expiration.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statments.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

The UTY was approved by the Commission on September 9, 1987.[1] The UTY is a cash-settled, European-style options contract. The underlying index consists of twenty geographically diverse, highly capitalized New York Stock Exchange-listed electric utility common stocks. The UTY is capitalization-weighted.

The proposed rule change seeks authority for the PHLX to grant to public customers (*i.e.*, those accounts not affiliated with a broker-dealer)

[1] *See* Securities Exchange Act Release No. 24889 (September 9, 1989), 52 FR 35021.

exemptions from specified position limits for any UTY position hedged by at least ten UTY-component stocks, of which no one component stock position may account for more than 15 percent of the stock portfolio being hedged by the UTY position. The exemption would be limited so that any UTY hedged position could not exceed three times the specified position limits for the UTY. Moreover, the maximum size of the exempt position cannot exceed the unhedged value of the underlying stock portfolio.

The UTY is cash-settled and comprised of highly capitalized, widely traded utility stocks. No single stock or group of stocks dominates the index. In this regard, trading and exercise of UTY contracts is not likely to disrupt the markets in the stocks underlying the UTY or suspect those stocks to manipulation. In connection with the extempt position limits, the potential for manipulation is further reduced because no one component stock position can account for more than 15 percent of the hedged stock porftolio and the maximum size of the exempt position cannot exceed the unhedged value of the underlying stock portfolio. Moreover, the hedge exemption specifically requires that both the options and stock position must be initiated and liquidated in an orderly manner. This requires that a reduction of the options position must occur at or before the corresponding reduction in the stock portfolio position. Finally, to further ameliorate the potential for adverse impacts on the market, prevailing UTY exercise limits will not change except nor restrictions will apply on expiring series from the last business day prior to expiration.

So that the Commission and the PHLX can gain valuable experience in the utilization of the proposed hedge exemption in connection with UTY trading, the PHLX proposes to implement the initiative for a one-year pilot commencing upon the proposal's effective date. To the extent, however, any potential for manipulation or disruption might increase because of the higher limits, the PHLX believes that its surveillance procedures are adequate to detect and deter such activity. In this connection, the PHLX generates daily an automated position limit report. If an entity is identified as exceeding the existing position limit in a specific option, the PHLX surveillance staff will discern immediately whether an offsetting stock position exists. If the excess options are not hedged, the entity loses the exemption, will be precluded from effecting additional opening transactions, and will be required to close out those positions in excess of the current position limit. As a more routine compliance monitoring procedure, the PHLX will require member firms representing customers who seek the exemption to apply for the exemption on a form prescribed by the Exchange. The application form will require the firm carrying the customer's position to telefax, on the Wednesday prior to expiration, data to the PHLX Surveilance Department regarding the status of the account's portfolio (*i.e.*, the current UTY position and any changes made to the stock portfolio since the filing of the application for exemption). Additionally, the PHLX Surveillance Department will closely monitor UTY trading activity in connection with the contemporaneous trading in the underlying securities to detect and deter potential frontrunning and mini-manipulation abuses.

For the reasons stated above, the PHLX believes the proposed amendment is consistent with the provisions of the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, section 6(b)(5) of the Act. By limiting the exemption to hedged positions, the proposal is designed to prevent fraudulent and manipulative acts and practices, while enhancing the ability of investors to use options for investment and hedging purposes. The PHLX believes all proposals herein are deisgned to protect investors and promote the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Options Committee, a committee of the PHLX Board of Governors comprised of members and representatives of member firms, has endorsed the proposed rule change.

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days or such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or,

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amndments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 20, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-22825 Filed 9-26-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27260; File No. SR-PHLX-89-25]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Procedures for Allocating Equity Books or Options Classes

On August 3, 1989, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4

[1] 15 U.S.C. 78s(b)(1) (1982).

thereunder,[2] a proposed rule change to permit the allocation and reallocation of equity books or options classes without providing floor members with five days advanced notice of the security to be allocated and its applicants.

The proposed rule change was published for comment in Securities Exchange Act Release No. 27106 (August 8, 1989), 54 FR 33797 (August 1, 1989). No comments were received on the proposed rule change.

Currently, the Exchange allocates and reallocates equity books and options classes through the Allocation, Evaluation and Securities Committee ("Committee"). The Committee solicits, from all eligible specialists, applications containing information relevant to the allocation decision. In particular, the applications are required to include, at a minimum, the name and background of the head specialist and assistant specialist(s), the unit's experience and capitalization demonstrating its ability to trade the particular equity book or options class sought, and any other reasons why the unit believes it should be assigned or allocated the security. In addition, if the Committee determines that special qualifications should be sought in the successful applicant, it may indicate such desired qualifications in the notice soliciting applications.

To gather additional information about applicants, the Committee provides notice to all floor members at least five days before allocation meetings of the security to be allocated and its applicants. According to the Exchange, the purpose of the provision is to afford an opportunity to PHLX members to provide input to the Committee regarding any special qualifications of particular applicants for particular new issues, or regarding factors of which the Committee might not otherwise be aware that could make a particular applicant unsuitable to be a specialist in those issues.

The Exchange believes the five day notice period should be eliminated because it has interjected an unnecessary delay in its allocation and listing process, particularly in the context of multiply-traded options. The remaining procedures will still apply. To this end, the Exchange notes that it has not received any special input pursuant to the provision since it was adopted in October, 1982. Moreover, the PHLX maintains that its other rules provide the Exchange with information sufficient to make its allocation and listing decisions.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of section 6.[3] Specifically, the Commission finds that eliminating the five day advanced notice period is consistent with section 6(b)(5) in that it will perfect the mechanism of a free and open market by eliminating an unnecessary delay in the allocation process. Further, the Commission believes that the integrity of the allocation process is not impaired by elimination of the notice period since the Committee will still receive sufficient information to allocate securities properly by following the remaining allocation procedures.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[4] that the proposed rule change (SR-PHLX-89-25) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Dated: September 20, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-22826 Filed 9-26-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27269; File No. SR-CSE-89-02]

Self-Regulatory Organizations; Proposed Rule Change by the Cincinnati Stock Exchange Relating to Intermarket Trading System Rules on Pre-Opening Responses and Trade-Throughs

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 29, 1989, the Cincinnati Stock Exchange ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), the proposed Rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the Proposed rule Change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Cincinnati Stock Exchange proposes to amend Rule 14.9(c) in order to conform its rules to recent changes in the ITS Plan agreed upon by all the ITS participants. These changes clarify the obligation of responding market makers to seek a pre-opening report and the procedures for resolving third participating market center trade-throughs.[1]

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

The purpose of the proposed rule change is to promote cooperation among ITS participants and facilitate transactions through the ITS.

The first proposed rule change concerns the responsibility of market makers to seek a report of execution when the market center that sent a pre-opening notification has not issued such a report. In the past, because of some ambiguities in the ITS Plan, it was not clear that a market maker who had issued a response to a pre-opening notification also had a responsibility to inquire through the System as to whether or not he had participated in the opening. The amendment now more clearly places responsibility on a market maker to seek a report of execution if a report has not been issued by that opening market place.

The second proposed rule change concerns third party trade-throughs. The ITS Plan and Exchange rules define trade-throughs as well as certain exceptions which may justify a particular trade as not requiring satisfaction as a trade-through. The proposed rule change states that, with respect to a third party trade-through, satisfaction is not required if the market center that initiated the trade-through sends a commitment to trade promptly following the trade-through that satisfies the bid or offer traded-through and preceded the commitment with an administrative message stating that the

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[1] The appendix to this notice contains the specific rule changes.

[2] 17 U.S.C. 240.19b-4 (1988).

[3] 15 U.S.C. 78f (1982).

[4] 15 U.S.C. 78s(b)(2) (1982).

[5] 17 U.S.C. 200.30-3(a)(12) (1988).

commitment was in satisfaction of a third participating market center trade-through.

The proposed Rule change is consistent with section 6(b)(5) of the Securities Exchange Act of 1934 (the "Act") in that it is designed to facilitate transactions in securities and perfect the mechanism of a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition which is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statements on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed Rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CSE. All submissions should refer to File No. SR-CSE-89-01 and should be submitted by October 18, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 20, 1989.

Jonathan G. Katz,

Secretary.

Appendix

Proposed Rule Amendments (Italics indicate language to be added).

Rule 14.3: Pre-Opening Application

(a)–(i) * * *

(j) *The ITS Plan anticipates that an Exchange member who has sent one or more obligations to trade in response to a pre-opening notification will request a report through the System as to his participation if he does not receive a report as required promptly following the opening. If, on or following trade date, he does request a report through the System as to his participation before 4:00 p.m. eastern time, and he does not receive a response by 9:30 a.m. eastern time on the next trading day, he need not accept a later report. If he fails to so request a report, he must accept a report until 4:00 p.m. eastern time on the third trading day following the trade date (i.e., on T+3). The Exchange does not intend this paragraph to relieve him of the obligation, when he does not receive a report, to request a report as soon as he reasonably should expect to have received it.*

(k)–(q) * * *

Rule 14.9 ITS Trade-Throughs and Locked Markets

(a) * * *

(b)(1) * * *

(2) * * *

(3) The provisions of paragraph (b)(2) above shall not apply under the following conditions:

(i)–(vi) * * *

(vii)(A) * * *

(B) in the case of a third participating market center trade-through, either *(1) the member who initiated the trade-through (i) had sent a commitment to trade promptly following the trade-through that satisfies the bid or offer traded-through and (ii) preceded the commitment with an administrative message stating that the commitment was in satisfaction of a third participating market center trade-through, or (2) a complaint with respect to the trade-through was not received by the Exchange through the System from the aggrieved party promptly following the trade-through, and, in any event,* within ten minutes from the time the aggrieved party sent a complaint through the System to the ITS participating market center that received the commitment to trade that caused the trade-through, which first complaint must have been received within five minutes from the time the report of the transaction that constituted the trade-through was disseminated over the high speed line of the consolidated last sale reporting system.

[FR Doc. 89-22828 Filed 9-26-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27273; File No. SR-NASD-89-41]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Intermarket Trading System Rule for Consolidated Closing Price

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 8, 1989, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The National Association of Securities Dealers, Inc. ("NASD" or the "Association"), proposes to amend the Rules of Practice and Procedure for the Intermarket Trading System/Computer Assisted Execution System Automated Interface ("ITS/CAES Rules"). The ITS/CAES Rule change, described below, implements the Intermarket Trading System ("ITS") Plan change adopted by the ITS participants. (Additions are italicized, deletions are bracketed.)

¶ 2501

(a) Definitions

(9) The term "Previous Day's Consolidated Closing Price" as used in these Rules shall mean the last price at which a transaction in a security was reported by the consolidated last sale reporting system on the last previous day on which transactions were reported by such system; provided, however that the "previous day's consolidated closing price" for all Network A or Network B eligible Securities shall be the last price at which a transaction in the stock was reported by the New York Stock Exchange, Inc. ("NYSE") or the American Stock Exchange, Inc. ("Amex"), if, because of unusual market conditions, the NYSE or the

Amex price is designated as such pursuant to the ITS plan.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory for, the Proposed Rule Change

In its filing with the Commission, the NASD 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 NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

ITS was created pursuant to the provisions of section 11A(a)(3)(B) of the Securities Exchange Act of 1934 ("Act"), in order to achieve the regulatory goals established by section 11A, including, among other things, the facilitation of transactions and the removal of impediments to a free and open market. Since it was initially created, the structure of the ITS Plan has periodically been re-stated and amended because of developments and changes within the marketplace, as well as the participants' continuing reevaluation of the structure of the System within the context of its original goals. With this in mind, the various participating market centers which utilize the ITS system have recently approved certain amendments to the system.

Specifically, the proposed ITS/CAES Rule change attempts to clarify the determination of the "previous day's consolidated closing price." Currently the previous day's consolidated closing price means the last price at which a transaction in a security was reported to the consolidated tape from any market center. The rule change would permit the use of the last price at which a transaction was reported from the primary market for that security, in instances where the ITS participants believe that usual market conditions necessitate such a change. Unusual market conditions could include system malfunctions on either the primary market, the other participant market centers, or with the facilities manager, or could mean market volatility such as what occurred in October 1987, that may render consolidated closing prices unreliable for opening the markets the following day.

The NASD believes that the proposed rule change is consistent with section 15A(b)(6) of the Act because it is designed to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system. Further, as noted herein, NASD believes that the proposed change to the ITS/CAES Rules is consistent with the objectives of Congress as set forth in section 11A of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Securities Exchange Act of 1934, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by October 18, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: September 20, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-22829 Filed 9-26-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27275; File No. SR-NYSE-89-26]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc. Relating to Intermarket Trading System Rules on the Determination of the "Previous Day's Consolidated Closing Price," and Pre-Opening Responses and Third Participating Market Center Trade Throughs

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Public Law 94-29, 16 (June 4, 1975), notice is hereby given that on September 13, 1989, the New York Stock Exchange, Inc. ("NYSE") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been preapred 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

On February 2, 1989, the Board of Directors of the Exchange approved the following changes to Rule 15 (Intermarket Trading System ("ITS")/ Pre Opening Application) and to Rule 15A (Trade-Throughs) to read as follows:

Amendment 1—Pre-Opening—Consolidated Closing Prices

To amend section (a)(vi) to Rule 15 to provide that Exchange closing prices may be substituted for consolidated closing prices in unusual situations. (New language italicized)

(vi) "Previous day's consolidated closing price" means the last price at which a transaction in a security was reported by the consolidated last sale reporting system on the last previous day on which transactions in the security were reported by such system;

Provided, however, that the Exchange may specify that the "previous day's consolidated closing price" for all Exchange Eligible Securities shall be the last price at which a transaction in the stock was reported by the Exchange, if, because of unusual market conditions, the Exchange price is designated as such pursuant to the ITS Plan.

Amendment 2—Pre-Opening Rule—Opening Reports

To add new section (d)(vi) to Rule 15 to make explicit that a market maker who responds to a Pre-Opening notification has a responsibility to seek a report. (all new language)

(vi) Request for Participation Reports—The ITS Plan anticipates that an Exchange member who has sent one or more obligations to trade in response to a pre-opening notification will request a report through the System as to his participation if he does not receive a report as required promptly following the opening. If, on or following trade date, he does request a report through the System as to his participation before 4:00 p.m. eastern time, and he does not receive a response by 9:30 a.m. eastern time on the next trading day, he need not accept a later report. If he fails to so request a report, he must accept a report until 4:00 p.m. eastern time on the third trading day following the trade date (i.e. on T+3). The Exchange does not intend this paragraph (d)(vi) to relieve him of the obligation, when he does not receive a report, to request a report as soon as he reasonably should expect to have received it.

Amendment 3—Trade-Through Rule—Third Party Trade Through

To amend section (b)(3)(G) and to add section (b)(3)(H) to Rule 15A to provide another exemption to the satisfaction requirements of the Rule (deletions in brackets; new language italicized):

(G) *in the case of an Exchange trade-through,* a complaint with respect to the trade-through was not received by the Exchange through the System from the aggrieved party promptly following the trade-through and, in any event, [(i) in the case of an Exchange trade-through,] within five (5) minutes from the time the report of the transaction that constituted the trade-through was disseminated over the high speed line of the consolidated last sale reporting system; or [(ii) in the case of a third participating market center trade-through, within ten (10) minutes from the time the aggrieved party sent a complaint through the System to the ITS participating market center that received the commitment to trade that caused the trade-through, which first complaint must have been received within five (5) minutes from the time the report of the transaction that constituted the trade-through was disseminated over the high speed line of the consolidated last sale reporting system.]

(H) in the case of a third participating market-center trade-through, either:

(i) the member who initiated the trade-through (a) had sent a commitment to trade promptly following the trade-through that satisfies the bid or offer traded-through and (b) preceded the commitment with an administrative message stating that the commitment was in satisfaction of a third participating market center trade-through, or

(ii) a complaint with respect to the trade-through was not received by the Exchange through the System from the aggrieved party promptly following the trade-through, and, in any event, within ten (10) minutes from the time the aggrieved party sent a complaint through the system to the ITS participating market center that received the commitment to trade that caused the trade-through, which first complaint must have been received within five (5) minutes from the time the report of the transaction that constituted the trade-through was disseminated over the high speed line of the consolidated last sale reporting system.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed amendments are (1) to allow for the Pre-Opening Application to be based on the closing prices on the New York Stock Exchange in certain circumstances; (2) to clarify that a market maker who has sent a pre-opening response has a responsibility to seek a report of execution; and (3) to clarify the procedures for resolving third participating market center trade-throughs.

The amendments to Rule 15 and Rule 15A proposed herein are consistent with section 6(b)(5) of the Securities Exchange Act of 1934 (the "Act") as it is designed to promote just and equitable principles of trade. The amendments are also consistent with section 11A(a)(1)(D) of the Act which calls for the linking of all markets for qualified securities.

Pre-Opening Rule

Current Exchange Rule 15 contains basic definitions pertaining to ITS, provides the sorts of transactions that may be effected through ITS and the pricing of commitments to trade, the specifies the procedures pertaining to the "Pre-Opening Application", whereby an Exchange specialist who wishes to open his market in an ITS stock may obtain any pre-opening interest in that stock of other market-makers registered in that stock in other Participant markets.

The Rule prescribes that if an Exchange specialist anticipates that the opening transaction on the Exchange will be at a price that represents a change from the security's previous day's consolidated closing price of more than the "applicable price change", he shall notify other Participant markets by sending a pre-opening notification through the System. The "applicable price changes" are:

Consolidated closing price	Applicable price change (more than)
Under $15	⅛ point.
$15 or over	¼ point.

The first amendment to Rule 15 amends section (a)(vi) to deal with the occasional situations when a system problem will cause incorrect consolidated closing prices to be displayed on the Floor. In these situations, the practice has been to gauge "the applicable price change" from the NYSE closing prices rather than the consolidated closing prices. However, this substitution requires telephonic consultation with, and concurrence of, each of the ITS Participant markets—usually just prior to the opening.

As proposed, the ITS Plan provides that, if on broad scale, consolidated closing prices are incorrectly displayed, the Chairman of the ITS Operating Committee, upon the request of the NYSE, may designate the NYSE's closing prices be substituted for the purposes of the Pre-Opening. The proposal provides a simple, efficient and timely means for accomplishing the substitution of closing prices—a single phone call with the Chairman, followed by an administrative message broadcast over the System to all ITS Participant Markets.

The amendment to Rule 15 recognizes that the Exchange may designate that its last sales be substituted for consolidated closing prices in accordance with the Plan provision.

The second amendment to rule 15 adds section (d)(vi) to make it clear that a specialist/market marker who responds to a Pre-Opening notification has a responsibility to seek from the opening market maker a report of participation in the opening.

The first sentence of the paragraph discusses a basic responsibility to request a report if one is not promptly received following the opening.

The second sentence provides that, if a report is requested on or following trade date, and a report is not received by 9:30 a.m. eastern time the following trading day, then a later received report need not, but may, be accepted.

The third sentence provides that if a report is not requested, a report must be accepted until 4:00 p.m. eastern time on the third day following the trade date.

The fourth sentence makes clear that the provision of the third sentence is not intended to relieve a specialist/market maker of the basic obligation to seek a report.

Trade-Through Rule

The Trade-Through Rule sets forth the rights and obligations of members of the Participant Markets upon the occurrence of a transaction in one Participant market at a price inferior to the bid or offer in another Participant market—i.e., a trade-through. The Rule generally provides that, upon receipt of a timely administrative message, the member who caused the trade-through is obligated to satisfy the bid or offer traded through. The Rule also contains several exemptions to the obligation to satisfy a trade-through.

The amendment to Rule 15A amends section (b)(3)(G) and adds section (b)(3)(H) to provide another exemption to the satisfaction obligations of the Rule.

The additional exemption provides that, if a member who initiates a "third participant market trade through" (as defined in the Rule) had sent a commitment to trade promptly following the trade-through to satisfy the bid or offer traded-through, and had preceded the commitment with an administrative message stating that the commitment was in satisfaction of the trade-through, then such member shall have no further responsibility to satisfy the trade-through.

The provision is intended to provide the receiving party with requisite information about the purpose of the commitment so it can be properly acted on.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the Proposed Change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Member Participants or Others

The Exchange has neither solicited nor received comments on the proposed changes.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 1100 L Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 20, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-22830 Filed 9-26-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27276; File No. SR-PSE-89-07]

Self-Regulatory Organizations; Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to the Adjustment in PSE Rules Relating to ITS Rules on the Determination of the "Previous Day's Consolidated Closing Price"

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 2, 1989, the Pacific Stock Exchange Incorporated ("PSE" or the "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Pacific Stock Exchange Incorporated ("PSE" or "Exchange"), proposes to amend PSE Rule I, section 19(a)(ix) to adjust its Intermarket Trading System ("ITS") rules to conform to recent changes in the ITS system as adopted by the participating ITS members. These changes relate to the determination of the "previous day's consolidated closing price".[1]

The term "previous day's consolidated closing price" as used in exchange rules means the last price at which a transaction in a security was reported by the consolidated last sale reporting system on the last previous day on which transactions in the security were reported by such system. The proposed rule change would provide that in the event that unusual market conditions render prices, on a broad scale, inappropriate as the basis for the Pre-Opening Application the Exchange may specify that the "previous day's consolidated closing price" for all Network A or Network B Eligible Securities shall be the last price at which a transaction in the stock was

[1] The appendix to this notice contains the specific rule changes.

reported by the New York Stock Exchange, Inc. ("NYSE") or the American Stock Exchange, Inc. ("AMEX").

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. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The Intermarket Trading System ("ITS") was created pursuant to the provisions of section 11A(a)(3)(B) of the Securities Exchange Act of 1934 ("The Act"), in order to comply with the requirements of the Act so as to facilitate transactions and help to remove impediments to a free and open market.

Since it was initially created, the structure of the ITS Plan has been re-stated and amended because of continuous developments and changes in the market place, as well as a continuing re-evaluation of the structure of the system within the context of its original goals.

With this in mind, the various participating market centers which utilize the ITS system have recently approved certain amendments to the system. At this time the PSE proposes amending PSE Rule I, section 19(a)(xi) for the purpose of adjusting the PSE ITS rules to comply with these recent changes.

Specifically, the proposed changes attempt to define the establishment of the "previous day's consolidated closing price".

It is the proposition of the PSE that the proposed rule changes are consistent with section 6 of the Securities and Exchange Act of 1934 ("the Act") and in particular, section 6(b)(5) in that it will help to, "facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system".

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of the publication of this notice in the **Federal Register** or within such longer period: (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written date, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other that those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspections and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 18, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 20, 1989.

Jonathan G. Katz,

Secretary.

Appendix

Proposed ITS Rule Amendments (italics indicate language to be added; brackets indicate language to be deleted)

Section 19

* * * (ix) The term "Previous Day's Consolidated Closing Price" as used in Exchange rules shall mean the last price at which a transaction in a security was reported by the consolidated last sale reporting system on the last previous day on which transactions in the security were reported by such system; *provided, however that the Exchange may specify that the "previous day's consolidated closing price" for all Network A or Network B eligible Securities shall be the last price at which a transaction in the stock was reported by the New York Stock Exchange, Inc. ("NYSE") or the American Stock Exchange, Inc. ("AMEX"), if because of the unusual market conditions, the NYSE or AMEX price is designated as such pursuant to the ITS plan.*

[FR Doc. 89-22831 Filed 9-26-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 27278; File No. SR-PHLX-89-40]

Self-Regulatory Organizations; Proposed Rule Changes by Philadelphia Stock Exchange, Inc. Relating to Amendments to Rule 2001 of the Philadelphia Stock Exchange Rules

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 15, 1989 the Philadelphia Stock Exchange, Inc. ("PHLX") filed with the Securities and Exchange Commission the proposed changes as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement on the Terms of Substance of the Proposed Rule Changes

The Philadelphia Stock Exchange proposes to amend Rule 2001, (Intermarket Trading System) and Rule 2001A, (ITS "Trade-Throughs" and

"Locked Markets"), consistent with the ITS Plan changes agreed upon by all other ITS participants. The three proposed amendments herein will help to clarify certain pre-opening and opening communication problems as well as third party trade-through problems.[1] All other ITS participants are expected to file 19b–4 rule changes concerning these three amendments. They are as follows:

American Stock Exchange
Boston Stock Exchange
Cincinnati Stock Exchange
Midwest Stock Exchange
National Association of Securities Dealers
New York Stock Exchange
Pacific Stock Exchange
Philadelphia Stock Exchange

II. Self-Regulatory Organization's Statement Regarding the Proposed Rule Changes

In its filing with the Commission, the self-regulatory organization included statements governing the purpose of and basis for the proposed rule changes and discussed any comments it received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose and Statutory Basis for the Proposed Rule Change

The purpose of these rule amendments is to promote cooperation and facilitation of transactions among the ITS participants. The Intermarket Trading System (ITS) was adopted for the purpose of enabling the participating market centers to act jointly in planning, developing, operating and regulating the System and its applications so as to further the objectives of Congress as set forth in section 11A(a) of the Act.

Representatives from each participating market center meet periodically during each year for the purpose of reviewing current ITS rules and, of course, areas where further interpretation and/or rules become necessary. These amendments were the result of such meetings where representatives unanimously voted to adopt such as amendments to the ITS Plan and incorporate the same within each market center's regulatory framework. It is expected that each participating market center will file a separate 19b–4 covering "Previous day's closing prices", "Responsibility to seek a report" and "Third party trade-throughs".

The first amendment concerns "Previous day's closing prices". Whenever an exchange specialist, in arranging the opening transaction on the exchange in a security traded through the ITS System anticipates that such opening transaction will be at a price that represents a specified change from the previous day's consolidated closing price, he must notify the other participant markets of the situation and those markets may seek to participate in the opening. When unusual market conditions render consolidated closing prices, on broad scale, inappropriate as the basis for the pre-opening application this amendment will allow for a simplified procedure to allow the last price at which a transaction was reported in a particular stock on the American or New York Stock exchange, as appropriate, to be designated the "previous day's closing price" for purposes of the ITS pre-opening application.

The second amendment concerns the Responsibility to seek a report by the market maker (Specialist). This responsibility occurs when a pre-opening or re-opening indication of interest has been sent through the (ITS) System to other markets. In the past because of some ambiguities in the ITS Plan it was not clear that a market maker (Specialist) who had issued a response to an indication also had a responsibility to inquire through the system as to whether or not he had participated in the opening. The amendment now more clearly places responsibility on a market maker (Specialist) to seek a report of participation after the opening if a report has not been issued by that opening market place.

The third amendment concerns *Third party trade-throughs*. The ITS Plan and Exchange rules define trade-throughs as well as certain exceptions which may justify a particular trade as not requiring satisfaction as a trade-through. This particular amendment is being incorporated within the exceptions for a third party trade-through. This amendment will require an administrative message which will clearly identify a particular transaction as one in satisfaction of a third party trade-through problem to avoid further confusion and/or errors when a trade occurs in satisfaction of a trade-through from a third participating market center.

The statutory basis for this rule change is Section 6(b)(5) of the Securities Exchange Act of 1934 in that it is designed to facilitate transactions in securities and perfect the mechanism of a national market system. Further, as noted herein concerning the Intermarket Trading System these amendments further the objectives of Congress as set forth in Section 11A(a) of the Act.

(B) Self-Regulatory Organization's Statement on Burden on Competition

No burden on competition is perceived by the adoption of these rule amendments.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments have neither been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding of (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed changes, or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 18, 1989.

[1] The appendix to this notice contains the specific rule changes.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: September 20, 1989.

Appendix

Rule 2001—Intermarket Trading System

[Proposed new languge is italicized]

(a) *(vi)*—"Previous day's consolidated closing price" means the last price at which a transaction in a security was reported by the consolidated last sale reporting system on the last previous day on which transactions in the security were reported by such system: *Provided, however, that the Exchange may specify that the "previous day's consolidated closing price" for all Network A or Network B Eligible Securities shall be the last price at which a transaction in the stock was reported by the New York Stock Exchange, Inc. ("NYSE") or the American Stock Exchange, Inc. ("AMEX"), if, because of unusual market conditions, the NYSE or AMEX price is designated as such pursuant to the ITS Plan.*

Section (d)—Insert under the margin heading Openings in Other Participant Markets and identify as (d)(iv).

(d) *(iv)—Request for Participation Report—The ITS Plan anticipates that an Exchange member who has sent one or more obligations to trade in response to a pre-opening notification will request a report through the System as to this participation if he does not receive a report as required promptly following the opening. If, on or following trade date, he does request a report through the System as to his participation before 4:00 PM eastern time, an he does not receive a response by 9:30 AM eastern time on the next trading day, he need not accept a later report. If he fails to so request a report, he must accept a report until 4:00 PM eastern time on the third trading day following the trade date (i.e., on T+3). The Exchange does not intend this paragraph to relieve him of the obligation, when he does not receive a report, to request a report as soon as he reasonably should expect to have received it.*

Rule 2001A—ITS "Trade-Throughs" and "Locked Markets"

Insert under the subsection (b)(3)—Trade-Throughs (3)(H).

(b)(3)

(H) in the case of a third participating market-center trade-through, either:

(i) the member who initiated the trade-through (a) had sent a commitment to trade promptly following the trade-through that satisfies the bid or offer traded-through and (b) preceded the commitment with an administrative message stating that the commitment was in satisfaction of a third participating market center trade-through, or

(ii) a complaint with respect to the trade-through was not received by the Exchange through the System from the aggrieved party promptly following the trade-through, and, in any event, within ten (10) minutes from the time the aggrieved party sent a complaint through the system to the ITS participating market center that received the commitment to trade that caused the trade-through, which first complaint must have been received within five (5) minutes from the time the report of the transaction that constituted the trade-through was disseminated over the high speed line of the consolidated last sale reporting system.

[FR Doc. 89-22832 Filed 9-26-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC—17143; 811-3125]

Birr, Wilson Money Fund; Application for Deregistration

September 20, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Birr, Wilson Money Fund ("Applicant").

Relevant 1940 Act Section: Section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

Filing Dates: The application on Form N-8F was filed on May 25, 1989, and an amendment was filed on September 15, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 16, 1989, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 777 Mariners Island Boulevard, San Mateo, California 94404.

FOR FURTHER INFORMATION CONTACT: Patricia Copeland, Legal Technician, (202) 272-3009, or Karen L. Skidmore, Branch Chief, (202) 272-3023 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant is a California corporation and an open-end diversified management investment company under the 1940 Act. On December 22, 1980, Applicant filed a Notification of Registration pursuant to section 8(a) of the 1940 Act on Form N-8A. On the same date, Applicant filed a registration statement under the Securities Act of 1933 on Form N-1 which was declared effective on March 18, 1981.

2. Birr Wilson, Inc., the registered broker-dealer that had exclusively marketed Applicant's shares to its retail customers, ceased doing business as a broker-dealer on Friday, December 9, 1988, effectively terminating the marketing of Applicant's shares. At a meeting on December 13, 1988, Applicant's Board of Directors ("Board") determined to wind-up the affairs of Applicant after all securityholders had redeemed their shares. The Board had no advance notice that Birr Wilson, Inc. was going out of business.

3. To provide investors with a viable alternative, the Board determined to offer shareholders the option of transferring their investment at no cost to one of the other money market funds in the Franklin Group of Funds. Franklin Money Fund (the "Fund") (811-2605) was selected because it had substantially identical investment objectives and policies as Applicant, and due to its larger size, offered a slightly higher yield. The Board sent a copy of the current Prospectus for the Fund to Applicant's shareholders, advised them of their options to exchange or redeem for cash and that if no request for redemption or transfer was made by December 30, 1988, their shares in Applicant would automatically be liquidated and the proceeds re-invested in shares of the Fund, having

an identical value. Since both funds' shares are valued at $1.00 per share, there was not tax effect of such event.

4. The decision of the Board to proceed in this manner was motivated, in part, by the redemption of shares and lack of new sales leaving remaining shareholders with a relatively small fund with a relatively high expense ratio. The Board felt that this immediate action was necessary and in the best interests of Applicant's shareholders.

5. Applicant's portfolio securities that were not otherwise maturing by December 31, 1988 were liquidated at fair market value to meet all redemptions by its securityholders. Immediately prior to December 31, 1988, Applicant had 9,468,262.78 shares outstanding, with a net asset value per share of $1.00. All of Applicant's expenses were included in the calculation of the net asset value. Franklin Resources, Inc., the controlling shareholder of Applicant's former investment manager, agreed to bear all expenses incurred in connection with this liquidation.

6. As of the time of filing the application, Applicant had no shareholders, assets or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged, nor does it propose to engage in any business activities other than those necessary to wind up its affairs. Applicant will take all action required by state law, including filing an application for a certificate of dissolution with the State of California.

7. Applicant has filed a Form N-SAR for its fiscal year ended January 31, 1989, reflecting the winding up of its operations and will file a Form N-SAR for its six month period ended July 31, 1989.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-22827 Filed 9-26-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17144; 812-7051]

SEI Liquid Asset Trust, et al.; Application

September 20, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: SEI Liquid Asset Trust, SEI Tax Exempt Trust, SEI Cash+Plus Trust, SEI Index Funds, SEI Institutional Managed Trust (the "Trusts"), SEI Financial Management Corporation ("SFM"), SEI Financial Services Company ("SFS"), and all other similar investment companies managed and distributed in the future by SFM and SFS, respectively (collectively, "Applicants").

Relevant 1940 Act Sections: Exemptions requested pursuant to section 6(c) from sections 18(f), 18(g) and 18(i).

Summary of Application: Applicants seek an order to permit the issuance and sale of two classes of shares representing interests in each of several investment portfolios, which classes would be identical in all respects except for differences related to the distribution expenses and/or support services expenses, and the related class designation, voting rights, and dividend payment differences.

Filing Dates: The application was filed on June 23, 1988, and amended on May 9, 1989, June 12, 1989, August 8, 1989, and September 14, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 16, 1989, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants c/o Robert J. Zutz, Kirkpatrick & Lockhart, 1800 M Street, NW., South Lobby, Suite 900, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Barbara Chretien-Dar, Staff Attorney, at (202) 272-3022, or Karen L. Skidmore, Branch Chief, at (202) 272-3023, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. The Trusts are registered investment companies sponsored by SFM, a registered investment adviser, which also serves as each Trust's Manager and Unitholder Servicing Agent. In this capacity, SFM receives a management fee from each Trust. Separate fees are paid by each Trust to independent investment advisers. Each Trust is authorized to issue an unlimited number of units of beneficial interest ("Shares") without par value, including Shares representing separate investment portfolios ("Portfolios") and multiple classes of Shares regarding each Portfolio.

2. All Shares are offered only to institutional investors for the investment of their own funds or funds for which the institutions are nominal but not beneficial owners of the investment. Typically, they would be acting in a fiduciary, agency or custodial capacity. A fiduciary account is generally one in which an institutional investor has discretionary investment authority. An agency account is generally one in which the institutional investor is investing upon the instruction of another party because the institution does not possess investment discretion. A custodial account is generally one in which the primary role of the institutional investor is custodian of assets. However, under limited circumstances involving independent investment management services provided by SFM, some officers, trustees and employees of Applicants can purchase directly Trust shares. Applicants anticipate that the aggregate investments by all such officers, trustees and employees will constitute substantially less than one percent of the total assets of such class or Portfolio.

3. Shares of each Portfolio are sold at net asset value without a sales or redemption charge by SFS, a registered broker-dealer and an affiliate of SFM, which serves as the principal distributor of each Trust. The net investment income of each Portfolio which is a money market fund is declared daily and paid on the first business day of each month. The net investment income of each Portfolio which is not a money market fund is declared daily or monthly and paid monthly.

4. Applicants propose to establish a second class of Shares ("Class B") within some or all Trust Portfolios in order to broaden their range of products and services, and to expand marketing alternatives. The Class B Shares would be sold to institutional investors who

invest on behalf of customer accounts and to whom they provide distribution-related services. The two proposed classes would differ in (i) the amount and type of fees under differing Rule 12b–1 plans and related distribution agreements, (ii) the voting rights with respect to the Rule 12b–1 plan of each class and (iii) the dividend payments resulting from the differing Rule 12b–1 fees. Both classes would represent interests in the same Portfolio, and the investment objectives, policies and limits, and all other rights and fees (including advisory and management fees and related expense caps) will be identicial for each class of each particular Portfolio.

5. The currently outstanding class of Shares of each Trust will be designated Class A Shares. Class A shareholders will continue to be subject to the Rule 12b–1 distribution plans and distribution agreements which are currently in effect for each Trust. The 12b–1 plans and agreements adopted by each Trust provide that the Trust will bear the cost of its distribution expenses as provided in a budget approved annually and reviewed quarterly by the Board of Trustees. The expenses which are subject to reimbursement are limited to (i) the cost of preparing, producing and delivering prospectuses, shareholder reports, sales literature and other materials for distribution to poential shareholders, (ii) the costs of complying with state and federal securities laws pertaining to the distribution of Shares, (iii) advertising, and (iv) expenses incurred in connection with the promotion and sale of the Shares, including SFS's expenses for travel, communication, compensation and benefits of sales personnel. Each Class A Rule 12b–1 distribution plan limits the annual distribution budget and expenditures under the budget to .30% of the Trust's average daily net assets, except for the SEI Index Funds' plan which establishes a limit of .05% of the Trust's average daily net assets.

6. Class B Shares will be identical to Class A Shares, except that each Trust's Class B shareholders will be asked to adopt a modified Rule 12b–1 plan and distribution agreement. Such modified plan and agreement would have identical terms as the Rule 12b–1 plans for Class A, except that the Class B plan and agreement would require Class B Shares to pay SFS an additional distribution fee equal to .30% of the average daily net assets of the Trust's Class B Shares. SFS would be authorized to pay part or all of its fees derived from these payments to Class B institutional shareholders which provide distribution-related administrative services to customer accounts on whose behalf these shareholders have purchased Shares ("Service Payments"). These services will be provided pursuant to agreements between SFS and certain shareholders ("Servicing Agreements"), and will include such services as: establishing and maintaining customer accounts and records, aggregating and processing purchase and redemption requests from customers, placing net purchase and redemption orders with SFS, automatically investing customer account cash balances, providing periodic statements to their customers, arranging for bank wires, answering routine customer inquiries concerning their investments in the Shares, assisting customers in changing dividend options account designations and addresses, performing sub-accounting functions, processing dividend payments from the Trust on behalf of customers, and forwarding certain shareholders communications from the Trust (such as proxies, shareholder reports, and dividend, distribution and tax notices) to their customers. SFM will contine to provide these same types of services to Class A shareholders and to the Class B institutional shareholders. However, SFM will not directly provide such services to the beneficial owners of the Class B Shares where such owner is a party other than the institution. Rather, the institution which is the nominal shareholder pursuant to a Servicing Agreement will provide these services to the beneficial owners. No Service Payments will be made to institutions with respect to funds invested on the institution's own behalf.

7. The adoption and implementation of a Rule 12b–1 plan by a Trust for any of its Portfolios and classes will be independent of, and not conditioned upon, the adoption or implementation of a Rule 12b–1 plan by the Trust for any other Portfolio and class. In addition, no Trust will use the Rule 12b–1 plan fees charged to one class within a Portfolio to support the marketing of any other class of Shares within that Portfolio or any other Portfolio.

8. The dual class structure will enable each Portfolio to reflect more precisely the different distribution costs and related administrative expenses incurred in connection with different types of investors, while avoiding the risk and expense of creating separate Portfolios for each type of investor. Under the proposed arrangement, each Share in a particular Portfolio, regardless of class, would represent an equal pro rata interest in such Portfolio and would have identical voting, dividend, and liquidation rights, preferences, powers, restrictions, limitations, qualifications, designations, and terms and conditions, except for (i) Rule 12b–1 fees, (ii) voting rights related to each 12b–1 plan, and (iii) dividend differences resulting solely from the different Rule 12b–1 fees. In addition, each Share of a Portfolio will bear pro rata with every other Portfolio Share all Portfolio expenses not covered by the Rule 12b–1 plans, including fees of the manager, investment adviser, trustees, transfer agent, custodian, auditors, legal counsel, registration expenses, taxes and other operating expenses. The expense limits which apply to certain of these expenses will apply uniformly to all classes of a Portfolio.

9. The Rule 12b–1 fees reflect different distribution and related administrative costs of making sales to and servicing the accounts of different types of investors. For instance, the sale of Class A Shares with their lower Rule 12b–1 fee would be more appropriate for institutional investors which invest for their own accounts or for a few very large fiduciary, agency or custodial accounts which do not cause the institution to incur substantial additional costs. In contrast, the Class B Shares might be more appropriate for institutional investors which (i) purchase Shares in their fiduciary, agency or custodial capacity and (ii) incur substantial additional costs by directly providing distribution and related administrative services to the many, but relatively small, accounts of beneficial investors it represents. These institutions can economically service such accounts only through the receipt of the Service Payments provided by Class B Shares. At the same time, the proposed class structure does not compel Class A shareholders to bear the higher costs which would be incurred by the Trust if SFM and SFS directly performed such services for the beneficial investors.

10. The distribution expenses of a particular class will be borne solely by that class. Charges under a Rule 12b–1 plan of a particular class will be deducted from the net income of that class only, and dividends payable to the holders of Shares of that class thus will reflect the distribution expenses paid pursuant to the Rule 12b–1 plan adopted by that class. Accordingly, the dividends distributed to shareholders of one class may differ from the dividends distributed to shareholders of the other class within the same Portfolio as a result of varying allocations of distribution expenses under the

respective Rule 12b–1 plans. The methodology and procedures used to calculate the net asset value of every class of a Portfolio shall be identical. In addition, Applicants shall disclose in each applicable prospectus that, although the methodology and procedures are identical, the net asset value of classes within a Portfolio may differ because of the different Rule 12b–1 fees charged to each class.

Applicants' Legal Conclusions

1. Applicants request an exemptive order under section 6(c) to permit the creation of the proposed classes and the issuance and sale of Shares representing interests in each of Applicants' Portfolios to the extent that such issuance and sale might be deemed to (i) result in a "senior security" within the meaning of section 18(g) of the 1940 Act and to be prohibited by section 18(f)(1), and (ii) violate the equal voting provisions of section 18(i).

2. The creation of two classes does not present the concerns which section 18 was designed to address. The proposed arrangement does not involve borrowings, affect any Trust's existing assets or reserves, or increase the speculative character of any Shares in a Portfolio. The proposed capital structure will not induce any group of shareholders to invest in risky securities to the detriment of any other group of shareholders because the investment risks of each Portfolio will be borne equally by all of its shareholders.

3. Mutuality of risk will be preserved with respect to all Shares in a Portfolio because (i) and Shares of each Portfolio will be redeemable at any time, and (ii) no class of Shares will have any distribution or liquidation preferences with respect to particular assets and no class will be protected by any special reserve or other account.

4. Insiders will not be able to manipulate expenses and profits among the classes of Shares because no Trust or Portfolio is organized in a pyramid fashion, all the expenses and profits of a Portfolio will be borne pro rata by all Shares of the Portfolio, irrespective of a class, and all classes will have equal voting rights with other classes within the same Portfolio, except for the allocation of distribution expenses and voting rights under separate Rule 12b–1 plans adopted by the respective classes. The danger that a complex capital structure may shift control to those without equity or other investment is not present.

5. Finally, the proposed arrangement raises no valuation concerns because all classes of a Portfolio have pro rata interests in the same pool of assets. Moreover, Applicants will implement appropriate steps to ensure that the respective yields to shareholders of each class of Shares are fairly disclosed in the relevant Portfolio's prospectus and shareholder reports.

6. The proposed arrangement would permit each Trust to facilitate the distribution of its securities and expand the scope and depth of its administrative services without assuming excessive organizational, legal, administrative, accounting and bookkeeping costs or unnecessary investment risks. Further, each Trust could compensate institutional shareholders for providing administrative services that are tailored to the needs of their customers. In turn, such customers would enjoy not only the benefits of the services so provided, but also the additional investment safety and stability anticipated from the opportuity to invest in established, low-cost, diversified portfolios.

7. The dual class structure will permit each Trust to save the organizational and other continuing costs that would be incurred if each Trust were required to establish a separate Portfolio for each class of Shares. Moreover, each Trust's beneficial owners, irrespective of class, may benefit to the extent that (i) the pro rata operating expenses per Share are lower than they would be otherwise, due to economies of scale and spreading fixed costs over a larger asset base, and (ii) the larger pool of assets in each Portfolio better enables the investment adviser to achieve investment objectives, including Portfolio diversification.

8. The proposed allocation to a class of Shares of expenses and voting rights relating only to its particular Rule 12b–1 plan in the manner described in equitable and would not discriminate against any group of shareholders. Investors purchasing Shares in a particular class and receiving the service provided under the Rule 12b–1 plan adopted by that class would bear the costs associated with those services, but would also enjoy exclusive shareholder voting rights with respect to matters affecting such plan.

Conditions on Relief

If the requested relief is granted, Applicants agree to the following conditions:

Class Differences

1. Each class of Shares will represent interests in the same Portfolio of investments of a Portfolio and will be identical in all respects, except for certain differences related to (i) the method of financing Distribution Expenses, including Service Payments and other Rule 12b–1 fees, and (ii) the related voting, dividend payment and class designation differences. Any additional incremental expenses other than Rule 12b–1 fees which are subsequently identified and should be properly allocated to one class of Shares shall not be so allocated until approved by the SEC pursuant to an amended order.

Trust Approval of Service Plans

2. Each Rule 12b–1 plan will (i) conform with Rule 12b–1, (ii) be approved and reviewed by the Board of Trustees of the applicable Trust and (iii) be approved by that Trust's applicable shareholders, each in accordance with the procedures and standards set forth in Rule 12b–1 as that rule is currently in effect and in accordance with any future modifications to that rule.

3. Each Servicing Agreement (including any related agreements) will be approved annually by the Board of Trustees of the applicable Trust, including a majority of the independent Trustees, only after a thorough examination of all relevant facts. In evaluating the Servicing Agreements, the Trustees will specifically consider whether (i) the Servicing Agreements are in the best interest of each Portfolio's classes and their respective shareholders, (ii) the services to be performed thereunder are required for the operations of the Portfolios, (iii) the service provider can provide services at least equal, in nature and quality, to those provided by others, including the Trusts, offering the same or similar services, and (iv) the fees for such services are fair and reasonable in light of the usual and customary charges made by other entities, especially non-affiliated entities, for services of the same nature and quality. In addition, the Trustees who vote to approve will do so, exercising reasonable business judgment and in light of their fiduciary duties under state law and under Sections 36(a) and (b) of the 1940 Act. The minutes of the meetings of the Trustees of each Trust regarding such deliberations and approvals shall describe the factors considered and the basis for the decisions. The minutes will be available for inspection by the SEC staff and any Servicing Agreements will be preserved for a period of not less than six years from the date of such plan, the first two years in an easily accessible place.

4. The Board of Trustees of the Trusts will receive quarterly and annual statements of the amounts received and expended under the Servicing

Agreements and the purposes for which such expenditures were made. In the statements, only service expenditures properly attributable to the servicing of a particular class of Shares will be used to justify the Servicing Agreement fees. No Servicing Agreement will be operated in such a manner as to cause payments thereunder to subsidize the servicing of the Shares of any class of the same Portfolio.

Class Conflicts

5. Dividends paid by each Trust with respect to a class of Shares of a Portfolio will be calculated in the same manner, at the same time, on the same day, and will be in the same amount as dividends paid by the Trust with respect to each other class of shares in the same Portfolio, except that distribution fee payments made by a class under its Rule 12b–1 Plan and any related Service Payments made by a class under Service Agreements will be borne exclusively by that class.

6. On an ongoing basis, the Trustees of the Trusts, pursuant to their fiduciary responsibilities under the 1940 Act and otherwise, will monitor each Portfolio for the existence of any material conflicts among the interests of the various classes of Shares. The Trustees, including a majority of the independent Trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. Applicants agree to take the actions necessary to ensure that the investment advisers, distributors, and service providers will be responsible for reporting any potential or existing ocnflicts to the Trustees. If a conflict arises, SFM or SFS, at their own cost, will remedy such conflict by appropriate actions including, if necessary, establishing new and separate registered management investment companies or portfolios.

7. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Trustees of the Trust with respect to the multi-class system will be set forth in guidelines to be furnished to the Trustees.

8. Trustees of the Trusts will be entitled to directly purchase Shares of any Portfolio after implementation of the two class distribution system only if the purchased Shares will be equally divided among the various classes, provided, however, that the actual holdings of the various classes of Shares may differ to a minor degree if a Trustees elects to have dividends reinvested. In this connection, purchases of Class B Shares need not be divided among all service providers, but may be limited to only one such provider chosen on a random basis.

9. Any Servicing Agreement between SFS and an institution shall provide that in the event an issue pertaining to the Rule 12b–1 plan is submitted for shareholder approval, the institution shall vote any Shares held for its own account in the same proportion as the vote of those Shares held for its customers' benefit.

Disclosure

10. Each Trust will clearly disclose the difference in the respective yields of the different classes of Shares of a Portfolio in the prospectus, shareholder reports and any advertising materials, including newspaper advertisements. For instance, the supplementary financial information, including the per share table in each prospectus and the balance sheet in each prospectus or statement of additional information, will be separately presented for the different classes. Similarly, the information provided by Applicants to any newspaper or similar listing of the Trusts' net asset values and public offering prices will separately present the different classes of Shares.

11. Each prospectus relating to a class of Shares that is offered in connection with a Rule 12b–1 plan will describe the distinct expenses with respect to each class of Shares and the related services provided to that class, including any expenses and related services provided under any Servicing Agreement. In addition, each Servicing Agreement entered into by SFS pursuant to a Rule 12b–1 plan will contain a representation by the institutional investor involved that any compensation payable to the institution in connection with the investment of its customers' assets in a Portfolio (i) will be disclosed by it to its customers, (ii) will be authorized by its customers, and (iii) will not result in an excessive fee to the institution.

12. If salespeople or other people become entitled to receive a portion of a distribution or servicing fee which differs based upon the class of Shares so purchased, the applicable prospectuses will include a statement to this effect.

Calculation of New Asset Value/ Allocation of Expenses and Retention of an Outside Expert

13. The methodology and procedures for calculating the net asset value and divided distribution of the various classes and the proper allocation of expenses among the classes has been reviewed by an expert (the "Expert") who has rendered a report to the Applicants, which has been provided to the staff of the SEC, that such methodology and procedures are adequate to ensure that such calculations and allocations would be made in an appropriate manner. On an on-going basis, the Expert, or an appropriate substitute Expert, would monitor the manner in which the calculations and allocations are being made and, based upon such review, would render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the Expert would be filed as part of the periodic reports filed with the SEC pursuant to Sections 30(a) and 30(b)(1) of the 1940 Act and the work papers of the Expert with respect to such reports, following requests by the Trusts which the Trusts agree to provide, will be available for inspection by the SEC staff upon written request by a senior member of the Division of Investment Management or a Regional Officer of the SEC. Authorized staff members would be limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrator or Assistant Regional Administrator. The initial report of the Expert is a "Special Purpose" report on the "Design of a System" and on-going reports would "Special Purpose" reports on the "Design of a System and Certain Compliance Tests" as defined and described in Statement of Auditing Standards No. 44 of the American Institute of Certified Public Accountants ("AICPA"), as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

14. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividend/distributions of the various classes of Shares and the proper allocation of expenses among the classes of Shares and this representation has been concurred with by the Expert in the initial report referred to in condition 11 above and would be concurred with by the Expert or an appropriate substitute Expert on an on-going basis at least annually in the on-going reports referred to in that condition. Applicants agree to take immediate corrective action if the Expert, or appropriate substitute Expert, does not so concur in the on-going reports.

Rule 12b–1 Payments

15. Applicants acknowledge that the grant of the requested exemptive order does not imply SEC approval,

authorization of or acquiescence in any particular level of payments that Applicants may make to institutions pursuant to any plan in reliance on this exemptive order.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-22824 Filed 9-26-89; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Areas #2378 & #2379]

Arizona, With a Contiguous County in the State of California; Declaration of Disaster Loan Area

Yuma County and the contiguous counties of La Paz, Maricopa, and Pima, in the State of Arizona, and Imperial County in the State of California, constitute a disaster area as a result of damages from heavy rainfall, high winds, and flooding which occurred July 27–August 9, 1989. Applications for loans for physical damage may be filed until the close of business on November 16, 1989 and for economic injury until the close of business on June 15, 1990 at the address listed below:

Disaster Area 4 Office, Small Business Administration, P.O. Box 13795, Sacramento, CA 95825

or other locally announced locations.

The interest rates are:

Homeowners with credit available elsewhere, 8.000 %;

Homeowners without credit available elsewhere, 4.000 %;

Businesses with credit available elsewhere, 8.000 %;

Businesses and non-profit organizations without credit available elsewhere, 4.000 %;

Businesses and non-profit organizations (EIDL) without credit available elsewhere, 4.000 %;

Others (including non-profit organizations) with credit available elsewhere, 9.125 %.

The numbers assigned to this disaster for the State of Arizona are 237806 for physical damage and 683800 for economic injury. For California the numbers are 237906 for physical damage and 683900 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 15, 1989.

Katherine Bulow,

Acting Administrator.

[FR Doc. 89-22786 Filed 9-26-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2380]

Indiana; Declaration of Disaster Loan Area

Madison County and the contiguous counties of Delaware, Grant, Hamilton, Hancock, Henry, and Tipton, in the State of Indiana, constitute a disaster area as a result of damages from heavy rainfall and flash flooding which occurred on September 1, 1989. Applications for loans for physical damage may be filed until the close of business on November 16, 1989 and for economic injury until the close of business on June 15, 1990 at the address listed below:

Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Fl., Atlanta, Georgia 30308

or other locally announced locations.

The interest rates are:

Homeowners with credit available elsewhere, 8.000%;

Homeowners without credit available elsewhere, 4.000%;

Businesses with credit available elsewhere, 8.000%;

Businesses and non-profit organizations without credit available elsewhere, 4.000%;

Businesses and non-profit organizations (EIDL) without credit available elsewhere, 4.000%;

Others (including non-profit organizations) with credit available elsewhere, 9.125%.

The number assigned to this disaster for physical damage is 238006 and for economic injury the number is 684000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: September 15, 1989.

Katherine Bulow,

Acting Administrator.

[FR Doc. 89-22787 Filed 9-26-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2368; Amdt 2]

Louisiana; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with Notices of Amendment to the President's declaration, dated July 28 and August 23, 1989, to include Sabine Parish, in the State of Louisiana, as a result of damages from Tropical Storm Allison, and to establish the incident period of June 25 through July 21, 1989.

In addition, applications for economic injury from small businesses located in the contiguous county of Shelby, in the State of Texas, may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary county and not listed herein have previously been named as contiguous or primary counties for the same occurrence.

As the termination date for filing applications for physical damage will close on September 16, 1989, the deadline is hereby extended for an additional 30 days to October 16, 1989 for Sabine Parish and the contiguous county of Shelby. The termination date for filing applications for economic injury remains the close of business on April 18, 1990.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: September 12, 1989.

Alfred E. Judd,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89-22788 Filed 9-26-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2353; Amdt 8]

Texas; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with the Notice of Amendment to the President's declaration, dated August 31, 1989, to include Donley County, in the State of Texas, as a result of damages from severe storms, tornadoes, and flooding which occurred May 4 through June 15, 1989.

In addition, applications for economic injury from small businesses located in the contiguous county of Wheeler, Texas, may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary county and not listed herein have previously been named as contiguous or primary counties for the same occurrence.

As the termination date for filing applications for physical damage closed on July 18, 1989, prior to the Notice of Amendment cited above, the termination date for filing applications for physical damage is extended to October 13, 1989, 30 days from the date of this action. The termination date for filing applications for economic injury remains the close of business on February 20, 1990.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: September 13, 1989.

Alfred E. Judd,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89-22789 Filed 9-26-89; 8:45 am]

BILLING CODE 8025-01-M

Region VIII Advisory Council Meeting

The Small Business Administration Region VIII Advisory council, located in the geographical area of Helena, Montana, will hold a public meeting at 9 a.m. on Friday, October 13, in the board room of Northwest Bank, 21 3rd St. N., Great Falls, MT, to discuss such matters as may be presented by members, staff of the U.S. Business Administration, or others present.

For further information, write or call John R. Cronholm, District Director, U.S. Small Business Administration, Federal Office Building, 301 South Park, Drawer 10054, Helena, Montana 59626-0054—(406) 449-5381.

Dated: September 21, 1989.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 80-22782 Filed 9-26-89; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 05/05-5213]

Milestone Growth Fund, Inc.; Application for a Small Business Investment Company License

An application for a license to operate as a small business investment company under provisions of section 301(d) of the Small Business Investment Act of 1958, as amended, (15 U.S.C. 661 et seq. (1989)) (the Act) has been filed by Milestone Growth Fund, Inc., 2021 East Hennepin Avenue, Minneapolis, MN 55413 with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1989).

The officers, directors, and stockholder of the Applicant are as follows:

Name	Title or relationship	Percent of ownership
Esperanza Guerrero, 2018 Ordway Street, Golden Valley, MN 55422.	President & CEO, Treasurer, & CFO; Director.	
John Stout, 210 West Grant, Minneapolis, MN 55403.	Chairman, Secretary; Director.	
Jack Ahrens, 7101 Ticonderoga Trail, Eden Prairie, MN 55346.	Director	
Ray Allen, 1846 Sargent Ave., St. Paul, MN 55105.	Director	
Walter Faster, 4717 Maple Hill Drive, Excelsior, MN 55331.	Director	
Roxanne Givens, 5701 Clinton Ave., So. Minneapolis, MN 55419.	Director	
Dan Haggerty, 6804 Sally Lane, Edina, MN 55435.	Director	
James Hearon, III, 6204 Loch Moor Drive, Edina, MN 55435.	Director	
Peter Lefferts, 7719 Shaughnessy Road, Edina, MN 55435.	Director	
Jerry Levin, 4260 Chimo East, Deephaven, MN 55343.	Director	
Timothy Stepanek, 5121 Minneapolis Avenue, Mound, MN 55364.	Director	
James Thomas, 1401 Oakwood Drive, Anoka, MN 55303.	Director	
Howard Weiner, 5224 Schaefer Road, Edina, MN 55436.	Director	
Richard Worthing, 2323 Newton Ave., So., Minneapolis, MN 55405.	Director	
Metropolitan Economic Development Association, 2021 East Hennepin Ave., Minneapolis, MN 55413.		100

The Applicant, a Minnesota Corporation, will begin operations with $1,200,000 paid-in capital and paid-in surplus. The Applicant will conduct its activities primarily in the State of Minnesota, but will consider investments in businesses in other areas in the United States.

The Applicant's sole stockholder is Metropolitan Economic Development Association (MEDA) a non-profit organization organized under laws of Minnesota in 1971. The following corporations have a ten percent, or more, economic interest in MEDA:

Company

3M Company, Building 521-11-01, 3M Center, St. Paul, MN 55144-1000.

U.S. West Communications, 200 South Fifth Street, Minneapolis, MN 55402.

General Mills, P.O. Box 1113, Minneapolis, MN 55440.

Northwest Area Foundation, W-975 First National Bank Bldg., St. Paul, MN 55101.

As an SBIC under section 301(d) of the Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Small Business Investment Act of 1958, as amended, from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantage.

Matters involved in SBA's consideration of the Application include the general business reputation and character of the proposed owner and management, and the probability of successful operations 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 Application. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" St., NW., Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in the Minneapolis area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: September 15, 1989.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 89-22785 Filed 9-26-89; 8:45 am]

BILLING CODE 8025-01-M

[Application Number: 09/09-0387]

Sundance Venture Partners, L. P.; Application for a Small Business Investment Company License

An application for a license to operate a small business investment company

under the provisions of section 301(c) of the Small Business Investment Act of 1958, as amended (the Act) (15 U.S.C. 661, *et seq.*) has been filed by Sundance Venture Partners, L. P., 3000 Sand Hill Road, Building 4, Suite 130, Menlo Park, California 94025 (Applicant), with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1989).

The Management and Ownership of the Applicant, a Limited Partnership are as follows:

Name	Title or relationship	Percent of equity owned
Sundance Management Co., 3000 Sand Hill Road, Bldg. 4, Suite 130, Menlo Park, CA 94025.	General Partner	1.00
Larry J. Wells, 12791 Ione Court, Saratoga, CA 90570.	General Partner, General Manager, & President.	0
Gregory S. Anderson, 3535 E. Hazelwood St., Phoenix, Arizona 85018.	General Partner, Vice President & Branch Manager.	0
Sundance Capital Corp., 2828 N. Cental Avenue, Suite 2828, Phoenix, Arizona 85004.	Limited Partner	99.00

Sundance Capital Corporation is 99 percent owned by El Dorado Investments, which, in turn, is a wholly-owned subsidiary of Pinnacle West Capital Corporation (Pinnacle West). Pinnacle West is listed on the New York Stock Exchange, and has no shareholders who own 10 percent or more of its stock.

In addition, the Applicant will establish a branch office at 2828 N. Central Avenue, Suite 1275, Phoenix, Arizona 85004.

The Applicant, a Delaware limited partnership, will begin operations with $2,500,000 in partnership capital. The Applicant will conduct its activities principally within the States of Arizona and California.

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 Phoenix, Arizona and Menlo Park, California.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: September 18, 1989.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 89-22784 Filed 9-26-89;8:45 am]

BILLING CODE 8075-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

Commercial Fishing Industry Vessel Advisory Committee; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-403; U.S.C. App I) notice is hereby given of a meeting of the Commercial Fishing Industry Vessel Advisory Committee and its subcommittees on October 22, 23 and 24, 1989. The meeting will begin at 8:30 a.m. on October 22, 1989, at the Radisson Hotel Seattle Airport, 17001 Pacific Highway South, Seattle, Washington. The agenda is as follows:

—Call to order and opening remarks.
—Discussion of casualty data collection and third party organizations.
—Discussion of accepting third party certification for compliance with stability requirements.
—Discussion of enforcement approaches.
—Meeting of Subcommittees:
  A. General Regulation Review and Assessment
  B. Safety Equipment Regulation Review and Assessment
  C. Crew Qualifications, Education and Training
—Discussion of training schools and programs for fishermen
—Subcommittee reports and recommendations
—Other business.
—Future meeting dates and agendas.
—Adjournment.

The meeting is open to the public.

Members of the public may present written or oral statements at the meeting.

FOR FURTHER INFORMATION CONTACT: Mr. Norman W. Lemley, Executive Director, Commercial Fishing Industry Advisory Committee; Marine Technical and Hazardous Materials Division (G-MTH), Room 1218, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001; or telephone (202) 267-0001.

Dated: September 21, 1989.

J. D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89-22750 Filed 9-26-89; 8:45 am]

BILLING CODE 4910-14-M

Federal Highway Administration

Environmental Impact Statement; City of Fresno, Fresno County CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Fresno County, California.

FOR FURTHER INFORMATION CONTACT: Mr. John R. Schultz, District Engineer, Federal Highway Administration, P.O. Box 1915, Sacramento, California, 95812-1915, Telephone (916) 551-1307.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation, (CALTRANS) will prepare an environmental impact statement (EIS) on a proposal to improve Route 41 from Elkhorn Avenue to North Avenue (post mile R6.1 to R20.1) south of the City of Fresno.

Route 41 is a Principal Arterial that carries intra and interstate traffic between the central coastal areas and Yosemite National Park. Portions of this route are considered a recreational route. Within the Fresno Urbanized Area, Route 41 as a high volume urban Principal Arterial serving locally generated traffic and is an integral part of the adopted freeway network. The route serves agricultural farm to market and residential to farm traffic. It also serves as a major north-south cooridor for travel through Fresno.

The proposed project is needed to provide continuity from existing two-lane expressway south of Elkhorn Avenue to the proposed freeway on new alignment north of North Avenue.

The proposed project consists of construction of an expressway/freeway facility on proposed Route 41 between Elkhorn Avenue and North Avenue in Fresno County. The alignment is located approximately ¼ mile east of existing Route 41. CALTRANS adopted the proposed project alignment in 1961.

Engineering and environmental studies will also investigate the following four alternatives to the proposed project. Alternatives may be added or modified during the analysis and development of the project.

1. Widen existing Route 41 from Elkhorn Avenue to Easton and construct an expressway/freeway facility ¼ mile east of Route 41 from Easton to North Avenue on adopted alignment.

2. Rehabilitate and widen existing Route 41 to provided a 2 lane facility with 12 foot lanes and 8 foot shoulders.

3. Widen existing Route 41 to a 4 lane highway.

4. No project.

A scoping meeting will be held on Thursday, October 12, 1989 at 9:00 a.m. in the CALTRANS Training Room, 4491 West Shaw Avenue Fresno, California. Agency representatives will be given an opportunity to ask questions about the project and provide input to the environmental scoping process. The public participation process will include additional open houses and at least one public hearing.

To ensure that the full range of issues related to this propose action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. If you have an information regarding historic resources, endangered species, or other sensitive issues that could be affected by this project, please notify this office. Also, please indicate if you would be interested in being notified at completion of historic resource studies.

Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

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

Issued on: September 20, 1989.

John R. Schultz,

District Engineer, Sacramento, California.

[FR Doc. 89-22811 Filed 9-26-89; 8:45 am]

BILLING CODE 4910-22-M

Research and Special Programs Administration

[Docket No. IRA-49]

State of Louisiana Application for Inconsistency Ruling

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Public Notice and Invitation to Comment.

SUMMARY: The State of Louisiana's Department of Public Safety and Corrections has applied for an administrative ruling determining whether certain of its statutes and regulations concerning carrier and shipper transportation of hazardous materials are inconsistent with the Hazardous Materials Transportation Act (HMTA) and the Hazardous Materials Regulations (MHR) issued thereunder and, therefore, are preempted under Section 112(a) of the HMTA. Although the State requested a ruling solely with respect to rail transportation, RSPA is expanding the proceeding to include the issue of whether those statutes and regulations are consistent with respect to carriers and shippers in all modes of transportation.

DATES: Comments received on or before November 24, 1989, and rebuttal comments received on or before December 26, 1989, will be considered before an administrative ruling is issued by the Director of the Office of Hazarous Materials Transportation (OHMT). Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

ADDRESSES: The application and any comment received may be reviewed in the Dockets Unit, Research and Special Programs Administration, Room 8419, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Comments and rebuttal comments on the application may be submitted to the Dockets Unit at the above address, and should include the Docket Number (IRA-49). Three copies are requested. A copy of each comment and rebuttal comment must also be sent to Howard P. Elliott, Jr., Esq., Chief Counsel, State of Louisiana, Department of Public Safety and Corrections, P.O. Box 66614, Baton Rouge, LA 70896 and to Dennis J. Hauge, Esq., Breazeale, Sachse & Wilson, Counsel for Illinois Central Railroad, P.O. Box 3197, Baton Rouge, LA 70821. A certification that a copy has been sent to each person must also be included with the comment. (The following format is suggested: "I hereby certify that copies of this comment have been sent to Mr. Elliott and Mr. Hauge at the addresses specified in the Federal Register.")

FOR FURTHER INFORMATION CONTACT: Mr. Edward H. Bonekemper, III, Senior Attorney, Office of the Chief Counsel, Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590, telephone number 202-355-4400.

SUPPLEMENTARY INFORMATION:

1. Background

The HMTA (40 App. U.S.C. 1801-1811), at section 112(a) (49 App. U.S.C. 1811(a)) expressly preempts "any requirement, of a State or political subdivision, thereof, which is inconsistent with any requirement" of the HMTA or the HMR issued thereunder.

Procedural regulations implementing section 112(a) of the HMTA and providing for the issuance of inconsistency rulings are codifed at 49 CFR 107.201 through 107.211. An inconsistency ruling is an advisory administrative opinion as to the relationship between a state or political subdivision requirement and a requirement of the HMTA or HMR. Section 107.209(c) sets forth the following factors which are considered in determining whether a state or local requirement is inconsistent:

(1) Whether compliance with both the state or local requirement and the HMTA or HMR is possible (the "dual compliance" test); and

(2) The extent to which the state or local requirement is an obstacle to the accomplishment and execution of the HMTA and the HMR (the "obstacle" test).

Inconsistency rulings do not address the issues of preemption under the Commerce Clause of the Constitution or under statutes other than the HMTA.

In issuing its advisory inconsistency rulings concerning preemption under the HMTA, OHMT is guided by the principles enunciated in Executive Order No. 12,612 entitled "Federalism" (52 FR 41,685, Oct. 30, 1987). Section 4(a) of that Executive Order authorizes preemption of state laws only when the statute contains an express preemption provision, there is other firm and palpable evidence of Congressional intent to preempt, or the exercise of state authority directly conflicts with the exercise of Federal authority. The HMTA, of course, contains an express preemption provision, which OHMT has implemented through regulations and

interpreted in a long series of inconsistency rulings beginnng in 1978.

2. The Application for Inconsistency Ruling

On September 18, 1989, the State of Louisiana, Department of Public Safety and Corrections, through its Chief Counsel, applied for an inconsistency ruling concerning certain of its statutes and regulations as they pertain to rail carrier and shipper transportation of hazardous materials.

In order to facilitate consideration of all relevant issues, this proceeding is being expanded to include the issue of whether those Louisiana statutes and regulations are consistent with respect to carriers and shippers in all modes of transportation.

In Louisiana Revised Statutes 32:1501–1520 and Louisiana Regulations, title 33, part V, 10501–10505 and 10901–10905, Louisiana adopted with modification the provisions of 49 CFR Parts 171–179, as they pertain to carriers and shippers of hazardous materials. Louisiana says that in enforcing these provisions, its Office of State Police, Transportation and Environmental Safety Section cited Illinois Central Railroad Company for violations and assessed a civil penalty after an administrative hearing. The application states that Illinois Central Railroad has appealed the imposition of the civil penalty to the Nineteenth Judicial District Court, Parish of East Baton Rouge, Louisiana, claiming that Louisiana's Office of State Police and/or Department of Public Safety "are without authority to assess civil penalties in that these matters have been preempted by Federal Statutes and Regulations."

In its application, Louisiana maintains that its statutes and regulations, as they apply to rail carriers and shippers of hazardous materials in Louisiana, are consistent with the HMTA and Parts 171–179 of the HMR because they were adopted in toto, without modification. The application further states that the statutes and regulations "afford an equal level of protection to the public" as that afforded by the HMTA and the HMR and "do not unreasonably burden commerce."

Louisiana states that in enforcing these provisions it "has conformed to the civil penalties limitations" of the HMTA. Louisiana also contends that the regulatory scheme of the HMTA "obviously envisions state participation in the enforcement of regulations and penalties for violations." The application further states that the number of Federal Railroad Administration inspectors in the Louisiana area makes it "physically impossible for the rail transportation of hazardous materials to be adequately policed by the Federal government alone."

Therefore, Louisiana requests a ruling that its statutes and regulations insofar as they pertain to rail carriers and shippers of hazardous materials and the State's authority to administer these regulations are consistent with the HMR and, thus, are not preempted by section 112(a) of the HMTA. However, the above-cited Louisiana statutes and regulations apply to all modes of transportation; therefore, RSPA is expanding this proceeding to include the issue of whether Louisiana's statutes and regulations as they pertain to carriers and shippers in all modes of transportation are consistent with the HMTA and the HMR.

3. Public Comment

Comments should be limited to the issue of whether the cited Louisiana statutes and regulations are consistent or inconsistent with the HMTA and the HMR. Comments should specifically address the "dual compliance" and "obstacle" tests described in the "Background" section.

Persons intending to comment on the application should examine the complete application in the RSPA Dockets Unit, and the procedures governing the Department's consideration of applications for inconsistency rulings found at 49 CFR 107.201–107.211. Copies of Louisiana Revised Statutes 32:1501–1520 and Louisiana Regulations, title 33, part V, sections 10501–10505 and 10901–10905 will also be available from the Dockets Unit.

Issued in Washington, DC, on September 21, 1989.

Elaine Joost,

Acting Director, Office of Hazardous Materials Transportation.

[FR Doc. 89–22836 Filed 9–26–89; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: September 22, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: 706GS (D–1)
Type of Review: New Collection
Title: Notification of Distribution From a Generation-Skipping Trust
Description: Form 706GS (D–1) is used by trustees to notify the IRS and distributees of information needed by distributees to compute the Federal GST tax imposed by Internal Revenue Code section 2601. IRS uses the information to enforce this tax and to verify that the tax has been properly computed.
Respondents: Individuals or households
Estimated Number of Respondents: 80,000
Estimated Burden Hours Per Response/ Recordkeeping:
Recordkeeping, 1 hour, 33 minutes
Learning about the law or the form, 1 hour, 38 minutes
Preparing the form, 40 minutes
Copying, assembling, and sending the form to IRS, 20 minutes
Frequency of Response: Annually
Estimated Total Recordkeeping/ Reporting Burden: 1,006,000 hours

OMB Number: New
Form Number: 706GS (D) and Schedule A
Type of Review: New Collection
Title: Generation-Skipping Transfer Tax Return for Distributions
Description: Form 706GS (D) is used by the distributees to compute and report the Federal GST tax imposed by Internal Revenue Code section 2601. ITS uses the information to enforce this tax and to verify that the tax has been properly computed.
Respondents: Individuals or households
Estimated Number of Respondents: 50,000
Estimated Burden Hours Per Response/ Recordkeeping:

	706GS (D) (minutes)	706GS (D) Schedule A (minutes)
Recordkeeping	7	7
Learning about the law or the form	6	5
Preparing the form	20	11
Copying, assembling, and sending the form to IRS	19	20

Frequency of Response: Annually

Estimated Total Recordkeeping/ Reporting Burden: 79,940 hours
OMB Number: New
Form Number: 706GS (T) and Schedules A and B
Type of Review: New Collection
Title: Generation-Skipping Transfer Tax Return for Terminations
Description: Form 706GS (T) is used by trustees to compute and report the Federal GST tax imposed by Internal Revenue Code section 2601. IRS uses the information to enforce this tax and to verify that the tax has been properly computed.
Respondents: Individuals or households
Estimated Number of Respondents: 30,000
Estimated Burden Hours Per Response/ Recordkeeping:

Form	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, assembling, and sending the form to IRS
706GS (T)	3 hrs., 6 mins.	1 hr., 37 mins.	1 hr., 16 mins.	20 mins.
Sched. A	1 hr., 2 mins.	1 hr., 23 mins.	1 hr., 3 mins.	20 mins.
Sched. B	1 hr., 2 mins.	25 mins.	32 mins.	20 mins.

Frequency of Response: Annually
Estimated Total Recordkeeping/ Reporting Burden: 557,400 hours
OMB Number: 1545–0014
Form Number: 637
Type of Review: Revision
Title: Application for Registration (Relating to Excise Tax)
Description: This form is used to apply for excise tax registration. The registration applies to refiners or producers of gasoline and to certain manufacturers or sellers and purchasers that must register to be exempt from the excise tax on taxable articles. The data is used to determine if the applicant qualifies for the exemption. Gasoline producers are required by section 4101 to register with the Service before incurring any tax liability.
Respondents: State or local governments, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations
Estimated Number of Respondents: 8,000
Estimated Burden Hours Per Response/ Recordkeeping:
Recordkeeping, 8 hours, 22 minutes
Learning about the law or the form, 18 minutes
Preparing and sending the form to IRS, 26 minutes
Frequency of Response: One-time only
Estimated Total Recordkeeping/ Reporting Burden: 72,960 hours
OMB Number: 1545–0090
Form Number: 1040SS and 1040PR
Type of Review: Revision
Title: U.S. Self-Employment Tax Return, and Planilla Para La Declaracion De La Contribucion Federal Sobre El Trabajo Por Cuenta Propia-Puerto Rico
Description: Forms 1040SS (Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands) and 1040PR (Puerto Rico) are used by self-employed individuals to figure and report self-employment tax under Internal Revenue Code chapter 2 of the subtitle A, and provide credit to the taxpayer's social security account.
Respondents: Individuals or households, Farms, Businesses or other for-profit
Estimated Number of Respondents: 49,766
Estimated Burden Hours Per Response/ Recordkeeping:

	1040SS	1040PR
Recordkeeping.	7 hrs., 19 mins.	6 hrs., 46 mins.
Learning about the law or the form.	25 mins.	38 mins.
Preparing the form.	2 hrs., 40 mins.	2 hrs., 28 mins.
Copying, assembling, and sending the form to IRS.	49 mins.	49 mins.

Frequency of Response: Annually
Estimated Total Recordkeeping/ Reporting Burden: 531,721 hours
OMB Number: 1545–0803
Form Number: 5074
Type of Review: Revision
Title: Allocation of Individual Income Tax to Guam or the Commonwealth of the Northern Mariana Islands (CNMI)
Description: Form 5074 is used by U.S. citizens or residents as an attachment to Form 1040 when they have $50,000 income from U.S. sources and $5,000 from Guam or Northern Mariana Islands. The data is used by IRS to allocate income tax due to Guam or NMI as required by 26 U.S.C. 7654.
Respondents: Individuals or household
Estimated Number of Respondents: 50
Estimated Burden Hours Per Response/ Recordkeeping:
Recordkeeping, 2 hrs., 57 mins.
Learning about the law or the form, 5 minutes
Preparing the form, 44 mins.
Copying, assembling, and sending the form to IRS 17 mins.
Frequency of Response: Annually
Estimated Total Recordkeeping/ Reporting Burden: 201 hours
OMB Number: 1545–1057
Form Number: 8800
Type of Review: Revision
Title: Application for Additional Extension of Time to File Return for a U.S. Partnership, REMIC, or for Certain Trusts
Description: Form 8800 is used by partnerships, REMICs, and by certain trusts to request an additional extension (of up to 3 months) of time to file Form 1065, Form 1041, or Form 1066. Form 8800 contains data needed by the IRS to determine whether or not a taxpayer qualifies for such an extension.
Respondents: Farms, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 20,000
Estimated Burden Hours Per Response: 13 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 4,210 hours
Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 89–22800 Filed 9–26–89; 8:45 am]
BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: September 22, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980. Pub. L. 96–511. Copies of the

submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0052
Form Number: 990–PF and 4720
Type of Review: Revision
Title: Return of Private Foundation or Section 4947(a)(1) Trust Treated as a Private Foundation; Return of Certain Excise Taxes on Charities and Other Persons Under Chapters 41 and 42 of the Internal Revenue Code
Description: Internal Revenue Code section 6033 requires all private foundations, including section 4947(a)(1) trusts treated as private foundations, to file an annual information return. Section 53.4940–1(a) of the Income Tax Regulations requires that the tax on net investment income be reported on the return filed under section 6033. Section 6011 requires a report of taxes under Chapter 42 of the Code for prohibited acts by private foundations and certain related parties. Section 4947(a) trusts may file Form 990–PF in lieu of Form 1041 under the provisions of sections 6033 and 6012.
Respondents: Businesses or other for-profit, Non-profit institutions
Estimated Number of Respondents: 43,067
Estimated Burden Hours Per Response/ Recordkeeping:

	990–PF	4720
Recordkeeping	130 hrs., 6 mins.	31 hrs., 5 mins.
Learning about the law or the form.	21 hrs., 25 mins.	15 hrs., 31 mins.
Preparing the form.	25 hrs., 25 mins.	22 hrs., 29 mins.
Copying, assembling, and sending the form to IRS.	16 mins.	1 hr., 37 mins.

Frequency of Response: Annually
Estimated Total Recordkeeping/ Reporting Burden: 8,215,674 hours
OMB Number: 1545–0409
Form Number: 211
Type of Review: Extension
Title: Application for Reward for Original Information
Description: Form 211 is the official claim form used by persons claiming rewards for submitting information concerning alleged violations of the tax laws by other persons. Such rewards are authorized by Internal Revenue Code section 7623. The data is used to determine and pay rewards.
Respondents: Individuals or households
Estimated Number of Respondents: 9,992
Estimated Burden Hours Per Response: 10 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 1,665 hours
OMB Number: 1545–0710
Form Number: 5500, 5500–C/R, Schedule B (Form 5500), and Schedule P (Form 5500)
Type of Review: Revision
Title: Annual Return/Report of Employee Benefit Plan, Return/Report of Employee Benefit Plan and Associated Schedules
Description: Forms listed in item 4 are annual information returns filed by employee benefit plans. The IRS uses this data to determine if the plan appears to be operating properly as required under the law or whether the plan should be audited.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 901,400
Estimated Burden Hours Per Response/ Recordkeeping:

Form	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, assembling, and sending the form to IRS
5500	87 hrs., 32 mins.	9 hrs., 3 mins.	13 hrs., 40 mins.	48 mins.
5500–C/R	54 hrs., 46 mins.	7 hrs., 11 mins.	10 hrs., 16 mins.	32 mins.
Sched. B	25 hrs., 21 mins.	53 mins.	1 hr., 42 mins.	—0—
Sched. P	2 hrs., 9 mins.	1 hr., 23 mins.	1 hr., 29 mins.	—0—

Frequency of Response: Annually
Estimated Total Recordkeeping/ Reporting Burden: 30,969,793 hours
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,
Department Reports Management Officer.
[FR Doc. 89–22801 Filed 9–26–89; 8:45 am]
BILLING CODE 4810–25–M

UNITED STATES INSTITUTE OF PEACE

Jennings Randolph Program for International Peace; Grants and Cooperative Agreements

AGENCY: United States Institute of Peace.

ACTION: Notice.

SUMMARY: The United States Institute of Peace announces the 1990–1991 cycle of its annual international competition for fellowships from the Jennings Randolph Program for International Peace. These fellowships enable professionals and scholars to undertake research and education projects that will increase knowledge and spread awareness on the part of the public and policymakers regarding the nature of violent international conflicts and the full range of ways to deal with them peacefully. Fellowships are awarded in three categories: Distinguished Fellow, Peace Fellow, and Peace Scholar. Copies of application and nomination forms are available upon request.

DATE: Applications must be postmarked by November 15, 1989 in order to be considered in the current review cycle.

ADDRESS: United States Institute of Peace; 1550 M Street NW., Suite 700FR, Washington, DC 20005–1708.

FOR FURTHER INFORMATION CONTACT: Jennings Randolph Program for International Peace at the address given above; telephone (202) 457–1706.

Dated: September 22, 1989.

Bernice Carney,
Administrative Officer.
[FR Doc. 89–22840 Filed 9–26–89; 8:45 am]
BILLING CODE 3155–01–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 186
Wednesday, September 27, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Change in Subject Matter of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 9:00 a.m. on Friday, September 22, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in open session to consider the following matters:

Memorandum and resolution re: Proposed amendments to the Corporation's rules and regulations, in the form of an interim rule, Part 312, entitled "Assessment of Fees Upon Entrance to or Exit from the Bank Insurance Fund or the Savings Association Insurance Fund," which interim rule prescribes the entrance fee that must be paid by insured depository institutions that participate in "conversion transactions" (transfers or switches between the two deposit insurance funds), pursuant to the provisions of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

Memorandum and resolution re: Reconstitution of standing committees.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director M. Danny Wall (Director of the Office of Thrift Supervision), concurred in by Chairman L. Williams Seidman that Corporation business required its consideration of the matters on less than seven days' notice to the public; and that no earlier notice of the meeting than that previously provided on September 19, 1989, was practicable.

The Board further determined, by the same majority vote, that Corporation business required the withdrawal from the the agenda for consideration at the meeting, on less than seven days' notice to the public, of the memorandum and resolution regarding reconstitution of standing committees; and that no earlier notice of this change in the subject matter of the meeting was practicable.

The meeting was held in the Board Room of the FDIC Building located at 550-17th Street, NW., Washington, DC.

Dated: September 22, 1989.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 89-22932 Filed 9-25-89; 12:51 am]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 9:47 a.m. on Friday, September 22, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the possible closing of an insured bank.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman and Director M. Danny Wall (Director of the Office of Thrift Supervision), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550-17th Street, NW., Washington, DC.

Dated: September 22, 1989.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 89-22933 Filed 9-25-89; 12:51 pm]

BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 12:00 Noon, Monday, October 2, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed 1990 Federal Reserve System personnel matters: (A) Reserve Bank Officer salary structure adjustments; and (B) Board officer and employee salary structure adjustments and merit programs.
2. Policy regarding annual leave program for officers.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. 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.

Date: September 25, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-22951 Filed 9-25-89; 3:25 pm]

BILLING CODE 6210-01-M

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 p.m., Wednesday, October 4, 1989.

PLACE: Board Hearing Room 8th Floor, 1425 K. Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the month of September, 1989.
2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Director's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Charles R. Barnes, Executive Director, Tel: (202) 523-5920.

Date of Notice: September 21, 1989.

Charles R. Barnes,

Executive Director, National Mediation Board.

[FR Doc. 89-22901 Filed 9-25-89; 12:56 pm]

BILLING CODE 7550-01-M

TENNESSEE VALLEY AUTHORITY

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: To be

published September 25, 1989 (mailed September 20, 1989).

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9 a.m. (CDT), Wednesday, September 27, 1989.

PREVIOUSLY ANNOUNCED PLACE OF MEETING: National Fertilizer Development Center Auditorium, Muscle Shoals, Alabama.

CHANGES IN THE MEETING: Each member of the TVA Board of Directors has approved the addition of the following item to the previously announced agenda:

E—Real Property Transactions.

7. Grant of permanent easement to Everett Horn Public Library Board.

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Coordinator, Governmental and Public Affairs, or a member of his staff can respond to requests for information about this meeting. Call 615–632–8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office, 202–479–4412.

Edward S. Christenbury,

General Counsel and Secretary to the Board.

[FR Doc. 89–22887 Filed 9–25–89; 9:13 am]

BILLING CODE 8120–01–M

federal register

Wednesday
September 27, 1989

Part II

Department of Health and Human Services

Food and Drug Administration

21 Chapter I

Code of Federal Regulations; Authority Citations; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Chapter I

[Docket No. 87N-0358]

Code of Federal Regulations; Authority Citations

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is making editorial revisions to its procedures in 21 CFR 1.4 for including authority citations in the agency's regulations that were published in the **Federal Register** on February 2, 1988 (53 FR 2827). The agency is also revising the authority citations for 21 CFR parts 1 through 1250 in this final rule to conform to these revised procedures in § 1.4. This action does not represent a change in agency policy and does not increase any burdens on the public.

DATES: Effective September 27, 1989; comments by November 27, 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: T. Rada Proehl, Office of Regulatory Affairs (HFC–222), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 2, 1988 (53 FR 2827), FDA codified in a new § 1.4 its procedures for including authority citations in the agency's regulations in Title 21 of the Code of Federal Regulations. As discussed in the preamble of that final rule, the agency would complete its review and revision of all the authority citations in 21 CFR parts 1 to 1299 in 1989.

This final rule includes minor editorial revisions to § 1.4 that were found to be necessary as a result of its review of existing authority citations. Because there will be no authorities cited at the subpart level, § 1.4(a) has been revised to indicate that all citations are centralized only at the part level. Consistent with revised § 1.4(a), § 1.4(b) has been revised to remove references to authorities at the subpart level. As discussed in the preamble to the February 2, 1988, final rule (53 FR 2827 at 2828) and required by revised § 1.4(b), the agency may rely on any one or more of the authorities that are listed for a particular part to implement or to enforce any section in that part. Section 1.4(c) has been revised to address the format that the agency will use in citing to such organic statutes as the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, or the Fair Packaging and Labeling Act that are enforced by FDA, and it includes an example. Section 1.4(d) is a new paragraph that specifies the format that the agency will use to cite statutes enforced by FDA, other than those specified in § 1.4(c), and it includes an example. Section 1.4(e), formerly included in § 1.4(c), specifies that where there is no applicable United States Code (U.S.C.) authority for a regulation, the agency will include a citation to the U.S. Statutes at Large. Paragraph (e) is further revised to refer to the volume and page of the U.S. Statutes at Large, rather than the section, page, and volume as currently required by § 1.4(c). Section 1.4(f) is current § 1.4(d) which specifies that the agency will include a citation to executive delegations (i.e., Executive Orders), if any, necessary to link the statutory authority to the agency.

In addition, this final rule completes the revision of all authority citations for the agency's regulations by revising the authority citations in 21 CFR parts 1 to 1250 (21 CFR parts 1251 to 1299 are reserved) to comply with the revised procedures in § 1.4. Although the authority citation for 21 CFR part 1 was revised on February 2, 1988 (53 FR 2827 at 2828), it is further revised to include a citation to the Public Health Service Act. The title of part 1 has also been revised to remove references to specific statutes enforced by FDA.

FDA has determined that this final rule does not change the statutory authority applicable to the regulations issued by FDA. In some instances, the agency is removing references to statutory authority that are inapplicable to any of the sections in that part. In others, the agency is adding references to authority that are applicable to one or more sections in that part. Because the changes that the agency is making are not substantive but merely describe already applicable authority, the Commissioner of Food and Drugs finds that there is good cause not to engage in notice and public comment procedures or to delay the effective date of these amendments. FDA is merely conforming the form and placement of authority citations to requirements established by the Administrative Committee of the Federal Register in 1 CFR 21.40, et al., (5 U.S.C. 553) and correcting inaccuracies in its regulatory citations.

In accordance with 21 CFR 10.40(e)(1), the agency is providing until November 27, 1989 for interested persons to submit written comments on the changes to the Dockets Management Branch (address above) to permit the agency to determine whether any of the provisions of the amendments should subsequently be modified or revoked. 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.

Because the amendments are of a housekeeping nature and are either republications or corrections of current citations, the amendments are not subject to Executive Order 12291.

The agency has determined under 21 CFR 25.24(a) (8) and (9) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Chapter I of Title 21 of the Code of Federal Regulations is amended as follows:

PART 1—[AMENDED]

1. The title of part 1 is revised to read as follows:

PART 1—GENERAL ENFORCEMENT REGULATIONS

2. The authority citation for 21 CFR part 1 is revised to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 403, 502, 505, 512, 602, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 343, 352, 355, 360b, 362, 371); sec. 215 of the Public Health Service Act (42 U.S.C. 216).

3. Section 1.4 is revised to read as follows:

§ 1.4 Authority citations.

(a) For each part of its regulations, the Food and Drug Administration includes a centralized citation of all of the statutory provisions that provide authority for any regulation that is included in that part.

(b) The agency may rely on any one or more of the authorities that are listed for a particular part in implementing or enforcing any section in that part.

(c) All citations of authority in this chapter will list the applicable sections in the organic statute if the statute is the

Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, or the Fair Packaging and Labeling Act. References to an act or a section thereof include references to amendments to that act or section. These citations will also list the corresponding United States Code (U.S.C.) sections. For example, a citation to section 701 of the Federal Food, Drug, and Cosmetic Act would be listed: Sec. 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371).

(d) If the organic statute is one other than those specified in paragraph (c) of this section, the citations of authority in this chapter generally will list only the applicable U.S.C. sections. For example, a citation to section 552 of the Administrative Procedure Act would be listed: 5 U.S.C. 552. The agency may, where it determines that such measures are in the interest of clarity and public understanding, list the applicable sections in the organic statute and the corresponding U.S.C. section in the same manner set out in paragraph (c) of this section. References to an act or a section thereof include references to amendments to that act or section.

(e) Where there is no U.S.C. provision, the agency will include a citation to the U.S. Statutes at Large. Citations to the U.S. Statutes at Large will refer to volume and page.

(f) The authority citations will include a citation to executive delegations (i.e., Executive Orders), if any, necessary to link the statutory authority to the agency.

PART 2—GENERAL ADMINISTRATIVE RULINGS AND DECISIONS

4. The authority citation for 21 CFR part 2 is revised to read as follows and the authority citations following all of the sections and following the heading for Subpart G in part 2 are removed:

Authority: Secs. 201, 301, 305, 402, 408, 409, 501, 502, 505, 507, 512, 601, 701, 702, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 335, 342, 346a, 348, 351, 352, 355, 357, 360b, 361, 371, 372, 374); 15 U.S.C. 402, 409.

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

5. The authority citation for 21 CFR part 5 is revised to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 21 U.S.C. 41–50, 61–63, 141–149, 467f, 679(b), 801–886, 1031–1309; secs. 201–902 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–392); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 354–360F, 361, 362, 1701–1706, 2101 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b–263n, 264, 265, 300u–300u–5, 300aa–1); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11490, 11921, and 12591.

PART 7—ENFORCEMENT POLICY

6. The authority citation for 21 CFR part 7 is revised to read as follows and the authority citations following all of the sections in part 7 are removed:

Authority: Secs. 201–902 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–392); secs. 301, 351, 354–360F, 361 of the Public Health Service Act (42 U.S.C. 241, 262, 263b–263n, 264).

PART 10—ADMINISTRATIVE PRACTICES AND PROCEDURES

7. The authority citation for 21 CFR part 10 is revised to read as follows and the authority citations following all of the sections in part 10 are removed:

Authority: Secs. 201–902 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–392); 21 U.S.C. 41–50, 141–149, 467f, 679, 821, 1034; secs. 2, 351, 354–360F, 361 of the Public Health Service Act (42 U.S.C. 201, 262, 263b–263n, 264); secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 5 U.S.C. 551–558, 701–706; 28 U.S.C. 2112.

PART 12—FORMAL EVIDENTIARY PUBLIC HEARING

8. The authority citation for 21 CFR part 12 is revised to read as follows and the authority citations following all of the sections in part 12 are removed:

Authority: Secs. 201–902 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–392); 21 U.S.C. 41–50, 141–149, 467f, 679, 821, 1034; secs. 2, 351, 354–360F, 361 of the Public Health Service Act (42 U.S.C. 201, 262, 263b–263n, 264); secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 5 U.S.C. 551–558, 701–706; 28 U.S.C. 2112.

PART 13—PUBLIC HEARING BEFORE A PUBLIC BOARD OF INQUIRY

9. The authority citation for 21 CFR part 13 is revised to read as follows and the authority citation following § 13.5 is removed:

Authority: Secs. 201–902 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–392); 21 U.S.C. 41–50, 141–149, 467f, 679, 821, 1034; secs. 2, 351, 354–360F, 361 of the Public Health Service Act (42 U.S.C. 201, 262, 263b–263n, 264); secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 5 U.S.C. 551–558, 701–706; 28 U.S.C. 2112.

PART 14—PUBLIC HEARING BEFORE A PUBLIC ADVISORY COMMITTEE

10. The authority citation for 21 CFR part 14 is revised to read as follows:

Authority: Secs. 201–902 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–392); 21 U.S.C. 41–50, 141–149, 467f, 679, 821, 1034; secs. 2, 351, 354–360F, 361 of the Public Health Service Act (42 U.S.C. 201, 262, 263b–263n, 264); secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 5 U.S.C. App. 2; 28 U.S.C. 2112.

PART 15—PUBLIC HEARING BEFORE THE COMMISSIONER

11. The authority citation for 21 CFR part 15 is revised to read as follows and the authority citation following § 15.20 is removed:

Authority: Secs. 201–902 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–392); 21 U.S.C. 41–50, 141–149, 467f, 679, 821, 1034; secs. 2, 351, 354–360F, 361 of the Public Health Service Act (42 U.S.C. 201, 262, 263b–263n, 264); secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 5 U.S.C. 553; 28 U.S.C. 2112.

PART 16—REGULATORY HEARING BEFORE THE FOOD AND DRUG ADMINISTRATION

12. The authority citation for 21 CFR part 16 is revised to read as follows and the authority citations following all of the sections in part 16 are removed:

Authority: Secs. 201–902 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–392); 21 U.S.C. 41–50, 141–149, 467f, 679, 821, 1034; secs. 2, 351, 354–360F, 361 of the Public Health Service Act (42 U.S.C. 201, 262, 263b–263n, 264); secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 28 U.S.C. 2112.

PART 19—STANDARDS OF CONDUCT AND CONFLICTS OF INTEREST

13. The authority citation for 21 CFR part 19 is revised to read as follows:

Authority: Sec. 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371).

PART 20— PUBLIC INFORMATION

14. The authority citation for 21 CFR part 20 is revised to read as follows and the authority citations following all of the sections in part 20 are removed:

Authority: Secs. 201–902 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–392); secs. 301, 302, 303, 307, 310, 311, 351, 352, 354–360F, 361, 362, 1701–1706, 2101 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b–263n, 264, 265, 300u–300u–5, 300aa–1); 5 U.S.C. 552; 18 U.S.C. 1905.

PART 21—PROTECTION OF PRIVACY

15. The authority citation for 21 CFR part 21 is revised to read as follows:

Authority: Sec. 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371); 5 U.S.C. 552, 552a.

PART 25—ENVIRONMENTAL IMPACT CONSIDERATIONS

16. The authority citation for 21 CFR part 25 is revised to read as follows:

Authority: Secs. 201–902 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–392); secs. 351, 354–361 of the Public Health Service Act (42 U.S.C. 262, 263b–264); 42 U.S.C. 4321, 4332; 40 CFR parts 1500–1508; E.O. 11514 as amended by E.O. 11991; E.O. 12114.

PART 50—PROTECTION OF HUMAN SUBJECTS

17. The authority citation for 21 CFR part 50 is revised to read as follows and the authority citations following § 50.3 and following the heading for subpart B in part 50 are removed:

Authority: Secs. 201, 406, 408, 409, 502, 503, 505, 506, 507, 510, 513–516, 518–520, 701, 706, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 346, 346a, 348, 352, 353, 355, 356, 357, 360, 360c–360f, 360h–360j, 371, 376, 381); secs. 215, 301, 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 262, 263b–263n).

PART 56—INSTITUTIONAL REVIEW BOARDS

18. The authority citation for 21 CFR part 56 is revised to read as follows:

Authority: Secs. 201, 406, 408, 409, 501, 502, 503, 505, 506, 507, 510, 513–516, 518–520, 701, 706, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 346, 346a, 348, 351, 352, 353, 355, 356, 357, 360, 360c–360f, 360h–360j, 371, 376, 381); secs. 215, 301, 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 262, 263b–263n).

PART 58—GOOD LABORATORY PRACTICE FOR NONCLINICAL LABORATORY STUDIES

19. The authority citation for 21 CFR part 58 is revised to read as follows:

Authority: Secs. 402, 406, 408, 409, 501, 502, 503, 505, 506, 507, 510, 512–516, 518–520, 701, 706, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342, 346, 346a, 348, 351, 352, 353, 355, 356, 357, 360, 360b–360f, 360h–360j, 371, 376, 381); secs. 215, 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 262, 263b–263n).

PART 60—PATENT TERM RESTORATION

20. The authority citation for 21 CFR part 60 is revised to read as follows:

Authority: Secs. 409, 505, 507, 515, 520, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348, 355, 357, 360e, 360j, 371, 376); sec. 351 of the Public Health Service Act (42 U.S.C. 262); 35 U.S.C. 156.

PART 70—COLOR ADDITIVES

21. The authority citation for 21 CFR part 70 is revised to read as follows and the authority citation following § 70.50 is removed:

Authority: Secs. 201, 401, 402, 403, 409, 501, 512, 601, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 343, 348, 351, 360b, 361, 371, 376).

PART 71—COLOR ADDITIVE PETITIONS

22. The authority citation for 21 CFR part 71 is revised to read as follows and the authority citations following all of the sections in part 71 are removed:

Authority: Secs. 201, 402, 409, 501, 505, 506, 507, 510, 512–516, 518–520, 601, 701, 706, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 351, 355, 356, 357, 360, 360b–360f, 360h–360j, 361, 371, 376, 381); secs. 215, 351 of the Public Health Service Act (42 U.S.C. 216, 262).

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

23. The authority citation for 21 CFR part 73 is revised to read as follows and the authority citations following all of the sections in part 73 are removed:

Authority: Secs. 201, 401, 402, 403, 409, 501, 502, 505, 601, 602, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 376).

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

24. The authority citation for 21 CFR part 74 is revised to read as follows and the authority citations following all of the sections in part 74 are removed:

Authority: Secs. 201, 401, 402, 403, 409, 501, 502, 505, 601, 602, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 376).

PART 80—COLOR ADDITIVE CERTIFICATION

25. The authority citation for 21 CFR part 80 is revised to read as follows and the authority citation following § 80.10 is removed:

Authority: Secs. 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371, 376).

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

26. The authority citation for 21 CFR part 81 is revised to read as follows and the authority citations following all of the sections in part 81 are removed:

Authority: Secs. 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371, 376, 376 note).

PART 82—LISTING OF CERTIFIED PROVISIONALLY LISTED COLORS AND SPECIFICATIONS

27. The authority citation for 21 CFR part 82 is revised to read as follows and the authority citations following all of the sections in part 82 are removed:

Authority: Secs. 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371, 376, 376 note).

PART 100—GENERAL

28. The authority citation for 21 CFR part 100 is revised to read as follows and the authority citations following all of the sections in part 100 are removed:

Authority: Secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

PART 101—FOOD LABELING

29. The authority citation for 21 CFR part 101 is revised to read as follows and the authority citation following § 101.29 is removed:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

PART 102—COMMON OR USUAL NAME FOR NONSTANDARDIZED FOODS

30. The authority citation for 21 CFR part 102 is revised to read as follows:

Authority: Secs. 201, 403, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 343, 371).

PART 103—QUALITY STANDARDS FOR FOODS WITH NO IDENTITY STANDARDS

31. The authority citation for 21 CFR part 103 is revised to read as follows and the authority citation following § 103.35 is removed:

Authority: Secs. 201, 401, 403, 409, 410, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 349, 371, 376).

PART 104—NUTRITIONAL QUALITY GUIDELINES FOR FOODS

32. The authority citation for 21 CFR part 104 is revised to read as follows:

Authority: Secs. 201, 403, 701(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 343, 371(a)).

PART 105—FOODS FOR SPECIAL DIETARY USE

33. The authority citation for 21 CFR part 105 is revised to read as follows and the authority citations following all of the sections in part 105 are removed:

Authority: Secs. 201, 401, 403, 409, 411, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 350, 371, 376).

PART 106—INFANT FORMULA QUALITY CONTROL PROCEDURES

34. The authority citation for 21 CFR part 106 is revised to read as follows:

Authority: Secs. 201, 412, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 350a, 371).

PART 107—INFANT FORMULA

35. The authority citation for 21 CFR part 107 is revised to read as follows:

Authority: Secs. 201, 403, 412, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 343, 350a, 371).

PART 108—EMERGENCY PERMIT CONTROL

36. The authority citation for 21 CFR part 108 is revised to read as follows:

Authority: Secs. 402, 404, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342, 344, 371).

PART 109—UNAVOIDABLE CONTAMINANTS IN FOOD FOR HUMAN CONSUMPTION AND FOOD-PACKAGING MATERIAL

37. The authority citation for 21 CFR part 109 is revised to read as follows and the authority citation following § 109.30 is removed:

Authority: Secs. 306, 402, 406, 408, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 336, 342, 346, 346a, 348, 371).

PART 110—CURRENT GOOD MANUFACTURING PRACTICE IN MANUFACTURING, PACKING, OR HOLDING HUMAN FOOD

38. The authority citation for 21 CFR part 110 is revised to read as follows:

Authority: Secs. 402, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342, 371, 374); sec. 361 of the Public Health Service Act (42 U.S.C. 264).

PART 113—THERMALLY PROCESSED LOW-ACID FOODS PACKAGED IN HERMETICALLY SEALED CONTAINERS

39. The authority citation for 21 CFR part 113 is revised to read as follows:

Authority: Secs. 402, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342, 371, 374); sec. 361 of the Public Health Service Act (42 U.S.C. 264).

PART 114—ACIDIFIED FOODS

40. The authority citation for 21 CFR part 114 is revised to read as follows:

Authority: Secs. 402, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342, 371, 374); sec. 361 of the Public Health Service Act (42 U.S.C. 264).

PART 129—PROCESSING AND BOTTLING OF BOTTLED DRINKING WATER

41. The authority citation for 21 CFR part 129 is revised to read as follows:

Authority: Secs. 402, 409, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342, 348, 371, 374); sec. 361 of the Public Health Service Act (42 U.S.C. 264).

PART 130—FOOD STANDARDS: GENERAL

42. The authority citation for 21 CFR part 130 is revised to read as follows:

Authority: Secs. 201, 306, 401, 403, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 336, 341, 343, 371).

PART 131—MILK AND CREAM

43. The authority citation for 21 CFR part 131 is revised to read as follows and the authority citations following all of the sections in part 131 are removed:

Authority: Secs. 201, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 376).

PART 133—CHEESES AND RELATED CHEESE PRODUCTS

44. The authority citation for 21 CFR part 133 is revised to read as follows and the authority citations following all of the sections in part 133 are removed:

Authority: Secs. 201, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 376).

PART 135—FROZEN DESSERTS

45. The authority citation for 21 CFR part 135 is revised to read as follows and the authority citations following all of the sections in part 135 are removed:

Authority: Secs. 201, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 376).

PART 136—BAKERY PRODUCTS

46. The authority citation for 21 CFR part 136 is revised to read as follows and the authority citations following all of the sections in part 136 are removed:

Authority: Secs. 201, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 376).

PART 137—CEREAL FLOURS AND RELATED PRODUCTS

47. The authority citation for 21 CFR part 137 is revised to read as follows and the authority citations following all of the sections in part 137 are removed:

Authority: Secs. 201, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 376).

PART 139—MACARONI AND NOODLE PRODUCTS

48. The authority citation for 21 CFR part 139 is revised to read as follows and the authority citations following all of the sections in part 139 are removed:

Authority: Secs. 201, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 376).

PART 145—CANNED FRUITS

49. The authority citation for 21 CFR part 145 is revised to read as follows and the authority citations following all of the sections in part 145 are removed:

Authority: Secs. 201, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 376).

PART 146—CANNED FRUIT JUICES

50. The authority citation for 21 CFR part 146 is revised to read as follows and the authority citations following all of the sections in part 146 are removed:

Authority: Secs. 201, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 376).

PART 150—FRUIT BUTTERS, JELLIES, PRESERVES, AND RELATED PRODUCTS

51. The authority citation for 21 CFR part 150 is revised to read as follows and the authority citations following all of the sections in part 150 are removed:

Authority: Secs. 201, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 376).

PART 152—FRUIT PIES

52. The authority citation for 21 CFR part 152 is revised to read as follows and the authority citation following § 152.126 is removed:

Authority: Secs. 201, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 376).

PART 155—CANNED VEGETABLES

53. The authority citation for 21 CFR part 155 is revised to read as follows and the authority citations following all of the sections in part 155 are removed:

Authority: Secs. 201, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 376).

PART 156—VEGETABLE JUICES

54. The authority citation for 21 CFR part 156 is revised to read as follows and the authority citations following all of the sections in part 156 are removed:

Authority: Secs. 201, 401, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371).

PART 158—FROZEN VEGETABLES

55. The authority citation for 21 CFR part 158 is revised to read as follows and the authority citations following all of the sections in part 158 are removed:

Authority: Secs. 201, 401, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371).

PART 160—EGGS AND EGG PRODUCTS

56. The authority citation for 21 CFR part 160 is revised to read as follows and the authority citation following § 160.180 is removed:

Authority: Secs. 201, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 376).

PART 161—FISH AND SHELLFISH

57. The authority citation for 21 CFR part 161 is revised to read as follows and the authority citations following all of the sections in part 161 are removed:

Authority: Secs. 201, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 376).

PART 163—CACAO PRODUCTS

58. The authority citation for 21 CFR part 163 is revised to read as follows and the authority citations following all of the sections in part 163 are removed:

Authority: Secs. 201, 301, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 341, 343, 348, 371, 376).

PART 164—TREE NUT AND PEANUT PRODUCTS

59. The authority citation for 21 CFR part 164 is revised to read as follows and the authority citation following § 164.150 is removed:

Authority: Secs. 201, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 376).

PART 166—MARGARINE

60. The authority citation for 21 CFR part 166 is revised to read as follows and the authority citations following all of the sections in part 166 are removed:

Authority: Secs. 201, 401, 403, 407, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 347, 348, 371, 376).

PART 168—SWEETENERS AND TABLE SIRUPS

61. The authority citation for 21 CFR part 168 is revised to read as follows and the authority citations following all of the sections in part 168 are removed:

Authority: Secs. 201, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 376).

PART 169—FOOD DRESSINGS AND FLAVORINGS

62. The authority citation for 21 CFR part 169 is revised to read as follows and the authority citations following all of the sections in part 169 are removed:

Authority: Secs. 201, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 376).

PART 170—FOOD ADDITIVES

63. The authority citation for 21 CFR part 170 is revised to read as follows and the authority citations following all of the sections in part 170 are removed:

Authority: Secs. 201, 401, 402, 408, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 346a, 348, 371).

PART 171—FOOD ADDITIVE PETITIONS

64. The authority citation for 21 CFR part 171 is revised to read as follows:

Authority: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

65. The authority citation for 21 CFR part 172 is revised to read as follows and the authority citations following all of the sections in part 172 are removed:

Authority: Secs. 201, 401, 402, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 348, 371, 376).

PART 173—SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION

66. The authority citation for 21 CFR part 173 is revised to read as follows and the authority citations following all of the sections in part 173 are removed:

Authority: Secs. 201, 402, 409 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348).

PART 174—INDIRECT FOOD ADDITIVES: GENERAL

67. The authority citation for 21 CFR part 174 is revised to read as follows:

Authority: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

68. The authority citation for 21 CFR part 175 is revised to read as follows:

Authority: Secs. 201, 402, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 376).

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

69. The authority citation for 21 CFR part 176 is revised to read as follows and the authority citation following § 176.170 is removed:

Authority: Secs. 201, 402, 406, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 346, 348, 376).

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

70. The authority citation for 21 CFR part 177 is revised to read as follows and the authority citations following all of the sections in part 177 are removed:

Authority: Secs. 201, 402, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 376).

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

71. The authority citation for 21 CFR part 178 is revised to read as follows:

Authority: Secs. 201, 402, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 376).

PART 179—IRRADIATION IN THE PRODUCTION, PROCESSING AND HANDLING OF FOOD

72. The authority citation for 21 CFR part 179 is revised to read as follows:

Authority: Secs. 201, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 343, 348, 371).

PART 180—FOOD ADDITIVES PERMITTED IN FOOD ON AN INTERIM BASIS OR IN CONTACT WITH FOOD PENDING ADDITIONAL STUDY

73. The authority citation for 21 CFR part 180 is revised to read as follows and the authority citation following § 180.1 is removed:

Authority: Secs. 201, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 343, 348, 371); sec. 301 of the Public Health Service Act (42 U.S.C. 241).

PART 181—PRIOR-SANCTIONED FOOD INGREDIENTS

74. The authority citation for 21 CFR part 181 is revised to read as follows and the authority citation following § 181.1 is removed:

Authority: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

75. The authority citation for 21 CFR part 182 is revised to read as follows:

Authority: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

76. The authority citation for 21 CFR part 184 is revised to read as follows:

Authority: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

PART 186—INDIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

77. The authority citation for 21 CFR part 186 is revised to read as follows:

Authority: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

PART 189—SUBSTANCES PROHIBITED FROM USE IN HUMAN FOOD

78. The authority citation for 21 CFR part 189 is revised to read as follows and the authority citations following all of the sections in part 189 are removed:

Authority: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

PART 197—SEAFOOD INSPECTION PROGRAM

79. The authority citation for 21 CFR part 197 is revised to read as follows:

Authority: Secs. 701, 702a, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371, 372a, 374).

PART 200—GENERAL

80. The authority citation for 21 CFR part 200 is revised to read as follows and the authority citations following all of the sections in part 200 are removed:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 508, 515, 701, 704, 705 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 358, 360e, 371, 374, 375).

PART 201—LABELING

81. The authority citation for 21 CFR part 201 is revised to read as follows and the authority citations following all of the sections in part 201 are removed:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 508, 510, 512, 701, 704, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 358, 360, 360b, 371, 374, 376); secs. 215, 301, 351, 354–360F, 361 of the Public Health Service Act (42 U.S.C. 216, 241, 262, 263b–263n, 264).

PART 202—PRESCRIPTION DRUG ADVERTISING

82. The authority citation for 21 CFR part 202 is revised to read as follows and the authority citation following § 202.1 is removed:

Authority: Secs. 201, 301, 502, 505, 507, 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 352, 355, 357, 360b, 371).

PART 207—REGISTRATION OF PRODUCERS OF DRUGS AND LISTING OF DRUGS IN COMMERCIAL DISTRIBUTION

83. The authority citation for 21 CFR part 207 is revised to read as follows and the authority citation following § 207.35 is removed:

Authority: Secs. 301, 501, 502, 505, 506, 507, 510, 512, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331, 351, 352, 355, 356, 357, 360, 360b, 371, 374); sec. 351 of the Public Health Service Act (42 U.S.C. 262).

PART 210—CURRENT GOOD MANUFACTURING PRACTICE IN MANUFACTURING, PROCESSING, PACKING, OR HOLDING OF DRUGS; GENERAL

84. The authority citation for 21 CFR part 210 is revised to read as follows:

Authority: Secs. 201, 501, 502, 505, 506, 507, 512, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 355, 356, 357, 360b, 371, 374).

PART 211—CURRENT GOOD MANUFACTURING PRACTICE FOR FINISHED PHARMACEUTICALS

85. The authority citation for 21 CFR part 211 is revised to read as follows and the authority citations following all of the sections in part 211 are removed:

Authority: Secs. 201, 501, 502, 505, 506, 507, 512, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 355, 356, 357, 360b, 371, 374).

PART 225—CURRENT GOOD MANUFACTURING PRACTICE FOR MEDICATED FEEDS

86. The authority citation for 21 CFR part 225 is revised to read as follows:

Authority: Secs. 501, 502, 512, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 360b, 371, 374).

PART 226—CURRENT GOOD MANUFACTURING PRACTICE FOR TYPE A MEDICATED ARTICLES

87. The authority citation for 21 CFR part 226 is revised to read as follows:

Authority: Secs. 501, 502, 512, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 360b, 371, 374).

PART 250—SPECIAL REQUIREMENTS FOR SPECIFIC HUMAN DRUGS

88. The authority citation for 21 CFR part 250 is revised to read as follows and the authority citations following all of the sections in part 250 are removed:

Authority: Secs. 201, 306, 402, 502, 503, 505, 601(a), 602 (a) and (c), 701, 705(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 336, 342, 352, 353, 355, 361(a), 362 (a) and (c), 371, 375(b)).

PART 290—CONTROLLED DRUGS

89. The authority citation for 21 CFR part 290 is revised to read as follows and the authority citation following § 290.6 is removed:

Authority: Secs. 502, 503, 505, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352, 353, 355, 371).

PART 291—DRUGS USED FOR TREATMENT OF NARCOTIC ADDICTS

90. The authority citation for 21 CFR part 291 is revised to read as follows:

Authority: Secs. 505, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355, 371); 21 U.S.C. 823; secs. 301(d), 548 of the Public Health Service Act (42 U.S.C. 241(d), 290ee–3); 42 U.S.C. 257a.

PART 299—DRUGS; OFFICIAL NAMES AND ESTABLISHED NAMES

91. The authority citation for 21 CFR part 299 is revised to read as follows and the authority citations following all of the sections in part 299 are removed.

Authority: Secs. 301, 501, 502, 505, 508, 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331, 351, 352, 355, 358, 360b, 371).

PART 300—GENERAL

92. The authority citation for 21 CFR part 300 is revised to read as follows and the authority citations following all of the sections in part 300 are removed:

Authority: Secs. 301, 501, 502, 505, 507, 512, 601, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331, 351, 352, 355, 357, 360b, 361, 371).

PART 310—NEW DRUGS

93. The authority citation for 21 CFR part 310 is revised to read as follows and the authority citations following all of the sections in part 310 are removed:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 512–516, 520, 601(a), 701, 704, 705, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b–360f, 360j, 361(a), 371, 374, 375, 376); secs. 215, 301, 302(a), 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 242(a), 262, 263b–263n).

PART 312—INVESTIGATIONAL NEW DRUG APPLICATION

94. The authority citation for 21 CFR part 312 is revised to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 371); sec. 351 of the Public Health Service Act (42 U.S.C. 262).

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG OR AN ANTIBIOTIC DRUG

95. The authority citation for 21 CFR part 314 is revised to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 371, 376).

PART 320—BIOAVAILABILITY AND BIOEQUIVALENCE REQUIREMENTS

96. The authority citation for 21 CFR part 320 is revised to read as follows and the authority citations following § 320.1 and following the headings for subparts B and C in part 320 are removed:

Authority: Secs. 201, 501, 502, 505, 507, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 355, 357, 371).

PART 329—HABIT-FORMING DRUGS

97. The authority citation for 21 CFR part 329 is revised to read as follows and the authority citation following § 329.1 is removed:

Authority: Secs. 502, 503, 505, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352, 353, 355, 371).

PART 330—OVER-THE-COUNTER (OTC) HUMAN DRUGS WHICH ARE GENERALLY RECOGNIZED AS SAFE AND EFFECTIVE AND NOT MISBRANDED

98. The authority citation for 21 CFR part 330 is revised to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

PART 331—ANTACID PRODUCTS FOR OVER-THE-COUNTER (OTC) HUMAN USE

99. The authority citation for 21 CFR part 331 is revised to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

PART 332—ANTIFLATULENT PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

100. The authority citation for 21 CFR part 332 is revised to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

PART 333—TOPICAL ANTIMICROBIAL DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

101. The authority citation for 21 CFR part 333 is revised to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

PART 336—ANTIEMETIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

102. The authority citation for 21 CFR part 336 is revised to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

PART 338—NIGHTTIME SLEEP-AID DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

103. The authority citation for 21 CFR part 338 is revised to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371); 5 U.S.C. 553, 554, 702, 703, 704.

PART 340—STIMULANT DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

104. The authority citation for 21 CFR part 340 is revised to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

PART 341—COLD, COUGH, ALLERGY, BRONCHODILATOR, AND ANTIASTHMATIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

105. The authority citation for 21 CFR part 341 is revised to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

PART 344—TOPICAL OTIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

106. The authority citation for 21 CFR part 344 is revised to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

PART 349—OPHTHALMIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

107. The authority citation for 21 CFR part 349 is revised to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

PART 357—MISCELLANEOUS INTERNAL DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

108. The authority citation for 21 CFR part 357 is revised to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

PART 361—PRESCRIPTION DRUGS FOR HUMAN USE GENERALLY RECOGNIZED AS SAFE AND EFFECTIVE AND NOT MISBRANDED: DRUGS USED IN RESEARCH

109. The authority citation for 21 CFR part 361 is revised to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 371); sec. 351 of the Public Health Service Act (42 U.S.C. 262).

PART 369—INTERPRETATIVE STATEMENTS RE WARNINGS ON DRUGS AND DEVICES FOR OVER-THE-COUNTER SALE

110. The authority citation for 21 CFR part 369 is revised to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 371).

PART 429—DRUGS COMPOSED WHOLLY OR PARTLY OF INSULIN

111. The authority citation for 21 CFR part 429 is revised to read as follows:

Authority: Secs. 502, 506, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352, 356, 371).

PART 430—ANTIBIOTIC DRUGS; GENERAL

112. The authority citation for 21 CFR part 430 is revised to read as follows and the authority citations following all of the sections in part 430 are removed:

Authority: Secs. 201, 501, 502, 503, 505, 507, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 357, 371); secs. 215, 301, 351 of the Public Health Service Act (42 U.S.C. 216, 241, 262).

PART 431—CERTIFICATION OF ANTIBIOTIC DRUGS

113. The authority citation for 21 CFR part 431 is revised to read as follows and the authority citations following all of the sections in part 431 are removed:

Authority: Secs. 501, 502, 503, 505, 507, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 353, 355, 357, 376); secs. 215, 301, 351 of the Public Health Service Act (42 U.S.C. 216, 241, 262); 5 U.S.C. 552.

PART 432—PACKAGING AND LABELING OF ANTIBIOTIC DRUGS

114. The authority citation for 21 CFR part 432 is revised to read as follows and the authority citation following § 432.1 is removed:

Authority: Secs. 201, 301, 502, 503, 507, 701, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 352, 353, 357, 371, 381).

PART 433—EXEMPTIONS FROM ANTIBIOTIC CERTIFICATION AND LABELING REQUIREMENTS

115. The authority citation for 21 CFR part 433 is revised to read as follows:

Authority: Secs. 502, 505, 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352, 355, 357).

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

116. The authority citation for 21 CFR part 436 is revised to read as follows and the authority citations following all of the sections in part 436 are removed:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

PART 440—PENICILLIN ANTIBIOTIC DRUGS

117. The authority citation for 21 CFR part 440 is revised to read as follows and the authority citations following all of the sections in part 440 are removed:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

PART 441—PENEM ANTIBIOTIC DRUGS

118. The authority citation for 21 CFR part 441 is revised to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

PART 442—CEPHA ANTIBIOTIC DRUGS

119. The authority citation for 21 CFR part 442 is revised to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

PART 444—OLIGOSACCHARIDE ANTIBIOTIC DRUGS

120. The authority citation for 21 CFR part 444 is revised to read as follows and the authority citations following all of the sections in part 444 are removed:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

PART 446—TETRACYCLINE ANTIBIOTIC DRUGS

121. The authority citation for 21 CFR part 446 is revised to read as follows and the authority citations following all of the sections in part 446 are removed:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

PART 448—PEPTIDE ANTIBIOTIC DRUGS

122. The authority citation for 21 CFR part 448 is revised to read as follows and the authority citations following all of the sections in part 448 are removed:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

PART 449—ANTIFUNGAL ANTIBIOTIC DRUGS

123. The authority citation for 21 CFR part 449 is revised to read as follows and the authority citations following all of the sections in part 449 are removed:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

PART 450—ANTITUMOR ANTIBIOTIC DRUGS

124. The authority citation for 21 CFR part 450 is revised to read as follows and the authority citations following all of the sections in part 450 are removed:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

PART 452—MACROLIDE ANTIBIOTIC DRUGS

125. The authority citation for 21 CFR part 452 is revised to read as follows and the authority citations following all of the sections in part 452 are removed:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

PART 453—LINCOMYCIN ANTIBIOTIC DRUGS

126. The authority citation for 21 CFR part 453 is revised to read as follows and the authority citations following all of the sections in part 453 are removed:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

PART 455—CERTAIN OTHER ANTIBIOTIC DRUGS

127. The authority citation for 21 CFR part 455 is revised to read as follows and the authority citations following all of the sections in part 455 are removed:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

PART 460—ANTIBIOTIC DRUGS INTENDED FOR USE IN LABORATORY DIAGNOSIS OF DISEASE

128. The authority citation for 21 CFR part 460 is revised to read as follows and the authority citation following § 460.42 is removed:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

PART 500—GENERAL

129. The authority citation for 21 CFR part 500 is revised to read as follows and the authority citation following § 500.49 is removed:

Authority: Secs. 201, 301, 402, 403, 409, 501, 502, 503, 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 351, 352, 353, 360b, 371).

PART 501—ANIMAL FOOD LABELING

130. The authority citation for 21 CFR part 501 is revised to read as follows and the authority citations following all of the sections in part 501 are removed:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

PART 502—COMMON OR USUAL NAMES FOR NONSTANDARDIZED ANIMAL FOODS

131. The authority citation for 21 CFR part 502 is revised to read as follows and the authority citations following all of the sections in part 502 are removed:

Authority: Secs. 201, 403, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 343, 371).

PART 505—INTERPRETIVE STATEMENTS RE: WARNINGS ON ANIMAL DRUGS FOR OVER-THE-COUNTER SALE

132. The authority citation for 21 CFR part 505 is revised to read as follows and the authority citations following all of the sections in part 505 are removed:

Authority: Secs. 201, 501, 502, 503, 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 360b, 371).

PART 507—THERMALLY PROCESSED LOW-ACID FOODS PACKAGED IN HERMETICALLY SEALED CONTAINERS

133. The authority citation for 21 CFR part 507 is revised to read as follows:

Authority: Secs. 402, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342, 371, 374); sec. 361 of the Public Health Service Act (42 U.S.C. 264).

PART 508—EMERGENCY PERMIT CONTROL

134. The authority citation for 21 CFR part 508 is revised to read as follows:

Authority: Secs. 402, 404, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342, 344, 371).

PART 509—UNAVOIDABLE CONTAMINANTS IN ANIMAL FOOD AND FOOD-PACKAGING MATERIAL

135. The authority citation for 21 CFR part 509 is revised to read as follows:

Authority: Secs. 306, 402, 406, 408, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 336, 342, 346, 346a, 348, 371).

PART 510—NEW ANIMAL DRUGS

136. The authority citation for 21 CFR part 510 is revised to read as follows and the authority citations following all of the sections and following the heading for subpart F in part 510 are removed:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

PART 511—NEW ANIMAL DRUGS FOR INVESTIGATIONAL USE

137. The authority citation for 21 CFR part 511 is revised to read as follows and the authority citation following § 511.1 is removed:

Authority: Secs. 201, 501, 502, 503, 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 360b, 371).

PART 514—NEW ANIMAL DRUG APPLICATIONS

138. The authority citation for 21 CFR part 514 is revised to read as follows and the authority citations following all of the sections in part 514 are removed:

Authority: Secs. 501, 502, 512, 701, 706, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 360b, 371, 376, 381).

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

139. The authority citation for 21 CFR part 520 is revised to read as follows and the authority citations following all of the sections in part 520 are removed:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

140. The authority citation for 21 CFR part 522 is revised to read as follows and the authority citations following all of the sections in part 522 are removed:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

141. The authority citation for 21 CFR part 524 is revised to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

PART 526—INTRAMAMMARY DOSAGE FORMS NOT SUBJECT TO CERTIFICATION

142. The authority citation for 21 CFR part 526 is revised to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

143. The authority citation for 21 CFR part 529 is revised to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

PART 536—TESTS FOR SPECIFIC ANTIBIOTIC DOSAGE FORMS

144. The authority citation for 21 CFR part 536 is revised to read as follows:

Authority: Secs. 507, 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357, 360b).

PART 539—BULK ANTIBIOTIC DRUGS SUBJECT TO CERTIFICATION

145. The authority citation for 21 CFR part 539 is revised to read as follows and the authority citations following all of the sections in part 539 are removed:

Authority: Secs. 507, 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357, 360b).

PART 540—PENICILLIN ANTIBIOTIC DRUGS FOR ANIMAL USE

146. The authority citation for 21 CFR part 540 is revised to read as follows and the authority citations following all of the sections in part 540 are removed:

Authority: Secs. 507, 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357, 360b).

PART 544—OLIGOSACCHARIDE CERTIFIABLE ANTIBIOTIC DRUGS FOR ANIMAL USE

147. The authority citation for 21 CFR part 544 is revised to read as follows and the authority citations following all of the sections in part 544 are removed:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

PART 546—TETRACYCLINE ANTIBIOTIC DRUGS FOR ANIMAL USE

148. The authority citation for 21 CFR part 546 is revised to read as follows and the authority citations following all of the sections in part 546 are removed:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

PART 548—CERTIFIABLE PEPTIDE ANTIBIOTIC DRUGS FOR ANIMAL USE

149. The authority citation for 21 CFR part 548 is revised to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

PART 555—CHLORAMPHENICOL DRUGS FOR ANIMAL USE

150. The authority citation for 21 CFR part 555 is revised to read as follows and the authority citations following all of the sections in part 555 are removed:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

151. The authority citation for 21 CFR part 556 is revised to read as follows:

Authority: Secs. 402, 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342, 360b, 371).

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

152. The authority citation for 21 CFR part 558 is revised to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

PART 564—DEFINITIONS AND STANDARDS FOR ANIMAL FOOD

153. The authority citation for 21 CFR part 564 is revised to read as follows:

Authority: Secs. 401, 403, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341, 343, 371).

PART 570—FOOD ADDITIVES

154. The authority citation for 21 CFR part 570 is revised to read as follows and the authority citations following all of the sections in part 570 are removed:

Authority: Secs. 201, 401, 402, 408, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 346a, 348, 371).

PART 571—FOOD ADDITIVE PETITIONS

155. The authority citation for 21 CFR part 571 is revised to read as follows and the authority citations following all of the sections in part 571 are removed:

Authority: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371); sec. 301 of the Public Health Service Act (42 U.S.C. 241).

PART 573—FOOD ADDITIVES PERMITTED IN FEED AND DRINKING WATER OF ANIMALS

156. The authority citation for 21 CFR part 573 is revised to read as follows and the authority citations following all of the sections in part 573 are removed:

Authority: Secs. 201, 402, 409 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348).

PART 579—IRRADIATION IN THE PRODUCTION, PROCESSING, AND HANDLING OF ANIMAL FEED AND PET FOOD

157. The authority citation for 21 CFR part 579 is revised to read as follows:

Authority: Secs. 201, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 343, 348, 371).

PART 582—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

158. The authority citation for 21 CFR part 582 is revised to read as follows and the authority citation following § 582.99 is removed:

Authority: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

PART 584—FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE IN FEED AND DRINKING WATER OF ANIMALS

159. The authority citation for 21 CFR part 584 is revised to read as follows and the authority citation following § 584.200 is removed:

Authority: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

PART 589—SUBSTANCES PROHIBITED FROM USE IN ANIMAL FOOD OR FEED

160. The authority citation for 21 CFR part 589 is revised to read as follows:

Authority: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

PART 600—BIOLOGICAL PRODUCTS: GENERAL

161. The authority citation for 21 CFR part 600 is revised to read as follows and the authority citations following all of the sections in part 600 are removed:

Authority: Secs. 201, 501, 502, 503, 505, 510, 519, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 360i, 371, 374); secs. 215, 351, 352, 353, 361 of the Public Health Service Act (42 U.S.C. 216, 262, 263, 263a, 264).

PART 601—LICENSING

162. The authority citation for 21 CFR part 601 is revised to read as follows and the authority citations following all of the sections and following the heading for subpart F in part 601 are removed:

Authority: Secs. 201, 501, 502, 503, 505, 510, 513–516, 518–520, 701, 704, 706, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 360c–360f, 360h–360j, 371, 374, 376, 381); secs. 215, 301, 351, 352 of the Public Health Service Act (42 U.S.C. 216, 241, 262, 263); secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461).

PART 606—CURRENT GOOD MANUFACTURING PRACTICE FOR BLOOD AND BLOOD COMPONENTS

163. The authority citation for 21 CFR part 606 is revised to read as follows:

Authority: Secs. 201, 301, 501, 502, 505, 510, 520, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 355, 360, 360j, 371, 374); secs. 215, 351, 353, 361 of the Public Health Service Act (42 U.S.C. 216, 262, 263a, 264).

PART 607—ESTABLISHMENT REGISTRATION AND PRODUCT LISTING FOR MANUFACTURERS OF HUMAN BLOOD AND BLOOD PRODUCTS

164. The authority citation for 21 CFR part 607 is revised to read as follows:

Authority: Secs. 201, 301, 501, 502, 505, 510, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 355, 360, 371, 374); secs. 215, 351 of the Public Health Service Act (42 U.S.C. 216, 262).

PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

165. The authority citation for 21 CFR part 610 is revised to read as follows and the authority citations following all of the sections in part 610 are removed:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371); secs. 215, 351, 352, 353, 361 of the Public Health Service Act (42 U.S.C. 216, 262, 263, 263a, 264).

PART 620—ADDITIONAL STANDARDS FOR BACTERIAL PRODUCTS

166. The authority citation for 21 CFR part 620 is revised to read as follows and the authority citations following all of the sections in part 620 are removed:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371); secs. 215, 351, 352, 353, 361 of the Public Health Service Act (42 U.S.C. 216, 262, 263, 263a, 264).

PART 630—ADDITIONAL STANDARDS FOR VIRAL VACCINES

167. The authority citation for 21 CFR part 630 is revised to read as follows and the authority citations following all of the sections in part 630 are removed:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371); secs. 215, 351, 352, 353, 361 of the Public Health Service Act (42 U.S.C. 216, 262, 263, 263a, 264).

PART 640—ADDITIONAL STANDARDS FOR HUMAN BLOOD AND BLOOD PRODUCTS

168. The authority citation for 21 CFR part 640 is revised to read as follows and the authority citations following all of the sections in part 640 are removed:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371); secs. 215, 351, 352, 353, 361 of the Public Health Service Act (42 U.S.C. 216, 262, 263, 263a, 264).

PART 650—ADDITIONAL STANDARDS FOR DIAGNOSTIC SUBSTANCES FOR DERMAL TESTS

169. The authority citation for 21 CFR part 650 is revised to read as follows and the authority citations following all of the sections in part 650 are removed:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371); secs. 215, 351, 352, 353, 361 of the Public Health Service Act (42 U.S.C. 216, 262, 263, 263a, 264).

PART 660—ADDITIONAL STANDARDS FOR DIAGNOSTIC SUBSTANCES FOR LABORATORY TESTS

170. The authority citation for 21 CFR part 660 is revised to read as follows and the authority citations following all of the sections and following the heading for subpart K in part 660 are removed:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371); secs. 215, 351, 352, 353, 361 of the Public Health Service Act (42 U.S.C. 216, 262, 263, 263a, 264).

PART 680—ADDITIONAL STANDARDS FOR MISCELLANEOUS PRODUCTS

171. The authority citation for 21 CFR part 680 is revised to read as follows and the authority citations following all of the sections in part 680 are removed:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371); secs. 215, 351, 352, 353, 361 of the Public Health Service Act (42 U.S.C. 216, 262, 263, 263a, 264).

PART 700—GENERAL

172. The authority citation for 21 CFR part 700 is revised to read as follows and the authority citations following all of the sections in part 700 are removed:

Authority: Secs. 201, 301, 502, 505, 601, 602, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 352, 355, 361, 362, 371, 374).

PART 701—COSMETIC LABELING

173. The authority citation for 21 CFR part 701 is revised to read as follows and the authority citations following all of the sections in part 701 are removed:

Authority: Secs. 201, 502, 601, 602, 603, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 352, 361, 362, 363, 371, 374); secs. 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1454, 1455).

PART 710—VOLUNTARY REGISTRATION OF COSMETIC PRODUCT ESTABLISHMENTS

174. The authority citation for 21 CFR part 710 is revised to read as follows and the authority citation following § 710.4 is removed:

Authority: Secs. 201, 301, 601, 602, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 361, 362, 371, 374).

PART 720—VOLUNTARY FILING OF COSMETIC PRODUCT INGREDIENT AND COSMETIC RAW MATERIAL COMPOSITION STATEMENTS

175. The authority citation for 21 CFR part 720 is revised to read as follows:

Authority: Secs. 201, 301, 601, 602, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 361, 362, 371, 374).

PART 730—VOLUNTARY FILING OF COSMETIC PRODUCT EXPERIENCES

176. The authority citation for 21 CFR part 730 is revised to read as follows:

Authority: Secs. 201, 301, 601, 602, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 361, 362, 371, 374).

PART 740—COSMETIC PRODUCT WARNING STATEMENTS

177. The authority citation for 21 CFR part 740 is revised to read as follows and the authority citation following § 740.11 is removed:

Authority: Secs. 201, 301, 502, 505, 601, 602, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 352, 355, 361, 362, 371, 374).

PART 800—GENERAL

178. The authority citation for 21 CFR part 800 is revised to read as follows:

Authority: Secs. 201, 304, 501, 502, 505, 506, 507, 515, 519, 521, 601, 602, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 334, 351, 352, 355, 356, 357, 360e, 360i, 360k, 361, 362, 371).

PART 801—LABELING

179. The authority citation for 21 CFR part 801 is revised to read as follows and the authority citations following all of the sections in part 801 are removed:

Authority: Secs. 201, 301, 501, 502, 507, 519, 520, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 357, 360i, 360j, 371, 374).

PART 803—MEDICAL DEVICE REPORTING

180. The authority citation for 21 CFR part 803 is revised to read as follows:

Authority: Secs. 502, 510, 519, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352, 360, 360i, 371, 374).

PART 805—CARDIAC PACEMAKER REGISTRY

181. The authority citation for 21 CFR part 805 is revised to read as follows:

Authority: Sec. 1862(h) of the Social Security Act and sec. 2304(d) of the Deficit Reduction Act (42 U.S.C. 1395y(h); 1395y note).

PART 807—ESTABLISHMENT REGISTRATION AND DEVICE LISTING FOR MANUFACTURERS OF DEVICES

182. The authority citation for 21 CFR part 807 is revised to read as follows and the authority citations following all of the sections in part 807 are removed:

Authority: Secs. 301, 501, 502, 510, 513, 515, 519, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331, 351, 352, 360, 360c, 360e, 360i, 371, 374).

PART 808—EXEMPTIONS FROM FEDERAL PREEMPTION OF STATE AND LOCAL MEDICAL DEVICE REQUIREMENTS

183. The authority citation for 21 CFR part 808 is revised to read as follows:

Authority: Secs. 521, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360k, 371).

PART 809—IN VITRO DIAGNOSTIC PRODUCTS FOR HUMAN USE

184. The authority citation for 21 CFR part 809 is revised to read as follows and the authority citations following all of the sections in part 809 are removed:

Authority: Secs. 301, 501, 502, 505, 507, 512, 513, 514, 518, 519, 520, 701, 702, 704, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331, 351, 352, 355, 357, 360b, 360c, 360d, 360h, 360i, 360j, 371, 372, 374, 381).

PART 812—INVESTIGATIONAL DEVICE EXEMPTIONS

185. The authority citation for 21 CFR part 812 is revised to read as follows and the authority citations following all of the sections in part 812 are removed:

Authority: Secs. 301, 501, 502, 503, 505, 506, 507, 510, 513–516, 518–520, 701, 702, 704, 706, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331, 351, 352, 353, 355, 356, 357, 360, 360c–360f, 360h–360j, 371, 372, 374, 376, 381); secs. 215, 301, 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 262, 263b–263n).

PART 813—INVESTIGATIONAL EXEMPTIONS FOR INTRAOCULAR LENSES

186. The authority citation for 21 CFR part 813 is revised to read as follows and the authority citations following all of the sections in part 813 are removed:

Authority: Secs. 301, 501, 502, 520, 701, 704, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331, 351, 352, 360j, 371, 374, 381).

PART 814—PREMARKET APPROVAL OF MEDICAL DEVICES

187. The authority citation for 21 CFR part 814 is revised to read as follows:

Authority: Secs. 501, 502, 503, 510, 513–520, 701, 702, 703, 704, 705, 706, 708, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 353, 360, 360c–360j, 371, 372, 373, 374, 375, 376, 379, 381).

PART 820—GOOD MANUFACTURING PRACTICE FOR MEDICAL DEVICES: GENERAL

188. The authority citation for 21 CFR part 820 is revised to read as follows:

Authority: Secs. 501, 502, 515, 518, 519, 520, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 360e, 360h, 360i, 360j, 371, 374).

PART 860—MEDICAL DEVICE CLASSIFICATION PROCEDURES

189. The authority citation for 21 CFR part 860 is revised to read as follows:

Authority: Secs. 513, 514, 515, 519, 520, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360c, 360d, 360e, 360i, 360j, 371, 374).

PART 861—PROCEDURES FOR PERFORMANCE STANDARDS DEVELOPMENT

190. The authority citation for 21 CFR part 861 is revised to read as follows and the authority citation following § 861.26 is removed:

Authority: Secs. 501, 502, 513, 514, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 360c, 360d, 371, 374); secs. 351, 354–361 of the Public Health Service Act (42 U.S.C. 262, 263b–264).

PART 862—CLINICAL CHEMISTRY AND CLINICAL TOXICOLOGY DEVICES

191. The authority citation for 21 CFR part 862 is revised to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

PART 864—HEMATOLOGY AND PATHOLOGY DEVICES

192. The authority citation for 21 CFR part 864 is revised to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

PART 866—IMMUNOLOGY AND MICROBIOLOGY DEVICES

193. The authority citation for 21 CFR part 866 is revised to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

PART 868—ANESTHESIOLOGY DEVICES

194. The authority citation for 21 CFR part 868 is revised to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

PART 870—CARDIOVASCULAR DEVICES

195. The authority citation for 21 CFR part 870 is revised to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

PART 872—DENTAL DEVICES

196. The authority citation for 21 CFR part 872 is revised to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

PART 874—EAR, NOSE, AND THROAT DEVICES

197. The authority citation for 21 CFR part 874 is revised to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

PART 876—GASTROENTEROLOGY-UROLOGY DEVICES

198. The authority citation for 21 CFR part 876 is revised to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

PART 878—GENERAL AND PLASTIC SURGERY DEVICES

199. The authority citation for 21 CFR part 878 is revised to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

PART 880—GENERAL HOSPITAL AND PERSONAL USE DEVICES

200. The authority citation for 21 CFR part 880 is revised to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

PART 882—NEUROLOGICAL DEVICES

201. The authority citation for 21 CFR part 882 is revised to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

PART 884—OBSTETRICAL AND GYNECOLOGICAL DEVICES

202. The authority citation for 21 CFR part 884 is revised to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

PART 886—OPHTHALMIC DEVICES

203. The authority citation for 21 CFR part 886 is revised to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

PART 888—ORTHOPEDIC DEVICES

204. The authority citation for 21 CFR part 888 is revised to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

PART 890—PHYSICAL MEDICINE DEVICES

205. The authority citation for 21 CFR part 890 is revised to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

PART 892—RADIOLOGY DEVICES

206. The authority citation for 21 CFR part 892 is revised to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

PART 895—BANNED DEVICES

207. The authority citation for 21 CFR part 895 is revised to read as follows and the authority citation following § 895.101 is removed:

Authority: Secs. 502, 516, 518, 519, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352, 360f, 360h, 360i, 371).

PART 1000—GENERAL

208. The authority citation for 21 CFR part 1000 is revised to read as follows and the authority citation following § 1000.50 is removed:

Authority: Secs. 354–360F of the Public Health Service Act (42 U.S.C. 263b–263n).

PART 1002—RECORDS AND REPORTS

209. The authority citation for 21 CFR part 1002 is revised to read as follows and the authority citations following all of the sections in part 1002 are removed:

Authority: Secs. 502, 510, 519, 520, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352, 360, 360i, 360j, 371, 374); secs. 354–360F of the Public Health Service Act (42 U.S.C. 263b–263n).

PART 1003—NOTIFICATION OF DEFECTS OR FAILURE TO COMPLY

210. The authority citation for 21 CFR part 1003 is revised to read as follows and the authority citations following all of the sections in part 1003 are removed:

Authority: Secs. 354–360F of the Public Health Service Act (42 U.S.C. 263b–263n).

PART 1004—REPURCHASE, REPAIRS, OR REPLACEMENT OF ELECTRONIC PRODUCTS

211. The authority citation for 21 CFR part 1004 is revised to read as follows:

Authority: Secs. 354–360F of the Public Health Service Act (42 U.S.C. 263b–263n).

PART 1005—IMPORTATION OF ELECTRONIC PRODUCTS

212. The authority citation for 21 CFR part 1005 is revised to read as follows and the authority citations following all of the sections in part 1005 are removed:

Authority: Secs. 356, 360 of the Public Health Service Act (42 U.S.C. 263d, 263h).

PART 1010—PERFORMANCE STANDARDS FOR ELECTRONIC PRODUCTS: GENERAL

213. The authority citation for 21 CFR part 1010 is revised to read as follows and the authority citations following all of the sections in part 1010 are removed:

Authority: Secs. 501, 502, 510, 515–520, 701, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 360, 360e–360j, 371, 381); secs. 354–360F of the Public Health Service Act (42 U.S.C. 263b–263n).

PART 1020—PERFORMANCE STANDARDS FOR IONIZING RADIATION EMITTING PRODUCTS

214. The authority citation for 21 CFR part 1020 is revised to read as follows and the authority citation following § 1020.33 is removed:

Authority: Secs. 501, 502, 515–520, 701, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 360e–360j, 371, 381); secs. 354–360F of the Public Health Service Act (42 U.S.C. 263b–263n).

PART 1030—PERFORMANCE STANDARDS FOR MICROWAVE AND RADIO FREQUENCY EMITTING PRODUCTS

215. The authority citation for 21 CFR part 1030 is revised to read as follows:

Authority: Secs. 501, 502, 510, 515–520, 701, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 360, 360e–360j, 371, 381); secs. 354–360F of the Public Health Service Act (42 U.S.C. 263b–263n).

PART 1040—PERFORMANCE STANDARDS FOR LIGHT-EMITTING PRODUCTS

216. The authority citation for 21 CFR part 1040 is revised to read as follows and the authority citation following § 1040.30 is removed:

Authority: Secs. 501, 502, 510, 515–520, 701, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 360, 360e–360j, 371, 381); secs. 354–360F of the Public Health Service Act (42 U.S.C. 263b–263n).

PART 1050—PERFORMANCE STANDARDS FOR SONIC, INFRASONIC, AND ULTRASONIC RADIATION-EMITTING PRODUCTS

217. The authority citation for 21 CFR part 1050 is revised to read as follows:

Authority: Secs. 501, 502, 510, 515–520, 701, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 360, 360e–360j, 371, 381); secs. 354–360F of the Public Health Service Act (42 U.S.C. 263b–263n).

PART 1210—REGULATIONS UNDER THE FEDERAL IMPORT MILK ACT

218. The authority citation for 21 CFR part 1210 is revised to read as follows:

Authority: 21 U.S.C. 141–149.

PART 1220—REGULATIONS UNDER THE TEA IMPORTATION ACT

219. The authority citation for 21 CFR part 1220 is revised to read as follows and the authority citation following § 1220.40 is removed:

Authority: 21 U.S.C. 41–50; 19 U.S.C. 1311.

PART 1230—REGULATIONS UNDER THE FEDERAL CAUSTIC POISON ACT

220. The authority citation for 21 CFR part 1230 is revised to read as follows:

Authority: 15 U.S.C. 1261–1276.

PART 1240—CONTROL OF COMMUNICABLE DISEASES

221. The authority citation for 21 CFR part 1240 is revised to read as follows:

Authority: Secs. 215, 311, 361, 368 of the Public Health Service Act (42 U.S.C. 216, 243, 264, 271).

PART 1250—INTERSTATE CONVEYANCE SANITATION

222. The authority citation for 21 CFR part 1250 is revised to read as follows:

Authority: Secs. 215, 311, 361, 368 of the Public Health Service Act (42 U.S.C. 216, 243, 264, 271).

Dated: August 23, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–20633 Filed 9–26–89; 8:45 am]

BILLING CODE 4160–01–M

Federal Register

Wednesday
September 27, 1989

Part III

Department of Transportation

Federal Railroad Administration

49 CFR Parts 217, 219, and 225

Alcohol/Drug Regulations; Final Rule and Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 219

[FRA Docket No. RSOR-6, Notice No. 25]

RIN 2130-AA43

Alcohol/Drug Regulations: Revised Compliance Date; Correction

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Final rule amendments.

SUMMARY: FRA postpones from October 2, 1989, to January 16, 1990, the date by which railroads will be required to comply with the Procedures for Transportation Workplace Drug Testing Programs with respect to pre-employment and reasonable cause tests conducted under the FRA alcohol/drug rule and makes a conforming amendment and technical correction to the rule.

DATES: Railroads are required to comply with subpart H of part 219 and part 40, title 49, Code of Federal Regulations, not later than January 16, 1990. The final rule amendments are effective September 27, 1989.

FOR FURTHER INFORMATION CONTACT: Dr. Sam Holley, Alcohol & Drug Program Manager (RRS-10), Office of Safety Enforcement, FRA, Washington, DC 20590 (Telephone: (202) 366-0501) or Grady Cothen, Special Counsel (RCC-4), FRA, Washington, DC 20590 (Telephone: (202) 366-0767).

SUPPLEMENTARY INFORMATION: On November 21, 1988, FRA published in the **Federal Register** a final rule (53 FR 47102) making certain amendments to its regulations on control of alcohol and drug use in railroad operations (49 CFR part 219). The amendments added requirements for random testing, a prohibition on non-medical use of controlled substances at any time (a "drug-free rule"), and new urine drug testing requirements incorporating the Procedures for Transportation Workplace Drug Testing Programs (53 FR 47002; 49 CFR part 40) ("DOT Procedures").

On May 23, 1989, FRA published a revised timetable for implementation of the new regulatory requirements (54 FR 22283). Under part 219 as revised, as of October 2, 1989, pre-employment and reasonable cause testing programs (subparts D and E) were to be subject to the new subpart H of the regulations, incorporating the DOT Procedures. By this date, duplicative and inconsistent provisions of subparts D and F were to have been modified or repealed through a separate rulemaking process. A Notice of Proposed Rulemaking is published elsewhere in today's **Federal Register** that would make the required amendments to subparts D and F and a number of additional technical, conforming and perfecting changes to the alcohol/drug regulations. However, it is evident that this rulemaking cannot be completed in time to provide adequate notice for railroads to implement new testing procedures. In addition, the Department is considering possible further changes in the DOT Procedures. It is in the interest of the railroads and their employees that changes in drug testing procedures be implemented in an orderly manner, based on a fully integrated set of regulatory requirements.

Therefore, FRA is postponing the compliance date for application of subpart H of part 219 and the DOT Procedures from October 2, 1989, to January 16, 1990. The latter date is the date set for commencement of random drug testing by Class I freight railroads, Amtrak and railroads providing commuter rail service. A conforming amendment is made to § 219.711 with respect to notification of post-accident testing results, since some railroads may not have a Medical Review Officer function fully established prior to implementation of subpart H. A correction is also made to § 219.601 that deletes the clause "(except where approval has been granted under paragraph (e) of this section)" in paragraph (b)(1). There is no paragraph (e) in the subject section, and the topic of the cross-reference is to be addressed in subsequent rulemaking.

FRA emphasizes that the agency has made no change in the requirement that certain major railroads file random testing programs not later than October 2, 1989. The effective date of the new § 219.102 of the regulations, which bars use of controlled substances by covered employes at any time except with medical authorization (§ 219.103), will also remain October 2, 1989.

Regulatory Procedures

FRA finds that notice and opportunity for comment are not necessary because the effect of the amendments is to provide additional time for compliance. FRA also finds that providing such notice would be contrary to the public interest because regulated entities would be compelled to expend resources over the short term to comply with a deadline that clearly must be adjusted. FRA further finds that there is good cause for making the rule effective in less than 30 days from the date of publication, since the amendments modify current regulatory obligations and do not impose more stringent requirements.

This final rule has been evaluated in accordance with existing regulatory policies. It is neither a "major" rule under Executive Order 12291 nor a "significant" rule as defined under DOT policies and procedures. The amendments contained in this final rule do not have any significant paperwork, Federalism, or economic impact. To the extent that any such impact exists, the amendments will lessen regulatory burdens by increasing the time available to comply with regulations previously issued. Because the amendments do not have any significant economic impact, FRA has not prepared a regulatory evaluation. It is certified that this rule will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act (5 U.S.C. 60 *et seq.*).

Therefore, in consideration of the foregoing, Part 219, title 49, Code of Federal Regulations is amended as follows:

List of Subjects in 49 CFR Part 219

Railroad safety, Control of alcohol and drug use.

PART 219—[AMENDED]

1. The authority citation for Part 219 continues to read as follows:

Authority: 45 U.S.C. 431, 437, and 438, as amended; Pub. L. 100-342; and 49 CFR 1.49(m).

2. Section 219.601 is amended by republishing the introductory text of paragraph (b) and by revising paragraph (b)(1) to read as follows:

§ 219.601 Railroad random testing programs.

* * * * *

(b) *Form of programs.* Random testing programs submitted by or on behalf of each railroad under this subpart shall meet the following criteria, and the railroad and its managers, supervisors, officials and other employees and agents shall conform to such criteria in implementing the program:

(1) Selection of covered employees for testing shall be made by a method employing objective, neutral criteria which ensure that every covered employee has a substantially equal statistical chance of being selected within a specified time frame. The method may not permit subjective factors to play a role in selection, *i.e.*, no employee may be selected as the result of the exercise of discretion by the

railroad. The selection method shall be capable of verification with respect to the randomness of the selection process, and any records necessary to document random selection shall be retained for not less than 24 months from the date upon which the particular samples were collected.

* * * * *

3. Section 219.701 is amended by revising paragraph (a) to read as follows:

§ 219.701 Standards for urine drug testing.

(a) On and after January 16, 1990, the conduct of urine drug testing under subparts D, F, and G of this part shall be governed by this subpart and part 40 of subtitle A of this title. Laboratories employed for these purposes must be certified by the Department of Health and Human Services under that Department's Mandatory Guidelines for Federal Workplace Drug Testing Programs.

* * * * *

4. Section 219.711 is revised by amending paragraph (c)(1) to read as follows:

§ 219.711 Confidentiality of test results.

* * * * *

(c)(1) Effective January 16, 1990, results of post-accident toxicological testing under subpart C of this part are reported to the railroad's Medical Review Officer, and the railroad shall treat the test results as subject to paragraph (b) of this section, except where publicly disclosed by FRA or the National Transportation Safety Board.

* * * * *

Issued in Washington, DC, on September 21, 1989.

Gilbert E. Carmichael,

Federal Railroad Administrator.

[FR Doc. 89–22797 Filed 9–22–89; 4:24 pm]

BILLING CODE 4910-06-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 217, 219, and 225

[FRA Docket No. RSOR-6, Notice No. 24]

RIN 2130-AA43

Alcohol/Drug Regulations: Proposed Amendments

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of Proposed rulemaking.

SUMMARY: FRA issues a notice of proposed rulemaking requesting comments on proposed amendments to its rule on Control of Alcohol and Drug Use in Railroad Operations and related provisions of other rules. These amendments are necessary to make improvements in the regulatory program in light of experience and prior public comment, to correct and clarify certain provisions, and to conform the original provisions of the alcohol/drug rule to the amendments issued with the random testing rule in November of 1988.

DATES: Written comments must be received no later than October 27, 1989. Comments received after that date will be considered to the extent possible without incurring additional expense or delay. FRA will hold a public hearing on the proposed amendments prior to the closing of the comment period on a date to be announced in a future notice in the Federal Register.

ADDRESSES: Written comments should be submitted to the Docket Clerk, Office of the Chief Counsel (RCC-30), FRA, Room 8201, 400 7th Street SW., Washington, DC 20590. Persons desiring to be notified that their written comments have been received by the FRA should submit a stamped, self-addressed postcard with their comments. The Docket Clerk will indicate on the postcard the date on which the comments were received and will return the card to the addressee. Written comments will be available for examination, both before and after the closing date for comments, during regular business hours in Room 8201 of the Nassif Building at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Walter C. Rockey, Jr., Executive Assistant to the Associate Administrator for Safety (RRS-3), FRA, Washington, DC 20590, (Telephone: (202) 366-0897), Dr. Sam Holley, Alcohol & Drug Program Manager (RRs-10), Office of Safety Enforcement, FRA, Washington, DC 20590, (Telephone: (202) 366-0501) or Grady Cothen, Special Counsel (RCC-4), FRA, Washington, DC 20590, (Telephone: (202) 366-0767).

SUPPLEMENTARY INFORMATION: The following abbreviations are used in this notice:

BAC: Blood alcohol concentration.

DOT Procedures: Transportation Workplace Drug Testing Procedures (49 CFR part 40; 53 FR 47002, Nov. 21, 1988).

MRO: Medical Review Officer.

NIDA: National Institute on Drug Abuse, Alcohol, Drug Abuse and Mental Health Administration (the unit within the Department of Health and Human Services responsible for urine drug testing standards and certification of laboratories for the Federal workplace).

On November 21, 1988, FRA published in the **Federal Register** a final rule (53 FR 47102) making certain amendments to its regulations on control of alcohol and drug use in railroad operations (49 CFR part 219). The amendments added requirements for random testing, a prohibition on non-medical use of controlled substances at any time (a "drug-free rule"), and new urine drug testing requirements incorporating the DOT Procedures (53 FR 47002).

In issuing the random testing rule and associated amendments, FRA indicated that further rulemaking would be required to conform the existing provisions of the alcohol/drug regulations to the new requirements. FRA also indicated that it intended to address a number of issues that had emerged during administration of the existing program, including issues identified through an informal safety inquiry designed to review first-year operations (*see* 52 FR 2118; Jan. 20, 1987). FRA has withheld action in these areas in anticipation of final judicial action in pending litigation. With the issuance of a Supreme Court decision completing resolution of challenges to the 1985 FRA rule (*Skinner* v. *Railway Labor Executives' Association*, 109 S. Ct. 1402 (March 21, 1989)), FRA is now able to address remaining issues in light of the decision and without further complicating or delaying the judicial process.

The proposed amendments would accomplish the following general objectives:

- Clarify certain rule language that has not been uniformly well understood in practice and make technical corrections.
- Conform prior rule language regarding testing procedures for pre-employment and reasonable cause tests to accommodate adoption of the DOT Procedures (the HHS Guidelines for Federal Workplace Drug Testing Programs, as adapted).
- Add enhanced conditions and safeguards for urine and blood alcohol testing that is permitted (or offered as an employee option) under the current rule.
- Ensure that employees are properly informed when tests are conducted under the FRA rules and that the reason for each test is clearly communicated.
- Conform prior rule language to reflect adoption of the drug-free rule (§ 219.102).
- Refine the criteria for post-accident toxicological testing by ensuring that tests are conducted after passenger train accidents involving personal injuries, while excusing testing after events clearly resulting from natural causes ("Acts of God").
- Strengthen the pre-employment testing program by specifying the action an employer shall take when non-authorized drug use is detected and by requiring tests when employees transfer from non-covered to covered service.
- Establish uniform minimum standards for handling employees determined to have violated the rules based on required or authorized tests, building on the same principles used in the random testing rulemaking.
- Consolidate similar provisions scattered across the rule into provisions of general applicability and otherwise improve organization of the rule text.

FRA also requests comment on whether the prohibited blood alcohol concentration should be lowered from .04%.

In a final rule amendment published elsewhere in today's **Federal Register**, FRA extends from October 2, 1989, to January 16, 1990, the date by which railroads must comply with subpart H of part 219 (and 49 CFR part 40) with respect to reasonable cause and pre-employment drug testing (subparts D and F of part 219). The effective date of 49 CFR 219.102 (the "drug-free rule") and the date by which Class I freight railroads, Amtrak and commuter railroads must submit random drug testing programs will remain October 2, 1989. Other compliance dates are also unchanged. *See* 54 FR 22283 (May 23, 1989) (prior revision of compliance schedule).

The Secretary of Transportation is also issuing a separate Advance Notice of Proposed Rulemaking on alcohol abuse prevention that addresses a broad range of issues involving alcohol countermeasures in all forms of commercial transportation.

Section-by-Section Analysis

Part 219

Subpart A—General

Section 219.3(a) would be revised to update a cross-reference to section 202(e) of the Federal Railroad Safety Act of 1970.

Paragraph (b) would be amended to conform the previous small railroad exclusion for reasonable cause and pre-employment testing and the voluntary referral/co-worker report provisions to the same standards provided in the random testing rule—i.e., the railroad would both have to employ 15 or fewer Hours of Service employees and not operate on tracks of another railroad except as necessary for interchange. FRA intends the interchange exclusion to apply to railroads that interchange cars on tracks in close proximity to one another. Where a small railroad operates over trackage of a covered railroad for several miles and thus takes on the characteristics of the covered carrier, that small railroad would be covered by the entire FRA regulation.

FRA recognizes that it is not plausible to include railroads in the random testing program (by virtue of the fact that they engage in joint operations with other railroads) unless they fully participate in the remainder of the program. The former random testing exclusion (now § 219.609) would then be collapsed into the general-purpose applicability section.

Section 219.5 (definitions) would be revised by deleting the paragraph numbers and by adding certain definitions for clarity.

The terms "Class I, "Class II" and "Class III" (used to modify "railroad") would be defined to have the meaning assigned by the Interstate Commerce Commission (when applied to "rail carrier"). These terms are well known in the railroad industry and are used with respect to required compliance dates with the random testing program.

The definition of impact accident is amended to reemphasize that the damage threshold for a train accident must be met for the event to come within the definition. Following issuance of the original rule in 1985, it became clear that many railroad officers did not understand the "train accident" and "train incident" concepts embodied in FRA's accident/incident reporting system (see 49 CFR part 225). Although extensive educational efforts have generally alleviated this problem, FRA wishes to avoid any confusion in the future. FRA will therefore add clarifying references at a number of points within the regulatory text. The definition of "impact accident" is further clarified by noting that raking collisions are not within its scope. Although certain raking collisions may involve crew member responsibility, the original rule was not intended to reach these events, since they involve a wide variety of scenarios where human factors may not be at issue or where identifying the individuals associated with the circumstances of the accident may be difficult.

"Independent" would be further defined as not under common control with the railroad. This term is used in relation to medical facilities used for reasonable cause and post-accident tests. In these circumstances, the positions of the railroad and individual employees may be clearly adverse to one another; and ensuring that collections of samples are handled by disinterested parties may be important to ensuring employee respect for the fairness of the program. FRA notes, however, that this proposed change may involve a hardship in certain cases where a railroad is owned and controlled (as a financial matter) by a principal shipper, whose medical clinic is the most convenient site for collection. FRA solicits comment on this issue.

"Medical Review Officer" would be added as a defined term. The definition is the same contained in 49 CFR 40.2.

"Railroad" would be given the same meaning assigned by section 202(e) of the Federal Railroad Safety Act of 1970, as amended by the Rail Safety Improvement Act of 1988. This definition is inclusive of all operations of common carriers engaged in interstate commerce, passenger and freight, regardless of the physical characteristics of the operations, and may include non-carriers, as well. However, *see* § 219.3 (application).

As used in current program operations, the term "railroad property damage" has the same meaning assigned under 49 CFR part 225, FRA's accident/incident reporting regulations. FRA will add a definition to part 219 to avoid any confusion over this concept. Railroad property damage refers to damage to railroad property, including railroad on-track equipment, signals, track, track structures (including bridges and tunnels), or roadbed, including labor costs and all other costs for repair or replacement in kind. Estimated cost for replacement of railroad propety is to be calculated as described in the FRA Guide for Preparing Accident/Incident Reports. FRA does not specify a detailed method for calculating passenger equipment damage in the current Guide, nor (in contrast to freight equipment) is there a recognized commercial standard that could be applied to value passenger equipment in this context. FRA therefore proposes to require that passenger equipment damage be calculated based on replacement value.

Section 219.9 would be amended to simplify the section and conform it to FRA's comprehensive approach to civil penalty assessments as set forth in 49 CFR part 209 (53 FR 52918, Dec. 29, 1988). FRA believes that the structure of the individual rule provisions will adequately protect against liability arising inappropriately. Further, FRA notes that the railroads have now had an extended period to become accustomed to the alcohol/drug regulations and to devise systems that will ensure compliance.

FRA proposes to retain two specific qualifications on the duty of compliance which are unique to the alcohol/drug area. These provisions provide that a railroad would be in violation of prohibitions on alcohol or drug use, possession or impairment by one of its employees only where the railroad had (i) willfully required or permitted the employee to go or remain on duty in covered service while the employee was in violation or (ii) failed to exercise due diligence (a high degree of care) to assure compliance. FRA has retained these limitations on railroad liability by adding a new § 219.105 to subpart B and by cross-referencing that new section in § 219.9.

Paragraph (b) would be added to address the issue of joint operations. When railroads operate in common facilities or on the property of another railroad, individual responsibilities (as among the railroads) are normally determined by joint operating agreements, trackage rights agreements, and other private contracts. (FRA may focus its compliance efforts on the track owner with respect to track safety matters and the operating entity with respect to certain other matters.) FRA has been queried concerning application of the alcohol/drug rule in joint operations with sufficient frequency to indicate the need for a clarifying amendment. The proposed amendment would make the host railroad primarily responsible for compliance with testing under subparts C and D, which involve occurrences under circumstances where supervisors of the foreign line employees may be unavailable. The employing railroad has a secondary responsibility in these in joint operating contexts and would retain the primary responsibility with respect to other aspects of the rules, including the alcohol/drug use prohibitions and

random testing. Railroads could still agree among themselves with respect to which entity would be expected to take the initiative in defined circumstances. Obviously, it will be important for employees to know to whom they must be responsive in circumstances where testing may be required or authorized.

Section 219.11 would be amended through several technical and clarifying changes. Paragraph (a) would be amended to conform the implied consent provisions of the rule by recognizing the new random testing subpart.

Paragraph (b) would be amended to state expressly the policy of the agency that necessary medical treatment shall be accorded priority over breath or body fluid testing where the employee has sustained a personal injury. The amendment would also make clear that extraordinary medical intervention (catheterization) is not authorized where the employee is unable to provide a urine sample as a result of an injury or related treatment. A new paragraph (b)(3) would provide the failure to remain available following an accident or casualty as required by company rules shall be considered a refusal to participate in testing (under the part). Finally, a new paragraph (b)(4) would state expressly that tampering with a sample to prevent a valid test constitutes a refusal.

Paragraph (d) would be amended to extend the express consent requirement now in place for post-accident testing to include reasonable cause and random testing. The purpose of the provision is to make clear that an employee shall evidence written consent to testing whenever such testing is legitimately required under this part. The consent would be provided to the entity collecting the specimen, if required by that entity. Since collectors are not in privity with the employer and must rely on employer representations, some collectors may require such expressions before going forward. However, FRA has noted that some medical facilities use forms of consent that may contain extraneous material. The amendment would appropriately limit the effect of the consent to that required by the section, and any clause waiving rights the employee would otherwise enjoy against the employer would be void. Employees could not be required to waive any recourse that they may have as a result of an improper collection.

Paragraph (g) would be added to make clear that, on the one hand, the rule does not restrict the railroad from conducting other testing (that the railroad may otherwise be free to do) and, on the other, that samples taken under this part may not be used for testing other than that authorized or mandated under the rule. The rule further states that all urine from a void constitutes a single sample. These limitations are necessary to avoid the implication of Federal action with respect to tests that go beyond the scope of those authorized or required by the rule. The new provision would be an expanded version of the language presently at § 219.305 (which would be deleted).

Section 219.19 (Field Manual) would be amended to conform to other changes, particularly the inclusion of post-accident testing procedures in appendix C. FRA intends to develop a Second Edition of the Field Manual reflecting the addition of the random testing program, the DOT Procedures, and the decisions made in this proceeding.

At the time of the final rule, § 219.21 will be amended to reflect the current placement of paperwork burdens.

Section 219.23 would add a requirement that employees be given clear written notice when tests are conducted under the FRA rule and the basis upon which the test was required. This information should generally be included on the urine collection form.

This proposal is responsive to two separate concerns. First, a number of railroads have commenced for-cause and other testing programs under their own management authority or under collectively bargained agreements. These programs may be broader or narrower than the FRA testing programs, both with respect to the type of employee covered and the bases on which testing may be required. In certain cases, these programs are clearly distinct from the FRA testing programs; in others, sufficient overlap exists to present the possibility for confusion. In either case, employees have the right to know who is requiring their participation in testing. Although as a safety regulatory agency, FRA has no direct interest in the regulation of tests conducted wholly under management programs, FRA has repeatedly been asked to become involved in the investigation of individual testing incidents. In some of these cases, employees were apparently led to believe that tests were being required under the FRA rule.

Similarly, even where it is clear that FRA's authority is being relied upon for testing a covered employee, employees may not be told immediately the basis of the test (reasonable suspicion, violation of an enumerated operating rule, etc.). Although it may not be realistic to require supervisors to write detailed reports of the circumstances underlying a test prior to sample collection, the employee should be told with reasonable specificity why it is they are being tested (as it expressly required for random testing under § 219.601(b)(7)).

The proposal would not require written notices for individual non-FRA testing events. Use of approved forms would be sufficient to provide notice that employees are being tested under subpart C (mandatory post-accident testing). The rule would prohibit use of those forms for other purposes.

Subpart B—Prohibitions

Section 219.101 (prohibitions). FRA solicits comment on whether the current *per se* prohibited blood alcohol concentration (BAC) should be reduced from .04 to .00 percent. FRA notes the suggestions of the National Transportation Board that this be done and the action by the Federal Highway Administration under the Commercial Motor Vehicle Safety Act of 1986 that motor vehicle drivers with BACs in the range above .00 percent, but below .04 percent, be removed from service for a 24-hour period (53 FR 39044, Oct. 4, 1988). The railroad industry has long maintained (though has not successfully enforced) a rule that an employee may not report for work with any alcohol in the employee's system.

Prior to issuance of the current .04% *per se* prohibition in 1985, FRA received extensive testimony on the subject of alcohol use in railroad operations. FRA noted at that time that prohibitions established at lower levels are more difficult to enforce. As the NTSB and other commenters have recognized, most chemical tests for alcohol are reliable down to only about .02 percent (though well-controlled gas chromatographic analyses provide sensitivity to .01 percent with good confidence). Cases where employees are caught drinking or in possession of alcohol on the job are punishable without regard to BAC. There are therefor few cases where a .00 percent rule would be enforceable but where other prohibitions would not also apply. Those cases would principally involve BACs in the range of .02–.04 percent, and would be subject to severe problems with respect to timeliness of chemical testing (since BAC would fall below reliably documentable levels from within a matter of minutes to one or two hours). Issues of fairness might also arise where employees who had consumed alcohol some hours before were subject to short calls and forced to report to work without knowing whether every remaining trace of alcohol had been eliminated from their blood.

Clearly, then, the question before FRA is whether the exemplary or preventive value of a no-alcohol standard would be of sufficient use in reducing consumption of alcoholic beverage, during the period employees are subject to call, to offset the technical and practical problem involved in dealing with low blood alcohol levels. In light of the Federal Highway Administration action, and the expert study on which it was based, FRA believes that this issue warrants review and reserves the option to lower the prohibited level contained in § 219.101 in the final rule document, either to .00 percent or another level. *See* Transportation Research Board, *Zero Alcohol and Other Options* (National Research Council Special Report No. 216, Washington, DC, 1987).

Section 219.103 (Prescribed and over-the-counter drugs) would be amended to explicitly address the situation in which the employee is being treated by more than one medical practitioner and therefore is at risk with respect to drug interactions. One of the prescribing physicians or dentists would be required to evaluate the effect of all medications in combination.

Section 219.104 would be added to address the general issue of responsive action in the event an employee tests positive in a required or authorized test. The approach embodied in the drafting combines the provisions of the random drug testing rule governing suspension and conditions for return to service (current § 219.605) with post-suspension hearing procedures similar to those for refusals of post-accident testing (§ 219.213(b)).

With the advent of the drug-use prohibition of § 219.104 and the decision in the context of the random drug testing rulemaking to establish a safety floor with respect to responsive action when an employee tests positive, it is clear that the entire rule should be reviewed for consistency and sound design. Options available to FRA include repealing the existing provision relating to responsive action, limiting procedural guidance to cases where FRA authorized or mandated tests are reported as positive indicating violation of Subpart B of the current rule, and including requirements for any situation where violation of Subpart B may be established (including railroad tests, evidence from observations by supervisors, and other sources).

FRA believes that Federalizing the entire disciplinary process related to substance abuse on the railroads would not be wise and is not necessary. However, where mandated or authorized tests are conducted and alcohol or drug presence is verified indicating violation of the FRA rule, FRA believes that minimal standards should be set out to protect employees while establishing a safety floor with respect to handling of the violator.

The proposed rule would provide that if, as a result of a test under the FRA rule, it is believed that the employee violated § 219.101 or § 219.102, the employee would then be entitled to a prompt hearing before a person other than the charging officer. If the railroad determines that the FRA rule was violated, the employee could not be returned to service until the employee had been evaluated by a substance abuse professional ("EAP counselor"), had participated in any primary treatment deemed necessary, and had tested negative on return-to-work alcohol and drug tests. Thereafter, the employee would be subject to aftercare and a reasonable program of follow-up testing. The procedures are intended to work in tandem with existing diciplinary systems in the railroad industry, as is the case with respect to refusals of post-accident testing under existing rules that have withstood judicial scrutiny.

It should be noted that the proposed rule would require suspension only when the Medical Review Officer has reported the test result as positive, following opportunity for a medical interview. Even then, if the railroad later determined that there was a defect in the test procedure or that the test result was attributable to innocent ingestion (a remote possibility, however unlikely), then the employee would have available the normal remedies, such as reinstatement with back pay.

The return-to-service provisions are not intended to require reinstatement of employees who violate alcohol/drug prohibitions. In the case of first-time violators many railroads assess stern sanctions, up to and including dismissal. Such sanctions create a salutary deterrent effect. Other railroads participate in Operation Red Block, under which first-time violators may be protected from disciplinary sanctions if they are willing to accept treatment. In exchange for this leniency, employees join together in prevention committees and participate directly in enforcement of workplace fitness requirements. Still other railroads deal with first-time violators through the railroad's medical qualifications program. In the case of employees who have violated alcohol/drug prohibitions more than once, virtually all railroads impose a sanction of dismissal. However, company policies continue to encourage self-referral of employees who may have received treatment in the past and who are experiencing a recurrence of uncontrolled abuse. The proposed rule amendment would be compatible with each of these approaches, so long as the minimum requirements are met. FRA believes these requirements are necessary to undergird company substance abuse programs, avoid conflict with the variety of state laws addressing occupational drug testing, and ensure that the testing requirements are effective.

FRA has not included in the regulatory text, but notices for comment, a requirement that any employee who is determined to have violated the rule's prohibitions for a second time during a five-year period would be deemed disqualified for an established period thereafter. A similar issue is being raised in connection with FRA's rulemaking on locomotive operator certification pursuant to the Rail Safety Improvement Act of 1988.

Paragraph (d) would add provisions more fully describing the scope of follow-up testing. Although FRA has not sought to be highly prescriptive with respect to the frequency and duration of follow-up testing, leaving these issues to the judgment of the companies and their medical officers or EAP counselors, FRA does believe that such testing (of whatever duration) should include both alcohol and controlled substances). It is extremely common for those with substance abuse problems to engage in "polyabuse"—i.e., the abuse of more than one compound. Alcohol is by far the most common alternative drug among those with marijuana, cocaine, or other drug abuse problems. The testing requirement is designed to address alcohol on the basis of use that would offend the rule, since not all those who violate § 219.101 or 219.102 will be chemically dependent, and such dependency may provide the only basis on which a therapy of total abstinence can be required (though it may be identified as a treatment goal for others). Accordingly, the form of testing would be breath testing or urine alcohol testing using the two-sample procedure. The theory underlying urine testing for alcohol is more full described in connection with amendments to the reasonable cause testing provisions.

Section 219.105 would be added to describe the limitations on railroad liability with respect to the prevention of violations of the subpart B prohibitions. These limitations are currently found in § 219.9. In summary, the provisions require the railroad to exercise a high degree of care to prevent violations, but do not impose liability where, despite such efforts, an individual employee uses alcohol or

drugs in a manner that is prohibited (and the railroad is not aware of the conduct).

Subpart C—Post-Accident Toxicological Testing

FRA believes that the post-accident testing requirements have, in general, served their intended purposes well and do not require major overhaul in light of program experience. However, FRA proposes a variety of clarifying, perfecting and conforming amendments in light of experience under the rule and other related rulemaking.

Throughout the proposed amendments, FRA includes parenthetical explanations of the concepts underlying the testing criteria ("train accident," "train incident").

Section 219.201. FRA proposes to clarify § 219.201(a)(1)(ii). Release of hazardous material in a train accident accompanied by an evacuation or injury from product would be a qualifying event for testing only where the hazardous material release involves railroad freight car lading. Although FRA makes this proposal based on experience involving relatively minor releases of hazardous materials (e.g., from a propane tank along the right of away), FRA solicits comment on whether a different rule should apply. FRA also solicits comment on whether the hazardous materials testing criteria should be refined or modified to more closely resemble the revised criteria for immediate reporting of certain hazardous materials incidents to the Research and Special Programs Administration (*See* 54 FR 25808, 25812; June 19, 1989).

FRA proposes to add to the listing of major train accidents at paragraph (a)(1)(iv) any train accident involving a passenger train that results in one or more reportable injures. Although most significant passenger train accidents have been covered under other testing criteria, FRA agrees with the National Transportation Safety Board and others who have recommended that a separate criterion be stated in the regulations to avoid a typical situations where passenger safety has been seriously imperiled, yet testing would not otherwise occur. FRA estimates that no more than ten (10) additional accidents per year would require testing under this criterion. It should be noted again that the proposal will require testing only after a "train accident" as defined by the rule. That is, there must have been an event involving derailment or collision producing damage that reaches the reporting threshold (currently $5,700). An accident involving a trip or fall by a passenger or rough train handling resulting in minor injury would not, by itself, require testing under subpart C.

Paragraph (b) of the current rule excepts rail-highway grade crossing accidents from testing. The proposed amendment to that section would also except any case of an accident/incident the cause and severity of which are wholly attributable to a natural cause (e.g., flood, tornado or other natural disaster), as determined on the basis of objective and documented facts by the railroad representative responding to the scene. In the past three years, FRA is aware of two documented tornado-caused accidents where testing was required. FRA agrees that testing should be excused in those situations. However, FRA remains concerned that an exception could be abused or could lead to loss of important data where it is initially believed that the subject employees had no opportunity to respond to the natural cause, but it is later determined that they could have avoided or reduced the severity of the accident by taking proper responsive action. This notice proposes the "Act of God" exception but also requests comment on how abuse of this provision can best be prevented.

Paragraph (c)(1) would be amended to disqualify from making the testing determinations any railroad representative who is immediately involved in the circumstances of the accident/incident. This could include a railroad officer riding the train in a supervisory capacity or directing the routing of trains at a dispatching center.

The amendment would also clarify the issue of joint decision making with respect to whether an accident qualifies for testing. In order to ensure compliance with Subpart C and avoid testing where it is not required, some railroads have required that the responding railroad representative contact higher authority to discuss the testing decision. This practice has the advantage of more uniform decision making, but can also contribute to delays in testing and confusion over responsibility for the decision. The amendment would reiterate that the responding representative must make the required factual determinations and would require that any other person making a final decision based on facts reported by the on-scene representative certify the basis of the decision in writing within 24 hours. The proposal is not intended to prevent collaboration between the on-scene official and a high authority (or person with specialized expertise) on issues such as the railroad damage estimate for individual units of damaged equipment. However, the on-scene representative must describe the visible damage in suitable detail to derive an estimate. A host freight railroad may rely upon replacement damage estimates and repair estimates provided by a passenger railroad, subject to the same requirement that visible damage be described.

Paragraph (c)(2) would be amended to emphasize that the "good faith" language with respect to determination of qualifying events for testing does not excuse errors of law. The railroad and its supervisors are responsible for being aware of the requirements of Subpart C so that testing can be conducted readily and according to the prescribed criteria. Although a good faith error in estimating property damage would be understandable, it would not be excusable for the railroad to apply a property damage criterion other than those specified in subpart C.

A new subparagraph (4) with paragraph (c) would clarify that if an accident is deemed to be a qualifying event based on reasonable inquiry and good faith judgment (together with application of the mandatory criteria), then it is a qualifying event for all purposes, including reporting of test results, even if at a later date the factual predicates are found not to match precisely the testing criteria. For instance, if field estimates should place damage at $550,000, but later more detailed estimates reduce the amount to $480,000, that would not vitiate the basis of the test. On the other hand, if the railroad fails to make reasonable inquiry into the facts, exercises bad faith in determining the facts, or applies inappropriate standards, and it is later determined that the accident did not qualify for testing, then any samples received would be destroyed and results of any analysis would not be reported.

Section 219.203(a) deals with the responsibilities of the railroad and employees tested.

Paragraph (a)(1) would be amended expressly to require employee cooperation in testing. Non-cooperation would include deliberate avoidance of testing by going absent without leave, refusal to provide specimens, and failure to participate in documentation of the collection process.

Paragraph (a)(3) would be amended for purposes of emphasis. As originally issued, the rule was structured to require testing of all train crew members and other covered employees involved in the circumstances of "major train accidents" described in §219.201(a)(1), but it provided for exclusion of individual train crew members involved in "impact accidents" and "fatal train

incidents" under §219.201(a) (2) and (3) where the railroad representative could immediately determine (i.e., without incurring further delays in testing) that the particular employee had no role in the cause(s) of the accident. FRA is concerned that in some situations railroads may have hesitated to utilize this provision. Accordingly, FRA proposes to change the words "employee is excluded" to read "employee shall be excluded." Although FRA recognizes that the causes of an impact accident or fatal train incident (fatality to on-duty employee) may not be immediately clear and that, as a result, the rule creates a presumption of testing where significant doubt exists, FRA believes that using mandatory language with respect to the exclusion may provide reassurance to railroad representatives that, where they can exclude responsibility on the part of one or more employees based on information that becomes immediately available in the course of determining whether the event qualifies for testing, then the policy of the rule clearly directs that they not be tested. The amendment also notes that employee contribution to the severity of the accident should be considered in making this determination (as it is in determining whether an employee may be tested under subpart D), since in many cases prompt crewmember response or appropriate dispatcher oversight may significantly mitigate the severity of an accident.

Paragraph (b) of §219.203 would be amended by adding a new subparagraph (4) that addresses issues raised during implementation with respect to prompt testing of employees while they remain in duty status. Railroad rules typically require employees to remain on site following an accident or casualty, unless it is necessary to perform other duties. The current post-accident testing rules are built on the assumption that this will occur and that the railroad will promptly direct employees to accompany a supervisor to an independent medical facility for testing. Although this is typically the case in practice, there have been exceptions. In some cases, employees have been allowed to leave duty status following qualifying events and have later been recalled for testing. In one well publicized case, an employee left his post and was not available for testing for over three days.

FRA believes there will seldom be a situation where a railroad is justified in releasing an employee prior to testing. The proposed amendment makes clear, therefore, that the railroad shall retain covered employees who "may be subject to testing" in duty status for the period necessary to make the on-site determinations and, as appropriate, complete the sample collection procedure. Where, through inadvertence or circumstances not now foreseen, the railroad releases the employee and later determines that testing should have occurred, FRA proposes to make clear that the employee will not be recalled. An employee who is free to go home without restriction is also free to utilize alcoholic beverages. Although use of controlled substances is permitted only consistent with medical authorization, it is nevertheless true that actual or claimed intervening use of drugs creates major complications in interpreting the significance of testing data. FRA therefore believes that considerations of employee privacy (with respect to legitimate off-duty use of alcohol), fairness and effectiveness argue for terminating the testing procedure where the employee has been released from duty.

However, where an injured employee is transported for the purpose of medical care directly to the medical facility, intervening alcohol use is not an issue. Further, any administration of drugs at the medical facility can be readily verified, both as to time and dosage. As is the case today, railroads would continue to have an obligation to pursue testing in these circumstances, unless provision of the sample or samples might be inconsistent with the employee's health.

In the extraordinary case where the employee is absent without leave following an accident but later reappears, testing could still be conducted. However, the refusal implicit is becoming absent without permission would not be excused.

Paragraph (c) would be amended to explicitly require the railroad to pre-designate post-accident collection sites. It is necessary for the railroad to survey available hospitals, clinics and other medical facilities to determine which facilities are willing to assist in post-accident testing, to ensure that services will be available promptly, and to emphasize the importance of careful, controlled collections in conformity with this part. Most major railroads have undertaken this task. However, in some limited situations, employees have been transported to facilities that would not assist in the collection process. In other cases, hospital emergency rooms have been used only because other available facilities had not been surveyed. Hospital emergency rooms appropriately give priority to trauma cases, and collections may be delayed as a result. FRA proposes to amend the rule to ensure that any remaining railroads follow through appropriately.

Section 219.205 would be amended to reference the new appendix C (post-accident sample collection) in lieu of the Field Manual.

Paragraph (d) would be amended to clarify its intent that toxicology kits be shipped as soon as possible (normally within a matter of minutes or a very few hours). The means of transportation should be adequate to ensure delivery within 24 hours of shipment. The section is further clarified to emphasize that, whenever reasonably possible, transfer of the sealed kit should be directly from the collecting medical facility to the courier, so that no issue arises with respect to the railroad's access to the specimens. FRA recognizes that this will not always be practical, given the remote locations at which some collections must occur. If, therefore, the railroad representative must transport the sealed kit to a point of shipment, it is the responsibility of the railroad to document secure chain of custody of the kit during that interval. This could be done through a separate chain of custody document or other writing documenting continuity of custody and attested by all persons who may have handled the box.

Section 219.207(d) would be amended to update a cross-reference (to Appendix C in place of the Field Manual).

Section 219.209(a)(1) would be amended to update the telephone number to which notification of post-accident testing events will be provided.

Section 219.211 would be amended to address the issues of medical review of post-accident testing results. Existing paragraphs would be redesignated to accommodate revision of the section.

In order to understand the manner in which these provisions will function, it is necessary to describe FRA's administrative procedures for post-accident testing. At the time of sample collection, employees are provided the opportunity to provide information concerning medical use or administration of drugs. This information is reviewed on FRA's behalf by qualified personnel, including a medical doctor having qualifications to serve as a Medical Review Officer, prior to the reporting of any analytically positive result. Because a principal function of the FRA post-accident testing program is to determine accident causation and to explore the role of impairing substances in railroad safety, all confirmed, analytically significant results are reported to the railroad and the employee, and are available for

accident investigation purposes, whether or not they indicate prohibited use. This is done because it is possible for even legitimate medical use of a drug to cause side effects that may lead to an accident. An important long-term function of the post-accident testing program may be to identify whether medical practice in this area is sufficiently sensitive to the potential adverse safety consequences of therapeutic drug use and to determine whether such use is being properly supervised.

However, where the employee has declared medical use of a controlled substance, FRA does endeavor to affirm in the laboratory report whether the findings are consistent with declared medical use. In exceptional cases, this may require contacting the employee directly to ascertain more information concerning claimed dosage or time of ingestion. However, FRA may not attempt at this stage to verify the existence of a proper prescription. Instead, FRA believes it is more appropriate for the railroad Medical Review Officer, who is often also the medical officer of the railroad, to make appropriate inquiries and to disclose to FRA only such information as is necessary for FRA's purposes (which normally would not include data describing the underlying condition for which the drug was prescribed).

Accordingly, paragraph (b) would provide that test results are reported to the employee and the railroad's Medicial Review Officer. The railroad would have the same duty of confidentiality with respect to the results as provided for tests subject to subpart G of the regulations, except to the extent the FRA or the NTSB has publicly disclosed the results as necessary for the conduct of an accident investigation.

Under paragraph (c), test results for surviving employees would be reviewed by the railroad's MRO in the same manner required for other tests subject to the regulations. Although the principal purpose of the review would be to reconcile test results with claimed medical use of drugs, FRA's designated laboratory will cooperate with the Medical Review Officer with respect to other steps the MRO may wish to take to review the test results. The results of the review would be reported to FRA for use in FRA's accident investigation, enforcement and data collection processes.

It should be noted that FRA maintains an independent oversight and technical review capability for its designated laboratory which can provide expert advice to FRA with respect to any contested test result. There may be occasions where the interests of the railroad employing the Medical Review Officer and that of investigating public agencies are inconsistent. Accordingly, neither FRA nor NTSB would be bound by the results of the railroad MRO review, although it would be binding with respect to disciplinary purposes internal to the railroad; and FRA would consider the results of the review in exercising its responsibilities.

Paragraph (d) describes FRA's practice of maintaining medical information in confidence to the extent permitted by law, except where necessary to discharge its statutory responsibilities. FRA believes that it is obligated by law to provide information pertinent to an accident investigation to the National Transportation Safety Board. FRA urges the Board to maintain medical information in confidence except as necessary for the proper conduct of its investigations.

Paragraph (e) (currently (a)(2)) would clarify the manner in which an employee could contribute to the accident/incident investigation by responding to the toxicology report.

Redesignated paragraph (h) (currently (d)) would be amended to lengthen the retention period for positive samples from six months to two years, which is the actual current practice. The retention period for negativre samples would be reduced from six months to three months. Retention of negative specimens is appropriate in this context because of the significance of certain of the events subject to testing; however, the current retention period for negatives is believed to be unreasonably long.

A new paragraph (i) would make explicit the agency's current practice of allowing reanalysis of specimens by the designated laboratory or by another certified laboratory with an appropriate, validated assay, at the employee's request. The request would have to be made within 60 days of the date of the toxicology report, in order to encourage early problem resolution and to minimize technical issues related to extended storage and later reanalysis of specimens. It would be within FRA's discretion whether to allow reanalysis after that period.

Although FRA can provide for reanalysis at its designated laboratory at the employee's request, any employee-requested reanalysis conducted at another laboratory would be at the expense of the employee. However, this would not bar FRA from procuring additional analysis in a proper case where necessary to achieve program purposes.

Section 219.213(a)(1) (refusals) would be amended to make a technical correction. (Other amendments to section 219.11 provide that the concept of refusal of a test includes failure to remain available as required by company rules or tampering with a specimen to defeat the test.)

The new paragraph (a)(4) would provide that, upon the expiration of the 9-month disqualification period, an employee could return to work only under the same conditions provided for violations of the alcohol/drug prohibitions in § 219.104. It should be noted that the required EAP evaluation and any necessary treatment could occur within the 9-month period.

Subpart D—Reasonable Cause Testing

As structured in the final rule issued in 1985, reasonable cause testing was designed to detect and deter on-the-job alcohol or drug use or impairment. Employers were permitted to act on information derived from this testing with respect to non-medical drug use that was not established to have shown use or impairment on the job, but were not required to do so. With adoption of § 219.102, the Federal drug-free rule, the focus of this testing procedure will now be expanded to include prohibited use of controlled substances at any time, as evidenced by drugs or their metabolites remaining in the body at the time of an in-service reasonable cause urine test. Over time, this innovation may warrant adjustment of the bases for testing, as well as the other changes proposed in this notice. However, due to the short period available to complete the instant rulemaking, the additional issues presented with respect to further program development will be deferred.

FRA notes that the major issue facing the agency with respect to the reasonable cause program is whether to retain that aspect of its character which is designed to address drug impairment. The rule currently creates a presumption of impairment from a positive urine test, unless the employee exercises the available option of a blood test. If the employee provides a blood sample, then the urine and blood test results are reviewed together; and the best available scientific information is used in concert with evidence concerning the employee's behavior to ascertain whether, on a preponderance of the evidence basis, the employee is impaired. Even if the employee is not determined to have been impaired, however, the railroad may still proceed based on a positive urine test alone to assess any discipline that may be appropriate under its established

policies published to employees through a required notice.

As further background, it should be emphasized that the purpose of the blood test is not to "confirm" the urine test results. Urine analysis includes both screening and confirmatory analysis by gas chromatography/mass spectrometry for the parent drug or for metabolites of the prohibited parent drug. It would not be unusual for a urine test to be positive and the blood test for the same drug negative, depending on the relative recency of use and the sensitivity of the blood test. This is true because drugs are generally found in the blood in lower concentrations than the urine during the latter phase of the elimination cycle. Residual blood levels of the drug or its metabolities may then be so low as to escape detection by available tests.

FRA recognizes the limitations of the current approach in light of the addition of the drug-free rule. If a railroad maintains a policy of handling all positive drug tests in the same manner regardless of the likelihood that the employee was impaired by the acute effects of the drug on the job (e.g., through medical disqualification), then it can be argued that the blood test option and the presumption of impairment are superfluous. At the same time, if at any later date the railroad or an arbitrator may be tempted to infer from a positive urine test and unsafe conduct that the employee was impaired on the job, then it may be useful to the employee to have the right of a blood test at the time of urine sample collection in order to provide exculpatory information.

FRA is also aware that appropriately sensitive blood analyses for drugs are available from a limited number of laboratories; and the interpretation of the results of these tests require specialized knowledge beyond that required for normal medical review purposes.

Accordingly, FRA requests comment on elimination of the urine impairment presumption and the boood test option. However, the structure of the proposed rule changes assumes retention of both. FRA believes that tests conducted in the railroad industry on reasonable suspicion or after unsafe practices may present special considerations that warrant providing employees with the opportunity to provide full information concerning their fitness. The existing program appears to have worked reasonably well in practice, though some railroads may have been discouraged from utilizing the FRA authority because of the complexities that these features introduce. Further, FRA has just completed extended litigation challenging the reasonable cause and post-accident testing programs. Both programs were upheld in their entirety. Major changes to either program may be seen to invite further litigation, and by their nature these issues are sufficiently complex and technical to invite extended judicial consideration of any challenges. FRA believes that the interests of safety may be better served by reserving significant changes for further consideration at a later date. Accordingly, the proposed changes would not disturb the basic program design but make only those changes necessary to conform the rule to advances in testing safeguards and reflect experience in program administration.

FRA further solicits comment on the possibility of excusing the requirement that employees have a blood test option where the urine result is used for limited purposes, such as temporary medical disqualification in the case of an initial positive. Where the railroad does not attempt to make a determination concerning on-duty use or impairment (i.e., where the railroad treats all cases as if the blood test was exculpatory as to on-duty acute effects), less reason would appear to require the additional expense and complication associated with the optional blood test.

Section 219.301 of the existing rule sets out the circumstances under which testing may be required. Instructing railroad supervisors to understand these conditions for testing is a significant undertaking that the railroads have addressed through structured training programs. The proposed amendments are, again, minor and of a clarifying or conforming nature.

Paragraph (a) would be amended to reflect the fact that reasonable cause urine tests would now detect non-compliance with § 219.102, as well as § 219.101, and to reference the new § 219.23, which requires notice to employees concerning the authority under which the test was conducted as the general basis of the test (e.g., suspicion of current impairment, violation of an enumerated operating rule).

Paragraph (b)(3), which enumerates those rule violations that provide a basis for a reasonable cause breath or urine test, would be amended by making a typographical correction and by adding explicit reference to two unsafe practices that have been construed as coming within the purview of the existing provisions. Both entering a cross-over before both switches have been properly lined for movement and running through a switch (other than a switch designed to activate automatically with the movement's approach) involve operating on a segment of track in an unauthorized manner. The proposed amendments would clarify that these particular unsafe practices provide a basis for testing. The proposed amendments would also clarify that failure to flag a train that is fouling an adjacent track, where required by the railroad's rules, is likewise a basis for testing.

Paragraph (f) would be amended to provide that reasonable cause collections may only be conducted promptly following the observations or events upon which the testing decision is based, consistent with the need to protect life and property. FRA has noted an excessive number of instances where the railroad has, following a rule violation or reportable accident/incident, allowed the employees involved to complete their normal duties before commencing the testing process. This practice erodes employee confidence in the program and renders less valuable the right of the employee to provide a blood test for analysis. It also raises questions concerning the railroad's commitment to maintaining a safe work environment and may lead to violations of the Hours of Service Act and the 8-hour limitation on testing described below. The intent of the proposed amendment is to require that testing be commenced as soon as practical after the triggering event, since the purpose of testing is to ascertain whether alcohol or drug use may have contributed to the occurrence.

It should be noted that the 8-hour limitation is not based on fixed technical limitations on breath or urine testing. In the case of alcohol, which is eliminated from the blood at an average rate of about .018% per hour, the detection window obviously varies in relation to the blood alcohol level at the time of the event in question (and individual variations in rate of elimination). Drug residues may be eliminated in the urine for periods after last use from two to three days to in excess of one week, depending on the drug, frequency of prior use, and degree of concentration of the urine. Thus, for alcohol, very prompt testing is desirable. For other drugs, urine levels will normally remain detectable well beyond the 8-hour period. However, drug levels in the blood tend to fall more quickly than urine levels, depending on the drug in question and whether the parent or metabolites, or both, are subject to testing.

Paragraph (f)(2) (newly subdivided) would be amended with respect to the 8-hour limitation. Unlike post-accident testing, for which the public interest in

obtaining available toxicological information regardless of necessary delays, the reasonable cause testing program sets an absolute 8-hour limitation. FRA solicits comments with respect to all issues involving the 8-hour rule.

The proposed changes would clarify and refine the 8-hour rule in light of program experience. First, the 8-hour period would run from the time of the event or the time the responsible supervisor receives notice of the event, whichever is later. This provision is intended to deal with the situation such as one in which an employee is injured, but either the employee conceals the injury to avoid testing or the seriousness of the injury does not manifest itself until some hours later. In either case, allowing 8 hours (if necessary) within which the supervisor can go to the site, evaluate the situation, determine who should be tested, transport the employees to the collection site, and complete the collection procedure may not be excessive. FRA is concerned, however, that the proposed provision may itself be subject to manipulation on the side of the railroad and solicits any suggestions for further refinement.

Paragraph (f)(3) would provide that an employee, once released, may not be recalled for reasonable cause testing. This would be true even if the employee reported an on-the-job injury after leaving work. FRA believes that the railroads have sufficient ability to penalize employees who fail to make prompt reports of injuries. Should an injury manifest itself following the end of the duty tour, it is more likely to be of a less serious variety or (as in the case of muscle strain) of the kind that could be incurred without employee fault.

Paragraph (f)(4) defines "responsible railroad supervisor" for purposes of who would receive notice to commence the 8-hour period. The definition is intended to be sufficiently broad to avoid abuse; but FRA nevertheless solicits comment on its formulation.

Section 291.303 of the existing rule addresses safeguards for breath testing. Since implementation of the rule in 1986, over 1,000 evidential breath tests have been conducted under the rule. So far as FRA has been made aware, there have been no significant problems with the regulatory structure. However, FRA is prepared to make any perfecting changes that may appear appropriate on the basis of comments submitted.

FRA specifically proposes to amend paragraph (c) to specify standards for analysis of blood samples that may be submitted on an optional basis by any employee who tests positive in replicate evidential breath tests. The proposed standards reflect common forensic testing standards similar to those used in many U.S. jurisdictions and those embodied in the FRA post-accident testing program. Quality control procedures parallel the essential internal quality control procedures for drug urinalysis contained in the DOT Procedures. Comment is requested with respect to laboratory qualifications and external quality control (*see* discussion of urine alcohol analysis with respect to § 219.307, below).

The proposed blood testing safeguards specifically provide that if the blood test is negative for alcohol (at a cutoff of .02%) then the breath tests shall also be deemed to be negative. FRA is well aware that this may not be a scientifically "correct" outcome, in view of the fact that delays in sample collection may result in elimination of detectable levels of alcohol from the blood. However, the purpose of the blood test option is to qualitatively verify that the breath alcohol device was measuring ethyl alcohol and to provide reassurance to all employees that the test procedure is fair and not subject to manipulation by the employer. The only way these objectives can be achieved is to rely, from a qualitative point of view, on the blood alcohol analysis.

FRA notes that it is common for breath test readings and later blood analysis quantitations to vary. In the most frequently encountered case, the breath analysis reading may be taken at the peak of the blood alcohol curve (comprised of an absorption phase and elimination phase) or during the period of declining BAC. A blood sample taken at a later time may show a BAC lower than that displayed on the breath alcohol device, even though the breath device displayed a conservatively low reading in relation to actual BAC. This is true because in the intervening period a portion of the alcohol in the blood has been metabolized by the liver. The better quantitation is that taken closest to the triggering event, even though a breath device has been used to estimate BAC. Accordingly, if the blood test is positive, the breath test reading should normally be viewed as authoritative (assuming compliance with periodic verification of calibration, plausible compatibility of two quantitations, etc.).

Under the current rule, breath alcohol readings below .02 percent are considered negative. An indicated BAC of .04 percent or above indicates possible violation of § 219.101; however, only an indicated BAC of .05 percent or more on a properly calibrated evidential device operated under appropriate environmental conditions by a qualified operator would normally be dispositive on this point, since devices are maintained within plus or minus .01% of true value. Note that under proposed § 219.104, an indicated BAC of .05 percent or above would require removal of the employee from service and impose certain minimum standards for returning the employee to service. A railroad encountering an indicated BAC of .02–.04% would be free to apply its own disciplinary standards. Railroad rules have historically required that an employee not have any alcohol in his or her system while on duty. FRA does not condone use of any alcohol. (See discussion of § 219.101, above.)

Section 219.305 of the current rule sets out a portion of the procedures and safeguards for urine alcohol and drug tests. These provisions were issued at a time when no national laboratory certification program was available and prior to development of current, enhanced testing safeguards. FRA therefore provided in its final rule of last November that railroads would be required to comply with the Transportation Workplace Drug Testing Procedures (49 CFR part 40; 53 FR 47002, Nov. 21, 1988) (DOT Procedures), which were based on the HHS Guidelines (Department of Health and Human Services Guidelines for Federal Workplace Drug Testing Programs (53 FR 11970, April 11, 1988). The proposed amendments would repeal portions of the existing sections that are covered in greater detail in the new subpart H, which incorporates the DOT Procedures and indicates appropriate linkages to existing railroad procedures.

FRA does propose to retain the requirement of paragraph (d) that reasonable cause urine collections be performed at independent medical facilities, since on-property collections would raise issues of alleged bias in the context of events involving some adversity between the employer and employee and since collection at a medical facility will make exercise of the blood test option realistic.

However, FRA is keenly aware that requiring collection at independent medical facilities will, in some cases, make control of the collection process more difficult. Further, railroads that are making extensive arrangements for random urine collections on the property may find this requirement burdensome. Accordingly, FRA solicits comments on this issue and, as with other issues raised in this notice, reserves the right to make further changes in light of comments received.

The existing rule provisions allow for alcohol analysis using urine, but do not

mandate safeguards specific to this analysis. The proposed amendment would continue this alcohol testing authority (more fully discussed below) but cross-referenced a revised § 219.307 containing urine alcohol testing standards.

Paragraph (e) would be deleted from this section, since the issue will be covered in the proposed amendments to § 219.11.

Section 219.307 of the existing rule contains standards for laboratory urine analysis and reporting. These provisions would be repealed in favor of the more rigorous and detailed provisions of subpart H and the new part 40.

A revised § 219.307 would address the specific issue of urine alcohol testing. Urine is ordinarily not a preferred fluid for alcohol analysis because urine alcohol levels based on single samples do not reliably correspond to blood alcohol concentrations at the time the urine is collected (nor at any clearly definable point in the past). However, there are situations where urine alcohol analysis may be indicated. Often observations giving rise to suspicion of alcohol or drug impairment will provide insufficient cues to discern whether the symptoms displayed resulted from use of drugs, alcohol, or alcohol and drugs in combination. After unsafe practices, specific indicators may again be absent. Prompt testing for both alcohol and drugs may therefore be indicated, but it may not be administratively practical to conduct both breath analysis and urine drug test. Even if breath analysis equipment is available, it may not be portable; or it may be unrealistic to introduce such equipment in the context where the employee may be found (e.g., where the employees is receiving treatment in a medical facility).

This section, together with the new appendix D, sets forth the technical standards for urine alcohol analysis. Appendix D is based on the existing Field Manual note regarding urine alcohol testing. In brief, the procedure calls for a two-sample procedure. At the time of provision of the first sample, which would normally be used for drug analysis under subpart H, the employee would be directed to entirely void the bladder. A waiting period would be observed during which the employee might be offered fluids. A second sample would then be collected for urine alcohol analysis. Since this sample would represent urine delivered to the bladder during the interval between the first and second collections, and since urine is produced in the kidney from blood, the urine alcohol level of the second sample will mirror the blood alcohol level. However, alcohol is found in body fluids in proportion to the water content of the fluid. Urine has a higher water content than blood. It is therefore necessary to divide the urine alcohol level by 1.5, which provides an acceptable estimate of average BAC in the interval between the first and second sample.

A sample collected under appendix D would be placed in a standard urine collection bottle containing at least 1% sodium fluoride (w/v) as a preservative. Except as otherwise specified, collection, handling and retention of the urine specimen would be the same as provided for drug analysis in subpart H. Thus, for example, the original sample container would be required to be retained in a separate accessioning/aliquoting/storage area at all times.

Quantitative test results would be reported to the Medial Review Officer, who would review and act upon the results in the same manner provided in subpart H, except that both a quantitated urine alcohol level and estimated BAC would be reported to the employer. Where this procedure is followed, an employee would have the option of providing a blood sample for analysis. This might be advantageous to an employee who has consumed alcohol off duty and is unable to completely void the bladder because of a physical disorder, but should not be viewed as obligatory by any employee, since the Medical Review Officer will be available to evaluate and take into consideration such explanations.

Laboratory analysis would incorporate standard forensic alcohol testing techniques, and internal quality control provisions would be similar to those required for urine drug testing. FRA requests comment on the qualifications of laboratories to perform this testing and the problem of external quality control and reserves the right to include specific requirements in the final rule. Such requirements could, include *inter alia*, participation in an external open proficiency testing survey, use of a laboratory certified by HHS/NIDA, use of a laboratory certified under the Clinical Laboratory Improvement Act, and submission of blind quality control specimens.

The proposed alcohol screening provisions would take into account the availability of commercial immunoassays for alcohol. Screening would be at a level of .05% (w/v), which is equivalent to an achieved BAC below .04%. Published literature suggests certain available assays are reliable at this level but less information exists with respect to lower levels. Confirmation would be by gas chromatography (GC), which is scientifically and forensically recognized as the preferred method of confirming volatiles such as ethyl alcohol. If the GC method is used for both screening and confirmation, two different columns must be employed to ensure specific identification of ethyl alcohol. FRA believes that a combination of two analytically distinct methods (e.g., immunoassay and GC, or dichromate oxidation and GC) should satisfy the requirement of specificity without requiring two GC analyses under different conditions, but requests comment on this issue.

The proposed criteria for protocols would require use of a suitable internal standard, external (ethyl alcohol) standards, and controls. FRA would not specify which of several GC methods should be employed. A cutoff of .05% would also be used for reporting after confirmation.

Section 219.309 of the rule addresses the presumption of impairment from a positive urine test, a subject with respect to which FRA requests comment above. FRA proposes to amend the notice required by paragraph (b) to reflect the addition of § 219.102 and the provision regarding notice of company policy would likewise be revised to require the company to express any distinctions between consequences of a positive for a person determined to have been impaired or used the drug on the job in contrast to drug use other than on the job.

Subpart E—Identification of Troubled Employees

As issued in 1985, this subpart requires that railroads adopt policies to encourage the voluntary referral of covered employees for treatment and co-worker identification of those who are unsafe to work with. The key to the success of these concepts is that, if the employee accepts help and successfully completes treatment, the employee's position is protected. This subpart has worked well in practice and does not require extensive revision.

Sections 219.403 and 219.405 would be amended to reference the new § 219.102.

FRA solicits comments regarding whether employees reported under the co-worker report provision should be subject to follow-up testing, either on a mandatory basis or at the option of the employer. Although FRA would much prefer not to include follow-up testing in the case of voluntary referrals, since such a requirement could discourage referrals, commenters may wish to address this issue, as well.

Subpart E—Pre-employment Drug Screens

The pre-employment drug screen requirement applies to applicants for positions that include covered service. Testing is required for certain drugs, and employers may include alcohol. As currently worded, the provision does not require testing on transfer from non-covered to covered service.

FRA proposes to make several changes to this program further to ensure sound scientific practice in testing and to increase the effectiveness of the program.

Section 219.501 would be amended to emphasize that the pre-employment drug testing procedure must be complete (i.e., a negative report must have been provided to the employer) before the individual enters covered service. The section would also be amended to require testing of any present employee who seeks to transfer from non-covered to covered service. FRA believes that, although a period of service with any employer does provide a certain amount of information concerning fitness, it is necesssary to verify that an employee seeking to transfer to covered service is not currently using prohibited controlled substances. Drug abuse habits may begin at any time and may require a period of some duration before they manifest themselves through a negative impact on job performance. Those who will be subject to other forms of testing as covered employees, including random testing, should come to covered service free of any problems that would require remedial action. Addressing this "gateway" is particularly important given the fact that the railroad industry continues in a period of generally declining employment and often seeks new engineers, dispatchers and other employees from the ranks of those already in its employ. Where performance of a safety-sensitive function is in question, testing of internal applicants is clearly warranted from the point of view of Fourth Amendment law. *National Treasury Employees Union* v. *von Raab*, 109 S. Ct. 1384 (March 21, 1989).

Based on contacts with representative railroad employers, FRA estimates that this proposal would result in not more than 500 employees being tested in any given year for the foreseeable future. In many cases, railroads are already requiring medically-based testing in this context. However, in some cases testing is not conducted; and the impetus of a Federal mandate may be necessary to ensure obstacles are not interposed.

Paragraph (c) would be amended to conform this subpart to subpart H and 49 CFR part 40.

Paragraph (d) would be revised to address the issue of urine alcohol testing. FRA currently authorizes railroads to test for alcohol in the pre-employment context. However, FRA believes that more rigorous standards are needed if such testing is to continue. The proposed rule would require notice to the employee that the sample will be tested for alcohol, as well as controlled substances. Since the only legitimate purpose of pre-employment alcohol testing is to identify possible alcohol abuse, the two-sample technique used for reasonable cause testing will not be necessary in this context; however, otherwise the same technical standards should apply. A suitably high cutoff should be used to limit issues concerning recent social drinking; .10% urine alcohol is proposed (equivalent to an attained BAC of almost .08%). The rule would also require that all applicants testing positive be handled in the same manner (pursuant to company policy) to ensure fairness and avoid use of the testing procedure to produce discriminatory hiring outcomes.

Section 219.503 would be amended to conform recordkeeping and reporting under this section to subpart H.

Section 219.505 would specify that an applicant who is making non-medical use of a controlled substance, as evidenced by a positive test reported by the MRO under subpart H, not be employed on the basis of the application for which the test was taken.

Subpart G—Random Drug Testing Program

The random drug testing provisions were issued last November after extensive public comment and do not require significant revision at this time. The few changes proposed here are of an editorial, clarifying or organizational nature and do not affect the structure or basic requirements for the subpart.

Section 219.601(b)(6) would be amended to clarify the circumstances under which employees who work in covered service only a portion of the time may be subject to random testing. Such employees may include clerks who occasionally are assigned to duties involving communication of train orders, electricians who sometimes are called upon to work on cab signal apparatus, and other employees (including, particularly on smaller railroads, supervisors). The objective of the current rule provisions was to ensure testing each employee who actually performs covered service perceives the possibility that he or she may be subject to testing on a random basis. At the same time, it would make little sense to require that employees who work in covered service only two or three days per year be tested as frequently as those who work in covered service on a regular basis. FRA has therefore provided advice that, although "occasional" Hours of Service employees should be included in the pools from which names or other identifiers are selected, they should be considered available for testing only during those periods they are on duty in covered service. (Under the Hours of Service act, an entire duty tour is "covered service" if any safety-sensitive functions subject to the Act are assigned for performance during the duty tour.) The clarifying amendment is intended to ensure that all railroads understand this principle. Obviously, the problem addressed by the amendment does not arise to any significant extent where the railroad's plan selects Hours of Service positions or position units, since whoever fills the position on any given day will be subject to testing.

Section 219.603(b)(3) would be deleted, since equivalent language of broader scope is being proposed for inclusion in § 219.11.

Section 219.605 deals with procedures for drug urine laboratory reports that indicate presence of a drug. Paragraph (b) would be revised to reference the new § 219.104, which deals with handling of a positive test result. (Provisions of subpart H already address the manner in which results will be reported.) Paragraphs (c) through (e) would be deleted, since the subject matter would be contained in § 219.104.

Section 219.607 (records retention) would be moved to a new § 219.713, since it will apply to all forms of company records relating to testing under the part.

Section 219.609 (small railroad exlusion) would be deleted, since the same exclusion will be contained in a revised § 219.3.

Subpart H—Procedures and Safeguards for Urine Drug Testing

This subpart would also be amended exclusively for editorial and organizational purposes.

Section 219.707 (MRO review). FRA requests comment on whether paragraph (c) should be amended to modify or delete the requirement that the employee be provided a copy of the MRO-approved test results within 48 hours of delivery to the railroad officer, or immediately upon the railroad's taking any action adverse to the employee, whichever first occurs. In a

filing on 49 CFR Part 40, the Association of American Railroads (AAR) has expressed concerns that it may not be physically possible to transmit the test result within the limitations stated. FRA appreciates the concern raised by the AAR; however, FRA has also noted instances where employees have been removed from service without receiving copies of test results for extended periods, despite current rule provisions requiring prompt delivery.

Paragraph (d) would be amended by deleting the final sentence of the paragraph. This text would be moved to § 219.711(b) and amended for clarity.

Section 219.709(a) would be amended to correct a typographical error ("within the 365-day period").

Section 219.711(a) would be amended by adding text derived from § 219.707(d) regarding the MRO's responsibility for confidentiality of medical information. FRA notes that the reference in this provision to use, in an established medical qualifications program, of medical information disclosed incident to the testing does not provide license to short-cut the medical review process. It is not intended that an MRO who is also a company medical officer (as will often be the case in the railroad industry) could medically disqualify an individual before a test reported as positive by the laboratory is fully reviewed. On the other hand, if the employee does provide information that suggests the presence of an underlying medical disorder that the employee is required by contract to disclose to the employer's medical office, or if verbal communication or laboratory results indicate use of drugs with potential adverse side effects that would normally be subject to review under the medical program, this information would be treated in the same fashion as information otherwise disclosed to the company medical officer as required under the employment contact. In the railroad industry, major railroads have a long history of maintaining medical qualifications programs for key safety-sensitive employees.

Existing paragraph (b) of this section would be designated as paragraph (c). The requirements of current paragraph (c) would be included in § 219.211 of subpart C, since it applies to post-accident testing under the subpart.

FRA also requests comment on the extent to which there is tension between the Subpart H confidentiality policy for drug test results and the requirement of 49 CFR 225.17 that railroads report to FRA any information relating to alcohol or drug use in an accident/incident.This issue may arise in relation to reasonable cause tests conducted following qualifying accidents and incidents. Comment is also requested concerning how any such tension should be addressed to protect against unnecessary disclosure while providing sufficient information pertinent to accident/incident causation.

Section 219.713 of the proposed amendments is derived from current section § 219.607. The section heading is amended to remove the reference to "confidentiality," which is separately treated in § 219.711.

Appendix A of the current rule provides for civil penalties, which were recently adjusted to reflect increases in the statutory range provided by the Rail Safety and Service Improvement Act of 1988. *See* 53 FR 52918, 52928–30, Dec. 29, 1988. FRA proposes, at the time of final rule, to make conforming changes to the penalty schedule generally consistent with the approach and penalty amounts presently in place. FRA will consider any comments received on this issue.

Appendix C would set out procedures for post-accident toxicological testing (sample collection and handling). FRA believes that significant improvements can be made in the approach used to collection and documentation of post-accident tests based on developments since issuance of the rule in 1985 and experience in program admistration. FRA has endeavored to emphasize simplicity (in order to foster orderly and successful collections at medical facilities) and proper identification and securing of specimens (in order to protect the rights of employees). An effort has been made to have these procedures parallel as closely as possible the procedures for urine collections under the DOT Procedures. However, mandatory post-accident collections have the following characteristics that set them aside from most occupational drug testing programs:

- Collections must always be conducted at medical facilities.
- Blood, as well as urine, must be provided.
- Employees to be tested may include personnel injured in the accident.
- Individual collections are typically of greater significance than those for random tests and most other types of tests.

These factors have a number of ramifications for collection procedures. For instance, although stringently managed urine collections are encouraged, measures to ensure against tampering by the donor are less critical where a blood sample is available. If a urine specimen appears to be dilute or to contain an adulterant, the blood can be screened for drugs of interest. (Alcohol screening is routinely conducted using the blood sample.) Urine collection procedures generally assume the provision of a single specimen. Where blood must be collected, as well, additional complications are introduced with respect to maintenance and documentation of chain of custody. Injured employees cannot be expected to provide samples at a pre-designated collection site in every case, but must be approached humanely and with appropriate flexibility and sensitivity in the clinical environment. Even rather minor injuries may lead to administration of drugs that will be detected in later testing, and serious injuries may result in administration of whole blood or plasma from another donor; it is therefore important contemporaneously to obtain information concerning medical treatment resulting from the accident or casualty. Personal identifying information must be included on the collection forms provided to the laboratory and FRA, since neither is in privity with the employee so as to have available a social security number, assignment on the date of the accident, or a mailing address. Similarly, medical drug use must be reflected on the collection form for the following reasons: (i) To obtain the best information concerning recent drug use and dosage (i.e., before the employee's memory has faded), (ii) to allow prompt use in the context of the accident investigation and (iii) to ensure accurate declarations. If facial defects appear in the collection process, routine nullifying of the test is not indicated, since the specimens represent evidence that may be critical to an accident investigation. Instead, efforts may be made to determine if any error could have affected sample identity or integrity; and any apparent gaps in custody and control must be reviewed to determine if continuity of custody and control can be documented. The post-accident collection process and FRA's administrative procedures are intended to take into acccount each of these concerns.

FRA notes three possible approaches to documentation of post-accident specimen chain-of-custody from collection to sealing in the toxicology kit. Chain-of-custody documentation could be provided (1) On a single form for both blood and urine of an individual employee, (2) on separate blood and urine forms for each employee, or (3) on batch urine and batch blood forms. It is important that the system established allow custody of each specimen to be

followed (i.e., the documentation must follow the sample). In reviewing the system proposed, commenters are asked to consider efficiency of collection and the receptivity of medical facility personnel to the proposed system.

Appendix D sets forth the method for collecting urine samples for alcohol analysis. This "void and second sample" procedure is derived from FRA's 1985 Field Manual and has been utilized with evident success by at least one major rail system. It reflects the best information available to FRA concerning urine alcohol analysis. FRA notes that urine is not a preferred specimen for alcohol analysis, since both breath and blood provide a much more direct means of determining current blood alcohol concentration. However, circumstances will arise where it is not practical to perform both a urine drug collection and another type of test for alcohol. This "void and second sample" procedure can provide a practical alternative to invasive blood testing. FRA specifically solicits comments on the experience of the industry in using this technique.

In incorporating the procedure into the regulations, FRA has made several modifications to the procedure. For example, alcohol analysis is limited to the second sample. Specific cautions are provided with respect to MRO review. Introductory matter has been eliminated, and the procedures would now be required (where the railroad elects to utilize urine alcohol analysis) rather than recommended.

Part 217

Part 217 of title 49, Code of Federal Regulations, sets forth requirements for filing of railroad operating rules and for programs of operational tests and inspections. Section 217.13 was amended at the time of 1985 alcohol/drug final rule to require filing of certain specific data concerning Rule G observations and violations and chemical tests (50 FR 31508, 31578, Aug. 2, 1985). This section was further amended to reflect the random testing requirements (53 FR 47102, 47131, Nov. 21, 1988). FRA has noted some difficulties in administration of the original provisions, principally due to the decision by some railroads to conduct for-cause testing under their own authorities, and has further noted the need to make the data collection elements consistent. Accordingly, FRA proposes further amendments to ensure that the data collected is reasonably complete and useful as a means of tracking alcohol/drug compliance. Comment is solicited on any further refinements that might be made to this section. In order to assist commenters, a copy of the proposed revised form 6180.77 incorporating changes in the rule is reproduced at the end of this notice.

Part 225

Part 225 of title 49, Code of Federal Regulations, sets forth requirements for accident/incident reporting. Section 225.17 was amended at the time of 1985 alcohol/drug final rule to require reporting of certain alcohol/drug information relating to reportable accidents and casualties (50 FR 31508, 31579, Aug. 2, 1985). The proposed amendment to the same section would merely emphasize the obligation of the railroad to provide required data with respect to reportable incidents (personal injuries), as well as train accidents. Such reporting has been included in the FRA accident/incident reporting system since calendar 1986.

Regulatory Impact

This proposed rule has been evaluated in accordance with existing regulatory policies. It is not a "major" rule under Executive Order 12291, but it is deemed a "significant" rule as defined under DOT policies and procedures. FRA has considered the regulatory costs and benefits associated with the proposed rule and has tentatively determined that the costs of the revisions are *de minimis*. Therefore, no further regulatory evaluation is warranted. Benefits of the proposed rule would include increased efficiency of program administration and improved safety. However, FRA specifically requests public comment on the costs and benefits of the proposed rule and will consider comments received in developing the final rule.

The regulations proposed herein would not have substantial 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. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

It is certified that the proposed amendments will not have a significant economic impact of a substantial number of small entities under the provisions of the Regulatory Flexibility Act (5 U.S.C. 60 et seq.). However, FRA specifically solicits comment on the extent to which revision of § 219.3(b) may impose regulatory burdens on certain small railroads. FRA also welcome suggestions with respect to phased compliance with the proposed amendments in order to provide for adjustment to new regulatory obligations.

FRA has evaluated these proposed regulations in accordance with its procedures for insuring full consideration of the environmental impacts of FRA actions as required by the National Environmental Policy Act (45 U.S.C. 4321 et seq.), other environmental statutes, Executive Orders and DOT order 5610.1c. These proposed regulations meet the criteria that establish this as a non-major action for environmental purposes.

Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) applies because this proposed rule is expected to change several currently approved collections of information. The extent of the burden hours involved and what impact the changes will have on currently approved clearances cannot be determined at this time. FRA solicits comments on burden estimates to complete these information collection requirements, the practical utility of the information, and alternative methods that might be less burdensome to obtain this information. Persons desiring to comment on this topic should submit their views in writing to Ms. Gloria Swanson, Office of Safety, RRS–21, Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590, and to Ms. Pamela Barr, Regulatory Policy Branch (OMB No. 2130–0526), Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Washington, DC 20503. Copies of any such comments should also be submitted to the docket of this rulemaking at the address provided above. A request for OMB approval of these revised information collection requirements will be made upon preparation of a final rule document.

Request for Public Comment

FRA proposes to amend 49 CFR parts 217, 219 and 225 as set forth below. FRA solicits public comment on the proposed amendments, other issues raised in this preamble, and any other matters pertaining to the administration or enforcement of the alcohol/drug regulations that might warrant further amendment. FRA may make changes in the final rules based on comments received in response to this notice.

Therefore, in consideration of the foregoing, FRA proposes to amend parts 217, 219 and 225, title 49, Code of Federal Regulations as follows:

List of Subjects

49 CFR Part 217

Railroad safety, Railroad operating rules, Reporting and recordkeeping requirements.

49 CFR Part 219

Railroad safety, Control of alcohol and drug use, Reporting and recordkeeping requirements.

49 CFR Part 225

Railroad safety, Accident/incident reporting, Reporting and recordkeeping requirements.

PART 219—[AMENDED]

1. The authority citation for Part 219 continues to read as follows:

Authority: 45 U.S.C. 431, 437, and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49(m).

2. Amend Part 219 as follows:

a. Revise the table of contents to read as follows:

Subpart A—General

Sec.
219.1 Purpose and scope.
219.3 Application.
219.5 Definitions.
219.7 Waivers.
219.9 Responsibility for compliance.
219.11 Consent required; implied.
219.13 Preemptive effect.
219.15 Alcohol concentration in blood and breath.
219.17 Construction.
219.19 Field Manual.
219.21 Information collection.
219.23 Notice to employees.

Subpart B—Prohibition

219.101 Alcohol and drug use prohibited.
219.102 Prohibition on abuse of controlled substances.
219.103 Prescribed and over-the-counter drugs.
219.104 Responsive action.
219.105 Railroad's duty to prevent violations.

Subpart C—Post-Accident Toxicological Testing

219.201 Events for which testing is required.
219.203 Responsibilities of railroads and employees.
219.205 Sample collection and handling.
219.207 Fatality.
219.209 Reports of tests and refusals.
219.211 Analysis and follow-up.
219.213 Unlawful refusals; consequences.

Subpart D—Authorization to Test for Cause

219.301 Testing for reasonable cause.
219.303 Breath test procedures and safeguards.
219.305 Urine test procedures and safeguards.
219.307 Standards for urine alcohol assays.
219.309 Presumption of impairment; notice.

Subpart E—Identification of Troubled Employees

219.401 Requirement for policies.
219.403 Voluntary referral policy.
219.405 Co-worker report policy.
219.407 Alternate policies.

Subpart F—Pre-Employment Drug Screens

219.501 Pre-employment drug screens.
219.503 Notification; records.
219.505 Refusals; consequences of positive.

Subpart G—Random Drug Testing Program

219.601 Railroad random testing programs.
219.603 Participation in testing; refusals.
219.605 Postive test results; procedures.

Subpart H—Procedures and Safeguards for Urine Drug Testing

219.701 Standards for urine drug testing.
219.703 Collection.
219.705 Drugs tested.
219.707 Review by MRO.
219.709 Retest.
219.711 Confidentiality of test results.
219.713 Reports; FRA access to records; confidentiality.

Appendix A to Part 219—Schedule of Civil Penalties
Appendix B to Part 219—Designation of Laboratory for Post-Accident Toxicological Testing
Appendix C to Part 219—Post-Accident Testing Sample Collection
Appendix D to Part 219—Procedure for Collection of Urine Alcohol Specimen

b. Revise § 219.3 to read as follows:

§ 219.3 Application.

(a) Except as provided in paragraph (b), this part applies to—

(1) Railroads that operate rolling equipment on standard gage track which is part of the general railroad system of transportation; and

(2) Railroads that provide commuter or other short-haul rail passenger service in a metropolitan or suburban area (as described by section 202(e) of the Federal Railroad Safety Act of 1970, as amended).

(b) Subparts D, E, F and G do not apply to a railroad that employs not more than 15 employees covered by the Hours of service act (45 U.S.C. 61–64b) and that does not operate on tracks of another railroad (or otherwise engage in joint operations with another railroad) except as necessary for purposes of interchange.

(c)(1) Subpart G of this part shall not apply to any person for whom compliance with that subpart would violate the domestic laws or policies of another country.

(2) Subpart G is not effective until January 1, 1991, with respect to any employee whose place of reporting or point of departure ("home terminal") for rail transportation services is located outside the territory of the United States.

c. Revise § 219.5 to read as follows:

§ 219.5 Definitions.

As used in this part—

Alcohol means ethyl alcohol (ethanol). References to use or possession of alcohol include use or possession of any beverage, mixture or preparation containing ethyl alcohol.

Class I, Class II, and *Class III* have the meaning assigned by regulations of the Interstate Commerce Commission (49 CFR part 1201), (General Instructions 1–1)) as those regulations may be revised and applied by order of the Commission (including modifications in class thresholds based revenue deflator adjustments).

Controlled substance has the meaning assigned by 21 U.S.C. 802 and includes all substances listed on Schedules I through V as they may be revised from time to time (21 CFR parts 1301–1316).

Covered employee means a person who has been assigned to perform service subject to the Hours of Service Act (45 U.S.C. 61–64b) during a duty tour, whether or not the person has performed or is currently performing such service, and any person who performs such service.

Covered service means service for a railroad that is subject to the Hours of Service Act (45 U.S.C. 61–64b), but does not include any period the employee is relieved of all responsibilities and is free to come and go without restriction.

Co-worker means another employee of the railroad, including a working supervisor directly associated with a yard or train crew, such as a conductor or yard foreman, but not including any other railroad supervisor, special agent or officer.

Drug means any substance (other than alcohol) that has known mind or function-altering effects on a human subject, specifically including any psychoactive substance and including, but not limited to, controlled substances.

EAP Counselor means a person or persons qualified by experience, education, or training to counsel persons affected by substance abuse problems and to evaluate their progress in recovering from or controlling such problems. An "EAP counselor" may be a qualified full-time salaried employee of the railroad, a qualified practitioner who contracts with the railroad on a fee-for-service or other basis, or a qualified physician designated by the railroad to perform functions in connection with alcohol or drug abuse evaluation or counseling. As used in these rules, an EAP Counselor owes a duty to the railroad to make an honest and fully

informed evaluation of the condition and progress of the employee.

Field Manual refers to the document described in § 219.19 of this subpart.

FRA means the Federal Railroad Administration, U.S. Department of Transportation.

FRA representative means the Associate Administrator for Safety, FRA, the Associate Administrator's delegate (including a qualified State inspector acting under part 212 of this chapter), the Chief Counsel, FRA, or the Chief Counsel's delegate.

Hazardous material means a commodity designated as hazardous material by part 172 of this title.

Impact accident means a train accident (i.e., a rail equipment accident involving damage in excess of the current reporting threshold, $5,700 in 1989 and 1990) consisting of a head-on collision, a rear-end collision, a side collision (including a collision at a railroad crossing at grade), a switching collision, or impact with a deliberately-placed obstruction such as a bumping post. The following are not impact accidents:

(1) An accident in which the derailment of equipment causes an impact with other rail equipment;

(2) Impact of rail equipment with obstructions such as fallen trees, rock or snow slides, livestock, etc.; and

(3) Raking collisions caused by derailment of rolling stock or operation of equipment in violation of clearance limitations.

Independent means not under the ownership or control of the railroad, not under common control with the railroad, and not operated or staffed by a salaried officer or employee of the railroad. The fact that the railroad pays for services rendered by a medical facility or laboratory, selects that entity for performing tests under this part, or has a standing contractual relationship with that entity to perform tests under this part or perform other medical examinations or tests of railroad employees does not, by itself, remove the facility from this definition.

Medical facility means a hospital, clinic, physician's office, or laboratory where toxicological samples can be collected according to recognized professional standards.

Medical practitioner means a physician or dentist licensed or otherwise authorized to practice by the state.

Medical Review Officer or "MRO" refers to a licensed physician designated by the railroad who is responsible for receiving laboratory results generated by the railroad's drug testing program (including testing mandated or authorized by this part) who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's positive test result (as reported by the laboratory) together with his or her medical history and any other relevant biomedical information.

NTSB means the National Transportation Safety Board.

Possess means to have on one's person or in one's personal effects or under one's control. However, the concept of possession as used in this part does not include control by virtue of presence in the employee's personal residence or other similar location off of railroad property.

Railroad means all forms of non-highway ground transportation that run on rails or electro-magnetic guideways, including (1) commuter or other short-haul rail passenger service in a metropolitan or suburban area, as well as any commuter rail service which was operated by Consolidated Rail Corporation as of January 1, 1979, and (2) high speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads. Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

Railroad property damage or "damage to railroad property" refers to damage to railroad property, including railroad on-track equipment, signals, track, track structures (including bridges and tunnels), or roadbed, including labor costs and all other costs for repair or replacement in kind. Estimated cost for replacement of railroad property shall be calculated as described in the FRA Guide for Preparing Accident/Incident Reports. (See 49 CFR § 225.21.) However, replacement of passenger equipment shall be calculated based on the cost of acquiring a new unit for comparable service.

Reportable injury means an injury reportable under part 225 of this title.

Reporting threshold means the amount specified in § 225.19(c) of this title, as adjusted from time to time in accordance with appendix A to part 225 of this title (i.e., $5,700 in 1989 and 1990).

Supervisory employee means an officer, special agent, or other employee of the railroad who is not a co-worker and who is responsible for supervising or monitoring the conduct or performance of one or more employees.

Train, except as context requires, means a locomotive, or more than one locomotive coupled, with or without cars. (A locomotive is a self-propelled unit of equipment which can be used in train service.)

Train accident means a passenger, freight, or work train accident described in § 225.19(c) of this title (a "rail equipment accident" involving damage in excess of the current reporting threshold, $5,700 in 1989 and 1990), including an accident involving a switching movement.

Train incident means an event involving the movement of railroad on-track equipment that results in a casualty but in which railroad property damage does not exceed the reporting threshold.

d. Revise § 219.9 to read as follows:

§ 219.9 Responsibility for compliance.

(a) Any person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $250 and not more than $10,000 per violation, except that: Penalties may be assessed against individuals only for willful violations; where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed; and the standard of liability for a railroad will vary depending upon the requirement involved. See, e.g., § 219.105, which shall be construed to qualify the responsibility of a railroad for the unauthorized conduct of an employee that violates § 219.101 or § 219.102 (while imposing a duty of due diligence to prevent such conduct). Each day a violation continues shall constitute a separate offense. See appendix A to this part for a statement of agency civil penalty policy.

(b) In the case of joint operations, primary responsibility for compliance with this part with respect to determination of events qualifying for breath or body fluid testing under Subparts C and D or this part shall rest with the host railroad, and all affected employees shall be responsive to direction from the host railroad consistent with this part. However, nothing in this paragraph shall restrict the ability of the railroads to provide for an appropriate assignment of responsibility for compliance with this part as among those railroads through a joint operating agreement or other binding contract. FRA reserves the right to bring an enforcement action for noncompliance with applicable portions

of this part against the host railroad, the employing railroad, or both.

e. By revising section 209.11 to read as follows:

§ 219.11 Consent required; implied.

(a) Any employee who performs covered service for a railroad on or after February 10, 1986, shall be deemed to have consented to testing as required in subparts B, C, D, and G of this part; and consent is implied by performance of such service.

(b)(1) Each such employee shall participate in such testing, as required under the conditions set forth in this part by a representative of the railroad.

(2) In any case where an employee has sustained a personal injury and is subject to alcohol or drug testing under this part, necessary medical treatment shall be accorded priority over provision of the breath or body fluid sample. No employee who is unable to urinate normally (based on the judgment of a medical professional that catheterization would be required) as a result of a personal injury or incident medical treatment shall be required to provide a urine sample.

(3) Failure to remain available following an accident or casualty as required by company rules (i.e., being absent without leave) shall be considered a refusal to participate in testing, without regard to any subsequent provision of samples.

(4) Tampering with a sample in order to prevent a valid test (e.g., through substitution, dilution or adulteration) constitutes a refusal to provide a sample.

(c) A covered employee who is required to be tested under subpart C or D and who is taken to a medical facility for observation or treatment after an accident or incident shall be deemed to have consented to the release to FRA of the following:

(1) The remaining portion of any body fluid sample taken by the treating facility within 12 hours of the accident or incident that is not required for medical purposes, together with any normal medical facility record(s) pertaining to the taking of such sample;

(2) The results of any laboratory tests for alcohol or any drug conducted by or for the treating facility on such sample; and

(3) The identity, dosage, and time of administration of any drugs administered by the treating facility prior to the time samples were taken by the treating facility or prior to the time samples were taken in compliance with this part.

(d) An employee required to participate in body fluid testing under Subpart C (post-accident toxicological testing), Subpart D (reasonable cause testing), or Subpart G (random testing) shall, if requested by the representative of the railroad or the medical facility (including under Subpart G of this part, a non-medical contract collector), evidence consent to taking of samples, their release for toxicological analysis under pertinent provisions of this part, and release of the test results to the railroad's Medical Review Officer by promptly executing a consent form, if required by the medical facility. The employee is not required to execute any document or clause waiving rights that the employee would otherwise have against the employer, and any such waiver is void. Any consent provided consistent with this section shall be construed to extend only to those actions specified herein.

(e) Nothing in this part shall be construed to authorize the use of physical coercion or any other deprivation of liberty in order to compel breath or body fluid testing.

(f) Any railroad employee who performs service for a railroad on or after February 10, 1986, shall be deemed to have consented to removal of body fluid and/or tissue samples necessary for toxicological analysis from the remains of such employee, if such employee dies within 12 hours of an accident or incident described in subpart C as a result of such event. This consent is specifically required of employees not in covered service, as well as employees in covered service.

(g) Nothing in this subpart restricts any discretion available to the railroad to request or require that an employee cooperate in additional body fluid testing. However, no such testing may be performed on urine or blood samples provided under this part. For purposes of this paragraph, all urine from a void constitutes a single sample.

f. Amend § 219.19 by revising paragraph (a) to read as follows:

§ 219.19 Field Manual.

(a) Recommended practice standards for breath testing under subpart D of this part, and relataed materials designed to assist the railroads in establishing programs for control of alcohol and drug use are contained in the FRA Alcohol and Drug Field Manual, which is revised from time to time by the Office of Safety, FRA.

* * * * *

g. Add at the end of Subpart A a new § 219.23 to read as follows:

§ 219.23 Notice to employees.

(a) Whenever a breath or body fluid test is required of an employee under this part, the railroad shall provide clear and unequivocal written notice to the employee that the test is being required under Federal Railroad Administration regulations. Rather than providing written notice for each individual test, a company that requires breath and/or body fluid tests only under the authority of this part for a clearly delineated portion of its employees may satisfy this requirement by publishing this fact in a manner that provides effective notice to each employee.

(b) Whenever a breath or body fluid test is required of an employee under this part, the railroad shall provide clear, unequivocal written notice of the basis or bases upon which the test is required (e.g., reasonable suspicion, violation of a specified operating/safety rule enumerated in subpart D, random selection, follow-up, etc.). Annotation of the urine custody and control form with the specific basis of the test (prior to providing a copy to the employee) satisfies the requirement of this paragraph.

(c) Use of approved forms for mandatory post-accident toxicological testing under subpart C of this part provides the notifications required under this section with respect to such tests. Use of those forms for any other test is prohibited.

h. Amend § 219.103 by revising paragraph (a) to read as follows:

§ 219.103 Prescribed and over-the-counter drugs.

(a) This subpart does not prohibit the use of a controlled substance (on Schedule II through V of the controlled substance list) prescribed or authorized by a medical practitioner, or possession incident to such use, if—

(1) The treating medical practitioner or a physician designated by the railroad has made a good faith judgment, with notice of the employee's assigned duties and on the basis of the available medical history, that use of the substance by the employee at the prescribed or authorized dosage level is consistent with the safe performance of the employee's duties;

(2) The substance is used at the dosage prescribed or authorized; and

(3) In the event the employee is being treated by more than one medical practitioner, at least one treating medical practitioner has been informed of all medications authorized or prescribed and has determined that use of the medications is consistent with the safe performance of the employee's duties (and the employee has observed

any restrictions imposed with respect to use of the medications in combination).

* * * * *

i. Add at the end of subpart B new §§ 219.104 and 219.105 to read as follows:

§ 219.104 Responsive action.

(a) *Removal from covered service.* If the railroad determines that there is reason to believe that an employee has violated § 219.101 or 219.102, as evidenced by a positive test result reported by the railroad's Medical Review Officer for a test conducted under subpart C, subpart D or subpart G of this part, the railroad shall immediately remove the employee from covered service.

(b) *Hearing procedures.* (1) Prior to or upon withdrawing the employee from covered service under this section, the railroad shall provide notice of the reason for this action and an opportunity for hearing before a presiding officer other than the charging official. This hearing may be consolidated with any other disciplinary hearing arising from the same accident or incident (or conduct directly related thereto), but the presiding officer shall make separate findings as to compliance with §§ 219.101 and 219.102 of this part.

(2) The hearing shall be convened within the period specified in the applicable collective bargaining agreement. In the absence of an agreement provision, the employee may demand that the hearing be convened within 10 calendar days of the suspension or, in the case of an employee who is unavailable due to injury, illness, or other sufficient cause, within 10 days of the date the charged employee becomes available for hearing.

(3) A post-suspension proceeding conforming to the requirements of an applicable collective bargaining agreement, together with the provisions for adjustment of disputes under section 3 of the Railway Labor Act, shall be deemed to satisfy the procedural requirements of this paragraph.

(4) Nothing in this part shall be deemed to abridge any additional procedural rights or remedies not inconsistent with this part that are available to the employee under a collective bargaining agreement, the Railway Labor Act, or (with respect to employment at will) at common law with respect to the removal or other adverse action taken as a consequence of a positive test result in a test authorized or required by this part.

(c) *Return to covered service.* An employee who has been determined to have violated § 219.101 or § 219.102 of this part shall not be returned to covered service unless the employee has—

(1) Been evaluated by an EAP counselor to determine if the employee is affected by a psychological or physical dependence on alcohol or one or more controlled substances or by another identifiable and treatable mental or physical disorder involving abuse of alcohol or drugs as a primary manifestation;

(2) Successfully completed any program of counseling or treatment determined to be necessary by the EAP counselor prior to return to covered service; and

(3) Presented a urine sample for testing under this subpart that tested negative for controlled substances assayed and has tested negative for alcohol under paragraph (d) of this section.

An employee returned to service under the above-stated conditions shall continue in any program of counseling or treatment deemed necessary by the EAP counselor and shall be subject to a reasonable program of follow-up drug and alcohol testing without prior notice for a period of not more than 60 months following return to service.

(d) *Follow-up tests.* Return-to-service and follow-up tests under paragraph (c) of this section shall include—

(1) Analysis of a urine specimen for controlled substances consistent with the requirements of subpart H of this part; and

(2) One of the following tests performed while the employee is in duty status:

(i) Analysis of a breath specimen for alcohol under safeguards consistent with those specified for reasonable cause breath testing under subpart C of this part; or

(ii) Analysis of a second urine specimen for alcohol in the same manner as prescribed in § 219.307 and Appendix D to this part (but the employee shall also have option to provide a blood sample for alcohol analysis).

§ 219.105 Railroad's duty to prevent violations.

(a) A railroad may not willfully permit an employee to go or remain on duty in covered service in violation of the prohibitions of § 219.101 or § 219.102. As used in this section, the knowledge imputed to the railroad shall be limited to that of a railroad management employee (such as a supervisor deemed an "officer," whether or not such person is a corporate officer) or a supervisory employee in the offending employee's chain of command.

(b) A railroad must exercise due diligence to assure compliance with § 219.101 and § 219.102 by each covered employee.

J. Revise § 219.201 to read as follows:

§ 219.201 Events for which testing is required.

(a) *List of events.* On and after March 10, 1986, except as provided in paragraph (b) of this section, post-accident toxicological tests shall be conducted after any event that involves one or more of the circumstances described in paragraphs (a) (1) through (3) of this section:

(1) *Major train accident.* Any train accident (i.e., a rail equipment accident involving damage in excess of the current reporting threshold, § 5,700 in 1989 and 1990) that involves one or more of the following:

(i) A fatality;

(ii) Release of a hazardous material lading from railroad equipment accompanied by—

(A) An evacuation; or

(B) A reportable injury resulting from the hazardous material release (*e.g.*, from fire, explosion, inhalation, or skin contact with the material);

(iii) Damage to railroad property of $500,000 or more; or

(iv) Reportable injury to any person in a train accident involving a passenger train.

(2) *Impact accident.* An impact accident (i.e., a rail equipment accident defined as an "impact accident" in § 219.5 of this part that involves damage in excess of the current reporting threshold, $5,700 in 1989 and 1990) resulting in—

(i) A reportable injury; or

(ii) Damage to railroad property of $50,000 or more.

(3) *Fatal train incident.* Any train incident that involves a fatality to any on-duty railroad employee.

(b) *Exceptions.* No test shall be required in the case of a collision between railroad rolling stock and a motor vehicle or other highway conveyance at a rail/highway grade crossing. No test shall be required in the case of an accident/incident the cause and severity of which are wholly attributable to a natural cause (e.g., flood, tornado or other natural disaster), as determined on the basis of objective and documented facts by the railroad representative responding to the scene.

(c) *Good faith determinations.* (1) The railroad representative responding to the scene of the accident/incident shall determine whether the accident/incident falls within the requirements of paragraph (a) of this section or is within

the exception described in paragraph (b) of this section. It is the duty of the railroad representative to make reasonable inquiry into the facts as necessary to make such determinations. In making such inquiry, the railroad representative shall consider the need to obtain samples as soon as practical in order to determine the presence or absence of impairing substances reasonably contemporaneous with the accident/incident. The railroad representative satisfies the requirement of this section if, after making reasonable inquiry, the representative exercises good faith judgment in making the required determinations. The railroad representative making the determination required by this section shall not be a person directly involved in the accident/incident. This section does not prohibit consultation between the responding railroad representative and higher level railroad officials; however, the responding railroad representative shall make the factual determinations required by this section, and any decision by a person other than the responding railroad representative with respect to whether an accident/incident qualifies for testing shall be certified in writing by the decision maker within 24 hours of the decision, setting forth the facts reported by the responding railroad representative, the basis upon which the testing decision was made, and the person making the decision. This decision memorandum shall be made available to the FRA on request. However, any estimates of railroad property damage made by persons not on the scene shall be based on descriptions of specific physical damage provided by the on-scene railroad representative. In the case of an accident involving passenger equipment, a host railroad (whether present on scene or not) in making the decision whether testing is required, subject to the same requirment that visible physical damage be specifically described.

(2) A railroad is not in violation of this subpart if its representative has made such reasonable inquiry and exercised such good faith judgment but nevertheless errs in determining that post-accident testing is not required. This section does not excuse the railroad for any error arising from a mistake of law (e.g., application of testing criteria other than those contained in these regulations).

(3) A railroad does not act in excess of its authority under this subpart if its representative has made such reasonable inquiry and exercised such good faith judgment, but it is later determined, after investigation, that one or more of the conditions thought to have required testing were not, in fact, present.

(4) An accident/incident with respect to which the railroad has made reasonable inquiry and exercised good faith judgment in determining the facts necessary to apply the criteria contained in paragraph (a) of this section is deemed a qualifying event for purposes of sample analysis, reporting, and other purposes. In the event samples are collected following an event determined by FRA not to be a qualifying event within the meaning of this paragraph, FRA directs its designated laboratory to destroy any sample material submitted and to refrain from disclosing to any person the results of any analysis conducted.

k. Amend § 219.203 by revising paragraphs (a), (b), and (c) to read as follows:

§ 219.203 Responsibilities of railroads and employees.

(a) *Employees tested.* (1) Following each accident and incident described in § 219.201, the railroad (or railroads) shall take all practicable steps to assure that all covered employees of the railroad directly involved in the accident or incident provide blood and urine samples for toxicological testing by FRA. Such employees shall cooperate in the provision of samples as described in this subpart and appendix C.

(2) Such employees shall specifically include each and every operating employee assigned as a crew member of any train involved in the accident or incident. In any case where an operator, dispatcher, signal maintainer or other covered employee is directly and contemporaneously involved in the circumstances of the accident/incident, those employees shall also be required to provide samples.

(3) An employee shall be excluded from testing under the following circumstances: In any case of an accident/incident for which testing is mandated only under § 219.201(a)(2) of this subpart (an "impact accident") or 219.201(a)(3) ("fatal train incident"), if the railroad representative can immediately determine, on the basis of specific information, that the employee had no role in the cause(s) or severity of the accident/incident.

(4) The following provisions govern accidents/incidents involving non-covered employees:

(i) Surviving non-covered employees are not subject to testing under this subpart.

(ii) Testing of the remains of non-covered employees who are fatally injured in train accidents and incidents is required.

(b) *Timely sample collection.* (1) The railroad shall make every reasonable effort to assure that samples are provided as soon as possible after the accident or incident.

(2) The paragraph shall not be construed to inhibit the employees required to be tested from performing, in the immediate aftermath of the accident or incident, any duties that may be necessary for the preservation of life or property. However, where practical, the railroad shall utilize other employees to perform such duties.

(3) In the case of a revenue passenger train which is in proper condition to continue to the next station or its destination after an accident or incident, the railroad shall consider the safety and conveniences of passengers in determining whether the crew is immediately available for testing. A relief crew shall be called to relieve the train crew as soon as possible.

(4) Covered employees who may be subject to testing under this subpart shall be retained in duty status for the period necessary to make the determinations required by § 219.201 and this section and (as appropriate) to complete the sample collection procedure. However, an employee may not be recalled for testing under this subpart if that employee has been released from duty by a railroad officer or supervisor with actual or apparent authority to do so. An employee who has been transported to receive medical care is not released from duty for purposes of this section. Nothing in this section prohibits the subsequent testing of an employee who has failed to remain available for testing as required (i.e., who is absent without leave); but subsequent testing does not excuse such refusal by the employee timely to provide the required specimens.

(c) *Place of sample collection.* (1) Employees shall be transported to an independent medical facility where the samples shall be obtained. The railroad shall pre-designate for such testing one or more such facilities in reasonable proximity to any location where the railroad conducts operations. Designation shall be made on the basis of the willingness of the facility to conduct sample collection and the ability of the facility to complete sample collection promptly, professionally, and in accordance with pertinent requirements of this part. In all cases blood shall be drawn only by a qualified medical professional or by a qualified technician subject to the supervision of a qualified medical professional.

(2) In the case of an injured employee, the railroad shall request the treating medical facility to obtain the samples.

* * * * *

l. Amend § 219.205 by revising paragraphs (a), (c) and (d) to read as follows:

§ 219.205 Sample collection and handling.

(a) *General.* Samples shall be obtained, marked, preserved, handled, and made available to FRA consistent with the requirements of this section and the technical specifications set forth in appendix C to this part.

* * * * *

(c) *Shipping kit.* (1) FRA and the laboratory designated in appendix B to this part make available for purchase a limited number of standard shipping kits for the purpose of routine handling of toxicological samples under this subpart. Whenever possible, samples shall be placed in the shipping kit prepared for shipment according to the instructions provided in the kit and appendix C. Specifications for kits are contained in the Field Manual.

(2) Kits may be ordered directly from the laboratory designated in appendix B to this part.

(3) FRA maintains a limited number of kits at its field offices. A Class III railroad may utilize kits in FRA possession, rather than maintaining such kits on its property.

(d) *Shipment.* Samples shall be shipped as soon as possible by pre-paid air express or air freight (or other means adequate to ensure delivery within twenty-four (24) hours from time of shipment) to the laboratory designated in appendix B to this part. Whenever possible, the medical facility shall transfer the sealed toxicology kit directly to an express courier for transportation. If courier pickup is not available at the medical facility where the samples are collected, the railroad shall promptly transport the sealed shipping kit holding the samples to the nearest point of shipment via air express, air freight or equivalent means. The railroad shall maintain and document secure chain or custody of the kit from release by the medical facility to delivery for transportation, as described in appendix C.

m. Amend § 219.207 by revising paragraph (d) to read as follows:

§ 219.207 Fatality.

* * * * *

(d) Appendix C to this part specifies body fluid and/or tissue samples required for toxicological analysis in the case of a fatality.

n. Revise § 219.211 to read as follows:

§ 219.211 Analysis and follow-up.

(a) The laboratory designated in appendix B to this part undertakes prompt analysis of samples provided under this subpart, consistent with the need to develop all relevant information and produce a complete report.

(b) Effective January 16, 1990, results of post-accident toxicological testing under subpart C of this part are reported to the railroad's Medical Review Officer and the employee. The railroad shall treat the test results and any information concerning medical use or administration of drugs provided under this subpart in the same confidential manner as if subject to subpart H of this part, except where publicly disclosed by FRA or the National Transportation Safety Board.

(c) With respect to a surviving employee, a test reported as positive for alcohol or a controlled substance by the designated laboratory shall be reviewed by the railroad's Medical Review Officer in the same manner provided for tests conducted under subpart H of this part. The Medical Review Officer shall promptly report the results of each review to the Associate Administrator for Safety, FRA, Washington, DC 20590. Such report shall be in writing and shall reference the employing railroad, accident/incident date, and location; and the envelope shall be marked "CONFIDENTIAL: ATTENTION ALCOHOL/DRUG PROGRAM MANAGER." The report shall state whehter the test result was reported to the railroad as positive or negative and the basis of any determination that analytes detected by the laboratory derived from authorized use (including a statement of the compound prescribed, dosage, and any restrictions imposed by the authorized medical practitioner). Unless specifically requested by FRA in writing, the Medical Review Officer shall not disclose to FRA the underlying physical condition for which any medication was authorized or administered. Neither the Federal Railroad Administration nor the National Transportation Safety Board shall be bound by the railroad Medical Review Officer's determination, but that determination will be considered by FRA in relation to the accident/incident investigation and with respect to any enforcement action under consideration.

(d) To the extent permitted by law, FRA treats test results indicating use of prescription or physician-administered controlled substances (and other information concerning medically authorized drug use or administration provided incident to such testing) as confidential and withholds public disclosure, except where it is necessary to consider this information in an accident investigation in relation to determination of probable cause. However, FRA may provide any result of testing under this subpart and associated documents to the National Transportation Safety Board.

(e) An employee may respond in writing to the results of the test prior to the preparation of any final investigation report concerning the accident or incident. An employee wishing to respond shall do so by letter addressed to the Associate Adminsistrator for Safety, FRA, 400 Seventh Street, SW., Washington, DC 20590 within 45 days of receipt of the test results. Any such letter shall refer to the accident date, railroad and location and state the position occupied by the employee on the date of the accident/incident and shall identify any information contained therein that the employee requests be withheld from public disclosure on grounds of personal privacy (but the decision whether to honor such request shall be made by the FRA on the basis of controlling law). Results of the toxicological analysis and any response from the employee are also promptly made available to the National Transportation Safety Board on request.

(f)(1) Toxicology report may contain a statement of pharmacological significance to assist FRA and other parties in understanding the data reported. No such statement may be construed as a finding of probable cause in the accident or incident.

(2) The toxicology report is a part of the report of the accident/incident and therefore subject to the limitation of section 4 of the Accident Reports Act (45 U.S.C. 41) (prohibiting use of the report for any purpose in any action for damages).

(g)(1) It is in the public interest to ensure that any railroad disciplinary actions that may result from accidents and incidents for which testing is required under this subpart are disposed of on the basis of the most complete and reliable information available so that responsive action will be appropriate. Therefore, during the interval between an accident or incident and the date that the railroad receives notification of the results of the toxicological analysis, any provisions of collective bargaining agreements establishing maximum periods for charging employees with rule violations, or for holding an investigation, shall not be deemed to run as to any offense involving the accident or incident (*i.e.*, such periods shall be tolled).

(2) This provision shall not be construed to excuse the railroad from any obligation to timely charge an employee (or provide other actual notice) where the railroad obtains sufficient information relating to alcohol or drug use, impairment or possession or other rule violations prior to receipt of toxicological analysis.

(3) This provision does not authorize holding any employee out of service pending receipt of toxicological analysis; nor does it restrict a railroad from taking such action in an appropriate case.

(h) Except as provided in § 219.201 (with respect to nonqualifying events), each sample provided under this subpart is retained for not less than three months following the date of the accident or incident (two years from the date of the accident or incident in the case of a sample testing positive for alcohol or a controlled substance) and may be made available to the National Transportation Safety Board (on request).

(i) An employee (donor) may, within 60 days of the date of the toxicology report, request that the employee's blood and/or urine sample be retested by the designated laboratory or by another laboratory certified by the Department of Health and Human Services under that Department's Guidelines for Federal Workplace Drug Testing Programs that has available an appropriate, validated assay for the fluid and compound declared positive. Since some analytes may deteriorate during storage, detected levels of the compound shall, as technically appropriate, be reported and considered corroborative of the original test result. Any request for a retest shall be in writing, specify the railroad, accident date and location, be signed by the employee/donor, be addressed to the Associate Administrator for Safety, FRA, Washington, DC 20590, and be designated "CONFIDENTIAL: ATTENTION ALCOHOL/DRUG PROGRAM MANAGER." The expense of any employee-requested retest at a laboratory other than the laboratory designated under this subpart shall be borne by the employee.

o. Amend § 219.213 by revising paragraph (a)(1), by adding a new paragraph (a)(4), and by revising paragraph (c) to read as follows:

§ 219.213 Unlawful refusals; consequences.

(a) *Disqualification.* (1) An employee who refuses to cooperate in providing a blood or urine sample following an accident or incident specified in this subpart shall be withdrawn from covered service and shall be deemed disqualified for covered service for a period of nine (9) months.

* * * * *

(4) Upon the expiration of the 9-month period described in this section, a railroad may permit the employee to return to covered service only under the same conditions specified in § 219.104 of this part.

* * * * *

(c) *Subject of hearing.* The hearing required by this section shall determine whether the employee refused to submit to testing, having been requested to submit, under authority of this subpart, by a representative of the railroad. In determining whether a disqualification is required, the hearing official shall, as appropriate, also consider the following:

(1) Whether the railroad made a good faith determination, based on reasonable inquiry, that the accident or incident was within the mandatory testing requirements of this subpart; and

(2) In a case where a blood test was refused on the ground it would be inconsistent with the employee's health, whether such refusal was made in good faith and based on medical advice.

p. Amend § 219.301 by revising paragraph (a), by republishing the introductory text of paragraph (b), by revising paragraph (b)(3), and by revising paragraph (f) to read as follows:

§ 219.301 Testing for reasonable cause.

(a) *Authorization.* A railroad may, under the conditions specified in this subpart, require any covered employee, as a condition of employment in covered service, to cooperate in breath or urine testing, or both, to determine compliance with §§ 219.101 and 219.102 of this part or a railroad rule implementing the requirements of §§ 219.101 and 219.102. This authority is limited to testing after observations or events that occur during duty hours (including any period of overtime or emergency service). The provisions of this subpart apply only when, and to the extent that, the test in question is conducted in reliance upon the authority conferred by this section. Section 219.23 prescribes the notice to an employee that is required when an employee is required to provide a breath or body fluid sample under this part.

(b) *Reasonable cause for breath tests.* The following circumstances constitute reasonable cause for the administration of breath tests under this section:

* * * * *

(3) *Rule violation.* The employee has been directly involved in one of the following operating rule violations or errors:

(i) Noncompliance with a train order, track warrant, timetable, signal indication, special instruction or other direction with respect to movement of a train that involves—

(A) Occupancy of a block or other segment of track to which entry was not authorized;

(B) Failure to clear a track to permit opposing or following movement to pass;

(C) Moving across a railroad crossing at grade without authorization; or

(D) Passing an absolute restrictive signal or passing a restrictive signal without stopping (if required);

(ii) Failure to protect a train as required by a rule consistent with § 218.37 of this title (including failure to protect a train that is fouling an adjacent track, where required by the railroad's rules);

(iii) Operation of a train at a speed that exceeds the maximum authorized speed by at least ten (10) miles per hour or by fifty percent (50%) of such maximum authorized speed, whichever is less;

(iv) Alignment of a switch in violation of a railroad rule, failure to align a switch as required for movement, operation of a switch under a train, or unauthorized running through a switch;

(v) Failure to apply or stop short of derail as required;

(vi) Failure to secure a hand brake or failure to secure sufficient hand brakes;

(vii) Entering a crossover before both switches are lined for movement; or

(viii) In the case of a person performing a dispatching function or block operator function, issuance of a train order or establishment of a route that fails to provide proper protection for a train.

* * * * *

(f) *Prompt sample collection; time limitation.*

(1) Testing under this subpart may only be conducted promptly following the observations or events upon which the testing decision is based, consistent with the need to protect life and property.

(2) Nothing in this section shall authorize testing of an employee after the expiration of an 8-hour period from—

(i) The time of the observations or other events described in this section; or

(ii) In the case of an accident/incident, the time a responsible railroad supervisor receives notice of the event providing reasonable cause for conduct of the test.

(3) An employee may not be tested under this subpart if that employee has been released from duty. An employee

who has been transported to receive medical care is not released from duty for purposes of this section. Nothing in this section prohibits the subsequent testing of an employee who has failed to remain available for testing as required (i.e., who is absent without leave).

(4) As used in this section a "responsible railroad supervisor" means any responsible line supervisor (e.g., a trainmaster or road foreman of engines) or superior official in authority over the employee to be tested.

* * * * *

q. Amend § 219.303 by revising paragraph (c) to read as follows:

§ 219.303 Breath test procedures and safeguards.

* * * * *

(c)(1) In any case where a breath test is intended for use in the railroad disciplinary process and the result is positive, the employee shall be given the prompt opportunity to provide a blood sample at an independent medical facility for analysis by a competent independent laboratory. The railroad shall provide the required transportation to facilitate the blood test.

(2) A blood test under this section shall conform to the following standards:

(i) The specimen shall be collected in a medically acceptable manner by a qualified medical professional or technician using a non-ethanol swab and shall be deposited into a single-use sterile vacuum tube containing at least one percent sodium fluoride (and an anticoagulant).

(ii) While the specimen remains in full view of the employee, the specimen shall be clearly labeled with the employee's name and/or a unique identifying number and shall be sealed with a tamperproof seal.

(iii) The sample shall be handled in accordance with chain of custody procedures from the point of collection through analysis and secure storage at the laboratory.

(iv) The sample shall be screened for alcohol only by a method reliable at a detection limit of not higher than .02 percent. Any presumptive positive shall be confirmed by gas chromatography with a suitable internal standard. The screening run shall include at least 10% quality control samples. The confirmation run shall include ethanol standards, at least one blank specimen, and at least one control purchased commercially or provided through an external quality control program. Results declared positive on confirmation shall be consistent with pre-established criteria for retention time of internal and external standards. Blood alcohol concentration shall be reported only at values of .02 percent or greater within the linear portion of the standard curve. Unconfirmed presumptive positive results and values below .02 percent shall be reported as negative. Any quantitations to the third digit shall be rounded downward to two digits (i.e., .238% to .23%).

(v) The remaining portion of any specimen testing positive shall be retained for at least one year, and the employee shall have the right to request a retest of the specimen at a competent independent laboratory within 60 days of the date of the laboratory report.

(vi) Test results shall be reported to the Medical Review Officer who shall review and act upon the results in the same manner provided for drug urine testing in subpart H of this part, except that fully quantitated results shall be made available to the employer representative.

(3) If the blood test under this section is reported as negative, the breath test shall be deemed negative for all purposes.

* * * * *

r. Revise § 219.305 to read as follows:

§ 219.305 Urine test procedures and safeguards.

(a) Effective January 16, 1990, the conduct of urine drug testing under this subpart is governed by subpart H of this part and (to the extent not inconsistent with this part) part 40 of subtitle A of this title. However, urine shall be collected at the independent medical facility. Personnel of the medical facility shall supervise the collection procedure.

(b) A urine test procedure may include the provision of not more than two samples from the same employee.

(c) A railroad may analyze a urine sample provided under this part for alcohol only as specified in § 219.307 of this subpart.

(d) In any case where a urine test is intended for use in the railroad disciplinary process, the employee shall be given the opportunity to provide a blood sample at an independent medical facility for analysis by a competent independent laboratory. Alcohol analysis conducted on the blood specimen (which shall be performed in the event the urine sample is analyzed for alcohol) shall be in conformity with the standards set forth in § 219.303(c).

s. Revise § 219.307 to read as follows:

§ 219.307 Standards for urine alcohol assays.

(a) *General requirements.* Impairment of railroad employees may be caused by use of controlled substances, use of alcohol, or use of controlled substances and alcohol in combination. Accordingly, a railroad may cause a urine sample collected under this subpart to be analyzed for alcohol subject to the following additional conditions and safeguards.

(1) The urine alcohol analysis shall be conducted on the second sample collected under the procedure set forth in Appendix D to this part. The sample container shall contain at least one percent sodium fluoride as a preservative. In all other respects not inconsistent with this section, the collection, handling and retention of the urine sample shall be the same as required for drug urinalysis under subpart H of this part. The railroad may only use the second sample for alcohol analysis under this subpart.

(2) The urine alcohol analysis shall conform to the requirements set forth in this section.

(3) Quantitative test results shall be reported to the Medical Review Officer who shall review and act upon the results in the same manner provided for drug urine testing in subpart H of this part, except that the test result reported to the railroad representative shall include both a urine alcohol concentration and an estimate of blood alcohol concentration as derived in the manner discussed in appendix D.

(4) The employee shall be given an opportunity to provide a blood sample for alcohol analysis as set forth in § 219.303. If the employee provides a blood sample, the lower of the actual blood alcohol concentration and the estimate derived from the urine alcohol level shall be considered in relation to any discipline or other adverse action taken against the employee.

(b) *Laboratory analysis and reporting.* (1) The urine sample shall be screened by a method that reliably detects alcohol in the urine at a concentration of .05 percent (w/v), and a concentration equal to or greater than that value shall be considered presumptively positive subject to confirmation. The screening run shall include at least 10% quality control samples. If the screening method uses prepared reagents, they shall meet the requirements of the Food and Drug Administration for commercial distribution.

(2) Any presumptive positive shall be confirmed by gas chromatography with a suitable internal standard. The confirmation run shall include ethanol standards, at least one blank specimen, and at least one control purchased commercially or provided through an external quality control program. Results declared positive on confirmation shall be consistent with

pre-established criteria for retention times of internal and external standards. Urine alcohol concentration shall be reported only at values of .05 percent or greater within the linear portion of the standard curve. Unconfirmed presumptive positive results and urine alcohol values below .05 percent shall be reported as negative.

(3) If both screening and confirmation are performed by gas chromatography, confirmation shall be conducted on a second column to ensure specific identification of ethanol.

t. Amend § 219.309 by revising paragraphs (b)(2) and (b)(3) to read as follows:

§ 219.309 Presumption of impairment; notice.

* * * * *

(b) * * *

(2) The following statement provides the required notice:

Under Federal Railroad Administration (FRA) safety regulations, you may be required to provide a urine sample after certain accidents and incidents or at any time the company reasonably suspects that you are under the influence of, or impaired by, drugs while on duty. Because of its sensitivity, the urine test may reveal whether or not you have used certain drugs within the recent past (in a rare case, up to *sixty* days before the sample is collected). As a general matter, the test cannot distinguish between recent use off the job and current impairment. However, the Federal regulations provide that if only the urine test is available, a positive finding on that test will support a presumption that you were impaired at the time the sample was taken.

You can avoid this presumption of impairment by demanding to provide a blood sample at the same time the urine sample is collected. The blood test will provide information pertinent to recency of use and current impairment. Regardless of the outcome of the blood test, if you provide a blood sample there will be no presumption of impairment from a positive urine test.

If you have used any drug off the job (other than a medication that you possessed lawfully) in the prior sixty days, it may be in your interest to provide a blood sample. If you have not made unauthorized use of any drug in the prior sixty days, you can expect that the urine test will be negative; and you may not wish to provide a blood sample.

Effective October 2, 1989, use of certain drugs (controlled substances) without medical authorization is prohibited by Federal regulation at any time. Therefore, presence of such drugs in the urine may be evidence of prohibited conduct, even if an optional blood test is negative. If a controlled substance is detected in the urine, you will be given an opportunity to discuss any legitimate administration or use of the controlled substance on a confidential basis with a Medical Review Officer.

You are not required to provide a blood sample at any time, except in the case of certain accidents and incidents subject to Federal post-accident testing requirements (49 CFR part 219, subpart C).

A complete copy of the Federal regulations is available for your review at _____.

(3) The railroad shall include in this notice a statement of company policy with respect to the disciplinary consequences (if any) attendant to on-the-job use, possession or impairment and prohibited drug use as detected only through a urine test.

§§ 219.403 and 219.405 [Amended]

u. Amend §§ 219.403(a) and 219.405(a) by adding "and § 219.102" immediately following "§ 219.101" in each section.

v. Revise § 219.501 to read as follows:

§ 219.501 Pre-employment drug screens.

(a) On and after May 1, 1986, each applicant who is given favorable consideration for a position with a railroad that involves the performance of covered service shall be tested for the presence of drugs prior to being employed in covered service. This requirement shall apply to final applicants for employment and, effective January 16, 1990, to employees seeking to transfer from non-covered service to duties involving covered service. The test shall be accomplished through analysis of a urine sample. Whenever feasible, the sample shall be obtained in connection with a pre-employment medical examination.

(b) Prior to collection of the urine sample, the applicant shall be notified that the sample will be tested for the presence of drugs. In the case of an applicant who declines to be tested and withdraws the application for employment, no record shall be maintained of the declination.

(c) Effective January 16, 1990, the conduct of urine drug testing under this subpart is governed by subpart H of this part and (to the extent not inconsistent with this part) part 40 of subtitle A of this title.

(d) A railroad may test for alcohol in pre-employment tests under this section under the following conditions:

(1) Prior to the collection of the sample, the applicant shall be notified that the sample will be tested for alcohol. In the case of an applicant who declines to be tested and withdraws the application for employment, no record shall be maintained of the declination.

(2) The test procedure shall utilize the same specimen analyzed for controlled substances, but the specimen bottle shall contain one percent sodium fluoride.

(3) Except as provided in this section, chemical analysis for alcohol shall be conducted according to the same standards required for reasonable cause urine alcohol testing in § 219.307 of this part.

(4) The reporting cutoff shall be .10 percent (w/v) urine alcohol (equivalent to an attained blood alcohol concentration of approximately .07 percent), and any lower concentration shall be reported as negative.

(5) Positive results shall be considered in the same manner for all applicants. (For instance, all applicants with a specified level shall be rejected; or all applicants testing positive shall be evaluated by a qualified physician against professionally recognized standards in order to determine if the applicant has an uncontrolled substance abuse disorder.)

w. Revise § 219.503 to read as follows:

§ 219.503 Notification; records.

The railroad shall provide for medical review of laboratory test results and shall notify the applicant of the results of any test in the same manner as provided for employees in subpart H. Records shall be maintained confidentially and shall be retained in the same manner as required under Subpart H for employee test records, except that such records need not reflect the identity of an applicant whose application for employment in covered service was denied.

x. Revise § 219.505 to read as follows:

§ 219.505 Refusals; consequences of positive.

(a) An applicant who has refused to submit to pre-employment testing under this section shall not be employed in covered service based upon the application and examination with respect to which such refusal was made. This section does not create any right on the part of the applicant to have a subsequent application considered; nor does it restrict the discretion of the railroad to entertain a subsequent application for employment from the same person.

(b) An applicant who is using a controlled substance without medical authorization shall not be employed in covered service. This section shall not be construed to bar employment based on a subsequent application if the applicant no longer uses a controlled substance without medical authorization.

y. Amend § 219.601 by republishing the introductory text of paragraph (b), and by revising paragraph (b)(6) to read as follows:

§ 219.601 Railroad random testing programs.

* * * * *

(b) *Form of programs.* Random testing programs submitted by or on behalf of each railroad under this subpart shall meet the following criteria, and the railroad and its managers, supervisors, officials and other employees and agents shall conform to such criteria in implementing the program:

* * * * *

(6) An employee shall be subject to testing only while on duty in covered service (including any duty tour during which the employee is assigned to perform functions that normally involve covered service, whether or not covered service is, in fact, performed during that particular duty tour).

z. Amend § 219.603 by removing paragraph (b)(3) and by revising paragraph (c) to read as follows:

§ 219.603 Participation in testing; refusals.

* * * * *

(c) Upon the expiration of the 9-month period described in this section, a railroad may permit the employee to return to covered service only under the same conditions specified in § 219.104 of this part.

aa. Amend § 219.605 by revising paragraph (b) to read as follows and by removing paragraphs (c), (d) and (e).

§ 219.605 Positive test results; procedures

* * * * *

(b) Procedures for administrative handling by the railroad in the event a sample provided under this subpart is reported as positive by the MRO are set forth in § 219.104 of this part.

§§ 219.607 and 219.609 [Removed]

bb. Remove §§ 219.607 and 219.609.

§§ 219.707 [Amended]

cc. Remove the fourth (final) sentence of § 219.707(d).

§219.709 [Amended]

dd. Amend § 219.709 by removing the word "with" in the third sentence of paragraph (a) and by inserting in lieu thereof the word "within".

ee. Revise § 219.711 to read as follows:

§ 219.711 Confidentiality of test results.

(a) A laboratory reporting results of tests conducted under this subpart shall report those results only to the designated Medical Review Officer of the railroad. The results shall not be disclosed by the laboratory to any other person, except that the laboratory may affirm the test result to the employee to whom the sample was identified. This paragraph shall not be read to bar normal access to analytical data for laboratory accreditation or certification processes, but records shall be maintained by specimen identification number (or accession number) rather than employee name.

(b) The MRO may not disclose medically approved drug use or administration information obtained under this part (whether ascertained through testing or reported by the employee or the employee's medical practitioner at the employee's request) to non-medical railroad personnel; however, nothing in this part bars use of such information by the railroad's medical officer in the context of an established medical qualifications program insofar as it may indicate an underlying physical disorder that requires evaluation under the company's existing medical standards.

(c) No record of tests conducted subject to this subpart or information drawn thereform shall be used or disseminated by the railroad or within the railroad for any purpose other than providing for compliance with this part (and railroad rules consistent herewith), unless with the voluntary written consent of the employee. Such written consent shall specify the person to whom the information may be provided. Each railroad shall adopt and implement procedures to guard this information against unauthorized disclosure both within and external to the railroad company.

ff. Add a new § 219.713 at the end of Subpart H to read as follows:

§ 219.713 Reports; FRA access to records.

(a) Each railroad shall retain for at least 2 years from the date of sample collection all records of each test conducted under this subpart (with respect to tests required or authorized under subparts D, F, or G of this part) that is reported as positive by the Medical Review Officer, inlcuding urine custody and control forms, laboratory reports, and certification statements. Records of negative tests shall be retained for at least 1 year.

(b) Each railroad shall maintain for at least 5 years summary records of employee alcohol and drug test results conducted under this part (including subpart C) and rehabilitation (including primary treatment, aftercare, and follow-up alcohol/drug testing) for each covered employee. Records required to be kept shall be made available to FRA as provided by section 208 of the Federal Railroad Safety Act of 1970.

gg. Add a new appendix C is added to Part 219 to read as follows:

Appendix C—Post-Accident Testing Sample Collection

1.0 General

This appendix prescribes procedures for collection of samples for mandatory post-accident testing pursuant to subpart C of this part. Collection of blood and urine specimens is required to be conducted at an independent medical facility.

(Surviving Employees)

2.0 Surviving Employees

This unit 2 provides detailed procedures for collecting post-accident toxicological samples from surviving employees involved in train accidents and train incidents, as required by 49 CFR part 219, subpart C. Subpart C specifies qualifying events and employees required to be tested.

2.1 Collection Procedures: General

All forms and supplies necessary for collection and transfer of blood and urine specimens for six surviving employees can be found in the FRA post-accident toxicology kit, which is made available to the collection site by the railroad representative. Each kit contains supplies for blood/urine collections from six individuals, including instructions and necessary forms. The railroad is responsible for ensuring that kit materials are fresh, complete and meet FRA requirements.

2.11 Responsibility of the Railroad Representative

In the event of an accident/incident for which testing is required under Subpart C, the railroad representative shall, upon arrival at the independent medical facility, promptly make available to the medical facility representative a toxicology kit or kits and shall identify to the medical facility representative the instructions contained in the kit for conduct of the collection. (Each kit contains supplies to collect samples from six employees.) The railroad representative shall request the medical facility representative to review the instructions provided (Exhibit C–1) and, through qualified medical personnel, to provide for collection of the specimens according to the procedure set out.

The railroad representative shall undertake the following additional responsibilities—

- Complete Form 6180.73 describing the testing event and identifying the employees whose samples are to be deposited in the toxicology kit.
- As necessary to verify the identity of individual employees, affirm the identity of each employee to the medical facility personnel.
- To the extent consistent with the policy of the medical facility and the privacy of the employee, follow the progress of the collection procedure.

Warnings: The railroad representative shall not observe urination or otherwise disturb the privacy of urine donation. The railroad representative shall not handle sample containers.

2.12 Employee Responsibility

An employee who is identified for post-accident toxicological testing shall cooperate in testing as require by the railroad and

personnel of the independent medical facility. Such cooperation will normally consist of the following, to be performed as requested:

• Provide a blood sample, which a qualified medical professional or technician will draw using a single-use sterile syringe. The employee should be seated for this procedure.

• Provide, in the privacy of an enclosure, a urine sample into a single-use cup. The urine sample shall be presented to the medical facility personnel.

• Monitor the collection to ensure that the blood and urine samples are properly identified and sealed before they leave your sight. Verify the sample and seal by placing your initials on the seal.

• Complete necessary paperwork, including Steps 1 and 4 of FRA Form 6180.74 (revised).

• If required by the medical facility, complete a separate consent form for taking of the samples and their release to FRA for analysis under the FRA rule.

Note: The employee may not be required to complete any form that contains any waiver of rights the employee may have in the employment relationship or that releases or holds harmless the medical facility with respect to negligence in the collection.

2.2 The Collection

Exhibit C–1 contains instructions for collection of samples for post-accident toxicology from surviving employees. These instructions shall be observed for each collection. Instructions shall be contained in each collection kit and shall be provided to medical facility personnel involved in the collection and/or packaging of specimens for shipment.

(Post Mortem Collection)

3.0 Fatality

This unit 3 provides procedures for collecting post-accident body fluid/tissue samples from the remains of employees killed in train accidents and train incidents, as required by 49 CFR Part 219, Subpart C. Subpart C specifies qualifying events and employees required to be tested.

3.1 Collection

In the event of a fatality for which testing is required under subpart C, the railroad shall promptly make available to the custodian of the remains a copy of Exhibit C–2 to this appendix and a toxicology kit. The railroad representative shall request the custodian to review the instructions contained in Exhibit C–1 and, through qualified medical personnel, to provide the specimens as indicated.

(Surviving Employees and Fatalities)

4.0 Shipment

The railroad is responsible for arranging overnight transportation of the sealed toxicology kit containing the specimens. Whenever possible, the kit should be delivered directly from the medical personnel providing the specimens to an overnight express service courier. If it becomes necessary for the railroad to transport the kit from point of collection to point of shipment, then—

1. The kit shall be sealed by the medical personnel providing the specimens before the kit is turned over to the railroad representative;

2. The railroad shall limit the number of persons handling the kit to the minimum necessary to provide for transportation;

3. If the kit cannot immediately be delivered to the express carrier for transportation, it shall be maintained in secure temporary storage; and

4. The railroad representatives handling the kit shall document chain of custody of the kit and shall make available such documentation to FRA on request.

Exhibit C–1—Instructions for Collection of Blood and Urine Specimens: Mandatory Post-Accident Toxicological Testing

A. Purpose

These instructions are for the use of personnel of medical facilities conducting collection of blood and urine samples from surviving railroad employees following railroad accidents and casualties that qualify for mandatory alcohol/drug testing. The Federal Railroad Administration appreciates the participation of medical facilities in this important public safety program.

B. Prepare for Collection

Railroad employees have consented to provision of samples for analysis by the Federal Railroad Administration as a condition of employment.

A private, controlled area should be designated for collection of specimens and completion of paperwork.

Only one specimen should be collected at a time, with each employee's blood draw or urine collection having the complete attention of the collector until the specific sample has been labeled, sealed and documented.

Please remember two critical rules for the collections:

All labeling and sealing must be done in the sight of the donor, with the sample never having left the donor's sight until the sample has been labeled, sealed and initialled by the donor.

Custody and control of blood and urine samples must be documented on the forms provided. In order to do this it is important for the paperwork and the specimens to stay together.

To the extent practical, blood collection should take priority over urine collection.

You will use a single Post-Accident Testing Blood/Urine Custody and Control Form (FRA Form 6108.74 (revised)), consisting of six Steps to complete the collection for each employee. We will refer to it as the Control Form.

C. Identify the Donor

The employee donor must provide photo identification to each collector, or lacking this, be identified by the railroad representative.

The donor should remove all unnecessary outergarments such as coats or jackets, but may retain valuables, including wallet. Donors should not be asked to disrobe, unless necessary for a separate physical examination required by the attending physician.

D. Draw Blood

Assemble the materials for collecting blood from each employee: two 10 ml grey-stoppered blood tubes, the Control Form and an indelible marker.

Ask the donor to complete Step 1 on the Control Form.

With the donor seated, draw two (2) 10 ml tubes of blood using standard medical procedures (sterile, single-use syringe into evacuated gray-top tubes provided). Caution: Do not use alcohol or an alcohol-based swab to cleanse the venipuncture site.

Once both tubes are filled and the site of venipuncture is protected, immediately—

• Seal and label each tube by placing a numbered blood specimen label from the label set on the Control Form over the top of the tube and securing it down the sides.

• Ask the donor to initial each label. Please check to see that the initials match the employee name and note any discrepancy in the "Remarks" block of the Control Form.

• Complete Step 2 on the form.

• Skip to Step 5 and initiate chain of custody for the blood tubes by filling out the first line of the block to show receipt of the blood samples from the donor.

• Keep the paperwork and specimens together. If another medical facility representative will be collecting the urine sample from this employee, transfer both the form and the blood tubes to that person, showing the transfer of the blood tubes on the second line of Sept 5 (the chain of custody block).

E. Collect Urine

The urine collection agent should assemble at his/her station the materials for collecting urine from each employee: one plastic collection cup (covered with shrink wrap), one 125 ml polyethylene specimen bottle with preservative (with protective seal), the Control Form, and an indelible marker.

After requiring the employee to wash his/her hands, the collection agent should escort the employee directly to the urine collection area. To the extent practical, all sources of water in the collection area should be secured and a bluing agent (provided in the toxicology kit) placed in any toilet bowl, tank, or other standing water.

The employee will be provided a private place in which to void. Urination will not be directly observed. If the enclosure contains a source of running water that cannot be secured or any material (soap, etc.) that could be used to adulterate the specimen, the collection agent should monitor the provision of the sample from outside the enclosure. Any unusual behavior or appearance should be noted in the remarks section of the Control Form or on the back of that form.

The collection agent should then proceed as follows:

Unwrap the collection cup in the employee's presence and hand it to the employee.

Ask the employee to void at least 60 ml into the collection cup (at least to the line marked). Leave the private enclosure.

If there is a problem with urination or sample quantity, see the "Trouble Box" at the back of these instructions.

Once the void is complete, the employee should exit the private enclosure and deliver the specimen to the collection agent. Both the collection agent and the employee must proceed immediately to the labeling/sealing area, with the specimen never leaving the sight of the employee before being sealed and labeled.

Upon receipt of the specimen, proceed as follows:

- In the full view of the employee, remove the wrapper from the urine specimen bottle.
- As you pour the specimen into the specimen bottle, please inspect for any unusual signs indicating possible adulteration or dilution. Secure the top. Note any unusual signs under "remarks" at Step 3 of the Control Form.
- Within 4 minutes after the void, measure the temperature of the urine by reading the strip on the bottle. Mark the result at Step 3 of the Control Form.

If there is a problem with the urine sample, see the "Trouble Box" at the back of these instructions.

- Place the numbered urine specimen label from the Control Form label set over the top of the bottle and secure it to the sides.
- Ask the donor to initial the label. Please check to see that the initials match the employee name and note any discrepancy in the "Remarks" block of Step 3.
- Complete the remainder of Step 3 on the Control Form.
- Skip to Step 5 and initiate chain-of-custody by showing receipt of the urine sample from the donor.
- Keep the paperwork and specimens together. If another medical facility representative will be collecting the blood sample from this employee or preparing the box for shipment, transfer both the form and the blood tubes to that person, showing the transfer on the second line of Step 5 (the chain of custody block).

F. Complete Treatment Information.

Complete Step 6 of the Control Form.

G. Prepare the kit for Shipment.

The toxicology kit shall be prepared and sealed by a medical facility representative as follows:

- To avoid unnecessary steps in the chain of custody, it is preferred that one of the persons collecting urine/blood samples prepare the kit and do so immediately. If for some reason the kit cannot be prepared immediately, samples should be secured; and placement in and removal from secure storage should be reflected on the chain of custody block at Step 5 of the Control Form.
- Inspect step 5 of each Control Form to ensure you are shown in receipt of blood and urine samples and that the chain of custody to you is complete.
- Put blood tubes in styrofoam tube holders to avoid breakage.
- Do not use dry ice. Fill the quart metal can (provided) with wet ice, affix lid, and place in center of the kit.
- Place all forms and unused tamper-proof tape in zip-lock bag and seal securely. Place bag and unused supplies in kit, but keep the marker, green tape, label instruction, and kit seal.
- Close kit around the closure with green tape provided. Affix kit seal at right angle to green tape and sign and date across seal with indelible marker provided.
- Affix lable instruction provided to outside of kit.

H. Ship the kit.

The railroad should arrange to have the kit shipped overnight air express or (if express service is unavailable) by air freight, prepaid, to FRA's designated laboratory. Whenever possible, the medical facility collection agent should deliver the kit directly into the hands of the express courier or air freight representative.

If courier service is not available after a certain hour in the evening but is available the next morning, the medical facility should retain the samples in a secure refrigerated storage area until pick-up the next morning. Where courier pickup is not available at the medical facility where the samples are taken, the railroad is required to transport the shipping kit to the nearest point of shipment via air express, air freight or equivalent means.

If railroad is given custody of kit to arrange shipment, please record name of railroad official taking custody on the copy of the Form 6180.73 ("Accident Information") retained by the collection site.

"Trouble Box"

1. *Problem:* The employee claims an inability to urinate, either because he/she has recently voided or because of anxiety concerning the collection.

Action: The employee may be offered moderate quantities of liquid to assist urination. If the employee continues to claim inability after 4 hours, the urine collection should be discontinued, but the blood samples should be forwarded and all other procedures followed. Please note in area provided for remarks what explanation was provided by the employee.

2. *Problem:* The employee cannot provide approximately 60 ml of specimen.

Action: The employee should remain at the medical facility until as much as possible of the required amount can be given (up to 4 hours). The employee may be offered moderate quantities of liquids to aid urination. The first bottle should be sealed and securely stored with the blood tubes and Control Form pending shipment and a second bottle should be used for the subsequent void (using a second Control Form with the words "SECOND VOID—FIRST SAMPLE INSUFFICIENT" in the remarks block and labels from that form).

3. *Problem:* The urine temperature is outside the normal range of 32.5—37.7 °C/90.5—99.8 °F, and a suitable medical explanation cannot be provided by an oral temperature or other means; or

4. *Problem:* The collection agent observes conduct clearly and unequivocally indicating an attempt to substitute or adulterate the sample (e.g., substitute urine in plain view, blue dye in specimen presented, etc.) and a collection site supervisor or the railroad representative agrees that the circumstances indicate an attempt to tamper with the sample.

Action: Document the problem on the Control Form. If the collection site supervisor or railroad representative concur that the temperature of the specimen, or other clear and unequivocal evidence, indicates a possible attempt to substitute or alter the specimen, another void should be taken under direct observation by a collection agent of the same gender.

If a collection agent of the same sex is not available, do not proceed with this step.

If a collection agent of the same gender is available, proceed as follows: A new Control Form must be initiated for the second void. The original suspect specimen should be marked "Void 1" with the indelible marker and the follow-up void should be marked "Void 2," with both voids being sent to the laboratory and the incident clearly detailed on the Control Form.

Exhibit C-2M Instructions for Collection of Post Mortem Toxicology Samples: Employee Killed in a Railroad Accident/Incident

To the Medical Examiner, Coroner, or Pathologist

In compliance with Federal safety regulations (49 CFR part 219), a railroad representative has requested that you obtain samples for toxicology from the remains of a railroad employee who was killed in a railroad accident or incident. The deceased consented to the taking of such samples, as a matter of Federal law, by performing service on the railroad (49 CFR 219.11(f)).

Your assistance is requested in carrying out this program of testing, which is important to the protection of the public safety and the safety of those who work on the railroads.

Materials

The railroad will provide you a shipping kit that contains necessary supplies, including a pen that will write directly on all surfaces. If the kit is not immediately available, please proceed using supplies available to you that are suitable for forensic toxicology.

Samples Requested, in Order to Preference

(1) *Blood*—20 milliliters or more. Preferred sites: intact femoral vein or artery or peripheral vessels (up to 10 ml, as available) and intact heart (20 ml). Deposit blood in gray-stopper tubes individually by site and shake to mix specimen and preservative.

Note: If uncontaminated blood is not available, bloody fluid or clots from body cavity may be useful for qualitative purposes; but do not label as blood. Please indicate source and identity of sample on label of tube.

(2) *Urine*— as much as 125 milliliters, if available. Deposit into plastic bottle provided and shake to mix specimen and preservative.

(3) *Vitreous fluid*—all available, deposited into smallest available tube (e.g., 3 ml) with 1% sodium fluoride, or gray-stopper tube (provided). Shake to mix specimen and preservative.

(4) *If available at autopsy, organs*—50 to 100 grams each of two or more of the following in order preference, as available: liver, bile, brain, kidney, spleen, and/or lung. Specimens should be individually deposited into the sealable collection containers provided in the fatality kit and frozen prior to shipment.

(5) *If vitreous or urine is not available,* please provide—

a. *Spinal fluid*—all available, in 8 ml container (if available) with sodium fluoride or in gray-stopper tube; or, if spinal fluid cannot be obtained,

b. *Gastric content*—up to 100 milliliters, as available, into plastic bottle.

Sample Collection

Sampling at time of autopsy is preferred so that percutaneous needle puncturing is not necessary. However, if autopsy will not be conducted or is delayed, please proceed with sampling.

Blood samples should be taken by sterile syringe and deposited directly into evacuated tube, if possible, to avoid contamination of sample or dissipation of volatiles (ethyl alcohol).

Note: If only cavity fluid is available, please open cavity to collect sample. Note condition of cavity.

Please use smallest tubes available to accomodate available quantity of fluid sample (with 1% sodium fluoride).

Sample Identification Sealing

As each sample is collected, please place an identifier label from the set attached to the Post Accident Testing Blood/Urine Custody and Control Form (FRA Form 6180.74) on each container. Make sure the unique identification number on the label matches the pre-printed number on the Control Form.

Annotate each label with sample description and source (as appropriate) (e.g., blood, femoral vein).

Seal each specimen with tamper-proof tape (provided).

Please provide copy of any written documentation regarding condition of body and/or toxicology sampling procedure that is available at the time samples are shipped.

Handling:

Samples other than blood (provided in evacuated tubes) may be immediately frozen. Blood samples should be refrigerated.

All samples and documentation should be secured from unauthorized access pending delivery for transporation.

Information

If the railroad has not already done so, please place the name of the subject at the top of the Control Form (step 1). You are requested to complete step 2 of the form, annotating it by writing the word "FATALITY," listing the specimens provided, providing any further information under "Remarks." If it is necessary to transfer custody of the specimens from the person taking the specimens prior to preparing the kit for shipment, please use the blocks provided in step 5 to document transfer of custody.

The railroad representative will provide FRA Form 6180.73. Both forms should be placed in the shipping kit when completed; but you may retain the designated medical facility copy of each form for your records.

Packing the Shipping Kit

Please put tubes in styrofoam tube holders to avoid breakage.

Do not use dry ice. Fill the quart metal can (provided) with wet ice, affix lid, and place in center of the kit.

Place all forms and unused tamper-proof tape in zip-lock bag and seal securely. Place bag in kit.

Seal kit with green tape provided and sign and date across seal with indelible marker provided.

Affix label instruction provided to outside of kit.

If shipping by Federal Express, place strap inside the kit and instead secure the top with green vinyl tape provided. Otherwise, secure strap around lid.

Shipping the Kit

The railway should arrange to have the kit shipped overnight air express or (if express service is unavailable) by air freight, prepaid, to FRA's designated laboratory. Whenever possible, deliver the kit directly into the hands of the express courier or air freight representative.

If courier service is not available after a certain hour in the evening but is available the next morning, the medical facility should retain the samples in a secure refrigerated storage area until pick-up the next morning. Where courier pickup is not available at the medical facility where the samples are taken, the railroad is required to transport the shipping kit to the nearest point of shipment via air express, air freight or equivalent means.

If railroad is given custody of kit to arrange shipment, please record name of railroad official taking custody.

Other Toxicology

FRA requests that the person taking the samples advise if additional toxicological analysis will be undertaken with respect to the fatality. FRA toxicology reports are available to the coroner or medical examiner on request.

hh. Add a new appendix D to part 219 to read as follows:

Appendix D—To Part 219 Procedure for Collection of Urine Alcohol Specimen

The following procedures shall be followed where urine will be analyzed for alcohol content under subpart D of this part:

1. The employee should be instructed to provide an intitial sample in the manner provided in subpart H of this part, at the same time voiding the bladder completely. The subject shall be advised that failure to complete the void may work to his/her disadvantage. (The collector shall document the time this sample and the subsequent sample are taken.)

2. After the passage of 20 minutes, the employee should be instructed to provide a second sample in the same manner provided under subpart H. If the employee has difficulty in providing the second sample, it may be necessary to wait until that is possible. Fluids may be offered to assist in the production of the sample.

3. The initial sample shall be used for controlled substance analysis as provided in subpart H of this part.

4. The second sample shall be deposited into a single-use bottle containing one percent sodium fluoride as a preservative. This sample shall be identified, sealed and handled in the same manner provided under Subpart H and shall be analyzed for alcohol as provided in Subpart D of this part. The laboratory shall report the results exclusively to the Medical Review Officer as urine alcohol concentration (grams per 100 ml). Urine alcohol concentrations below .05 are reported as negative.

5. The Medical Review Officer may estimate BAC by dividing the urine alcohol concentration by 1.5 to produce an estimated average BAC for the time between the void and the collection of the second sample.

6. If the second BAC is under .05, the result may be taken to indicate the presence of alcohol, but it should be recognized that reliable quantitation will not be possible.

7. In reviewing the urine alcohol result and reporting an estimated BAC, the Medical Review Officer shall take into consideration any medical reason that may have limited the ability of the donor to void the bladder upon providing the initial sample. If the Medical Review Officer determines that any alcohol present in the urine may have derived from ingestion and elimination into the bladder prior to the duty period, the MRO shall report the result as negative.

8. In reviewing the result, the MRO shall also take into consideration any medical condition that could make possible *in vitro* production of alcohol after provision of the sample.

PART 217—[AMENDED]

1. The authority citation for part 217 continues to read as follows:

Authority: 45 U.S.C. 431, 437, and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49(m).

2. Amend part 217 by revising paragraph (d) of § 219.13 to read as follows:

§ 217.13 Annual report.

* * * * *

(d) The number, type and result of each test and inspection related to enforcement of part 219 of this subchapter and the railroad's rule on alcohol and drug use ("Rule G"). This information shall be reported on Form FRA 6180.77, shall be provided separately for employees covered by the Hours of Service Act and other employees subject to the railroad's code of operating rules and operational testing program, and shall include the following:

(1) Total number of observations of individual employees (including observations for which breath, blood or urine tests were included and observations after accidents/incidents and rule violations) and total number of employees charged with violation of Rule G or a similar rule.

(2) Number of breath tests conducted under the authority of § 219.301 of this

title and number of such tests that were positive; number of breath tests conducted under railroad authority for specific cause and not relying on § 219.301 and number that were positive.

(3) Number of urine tests conducted under the authority of § 219.301 of this title and number of such tests that were positive; number of urine tests conducted under railroad authority for specific cause and not relying on § 219.301 and number that were positive. For positive tests indicate number for alcohol and for each of the following controlled substance drug groups: marijuana, cocaine, phencyclidine, opiates, amphetamines, and other controlled substances.

(4) Number of employees who refused to cooperate in testing under § 219.301; number of employees who refused to cooperate in testing under railroad authority for specific cause and not relying on § 219.301.

(5) Number of blood tests demanded by employees in connection with such observations and results by substance (alcohol, controlled substance drug group) (separated as to blood tests demanded under subpart D of this part and blood tests conducted under railroad authority).

(6) Number and results of random drug tests conducted under the authority of § 219.601 of this chapter. For positive tests indicate the number for each controlled substance by drug group, and the following information: number and type of disciplinary actions taken, number of employees referred for evaluation, number of employees evaluated as not requiring formal treatment, number of employees evaluated as requiring outpatient treatment, number of employees evaluated as requiring inpatient treatment, number of employees failing to complete abatement or rehabilitation (as determined by clinical of employees who completed abatement or rehabilitation determined after investigation to have been involved in subsequent alcohol/drug disciplinary offenses, and number of follow-up tests and results by drug group (including refusals). Also indicate the number of refusals to cooperate in random testing and provide a summary of any negative test findings based upon scientific insufficiency (without personal identifying information).

PART 225—[AMENDED]

1. The authority citation for part 225 continues to read as follows:

Authority: 45 U.S.C. 38, 42, and 43, as amended; 45 U.S.C. 431, 437, and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49 (c) and (m).

2. Amend part 225 by adding a new paragraph (d)(3) to § 225.17 to read as follows:

§ 225.17 Doubtful cases; alcohol or drug involvement.

* * * * *

(d) * * *

(3) For any train or non-train incident, the railroad shall provide any available information concerning the possible involvement of alcohol or drug use or impairment in such accident or incident.

Issued in Washington, DC, on September 21, 1989.

Gilbert E. Carmichael,

Federal Railroad Administrator.

Note: The following forms will not appear in the Code of Federal Regulations.

BILLING CODE 4910-06-M

POST-ACCIDENT TESTING BLOOD/URINE CUSTODY AND CONTROL FORM (49 CFR 219)

Step 1. COMPLETED BY EMPLOYEE (DONOR) PROVIDING SPECIMENS

NAME OF EMPLOYEE - PRINT (last, first, mi)	SAMPLE SET IDENTIFICATION NUMBER
EMPLOYEE HOME ADDRESS	NAME/ADDRESS OF EMPLOYING RAILROAD
OPTIONAL: PLEASE NAME ANY MEDICATIONS YOU HAVE TAKEN WITHIN THE LAST 30 DAYS (MAY BE PRESCRIBED OR OVER THE COUNTER)	DATE/TIME OF LAST DOSE TAKEN

Step 2. COMPLETED BY COLLECTOR OF BLOOD SPECIMEN

NAME OF COLLECTOR - PRINT (last, first, mi)		DATE/TIME OF COLLECTION
COLLECTION SITE ADDRESS	TELEPHONE NUMBER	REMARKS

I certify the blood specimen identified here was presented to me by the person named in Step 1, bears the identification number in Step 1, and was collected, labeled and sealed according to the instructions.

I HAVE COMPLETED THE REQUIRED ENTRY IN STEP 5 BELOW, AS EXPLAINED IN THE INSTRUCTIONS GIVEN TO ME.

_____
Signature of Collector

Step 3. COMPLETED BY COLLECTOR OF URINE SPECIMEN

NAME OF COLLECTOR - PRINT (last, first, mi)		DATE/TIME OF COLLECTION
COLLECTION SITE ADDRESS	TELEPHONE NUMBER	REMARKS

Temperature of Specimen was read within 4 minutes	--YES --NO	Temperature was within range of 32.5-37.7 C/90.5-99.8 F	--YES --NO	If not, actual temp. was ____

I certify the urine specimen identified here was presented to me by the person named in Step 1, bears the identification number in Step 1, and was collected, labeled and sealed according to the instructions.

I HAVE COMPLETED THE REQUIRED ENTRY IN STEP 5 BELOW, AS EXPLAINED IN THE INSTRUCTIONS GIVEN TO ME.

_____
Signature of Collector

Step 4. COMPLETED BY EMPLOYEE

I certify that the information I have given in Step 1 is correct and that I provided the specimens described in Steps 2 and 3. Each specimen is in a container which has the identifying number recorded in Step 1. Each container has a tamper-proof seal that was applied by the collector in my presence and I have placed my initials on each label.

EXAMPLE OF MY INITIALS

* | | *

_____
Signature of Employee

Step 5. COMPLETED IN SEQUENCE BY COLLECTORS AND OTHERS TAKING POSSESSION OF SPECIMENS

Purpose of Change	Released by Signature/Print Name	Type of Fluid(s) Blood	Urine	Blood/Urine	Received by Signature/Print Name	Date
PROVIDE SPECIMEN	EMPLOYEE (DONOR)					

Step 6. COMPLETED BY MEDICAL FACILITY/PHYSICIAN

Describe any medication, solution, transfusion, or other treatment the employee received after the accident that might affect toxicological analyses.

Step 7. COMPLETED BY LABORATORY AT TIME OF ACCESSIONING

Accession Number _____ (first blood container)

Accession Number _____ (second blood container)

Accession Number _____ (urine container)

I certify the specimens identified by accession numbers above bear the identification number in Step 1. Each specimen was examined upon receipt, all seals were intact, and each specimen was handled as required by FRA.

PRINTED NAME	SIGNATURE	DATE

REMARKS

FRA F 6180.XX (draft)

ANNUAL REPORT
CONTROL OF ALCOHOL AND DRUG USE ON RAILROADS
49 CFR 217

PAPERWORK REDUCTION ACT NOTICE

The Paperwork Reduction Reauthorization Act of 1986 requires agencies to place a notice on each collection of information informing the repondent of the estimated average burden hours per response, together with a request that repondents direct any comments on the accuracy of the estimate and suggestions for reducing the burden to the agency and the Office of Management and Budget (OMB). Congress's objective in making this amendment is to facilitate an agency's management of collections of information, to reduce paperwork burdens on the public, and to encourage more meaningful public participation in the Federal paperwork review process. The Federal Railroad Administration believes that the following notice meets this requirement.

Public reporting burden for this collection of information is estimated to average -- hours per response. This estimate includes 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 Office of Safety, ATTN: RRS-21, Federal Railroad Administration, 400 Seventh Street, S.W., Washington, D.C. 20590; and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

INSTRUCTIONS

Items No. 1 through 11 relate to the railroad's rule on drug and alcohol use. Items No. 12 through 20 relate to the Federal rule, and to those tests conducted under the authority of 49 CFR 219.301. Items No. 21 through 35 relate to the Federal rule and to those tests conducted under 49 CFR 219.601. Attach a narrative statement to identify those urine or blood tests which resulted in multiple substance findings and to identify those substances.

Form is required to be completed and mailed to the Federal Railroad administrtion, Office of Safety, RRS-10, 400 Seventh Street, S.W., Washington, D.C. 20590 before March 1 each year.

FRA F 6180.XX (draft)

REPORT REQUIRED BY 49 CFR 217 RELATING TO THE CONTROL OF ALCOHOL AND DRUG USE ON RAILROADS

Railroad		Railroad Code (FRA Use Only)
Reporting Year	Date Report Submitted / /	Railroad Class Code (FRA Use Only)

SECTION I
OBSERVATIONS AND TESTS CONDUCTED UNDER RAILROAD RULE

ITEM	INFORMATION REQUIRED	HOURS OF SERICE EMPLOYEES	OTHER EMPLOYEES WHO ARE SUBJECT TO OPERATING RULES AND OPERATIONAL TESTS
1.	Total number of individual employees observed in tests and inspections related to enforcement of the railroad's rule on drug and alcohol use, including observations for which breath, blood or urine tests were conducted and observations after accidents/incidents and rule violations.		
2.	Number of employees who refused to cooperate in testing under railroad's rule.		
3.	Number of employees charged with a violation of the the railroad's rule.		
4.	Number of breath tests conducted under railroad's rule.		
5.	Number of employees for whom breath tests were positive.		
6.	Number of urine tests conducted under railroad's rule.		
7.	Number of employees for whom urine tests were positive.		
8.	Number of urine tests positive for: a. Alcohol		
	b. Marijuana		
	c. Cocaine		
	d. Phencyclidine		
	e. Opiates		
	f. Amphetamines		
	g. Other Controlled Substances		
9.	Number of blood tests conducted under railroad's rule.		
10.	Number of employees for whom blood tests were positive.		
11.	Number of blood tests positive for: a. Alcohol		
	b. Marijuana		
	c. Cocaine		
	d. Phencyclidine		
	e. Opiates		
	f. Amphetamines		
	g. Other Controlled Substances		

SECTION 2
TESTS CONDUCTED UNDER AUTHORITY OF FEDERAL RULE 49 CFR 219.301
REASONABLE CAUSE TESTING PROGRAM

ITEM	INFORMATION REQUIRED	HOURS OF SERVICE EMPLOYEES	OTHER EMPLOYEES WHO ARE SUBJECT TO OPERATING RULES AND OPERATIONAL TESTS
12.	Number of employees who refused to cooperate in testing for reasonable cause.		
13.	Number of breath tests.		
14.	Number of employees for whom breath tests were positive.		
15.	Number of urine tests.		
16.	Number of employees for whom urine tests were positive.		
17.	Number of urine tests positive for: a. Alcohol		
	b. Marijuana		
	c. Cocaine		
	d. Phencyclidine		
	e. Opiates		
	f. Amphetamines		
	g. Other Controlled Substances		
18.	Number of blood tests demanded under 49 CFR 219. 301.		
19.	Number of employees for whom blood tests were positive.		
20.	Number of blood tests positive for: a. Alcohol		
	b. Marijuana		
	c. Cocaine		
	d. Phencyclidine		
	e. Opiates		
	f. Amphetamines		
	g. Other Controlled Substances		

SECTION 3 TESTS CONDUCTED UNDER AUTHORITY OF FEDERAL RULE 49 CFR 219.601 RANDOM DRUG TESTING PROGRAM			
ITEM	INFORMATION REQUIRED	HOURS OF SERVICE EMPLOYEES	OTHER EMPLOYEES WHO ARE SUBJECT TO OPERATING RULES AND OPERATIONAL TESTS
21.	Number of employees tested.		
22.	Number of employees for whom urine tests were positive.		
23.	Number of urine tests positive for: a. Marijuana		
	b. Cocaine		
	c. Phencyclidine		
	d. Opiates		
	e. Amphetamines		
	f. Other Controlled Substances		
24.	Number of disciplinary actions taken. (Attach narrative statement describing the type of disciplinary actions taken.)		
25.	Number of employees referred for evaluation.		
26.	Number of employees evaluated as not requiring formal treatment.		
27.	Number of employees evaluated as requiring outpatient treatment.		
28.	Number of employees evaluated as requiring inpatient treatment.		
29.	Number of employees failing to complete abatement or rehabilitation (as determined by clinical judgement or positive test on return-to-work urine analysis).		
30.	Number of employees who completed abatement or rehabilitation determined after investigation to have been involved in subsequent alcohol/drug disciplinary offenses.		
31.	Number of followup tests conducted.		
32.	Number of followup tests positive for: a. Marijuana		
	b. Cocaine		
	c. Phencyclidine		
	d. Opiates		
	e. Amphetamines		
	f. Other Controlled Substances		
33.	Number of employees who refused to cooperate in followup testing.		
34.	Number of employees who refused to cooperate in random testing.		
35.	Were there any negative findings based on scientific insufficiency found by the Medical Review Officer? (If yes, attach a summary of the findings.)	YES ☐	NO ☐

[FR Doc. 89-22798 Filed 9-22-89; 4:24 pm]
BILLING CODE 4910-06-M

federal register

Wednesday
September 27, 1989

Part IV

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 200 et al.

Disclosure and Verification of Social Security Numbers and Employer Identification Numbers by Applicants and Participants in HUD Programs; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 200, 201, 203, 205, 207, 213, 215, 221, 232, 234, 235, 236, 241, 242, 244, 247, 250, 251, 252, 255, 290, 510, 750, 813, 880, 881, 882, 883, 884, 885, 886, 887, 900, 904, 905, 913, and 960

[Docket No. R-89-1419; FR-2501]

RIN 2501-AA72

Disclosure and Verification of Social Security Numbers and Employer Identification Numbers by Applicants and Participants in HUD Programs

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This rule requires certain individuals to disclose and verify their Social Security Numbers (SSNs) when they apply for participation in a program subject to this rule, or when their continuing eligibility to participate in the program is determined. In addition, the rule requires certain entities to disclose their Employer Identification Numbers (EINs), and certain officials of these entities to disclose their SSNs, when the entities apply for participation in a covered program. Failure of any individual or entity to make the required disclosure constitutes grounds for denying eligibility, or continuing eligibility, as provided by the provisions governing the program involved.

Covered programs include those providing only FHA mortgage and loan insurance and coinsurance under 24 CFR chapter II, subchapter B; other housing assistance programs and related authorities under 24 CFR chapter II, subchapter B; the Rehabilitation Loan program under 24 CFR part 510; and the section 8 and Public and Indian Housing programs under 24 CFR chapters VIII and IX.

The rule will enable HUD to use Social Security and Employer Identification Numbers to help decrease the incidence of fraud, waste, and abuse in the program subject to the rule.

EFFECTIVE DATE: November 6, 1989, except for §§ 235.10(e), 235.350(d), 235.355, 235.375(b)(4) and (e), that contain information collection requirements that are awaiting OMB approval. In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), the reporting or recordkeeping provisions that are included in this regulation have been submitted for approval to the Office of Management and Budget (OMB). They are not effective until OMB approval has been obtained and the public notified to that effect through a technical amendment to this regulation.

FOR FURTHER INFORMATION CONTACT: For programs administered by the Assistant Secretary for Housing: James Tahash, Director of Planning and Procedures, Office of Multifamily Housing Management, room 6182, telephone number (202) 426-3944.

For programs administered by the Assistant Secretary for Public and Indian Housing: Edward C. Whipple, Chief, Occupancy Branch, room 4206, telephone number (202) 426-0744.

For the section 312 Rehabilitation Loan program: David Cohen, Director, Office of Urban Rehabilitation, telephone number (202) 755-5685.

For questions concerning the collection and use of Social Security and Employer Identification Numbers: Dennis Raschka, Director, Fraud Control Division, Office of Inspector General, room 8254, telephone (202) 426-6493.

For questions concerning the applicability of the Privacy Act or the Freedom of Information Act: Burton Bloomberg, Associate General Counsel for Equal Opportunity and Administrative Law, room 10244, telephone (202) 755-7203.

The addresses listed above are all at 451 Seventh Street SW., Washington, DC 20410. None of the telephone numbers listed are toll-free.

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and have been assigned OMB control numbers 2502-0159, 2502-0268, 2502-0204, 2502-0118, 2502-0059, 2502-0267, 2506-0076 and 2577-0083. Public reporting burden for the collection of information requirements contained in this rule are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided later in this preamble under the subheading, "Findings and Certifications." Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., room 10276, Washington, DC 20420; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Background

On October 17, 1988, the Department published a proposed rule (53 FR 40624) to implement for a number of HUD programs section 165 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988). Section 165(a) authorizes HUD to require applicants and participants (and members of their households) in any HUD program involving loans, grants, interest or rental assistance of any kind, or mortgage or loan insurance, to disclose to HUD their Social Security Numbers (SSNs) or Employer Identification Numbers (EINs). This disclosure is made an explicit condition of initial or continuing eligibility for participation in any of these programs, and is also designed to ensure the proper level of benefits under these programs.

The proposed rule implemented the requirements for the disclosure of SSNs and EINs through four independent, but parallel, provisions:

1. *24 CFR part 200, subpart T:* This subpart covered the TMAP/Assignment, Occupied Conveyance, and Rent Supplement programs; the section 221(d)(3) BMIR, 235, and 236 programs; and the Management and Preservation of HUD Multifamily Projects authority under 24 CFR part 290.

2. *24 CFR part 200, subpart U:* This subpart applied to the other loan and mortgage insurance and coinsurance programs administered by HUD under 24 CFR chapter II, subchapter B, including FHA loan insurance for property improvement and manufactured home loans under title I of the National Housing Act, and mortgage insurance for single family dwellings and multifamily projects under title II of the National Housing Act.

3. *24 CFR part 501:* This part covered the Rehabilitation Loan, Rental Rehabilitation, and Urban Homesteading programs, and elements of the Community Development Block Grant (CDBG) and the Urban Development Action Grant (UDAG) programs, under 24 CFR chapter V.

4. *24 CFR part 750.* This part covered the section 8 Housing Assistance Payments and the Public and Indian Housing programs administered by HUD under 24 CFR chapters VIII and IX.

The remainder of the rule contained conforming changes that were designed to incorporate the proposed disclosure and verification requirements into the regulatory provisions for the authorities involved.

The proposed rule contained the following principal features. All applicants seeking to participate in programs subject to the rule were required to disclose and verify their SSNs or EINs, depending on the nature of the applicant. In the case of applicants seeking rental assistance (such as under the section 8 and Public and Indian Housing authorities), the applicant and all members of his or her household had to meet the disclosure and verification requirements. In the case of individuals, and certain officials of entities, desirous of becoming "private owners" of assisted projects, such as under the section 8 project-based subsidy authorities, only the individuals involved had to disclose and verify SSNs. In the case of corporations and other entities seeking to participate in cover programs as "private owners," the entities had to disclose and verify their EINs.

The proposed rule also required the disclosure and verification of SSNs by participants (and their family members) in programs providing housing assistance that require determinations of continuing eligibility for the assistance involved. Examples of these programs include the Rent Supplement and the sections 235 and 236 programs, and the section 8 and Public and Indian Housing programs.

The proposed rule provided guidance on the documentation required to verify an SSN or EIN. It also specified that failure to meet the disclosure and verification requirements would result in denial of eligibility, or termination of assistance or tenancy, as provided by the provisions governing the program involved. However, applicants or participants seeking rental assistance who could provide their SSNs, but could not meet the verification requirements, were given 60 days to remedy the deficiency before losing their place on the waiting list or having their assistance or tenancy terminated.

Discussion of Public Comments and Changes Made in the Final Rule

The Department received 11 comments on the proposed rule. Eight were from Public Housing Agencies (PHAs), and one each from a HUD Field Office, a national association, a city government, and a State Office of Communities and Development.

Eight of the commenters expressed support for the proposed rule. Three expressed concern with it, generally on grounds that the rule was, in their view, programmatically inflexible or administratively burdensome, or both. A number of commenters proposed changes for inclusion in the final rule. The following is a discussion of the comments on the proposed rule, as well as any changes made to the final rule.

Administrative Burden

Several of the commenters expressed concern over the costs of complying with the rule. One commenter questioned the cost-effectiveness of the rule's mandatory disclosure provisions, given the "minimal" incidence of fraud and abuse problems in its programs. Another commenter argued that fraud and abuse prevention can be carried out most effectively at the local level. This commenter stated that the local approach would be a "more effective prevention measure than the inflexible, onerous and bureaucratic measures proposed in the rule."

On the other hand, a number of commenters stated that the mandatory disclosure feature of the rule would be a "positive undertaking." These commenters believed that the rule would significantly increase the Department's ability to combat fraud and abuse in its programs.

The Department disagrees that the incidence of fraud and abuse in HUD's assisted housing programs is minimal. In 1982, the Department's Office of Inspector General (OIG) conservatively estimated that $200 million is paid out annually to tenants who falsify their eligibility in order to gain a larger assistance payment. It is conservatively estimated that at least 12 percent of HUD-assisted households are able either to gain eligibility or to receive more benefits than allowed by law, by underreporting their income or otherwise falsifying their eligibility. In some locations the percentage may be much higher. In the most recent income computer matching efforts by the OIG, $14.4 million was underreported to one PHA since 1983 that resulted in the tenants' share of rent being underpaid by over $2.9 million.

Like a number of the commenters, the Department agrees that the rule's mandatory disclosure and verification of SSNs and EINs will be an important weapon in the Department's efforts against this type of fraud and abuse in the Department's programs. We do not, however, believe that the rule will result in significantly increased administrative burdens, time, and compliance costs. Under HUD Form HUD-50059 (assisted housing programs), PHAs and multifamily owners and agents are now required to collect SSNs for each member of the family who receives income or who is at least 18 years old. The PHAs and IHAs are now recording SSNs for the head of the applicant/participant household, spouse, and one other adult, if provided by the family at admission or at annual reexamination. Although disclosure of the SSN is currently voluntary with the individual, the vast majority of tenants do provide their numbers.

The results of past HUD–OIG audits and computer matches have shown that in approximately 75–80 percent of the cases, applicants and participants are voluntarily providing SSNs/EINs to PHAs and multifamily owners and agents. A 1982 evaluation done under contract for HUD's Office of Policy Development and Research found that 92 percent of household heads report name and SSN to HUD. No data was gathered for other than family head of household. Making disclosure mandatory should, therefore, not impose a significant new burden on PHAs and other owners and agents.

It is true that the rule's procedures for verifying SSNs are not presently required. In many instances, however, SSNs are routinely verified when the 50059s are reviewed for other eligibility factors, such as establishing identity or family income. The PHAs and IHAs will verify a family's SSNs in conjunction with their verification of income, family status, and preference category. Moreover, the Department has made every effort to limit the processing entity's verification functions to the minimum necessary to carry out the rule's purposes. Thus, the Department does not believe that the rule's verification procedures present a novel requirement that is unduly burdensome.

Finally, the Department disagrees that a local approach would be more effective. We believe that an effective approach to fraud prevention requires a partnership of Federal, State, and local resources, and that lines of communication must be established with the various Federal, State, and local agencies involved in verifying information based on SSNs to make this a successful joint effort.

For these reasons, the Department believes that the mandatory disclosure requirements of the proposed rule will enhance the Department's ability to detect instances of fraud, waste, and abuse in its programs, without appreciably increasing the administrative burdens on PHAs and private owners of multifamily housing projects. Accordingly, the final rule is unchanged on this point.

One commenter stated that in connection with CDBG-funded rehabilitation of owner-occupied homes and relocation payments to tenants of CDBG-rehabilitated property, the rule's requirement for the disclosure of the

SSNs of all family members over the age of six would entail additional home interviews with program applicants, at a cost of $40 per visit, or $5,000 annually, if half of the applicants required such return visits. To this cost, the commenter continued, must be added the expense of reporting the SSN data to HUD and retaining the data for possible future use. Guidance was requested on the form and frequenty of the reports, and on the availability of additional HUD monies for the new expenses.

This comment is moot, because the Department has decided to eliminate from the rule's coverage the Community Development Block Grant (CDBG) program, as well as the Urban Homesteading and Urban Development Action Grant (UDAG) program. On further review, the Department does not believe that the benefits to be derived from requiring the disclosure and verification of SSNs and EINs in these programs is sufficient to justify imposition of section 165's requirements at this time.

One commenter questioned the cost-effectiveness of HUD's expenses in processing data reports from PHAs and other covered entities, and in carrying out planned computer matchings. The Department's projected implementation of the rule is sufficient response to this comment. The Department does not intend to process data reports from PHAs and other project owners. In addition, the Department routinely conducts cost-benefit analyses before carrying out any computer matching activities—a practice that the Department intends to continue in carrying out the rule's provisions.

Two commenters opposed the provision in the proposed rule that requires all family members to disclose their SSNs if there is a change in the composition of the family. They argued that this requirement is redundant and burdensome for those family members who have previously disclosed their SSNs to the entity involved. The Department agrees, and has made the necessary changes to the final rule.

As a related matter, the Department has amended the proposed rule to make several clarifying changes to the assisted housing programs subject to the rule's requirements—24 CFR part 200, subpart T, and part 750. These changes are designed to identify clearly which family members must disclose their SSNs, when the disclosure must take place, and what documentation is required to verify the SSNs. The changes also make clear that the applicant or participant—generally the head of household—is the individual who must submit all required information to the processing entity.

A summary chart of the final rule's complete disclosure and verification requirements for applicants and participants in these programs follows. The summary only covers family members who are required to disclose their SSNs. In this regard, the final rule makes no change in those who must make this disclosure: Individuals who are under the age of six or who have not been assigned an SSN are not subject to the rule's disclosure requirements.

Family members who must disclose and when	Nature of disclosure
Applicants	
All family members: at eligibility determination.	Complete and accurate SSNs for all SSNs assigned; valid SSN card or such other evidence as HUD (and PHA in part 750) may prescribe as proof of each SSN
Those who were participants before effective date of rule	
All family members: at next regularly scheduled income reexamination after rule's effective date.	Complete and accurate SSNs for all SSNs assigned; valid SSN card or such other evidence as HUD (and PHA in part 750) may prescribe as proof of each SSN
Participants who have made either of the above disclosures	
Special circumstances	
New family member: next interim or regularly scheduled income reexamination that includes the new family member.	Complete and accurate SSNs for all SSNs assigned to the family member involved; valid SSN card or such other evidence as HUD (and PHA in part 750) may prescribe as proof of each SSN
Family member who is assigned a new SSN or who obtains a previously undisclosed SSN; next regularly scheduled income reexamination.	
Special Circumstances in Administrative Instructions	
HUD (and the PHA in part 750) may specify in administrative instructions additional disclosure and verification requirements, including the nature of the disclosure and verification required, and the time and manner for making the disclosure and verification.	

This summary contains the change described above, to require only *new* family members (rather than all family members) to verify their SSNs. This is required to take place at the next income reexamination, irrespective of whether the reexamination is interim or regularly scheduled.

Finally, it should be noted that all members of participating families who are subject to the rule's disclosure requirements are not, in the absence of special circumstances, subject to further disclosure and verification of their SSNs.

One commenter indicated that HUD's failure to use HUD Form 50058 will result in duplicate reporting of SSNs—both on the 50058 and some other form to be submitted to HUD. The commenter asked when the Department intended to begin using the 50058 as had been intended.

The Department intends to use both Form HUD–50058 and Form HUD 50059 to gather the SSNs of assisted families. No additional forms will be used, thus obviating any duplicate reporting.

Program Inflexibility

A number of the comments addressed perceived instances of unnecessary inflexibility in the proposed rule. One PHA commenter argued that the rule's effective date is too abrupt. The proposed rule covered all applicant eligibility determinations initiated on or after the rule's effective date, as well as each regularly scheduled reexamination of family income conducted on or after that date. The commenter urged adoption of a six-month delayed effective date, to permit the PHA to devise necessary implementing forms and procedures.

As noted earlier, under Form HUD–50059, PHAs and IHAs are not recording SSNs for certain family members. The Department believes that PHAs' and IHAs' experience with this requirement—as well as the large number of families that voluntarily provide their SSNs—removes any need for a delayed implementation date. The final rule makes no change in the proposed rule's effective dates.

The same PHA commenter argued that the proposed rule was too harsh in requiring that tenancy be terminated for any participant family that does not meet the rule's disclosure and verification requirements. The commenter recommended instead a two-part process. If the tenant fails to provide SSNs for each covered household member, but the PHA believes that eviction is not otherwise warranted, the unit rent would be

increased to eliminate the Federal subsidy until the SSNs are provided. Where, however, a tenant has unreasonably failed to submit assigned SSNs for each family member, and the PHA believes that eviction is warranted, tenancy would be terminated.

The Department disagrees that the proposed rule's provisions requiring termination of tenancy for program participants who fail to make the required SSN disclosures is unduly harsh. Indeed, section 165 of the 1987 Act specifically envisions such a penalty, by making disclosure of SSNs a condition of both eligibility and continuing eligibility for covered programs.

Moreover, if a family participating in a covered housing assistance program was unable to produce the documentation necessary to verify the required SSNs, the proposed rule provided a period of 60 days within which the SSNs could be documented. During this period, a participant family would continue to receive assistance. The Department believes that this time period is sufficiently long to enable a reasonably diligent individual to obtain the necessary documentation, and to avoid the more serious penalties of termination of assistance/tenancy.

Given the clear meaning of section 165 and the considerable time provided family members to produce the requisite SSN documentation, the Department does not believe that the proposed rule's penalties for failing to supply the required documentation of SSNs were unduly harsh. The final rule is unchanged on this point.

A commenter indicated that it currently handles income verification by mail for participants (but not applicants) in its section 8 programs. Requiring these participants to send originals, or even copies, of their SSNs through the mail would, in the commenter's view, be unnecessarily burdensome both for the individual—especially elderly persons—and the PHA (which must return the material to the family).

The commenter suggests instead that the rule only require family members whose incomes are verified by mail to list the SSNs, rather than send proof of the numbers. Verification of the SSNs would be carried out through computer match at a later time.

The Department believes that verification of participant data my mail is a useful technique to relieve the administrative burdens on PHAs and assisted families alike. The Department also agrees with the commenter that sending original evidence through the mails is both burdensome and increases the chance of losing important documents.

We do not agree, however, that where documentation of the SSN would otherwise be required, the only means of verification should be by computer match. The proposed rule adopted the most efficacious means of ensuring the complete and accurate disclosure of SSNs—examination of the actual documents involved. The Department believes that although original documents ought not be sent through the mail, copies of the documents should be made available to the PHA or other entity processing the family's SSNs.

The Department believes that this approach strikes the appropriate balance between the legitimate interests of PHAs in reducing administrative burdens and the interest expressed in section 165 of the 1987 Act in ensuring that there are adequate safeguards against fraud and abuse in HUD's programs. PHAs would have the "next best evidence" of the SSNs involved, without the costs of processing and returning originals and the risk of loss if the originals were sent through the mail.

Accordingly, where a PHA provides for verification by mail of the continuing eligibility of participant families in the Certificate, Voucher, or Moderate Rehabilitation program, it may verify SSNs in this way as well. The tenant must provide copies of the documentation otherwise required for SSNs under the rule.

As a related point, another commenter asked whether the final rule should provide for waiver of the documentation requirement for elderly families, when the documentation is not readily available. The Department agrees with the commenter's concern about the ability of some elderly tenants to comply with the proposed rule's documentation requirements, even within the 60 additional days provided by the rule. We do not believe, however, that the commenter's suggested waiver of all documentation requirements is necessary or faithful to section 165's objective of protecting against fraud and abuse in the Department's programs.

The Department believes that the best approach is to permit PHAs and other processing entities in the covered programs to give elderly families another 60-day period, after the proposed rule's 60-day period, to supply the required documentation. We believe that this approach is consistent with section 165's purposes, while affording the additional time that some elderly families may need to gather the necessary information. The final rule has been amended accordingly.

Two commenters questioned the rule's provision that requires all family members above the age of six to disclose their SSNs. One commenter asked whether the PHA will be put in the position of breaking up families by requiring any member who fails to produce the SSN to move out. The other commenter argued that some households will have great difficulty in complying with this requirement and that the requirement is too inflexible. Specifically, the commenter stated,

> We do not relish the prospects of insisting on seeing documentation for every child before payments can be made, when we ourselves know that the case is urgent and deserving.

Initially, it should be noted that the proposed rule did not require the issuance of SSNs for all family members: only those who are over the age of five and who have been assigned an SSN, had to disclose it. As noted in the preamble to the proposed rule (53 FR 40627), use of the six-year-old standard is consistent with section 6109(e) of the Internal Revenue Code of 1986. That provision requires taxpayers to include in their tax returns a dependent's SSN whenever claiming one or more exemptions for dependents age five or older. Thus, the Department considers this requirement neither novel nor unreasonably burdensome.

With regard to the "family splitting" issue, the Department would note that section 165 of the 1987 Act clearly contemplates that all family members who have an SSN will disclose it, as a condition of eligibility, or continuing eligibility, under a covered program. Thus, the rule's statutory authority, and not the rule alone, provides for the ineligibility of a family in which one or more members fail to meet the requisite SSN disclosure and documentation.

In addition, the Department has taken care to ensure that families will not be rendered ineligible—either as applicants or participants—without receiving adequate time to secure the necessary documentation. The proposed rule only required the disclosure and verification of SSNs that have been assigned to the individual. If the individual cannot produce the required documentation, he or she would receive 60 days to do so (with an additional 60 days for elderly tenants, as discussed above). The Department continues to believe that this period is adequate to secure the necessary documentation, and that families will not unreasonably be denied initial or continuing access to assistance under the covered programs.

Other Issues

Two commenters urged HUD to make the disclosure of SSNs a joint Federal-State-local effort, by establishing lines of communication with the various Federal, State, and local agencies involved in verifying SSNs under the rule. The commenters indicated that these agencies sometimes charge for their verification services, and urged HUD to encourage these agencies to waive such charges for PHAs and local community development agencies attempting to comply with the rule.

Neither the proposed nor final rule requires the third-party verification to which the commenters refer. As indicated above, however, the Department believes that intergovernmental cooperation is an essential element in efforts to combat fraud, waste, and abuse in its programs, and intends to explore ways to develop and enhance these relationships in the future.

One commenter indicated that the rule may permit section 8 Certificate and Voucher assistance to commence, even though the project owner may not have verified the family's SSN. The commenter asked how the owner and family will know that their subsidies will not be interrupted because of lack of proper identification.

This comment appears to proceed from a misunderstanding of how the Certificate and Voucher programs work. Eligibility under these programs is determined by the PHA. If the PHA finds a family eligible (which will include acceptance of the applicant's SSN documentation), the family is given a "certificate" or "voucher" with which to rent a qualifying dwelling. The private owner may select the tenant and enter into a Housing Assistance Payments Contract with the PHA, but only after the PHA issues the Certificate or Voucher. Thus, the private owner has no responsibilities with respect to SSN information: the disclosure and verification of the family's SSNs takes place before the private owner enter the picture.

One commenter raised two technical suggestions: That language be inserted to ensure that parents or guardians can sign required certifications on behalf of minors and that the rule make clear that the Voucher program is covered by the rule. The final rule contains each of these suggestions.

Finally, the Department has made several changes in the final rule, based on its review of the proposed rule. First, the proposed rule would have permitted PHAs administering the section 8 Certificate, Voucher, or Moderate Rehabilitation program:

—To determine additional special circumstances under which participants would have to disclose their SSNs'

—To establish alternate documents or other substantiation of SSNs' and

—To designate someone other than a minor family member to certify to the fact that the individual has been assigned an SSN, but cannot produce evidence to verify it.

The final rule permits PHAs to exercise this authority only in conjunction with the Department's administrative instructions. This change is necessary to comply with section 165: HUD is given sole responsibility to implement section 165—a responsibility that could not be fully discharged if PHAs have unfettered discretion to exercise the cited discretion.

Second, for FHA and other programs that provide for one-time eligibility determinations, the final rule requires the disclosure and verification of SSNs for the applicant and any family member who will be liable on the mortgage or loan debt or other instrument. The Department does not believe that subjecting all members of such an applicant's family to section 165's requirements is necessary to furthering the rule's fraud, waste, and abuse purposes. By the same token, those whom the financing documents identify as responsible for payment of the indebtedness should be required to disclose and verify their SSNs.

Third, the proposed rule imposed its disclosure and verification requirements only on "individual applicants" who assume an existing, unsubsidized FHA insured loan. "Individual applicants" for both single family and multifamily mortgages were covered. There is no real distinction between "individual applicants" and "entity applicants," and subsidized and unsubsidized mortgages, from the standpoint of fraud, waste, and abuse concerns. Thus, the Department has amended the final rule to make clear that all types of FHA assumptions are covered by section 165.

Fourth, the proposed rule covered the Temporary Mortgage Assistance Payments (TMAP)/Assignment programs published at 52 FR 6915 (March 5, 1987). This treatment was premised on the expectation that the programs would have become operational in time for this final rule. This has not occurred, and the final rule deletes them from its coverage. It should be noted, however, that the final rule leaves intact a provision subjecting the current Assignment program to its provisions. When the new TMAP/Assignment programs are implemented, the Department will take the steps necessary to bring it within the rule's ambit.

Findings and Certifications

Environment

A Finding of No Signifiant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours (7:30 a.m. to 5:30 p.m. weekdays) in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Major Rule

This rule does not constitute a "major rule," as that term is defined in section 1(d) of the Exectuive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it would not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule requires processing entities, some of which are small entities, to collect and verify SSN and EIN information. Although this will increase the administrative burdens on these entities, for the reasons discussed earlier, the increase should be relatively slight.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule will not have substantial direct effects on the States or their political subdivisions, or on the relationship between the Federal government and the States, or on the

distribution of power among the various levels of government. As a result, the rule is not subject to review under the Order.

The only entities subject to the rule that are covered by the Order are PHAs and State Housing Finance Agencies in their role as "processing entities." These entities already perform significant functions with respect to applicants and participants in HUD assistance programs, including the collection of SSNs from program applicants and participants. As noted above, the Department does not believe that the additional burden imposed by the rule to collect and verify SSNs will be substantial.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order.

The rules's principal effect on families involves those seeking or receiving rental assistance under several FHA assistance programs (see 24 CFR part 200, subpart T) and the section 8 Housing Assistance Payments programs and the Public and Indian Housing programs (see 24 CFR part 750). The rule provides that these families must disclose and verify their SSNs if they are to receive, or continue receiving, Federal assistance. To guard against the precipitate denial of eligibility or loss of assistance that could impose extreme financial hardship on these applicants and participants, those who cannot substantiate their SSNs are given a reasonable period to obtain proper evidence of their SSN before they are held ineligible for initial or continuing assistance. As noted earlier, the department believes that this scheme provides families adequate opportunity to comply with the rule's requirements before any action is taken with respect to their eligibility, or continuing eligibility, for the program. Thus, any effect that the rule may have on family formation, maintenance, or well-being should not be significant.

Semiannual Agenda of Regulations

This rule was not listed on the Department's Semiannual Agenda of Regulations published on April 24, 1989 (54 FR 16708) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

Catalog of Federal Domestic Assistance.

The catalog of Federal Domestic Assistance program numbers are 14.103, 14.112, 14.115, 14.116, 14.117, 14.121, 14.123, 14.124, 14.125, 14.126, 14.127, 14.128, 14.129, 14.133, 14.134, 14.135, 14.137, 14.139, 14.151, 14.156, 14.161, 14.164, 14.218, 14.219, 14.221, 14.223, 14.225, 14.227, 14.230, 14.232, 14.580, 14.850, 14.851, and 14.852.

Information Collection Requirements

The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Virtually all of the sections of this rule have been determined by the Department to contain collection of information requirements. Information on these requirements is provided as follows:

On September 22, 1988, the Department requested approval of the information collection requirements contained in this rule. On November 19, 1988, OMB filed comments on the request pursuant to section 3504(h) of the Paperwork Reduction Act. Those comments involved four concerns. These concerns, and the Department's response, are outlined below.

First, the Department listed inconsistently the current information collections that would be affected by this rulemaking. The proposed rule indicated that information collections with OMB Control Numbers 2502–0118 and 2502–0267 would be affected. The paperwork package submitted to OMB, however, did not mention these information collections. Also, the paperwork package submitted to OMB indicated that information collection 2502–0018 would be affected, but the proposed rule did not indicate this. OMB asked the Department to clarify for the public precisely which information collections would be affected by this rule.

To clarify this point, there are nine information collections affected by this rule. They include: (1) 2502–0159; (2) 2502–0268; (3) 2502–0204; (4) 2502–0082; (5) 2502–0118; (6) 2502–0059; (7) 2502–0267; (8) 2506–0076; and (9) 2577–0083. In addition, information collections 2502–0118 and 2502–0267 are in the rule and have current OMB approval. Information collection 2502–0018 was a typographical error and has been corrected to 2502–0118. The final rule omits 24 CFR parts 501, 590, and 570; therefore, the following information collections have been omitted: (1) "SSNs/EINs from Urban Homesteaders"; (2) "SSNs/EINs from Families, Individuals, Businesses, and Farms Seeking Relocation Assistance"; and (3) "SSNs/EINs on Form SF–424 Urban Development Action Grants (2506–0040)."

OMB's second concern was that in the proposed rule and paperwork submitted for OMB review, the Department indicated that two information collections had currently valid OMB control numbers (2502–0082 and 2506–0040) for collections of SSN and EIN information, when in fact, the OMB approval for these collections expired in March 1988 and January 1988, respectively.

In response to this concern, information collection 2502–0082 is pending approval by OMB and 24 CFR part 570 (requiring information collection 2506–0040) was deleted from the rule because of the belief that the benefits of disclosing and verifying SSNs/EINs does not justify the imposition of this requirement.

The third concern of OMB was that the Department had requested approval of the collection of SSN and EIN information for only three programs. OMB noted that for the other programs identified in the proposed rule and paperwork submissions, the Department did not request paperwork approval and offered no indication of precisely how this rulemaking will affect program applicants and participants. OMB stated that if the Department wishes to collect this information for the other programs, the Department must comply with Section 3504(h) of the Paperwork Reduction Act of 1980 by demonstrating either (1) that the implementation of this rulemaking will not affect in any way the current information requirements imposed on the public for each program or (2) that the imposition of the information requirements in the rulemaking, for each affected program, is consistent with the approval criteria at 5 CFR 1320.4.

In response to this concern, the Department agrees that the paperwork submission did not contain paperwork approval for all programs covered by the proposed rule. The paperwork submission was revised to include nine information collections for each affected program. The revised paperwork submission also includes an indication of precisely how this rulemaking will affect program applicants and participants.

For further clarification, the Department notes that the three reporting requirements submitted for OMB approval are no longer relevant, since 24 CFR parts 501, 590, and 570 are

not included in the final rule. The Department has excluded requiring SSNs/EINs from Urban Homesteaders, families, individuals, businesses and farms seeking relocation assistance and Urban Development Action Grant recipients.

OMB's final concern was that part 200, subpart U, and part 501 should be revised to indicate that an individual identity need not submit an SSN or EIN to the Department more than once. Changes have been made in the rule to eliminate multiple submissions of this data.

INFORMATION COLLECTIONS FOR FR-2501

Description of information collection	Section of 24 CFR affected	Number of respondents	Number of responses per respondents	Total annual responses	Hours per response	Total hours	Status
SSNs/EINs [1] on Housing Form HUD-92068F, Request for Financial Information (2502-0159).	203	76,000	1	76,000	0.0056 [2]	426	Expires, 11/30/90
SSNs/EINs on Housing Form HUD-9539, Request for Occupied Conveyance (2502-0268).	203	4,600	8.6	39,600	0.0056	222	Expires, 8/31/90
SSNs/EINs on Housing Form HUD-50059, Owner's Certification of Compliance (2502-0204).	215, 221, 236, 247, 290, 750, 880, 881, 883, 884, 885, 886	2,171,256	1	2,171,256	0.0056	12,159	Expires, 4/30/90
SSNs/EINs [3] on Housing Form HUD-93101 Recertification of Family Income and Composition (2502-0082).	235	150,962	varies	199,044	0.0056	1,115	Expired, 2/29/89 (Pending OMB approval)
SSNs/EINs on Housing Form HUD-2530, Previous Participation Certificate (2502-0118).	207, 213, 215, 221, 232, 236, 241, 242, 244, 250, 251, 252, 255	9,000	1	9,000	0.0056	50	Expires, 5/31/92
SSNs/EINs on Housing Forms HUD-92900, -92004G Application for HUD/FHA Insured Mortgage (2502-0059).	200, 201, 203, 205, 213, 221, 234, 235	1,603,334	1	1,603,334	0.0056	8,979	Expires, 9/30/89
SSNs/EINs on Housing Form HUD-92013, Sec. 202 Application Submission Requirements (2502-0267).	885	1,300	1	1,300	0.0056	7	Expires, 5/31/91
SSNs/EINs on Forms HUD-6230, 6243, & 40023, Sec. 312 Loan Program (2506-0076).	510	800	13.1	10,536	0.0056	59	Expires, 2/29/90
SSNs/EINs on Form HUD-50058, Tenant Data Summary (2577-0083).	750,813, 882, 887, 900, 904, 905, 913, 960	3,500	754	2,640,000	0.0056	14,784	Expires, 3/31/91
Total Annual Burden						37,801	

[1] SSNs/EINs = Social Security Numbers/Employer Identification Numbers.
[2] 0.0056 hour = 2.0 seconds.
[3] This information collection requirement has been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. No person may be subject to penalty for failure to comply with this requirement until it has been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by a separate notice in the **Federal Register.**

List of Subjects

24 CFR Part 200

Administrative practice and procedure, Claims, Housing standards, Loan programs: housing and community development, Mortgage insurance, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Minimum property standards, Incorporation by reference.

24 CFR Part 201

Health facilities, Historic Preservation, Home improvement, Mobile homes, Manufactured homes and lots.

24 CFR Part 203

Home improvement, Loan programs: housing and community development, Mortgage insurance, Solar energy.

24 CFR Part 205

Community facilities, Mortgage insurance, Land development.

24 CFR Part 207

Mortgage insurance, Rental housing, Mobile home parks.

24 CFR Part 213

Mortgage insurance, Cooperatives.

24 CFR Part 215

Grant programs: housing and community development, Rent subsidies.

24 CFR Part 221

Condominiums, Low and moderate income housing, Mortgage insurance, Displaced families, Single family housing, Projects, Cooperatives.

24 CFR Part 232

Fire prevention, Health facilities, Loan programs: health, Loan programs: housing and community development, Mortgage insurance, Nursing homes, Intermediate care facilities.

24 CFR Part 234

Condominiums, Mortgage insurance, Homeownership, Projects, Units.

24 CFR Part 235

Condominiums, Cooperatives, Low and moderate income housing, Mortgage insurance, Homeownership, Grant programs: housing and community development.

24 CFR Part 236

Low and moderate income housing, Mortgage insurance, Rent subsidies, Taxes, Utilities, Projects.

24 CFR Part 241

Energy conservation, Mortgage insurance, Solar energy, Projects.

24 CFR Part 242

Hospitals, Mortgage insurance.

24 CFR Part 244

Health facilities, Mortgage insurance.

24 CFR Part 247

Low and moderate income housing, Public housing, Tenant eviction.

24 CFR Part 250

Intergovernmental relations, Low and moderate income housing, Mortgage insurance.

24 CFR Part 251

Mortgage insurance, Coinsurance of multifamily mortgages.

24 CFR Part 252

Mortgage Insurance, Coinsurance of nursing homes, intermediate care facilities, and board and care homes.

24 CFR Part 255

Mortgage insurance, Coinsurance of mortgages covering existing multifamily, properties.

24 CFR Part 290

Mortgage insurance, Low and moderate income housing.

24 CFR Part 510

Loan programs: houisng and community development, Housing, Relocation assistance, Home improvement, Urban renewal.

24 CFR 750

Certain housing assistance programs, Disclosure of Social Security Numbers and Employer Identification Numbers.

24 CFR 813

Low and moderate income housing.

24 CFR Part 880

Grant programs: housing and community development, Rent subsidies, Low and moderate income housing, New construction.

24 CFR Part 881

Grant programs: housing and community development, Rent subsidies, Low and moderate income housing.

24 CFR Part 882

Grant programs: housing and community development, Housing, Mobile homes, Rent subsidies, Low and moderate income housing.

24 CFR Part 883

Grant programs: housing and community development, Rent subsidies, New construction and substantial rehabilitation, Low and moderate income housing.

24 CFR Part 884

Grant programs: housing and community development, Rent subsidies, Rural areas, Low and moderate income housing.

24 CFR Part 885

Grant programs: housing and community development, Aged, handicapped, Loan programs: housing and community development.

24 CFR Part 886

Grant programs: housing and community development, Low and moderate income housing, Rent subsidies.

24 CFR Part 887

Grant programs: Housing and community development, Housing, Rent subsidies, Low and moderate income housing.

24 CFR Part 900

Housing assistance payments: new construction and substantial rehabilitation, Guaranteed/insured loans.

24 CFR Part 904

Grant programs: housing and community development, Loan programs: housing and community development, Low and moderate income housing, Public housing, Homeownership.

24 CFR Part 905

Grant programs: housing and community development, Grant programs: Indians, Loan programs: Indians, Low and moderate income housing, Public housing, Homeownership.

24 CFR Part 913

Public housing, Indian housing.

24 CFR Part 960

Public housing.

Accordingly, 24 CFR parts 200, 201, 203, 205, 207, 213, 215, 221, 232, 234, 235, 236, 241, 242, 244, 247, 250, 251, 252, 255, 290, 510, 813, 880, 881, 882, 883, 884, 885, 886, 887, 900, 904, 905, 913, and 960 are amended, and a new 24 CFR part 750 is added, to read as follows:

PART 200—INTRODUCTION

1. The authority citation for part 200 is revised to read as follows:

Authority: Titles I, II, National Housing Act (12 U.S.C. 1701–1715z–18); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). Subparts T and U are also issued under sec. 165, Housing and Community Development Act of 1987 (42 U.S.C. 3543); subpart T is also issued under sec. 101, Houisng and Urban Development Act of 1965 (12 U.S.C. 1701s), and sec. 203, Housing and Community Development Amendments of 1978 (12 U.S.C. 1715z–11).

2. Part 200 is amended by adding new subparts T and U, to read as follows:

Subpart T—Disclosure and Verification of Social Security Numbers and Employer Identification Numbers by Applicants and Participants in Assisted Mortgage and Loan Insurance and Related Programs

Sec.

200.1001 Summary and purpose.
200.1003 Applicability.
200.1005 Definitions.
200.1010 Disclosure and Verification of Social Security and Employer Identification Numbers.
200.1015 Penalties and failing to disclose and verify Social Security and Employer Identification Numbers.
200.1020 Limitations on the collection, maintenance, use, and dissemination of Social Security and Employer Identification Numbers, and on information derived therefrom.
200.1025 Implementation.

Subpart T—Disclosure and Verification of Social Security Numbers and Employer Identification Numbers by Applicants and Participants in Assisted Mortgage and Loan Insurance and Related Programs

§ 200.1001 Summary and purpose.

(a) *Summary.* (1) This subpart implements section 165 of the Housing and Community Development Act of 1987 (42 U.S.C. 3543) as it pertains to the assisted mortgage and loan insurance and related programs administered by the Departmment of Housing and Urban Development under subchapter B of this chapter. The programs covered by this subpart include the following: Assignment of Mortgages to HUD under part 203, subpart C; Occupied Conveyance under part 203, subpart C; Rent Supplement under part 215; Management of HUD-acquired multifamily properties under part 290; and the rental and homeownership assistance programs under sections 221(d)(3) (BMIR), 235 and 236 of the National Housing Act.

(2) This subpart requires applicants that seek to receive, and certain recipients of, housing assistance under any of the covered programs to disclose, and to submit documentation to verify, their Social Security Numbers.

Individuals, certain officials of corporations and other entities, and entities that seek to participate as private owners in certain programs subject to this subpart must disclose and verify their Social Security or Employer Identification Numbers, as appropriate. The failure of any person or entity to make the required disclosure and verification constitutes grounds for denial of eligibility, or termination of assistance or tenancy (or both), under the program involved.

(3) Section 165 is implemented for the unassisted mortgage and loan insurance and coinsurance programs administered by the Department under subchapter B of this chapter, at part 200, subpart U. The provision is implemented for the section 8 Housing Assistance Payments programs administered by the Department under 24 CFR chapter VIII, and for the Public and Indian Housing programs administered by the Department under 24 CFR chapter IX, at 24 CFR part 750; and for the section 312 Rehabilitation Loan program, at 24 CFR part 501.

(b) *Purpose.* The purpose of this subpart is to enable the Department to use Social Security and Employer Identification Numbers to help decrease the incidence of fraud, waste, and abuse in the covered programs. Specific examples of how the Department may use Social Security and Employer Identification Numbers include (but are not limited to) the following:

(1) Identifying a person or entity in manual or automated records.

(2) Identifying a person or entity during debt collection efforts.

(3) Cross-checking among the Department's automated systems for the previous or current participation of a person or entity in other programs.

(4) Identifying persons or entities in the records of other Federal agencies for the purpose of obtaining information on their eligibility for, or level of benefits in, the Department's programs.

(5) Identifying persons or entities for the purpose of requesting information about them from other government or private sources during an audit or investigation.

(6) Validating the identity of a person or entity with the Social Security Administration or the Internal Revenue Service.

(7) Ensuring that the person or entity is eligible for the program involved and that the level of benefits provided is appropriate.

(Approved by the Office of Management and Budget under OMB control number 2502–0059)

§ 200.1003 Applicability.

This subpart applies to the following housing assistance programs contained in subchapter B of this chapter:

(a) *Part 203, subpart C,* Assignment of Mortgages to HUD.

(b) *Part 203, subpart C,* Occupied Conveyance.

(c) *Part 215,* Rent Supplement Payments.

(d) *Part 221,* Low Cost and Moderate Income Mortgage Insurance (BMIR).

(e) *Part 235,* Mortgage Insurance and Assistance Payments for Homeownership and Project Rehabilitation.

(f) *Part 236,* Mortgage Insurance and Interest Reduction Payments for Rental Projects.

(g) *Part 290,* Management and Disposition of HUD-Owned Multifamily Housing Projects.

§ 200.1005 Definitions.

As used in this subpart:

Assistance applicant has the following meanings for the programs referred to in § 200.1003:

(a) *Part 203, subpart C, Assignment of Mortgages to HUD:* A mortgagor who seeks TMAP or Assignment assistance.

(b) *Part 203, subpart C, Occupied Conveyance:* An occupant who wishes to occupy a property after HUD has acquired it.

(c) *Parts 215, 221(BMIR), 236, and 290:* An individual or family seeking rental assistance under any of the programs.

(d) *Part 235:* A homeowner or cooperative member seeking homeownership assistance (including where the individual seeks to assume an existing mortgage).

Assume an existing mortgage means any assumption of a mortgage that is insured under section 221(BMIR), 235, or 236 (as appropriate) of the National Housing Act, irrespective of whether the assumption involves the release by the mortgagee of a previous mortgagor from personal liability on the mortgage note and the assumption of this liability, and the agreement to pay the mortgage debt, by the mortgagor.

Employer Identification Number (EIN) means the taxpayer identifying number of an individual, trust, estate, partnership, association, company, or corporation that is assigned pursuant to section 6011(b) of the Internal Revenue Code of 1986, or corresponding provisions of prior law, or pursuant to section 6109 of the Code. The EIN has nine digits separated by a hyphen as follows: 00–0000000.

Entity applicant means a partnership, corporation, or any other association or entity that seeks to participate as a private owner (including where the entity seeks to assume an existing mortgage) in 24 CFR part 215, 221 (BMIR), or 236. Entity applicant does not include a public entity, such as a PHA or a State Housing Finance Agency.

HUD or *Department* means the United States Department of Housing and Urban Development.

Individual owner applicant means an individual who seeks to participate as a private owner (including where the individual seeks to assume an existing mortgage) in 24 CFR part 215, 221 (BMIR), 235 (without homeownership assistance) or 236.

Participant has the following meanings for the programs referred to in § 200.1003:

(a) *Part 203, subpart C, Assignment of Mortgages to HUD:* A mortgagor who is receiving TMAP or whose mortgage has been assigned to HUD.

(b) *Parts 215, 221(BMIR), 236, and 290:* A tenant or a qualified tenant under any of the covered programs.

(c) *Part 235:* A homeowner or a cooperative member receiving homeownership assistance.

PHA means a State, county, municipality, or other governmental entity or public body (or agency or intrumentality thereof) which is authorized to engage or assist in the development or operation of housing for lower income families. PHA includes Indian Housing Authorities.

Processing entity means HUD or other person or entity that is responsible for making eligibility and related determinations and scheduled income reviews under any of the programs referred to in § 200.1003.

Scheduled income reexamination has the following meaning for the programs referred to in § 200.1003:

(a) *Part 203, subpart C, Assignment of Mortgages to HUD:* The review of the monthly payment due from the mortgagor under the assistance agreement, as provided by § 203.648(c).

(b) *Parts 215, 221(BMIR), 235, and 236:* The regularly scheduled reexamination of participant income.

(c) *Part 290:* Income certification as provided by § 290.17(e).

Social Security Number (SSN) means the number that is assigned to a person by the Social Security Administration of the Department of Health and Human Services, and that identifies the record of the person's earnings that are reported to the Administration. The SSN has nine digits separated by hyphens, as follows: 000–00–0000; it does not include a number with a letter as a suffix that is used to identify an auxiliary beneficiary under the Social Security System.

§ 200.1010 Disclosure and Verification of Social Security and Employer Identification Numbers.

(a) *Disclosure: assistance applicant.* Each assistance applicant must submit the following information to the processing entity when the applicant's eligibility under the program involved is being determined:

(1)(i) The complete and accurate SSN(s) assigned to the applicant and to each member of the applicant's household who is at least six years of age; and

(ii) The documentation referred to in paragraph (f)(1) of this section to verify each such SSN; or

(2) If the applicant or any member of the applicant's household who is at least six years of age has not been assigned an SSN, a certification executed by the individual(s) involved that meets the requirements of paragraph (j) of this section.

(b) *Disclosure: individual owner applicants.* Each individual owner applicant must submit the following information to the processing entity when the applicant's eligibility under the program involved is being determined:

(1)(i) The complete and accurate SSN(s) assigned to the applicant and to each member of the applicant's household who will be obligated to pay the debt evidenced by the mortgage documents; and

(ii) The documentation referred to in paragraph (f)(1) of this section to verify the SSN(s); or

(2) If any individual referred to in paragraph (b)(1)(i) of this section has not been assigned an SSN, a certification executed by the individual involved that meets the requirements of paragraph (j) of this section.

(c) *Disclosure: certain officials of entity applicants.* Each officer, director, principal stockholder (as defined in HUD administrative instructions), or other official of an entity applicant (as specified in HUD administrative instructions) must submit the following information to the processing entity when the applicant's eligibility under the program involved is being determined:

(1) The complete and accurate SSN(s) assigned to each such individual; and

(2) The documentation referred to in paragraph (f)(1) of this section to verify each SSN.

(d) *Disclosure: participants*—(1) *Initial disclosure by those who were participants before November 6, 1989.* Each participant whose initial determination of eligibility under the program involved was begun before November 6, 1989, must submit the following information to the processing entity at the next scheduled income reexamination:

(i)(A) The complete and accurate SSN(s) assigned to the participant and to each member of the participant's family who is at least six years of age; and

(B) The documentation referred to in paragraph (f)(1) of this section to verify each such SSN; or

(ii) If the participant or any member of the participant's household who is at least six years of age has not been assigned an SSN, a certification executed by the individual(s) involved that meets the requirements of paragraph (j) of this section.

(2) *Subsequent disclosure by participants who have made an initial disclosure under this section.* Once a participant has disclosed and verified SSN(s), or submitted a certification(s) that no SSN(s) has been assigned, as provided by paragraph (a) (as an applicant) or paragraph (d)(1) (as a preexisting participant) of this section, the following rules apply:

(i) If the participant's household adds a new member(s) who is at least six years of age, the participant must submit to the processing entity, at the next interim or scheduled income reexamination that includes the new member(s):

(A) The complete and accurate SSN(s) assigned to each new member and the documentation referred to in paragraph (f)(1) of this section to verify the SSN(s) for each new member; or

(B) If the new member(s) has not been assigned an SSN, a certification executed by the individual(s) involved that meets the requirements of paragraph (j) of this section.

(ii) If the participant or any member of the participant's household who is at least six years of age obtains a previously undisclosed SSN, or has been assigned a new SSN (including any member who is six years of age or older and has been assigned an SSN, as required by section 6109(e) of the Internal Revenue Code of 1986), the participant must submit to the processing entity at the next scheduled income reexamination:

(A) The complete and accurate SSN(s) assigned to the participant or household member(s) involved; and

(B) The documentation referred to in paragraph (f)(1) of this section to verify the SSN(s) of each such individual.

(iii) HUD may specify in administrative instructions additional circumstances in which participants must disclose and verify SSNs, as well as the nature of the disclosure and the verification required, and the time and manner for making the disclosure and verification.

(e) *Disclosure: entity applicants.* Each entity applicant must submit the following information to the processing entity when the applicant's eligiblity under the program involved is being determined:

(1) The complete and accurate EIN(s) assigned to the applicant; and

(2) The documentation referred to in paragraph (f)(2) of this section to verify the EIN(s).

(f) *Required documentation*—(1) *Social Security Numbers.* The documentation necessary to verify the SSN of an individual who is required to disclose his or her SSN under paragraphs (a) through (d) of this section is a valid SSN card issued by the Social Security Administration of the Department of Health and Human Services, or such other evidence of the SSN (including one or more alternate documents or such other substantiation of the SSN) as HUD may prescribe in administrative instructions. Examples of such evidence may include a State driver's license that displays the SSN of the individual.

(2) Employer Identification Numbers. The documentation necessary to verify the EIN(s) of an entity applicant that is required to disclose its EIN(s) under paragraph (e) of this section is the official, written communication from the IRS assigning the EIN(s) to the entity applicant, or such other evidence of the EIN(s) (including such substantiation) as HUD may prescribe in administrative instructions.

(g) *Special documentation rules for assistance applicants and participants*—(1) *Certification of inability to meet documentation requirements.* If an individual who is required to disclose his or her SSN(s) under paragraph (a) (assistance applicants) or paragraph (d) (participants) of this section is able to disclose the SSN, but cannot meet the documentation requirements of paragraph (f)(1) of this section, the assistance applicant or participant (as appropriate) must submit to the processing entity the individual's SSN(s) and a certification executed by the individual that the SSN(s) submitted has been assigned to the individual, but that acceptable documentation to verify the SSN(s) cannot be provided.

(2) *Acceptance of certification by processing entity.* Except as provided by paragraph (h) of this section, the processing entity must accept the certification referred to in paragraph (g)(1) of this section, and continue to process the applicant's or participant's

eligibility to participate in the program involved.

(3) *Effect on applicants.* If the processing entity determines that the assistance applicant is otherwise eligible to particpate in the program, the applicant may not become a participant in the program, unless it submits to the the processing entity the documentation required under paragraph (f)(1) of this section within the time period specified in paragraph (g)(5) of this section. During such period, the applicant will retain the position that it occupied in the program at the time the determination of eligibility was made, including (as appropriate) its place on any waiting list maintained for the program.

(4) *Effect on participants.* If the processing entity determines that the participant otherwise continues to be eligible to participate in the program, participation will continue, provided that the participant submits to the processing entity the documentation required under paragraph (f)(1) of this section within the time period specified in paragraph (g)(5) of this section.

(5) *Time for submitting documentation.* The time period referred to in paragraphs (g) (4) and (5) of this section is 60 calendar days from the date on which the certification referred to in paragraph (g)(1) of this section is executed, except that the processing entity may, in its discretion and in such circumstances as it may permit, extend this period for up to an additional 60 days, if the individual is at least 62 years of age and is unable to submit the required documentation within the initial 60-day period.

(h) *Rejection of documentation or certification.* This processing entity may reject documentation referred to in paragraph (f) of this section, or a certification provided under paragraph (a)(2), (b)(2), (d), or (g)(1) of this section, only for such reasons (including the timeliness of the submission) as HUD may prescribe in administrative instructions.

(i) *Information on SSNs and EINs.* (1) Information regarding SSNs and SSN cards may be obtained by contacting the local Social Security Office or consulting the Social Security Administration regulations at 20 CFR chapter III (see particularly part 422).

(2) Information regarding EINs may be obtained by contacting the local office of the Internal Revenue Service or consulting the appropriate regulations for the Internal Revenue Service.

(j) *Form and manner of certifications.* The certifications referred to in paragraph (a)(2), (b)(2), (d), and (g)(1) of this section must be in the form and manner that HUD prescribes in administrative instructions. If an individual who is required to execute a certification is less than 18 years of age, it must be executed by his or her parent or guardian, or (in accordance with HUD administrative instructions) by the individual or another person.

(Approved by the Office of Management and Budget under OMB control number 2502–0059)

§ 200.1015 Penalties for failing to disclose and verify Social Security and Employer Identification Numbers.

(a) *Denial of eligibility: assistance applicants and individual owner applicants.* The processing entity must deny the eligibility of an assistance applicant or of an individual owner applicant in accordance with the provisions governing the program involved, if the applicant does not meet the applicable SSN disclosure, documentation and verification, and certification requirements specified in § 200.1010.

(b) *Denial of eligibility: entity applicants.* The processing entity must deny the eligibility of an entity applicant in accordance with the provisions governing the program involved, if:

(1) The applicant does not meet the applicable EIN disclosure and verification requirements specified in § 200.1010; or

(2) Any of the officials of the entity applicant referred to in § 200.1010(c) does not meet the applicable SSN disclosure, and documentation and verification requirements, specified in § 200.1010.

(c) *Termination of assistance or tenancy: participants.* The processing entity must terminate the assistance or the tenancy (or both) of a participant in accordance with the provisions governing the program involved, if the participant does not meet the applicable SSN disclosure, documentation and verification, and certification requirements specified in § 200.1010.

(d) *Cross reference.* Individuals should consult the regulations and administrative instructions for the programs referred to in § 200.1003 for further information on the use of SSNs and EINs in determining the eligibility of applicants, and the continued eligibility of participants under those programs.

(Approved by the Office of Management and Budget under OMB control number 2502–0059)

§ 200.1020 Limitations on the collection, maintenance, use, and dissemination of Social Security and Employer Identification Numbers, and on information derived therefrom.

The collection, maintenance, use, and dissemination of SSNs and EINs obtained pursuant to this subpart, and of any information derived therefrom, must be conducted, to the extent applicable, in compliance with the Privacy Act (5 U.S.C. 552a) and all other provisions of Federal, State, and local law.

(Approved by the Office of Management and Budget under OMB control number 2502–0059)

§ 200.1025 Implementation.

(a) *Applicants.* The provisions of this subpart, and the conforming changes made with respect to the disclosure, documentation and verification, and use of SSNs and EINs for applicants in the regulations governing the programs referred to in § 200.1003, apply to all applicant eligibility determinations initiated on or after November 6, 1989.

(b) *Participants.* The provisions of this subpart, and the conforming changes made with respect to the disclosure, documentation and verification, and use of SSNs for participants in the regulations governing the programs referred to in § 200.1003, apply to each scheduled reexamination (and in the circumstances specified in § 200.1010(d)(2)(i), each interim reexamination) of the income of a participant initiated by the processing entity on or after November 6, 1989.

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Subpart U—Disclosure and Verification of Social Security Numbers and Employer Identification Numbers by Applicants in Unassisted Mortgage and Loan Insurance and Coinsurance Programs

Sec.

200.1101 Summary and purpose.
200.1103 Applicability.
200.1105 Definitions.
200.1110 Disclosure and verification of Social Security and Employer Identification Numbers.
200.1115 Penalties for failing to disclose and verify Social Security and Employer Identification Numbers.
200.1120 Limitations on the collection, maintenance, use, and dissemination of Social Security and Employer Identification Numbers, and on information derived therefrom.
200.1125 Implementation.

Subpart U—Disclosure and Verification of Social Security Numbers and Employer Identification Numbers by Applicants in Unassisted Mortgage and Loan Insurance and Coinsurance Programs

§ 200.1101 Summary and purpose.

(a) *Summary.* This subpart implements section 165 of the Housing and Community Development Act of 1987 (42 U.S.C. 3543) as it pertains to the unassisted loan and mortgage insurance and coinsurance programs administered by the Department of Housing and Urban Development under subchapter B of this chapter. The programs covered by this subpart include the Department's unassisted home mortgage and multifamily mortgage insuring and coinsuring authorities under the National Housing Act; the property improvement and manufactured home loan programs under title I of the Act; and mortgage insurance for nursing homes and related facilities, hospitals, group practice facilities, and land development under sections 232 and 242, and titles XI and X, respectively, of the Act.

(2) This subpart requires corporate and other entity applicants that seek HUD-insured or -coinsured financing under any of the programs covered by this subpart to disclose and verify their Employer Identification Numbers. Individual applicants that seek HUD-insured or -coinsured financing under any of the programs covered by this subpart, as well as certain officials of prospective corporate and other entity owners, must disclose and verify their Social Security Numbers. The failure of any person or entity to meet these disclosure and verification requirements constitutes grounds for denial of eligibility for HUD mortgage or loan insurance or coinsurance under the program involved.

(3) Section 165 is implemented for the assisted mortgage and loan insurance and related programs administered by the Department under subchapter B of this chapter, at part 200, subpart T. The provision is implemented for the section 8 Housing Assistance Payments programs administered by the Department under 24 CFR chapter VIII, and for the Public and Indian Housing programs administered by the Department under 24 CFR chapter IX, at 24 CFR part 750; and for the section 312 Rehabilitation Loan program, at 24 CFR part 501.

(b) *Purpose.* The purpose of this subpart is to enable the Department to use Social Security and Employer Identification Numbers to help decrease the incidence of fraud, waste, and abuse in the covered programs. Specific examples of how the Department may use Social Security and Employer Identification Numbers include (but are not limited to) the following:

(1) Identifying a person or entity in manual or automated records.

(2) Identifying a person or entity during debt collection efforts.

(3) Cross-checking among the Department's automated systems for the previous or current participation of a person or entity in other programs.

(4) Identifying persons or entities in the records of other Federal agencies for the purpose of obtaining information on their eligibility for, or level of benefits in, the Department's programs.

(5) Identifying persons or entities for the purpose of requesting information about them from other government or private sources during audit or investigation.

(6) Validating the identity of a person or entity with the Social Security Administration or the Internal Revenue Service.

(7) Ensuring that the person or entity is eligible for the covered program and that the level of benefits provided is appropriate.

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§ 200.1103 Applicability.

This subpart applies to all mortgage and loan insurance and coinsurance programs contained in subchapter B of this chapter, except the mortgage insurance and related programs referred to in § 200.1003.

§ 200.1105 Definitions.

As used in this subpart:

Assume an existing mortgage or loan means any assumption of a mortgage or loan that is insured or coinsured under any of the programs referred to in § 200.1103, irrespective of whether the assumption involves the release by the mortgagee of a previous mortgagor from personal liability on the mortgage note and the assumption of this liability, and the agreement to pay the mortgage debt, by the mortgagor.

Applicant includes an individual applicant and an entity applicant, but does not include:

(a) A public entity (such as a PHA or a State Housing Financing Agency), or an Indian Tribe.

(b) A mortgagee or lender.

(c) A person whose only involvement with an application for mortgage or loan insurance or coinsurance, or an assumption of an existing mortgage or loan, is in his or her official capacity with a public entity or an Indian Tribe, or an official of a mortgagee or lender.

Employer Identification Number (EIN) means the taxpayer identifying number of an individual, trust, estate, partnership, association, company, or corporation that is assigned pursuant to section 6011(b) of the Internal Revenue Code of 1986, or corresponding provisions of prior law, or pursuant to section 6109 of the Code. The EIN has nine digits separated by a hyphen, as follows: 00-0000000.

Entity applicant means a partnership, corporation, or other association or entity, other than an individual applicant, that seeks to participate as a private owner (including where the entity seeks to assume an existing mortgage) under any of the programs referred to in § 200.1103.

HUD or *Department* means the United States Department of Housing and Urban Development.

Individual applicant means an individual(s) who:

(a)(1) Applies for a mortgage or loan insured or coinsured under any of the programs referred to in § 200.1103; or

(2) Seeks to assume an existing mortgage or loan; and

(b) Intends to hold the mortgaged property in his or her individual right.

PHA means any State, county, municipality or other governmental entity or public body (or agency or instrumentality thereof) that is authorized to engage or assist in the development or operation of housing for lower income families. The term includes Indian Housing Authorities.

Processing entity means the person or entity that is responsible for making eligibility and related determinations under any of the programs referred to in § 200.1103. The processing entity is specified in the regulations governing the covered program, and may include (but is not limited to): HUD, an FHA-approved mortgagee or lender under 24 CFR part 202 or 24 CFR 203.1 through 203.7, a mortgagee under the Direct Endorsement program (§ 200.163), or a lender under a coinsurance authority (part 204, 250, 251, 252 or 255).

Social Security Number (SSN) means the number that is assigned to an individual by the Social Security Administration of the Department of Health and Human Services, and that identifies the record of the individual's earnings that are reported to the Administration. The SSN has nine digits separated by hyphens, as follows: 000-00-0000; it does not include a number with a letter suffix that is used to identify an auxiliary beneficiary under the Social Security System.

§ 200.1110 Disclosure and verification of Social Security and Employer Identification Numbers.

(a) *Disclosure: individual applicants.* Each individual applicant must submit the following information to the processing entity when the applicant's eligibility under the program involved is being determined:

(1)(i) The complete and accurate SSN(s) assigned to the applicant and to each member of the applicant's household who will be obligated to pay the debt evidenced by the mortgage or loan documents; and

(ii) The documentation referred to in paragraph (d)(1) of this section to verify each such SSN; or

(2) If any individual referred to in paragraph (a)(1)(i) of this section has not been assigned an SSN, a certification executed by the individual(s) involved that meets the requirements of paragraph (g) of this section.

(b) *Disclosure: certain officials of entity applicants.* Each officer, director, principal stockholder (as defined in HUD administrative instructions), or other official of an entity applicant (as specified in HUD administrative instructions) must submit the following information to the processing entity when the applicant's eligibility under the program involved is being determined:

(1) The complete and accurate SSN(s) assigned to each such individual; and

(2) The documentation referred to in paragraph (d)(1) of this section to verify each SSN.

(c) *Disclosure: entity applicants.* Each entity applicant must submit the following information to the processing entity when the applicant's eligibility under the program involved is being determined:

(1) The complete and accurate EIN(s) assigned to the applicant; and

(2) The documentation referred to in paragraph (d)(2) of this section to verify the EIN(s).

(d) *Required documentation*—(1) *Social Security Numbers.* The documentation necessary to verify the SSN of an individual who is required to disclose his or her SSN(s) under paragraphs (a) and (b) of this section is a valid SSN card issued by the Social Security Administration of the Department of Health and Human Services, or such other evidence of the SSN (including one or more alternate documents or such other substantiation of the SSN) as HUD may prescribe in administrative instructions. Examples of such evidence may include a State driver's license that displays the SSN of the individual.

(2) *Employer Identification Numbers.* The documentation necessary to verify the EIN(s) of an entity applicant that is required to disclose its EIN(s) under paragraph (c) of this section is the official, written communication from the IRS assigning the EIN(s) to the entity applicant, or such other evidence of the EIN(s) (including such substantiation) as HUD may prescribe in administrative instructions.

(e) *Rejection of documentation or certifications.* The processing entity may reject documentation referred to in paragraph (d) of this section, or a certification provided under paragraph (a)(2) of this section, only for such reasons (including the timeliness of the submission) as HUD may prescribe in administrative instructions.

(f) *Information on SSNs and EINs.* (1) Information regarding SSNs and SSN cards may be obtained by contacting the local Social Security Office or consulting the Social Security Administration regulations at 20 CFR chapter III (see particularly part 422).

(2) Information regarding EINs may be obtained by contacting the local office of the Internal Revenue Service or consulting the appropriate regulations for the Internal Revenue Service.

(g) *Form and manner of certifications.* The certification referred to in paragraph (a)(2) of this section must be in the form and manner that HUD prescribes in administrative instructions. If an individual who is required to execute a certification is less than 18 years of age, it must be executed by his or her parent or guardian, or (in accordance with HUD administrative instructions) by the individual or another person.

(Approved by the Office of Management and Budget under OMB control number 2502–0059)

§ 200.1015 Penalties for failing to disclose and verify Social Security and Employer Identification Numbers.

(a) *Denial of eligibility: assistance applicants and individual owner applicants.* The processing entity must deny the eligibility of an individual applicant in accordance with the provisions governing the program involved, if the applicant does not meet the applicable SSN disclosure, documentation and verification, and certification requirements specified in § 200.1110.

(b) *Denial of eligibility: entity applicants.* The processing entity must deny the eligibility of an entity applicant in accordance with the provisions governing the program involved, if:

(1) The applicant does not meet the applicable EIN disclosure and verification requirements specified in § 200.1110, or

(2) Any of the officials of an entity applicant referred to in § 200.1110(b) does not meet the applicable SSN disclosure, and documentation and verification requirements, specified in § 200.1110.

(c) *Cross reference.* Individuals should consult the regulations and administrative instructions for the programs referred to in § 200.1103 for further information on the use of SSNs and EINs in determining the eligibility of applicants under those programs.

(Approved by the Office of Management and Budget under OMB control number 2502–0059)

§ 200.1120 Limitations on the collection, maintenance, use, and dissemination of Social Security and Employer Identification Numbers, and on information derived therefrom.

The collection, maintenance, use, and dissemination of SSNs and EINs obtained pursuant to this subpart, and of any information derived therefrom, must be conducted to the extent applicable, in compliance with the Privacy Act (5 U.S.C. 552a) and all other provisions of Federal, State, and local law.

(Approved by the Office of Management and Budget under OMB control number 2502–0059)

§ 200.1125 Implementation.

The provisions of this subpart, and the conforming changes made with respect to the disclosure and use of SSNs and EINs for applicants in the regulations governing the programs referred to in § 200.1103, apply to all eligibility determinations for individual and entity applicants initiated on or after November 6, 1989.

(Approved by the Office of Management and Budget under OMB control number 2502–0059)

PART 201—TITLE I PROPERTY IMPROVEMENT AND MANUFACTURED HOME LOANS

3. The authority citation for part 201 continues to read as follows:

Authority: Sec. 2, National Housing Act (12 U.S.C. 1703); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

4. Part 201, subpart A, is amended by adding a new § 201.06, to read as follows:

§ 201.06 Disclosure and verification of Social Security and Employer Identification Numbers

To be eligible for loan insurance under this part, the borrower must meet

the requirements for the disclosure and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart U, of this chapter.

(Approved by the Office of Management and Budget under OMB control number 2502–0059)

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

5. The authority citation for part 203 continues to read as follows:

Authority: Secs. 203, 211, National Housing Act (12 U.S.C. 1709, 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). In addition, subpart C is also issued under sec. 230, National Housing Act (12 U.S.C. 1715u).

6. Part 203, subpart A, is amended by adding a new § 203.35, to read as follows:

§ 203.35 Disclosure and verification of Social Security and Employer Identification Numbers.

To be eligible for mortgage insurance under this part, the mortgagor must meet the requirements for the disclosure and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart U, of this chapter.

(Approved by the Office of Management and Budget under OMB control numbers 2502–0059, 2502–0159, and 2502–0268)

7. Section 203.650 is amended by revising the heading by redesignating the existing paragraph as paragraph (a), by adding a new paragraph (b), and by adding the OMB control numbers to the end of the section, to read as follows:

§ 203.650 Assignment of mortgages; Disclosure.

* * * * *

(b) The mortgagor discloses and verifies Social Security Numbers, as provided by part 200, subpart T, of this chapter.

(Approved by the Office of Management and Budget under OMB control numbers 2502–0159, 2502–0268, and 2502–0059)

8. Section 203.664 is amended by adding a new paragraph (a)(1)(vi) and the OMB control number to the end of the section, to read as follows:

§ 203.664 Forbearance relief on Indian Land insured pursuant to section 248 of the National Housing Act.

* * * * *

(a) * * *

(1) * * *

(vi) The mortgagor discloses and verifies Social Security Numbers, as provided by part 200, subpart T, of this chapter.

* * * * *

(Approved by the Office of Management and Budget under OMB control number 2502–0159)

9. Section 203.674 is amended by adding new paragraphs (a)(5) and (b)(6) and the OMB control number to the end of the section, to read as follows:

§ 203.674 Eligibility for continued occupancy.

(a) * * *

(5) The occupant discloses and verifies Social Security Numbers, as provided by part 200, subpart T, of this chapter.

(b) * * *

(6) The occupant discloses and verifies Social Security Number, as provided by part 200, subpart T, of this chapter.

(Approved by the Office of Management and Budget under OMB control number 2502–0268)

PART 205—MORTGAGE INSURANCE FOR LAND DEVELOPMENT [TITLE X]

10. The authority citation for part 205 continues to read as follows:

Authority: Sec. 1010, National Housing Act (12 U.S.C. 1749jj); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

11. Section 205.30 is amended by adding a new paragraph (c) and the OMB control number to the end of the section, to read as follows:

§ 205.30 Eligible mortgagors.

* * * * *

(c) *Disclosure and verification of Social Security and Employer Identification Numbers.* To be eligible for mortgage insurance under this part, the mortgagor must meet the requirements for the disclosure and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart U, of this chapter.

(Approved by the Office of Management and Budget under OMB control number 2502–0059)

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

12. The authority citation for part 207 continues to read as follows:

Authority: Secs. 207, 211, National Housing Act (12 U.S.C. 1713, 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). Sections 207.258 and 207.258b are also issued under section 203(e), Housing and Community Development Amendments of 1978 (12 U.S.C. 1701z–11(e)).

13. In part 207, subpart A, § 207.17 is amended by revising the heading; by designating paragraph (b) as paragraph (c), by adding a new paragraph (b), and by adding the OMB control number to the end of the section, to read as follows:

§ 207.17 Classification; Disclosure.

* * * * *

(b) *Disclosure and verification of Social Security and Employer Identification Numbers.* To be eligible for mortgage insurance under this part, the mortgagor must meet the requirements for the disclosure and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart U, of this chapter.

* * * * *

(Approved by the Office of Management and Budget under OMB control number 2502–0118)

PART 213—COOPERATIVE HOUSING MORTGAGE INSURANCE

14. The authority citation for part 213 continues to read as follows:

Authority: Secs. 211, 213, National Housing Act (12 U.S.C. 1715b, 1715e); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

15. Section 213.20 is amended by adding a new paragraph (c) and the OMB control number to the end of the section, to read as follows:

§ 213.20 Eligibility of mortgagors.

* * * * *

(c) To be eligible for mortgage insurance under this subpart, the mortgagor must meet the requirements for the disclosure and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart U, of this chapter.

(Approved by the Office of Management and Budget under OMB control numbers 2502–0059 and 2502–0118)

16. In part 213, subpart C, § 213.522 is amended by revising the heading, by redesignating the existing paragraph as paragraph (a), by adding a new paragraph (b), and by adding the OMB approval number at the end of the section, to read as follows:

§ 213.522 Credit standing; Disclosure and verification of Social Security and Employer Identification Numbers.

* * * * *

(b) To be eligible for mortgage insurance under this subpart, the mortgagor must meet the requirements for the disclosure and verification of Social Security and Employer

Identification Numbers, as provided by part 200, subpart U, of this chapter.

(Approved by the Office of Management and Budget under OMB control numbers 2502–0059 and 2502–0118)

PART 215—RENT SUPPLEMENT PAYMENTS

17. The authority citation for 24 CFR part 215 continues to read as follows:

Authority: Sec. 101(g), Housing and Urban Development Act of 1965 (12 U.S.C. 1701s); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

18. Section 215.15 is amended by adding a new paragraph (d) and the OMB control number to the end of the section, to read as follows:

§ 215.15 Eligible housing owner.

* * * * *

(d) To be eligible to receive rent supplement payments, the housing owner must meet the requirements for the disclosure and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart T, of this chapter.

(Approved by the Office of Management and Budget under OMB control numbers 2502–0204 and 2502–0118)

19. Section 215.20 is amended by adding a new paragraph (b)(2) and the OMB control number to the end of the section, to read as follows:

§ 215.20 Qualified tenant.

* * * * *

(b) * * *

(2) For requirements covering the disclosure and verification of Social Security Numbers by individuals and families, see part 200, subpart T, of this chapter.

* * * * *

(Approved by the Office of Management and Budget under OMB control number 2502–0204 and 2502–0118)

20. Section 215.55 is revised to read as follows:

§ 215.55 Reexamination of family income and composition.

(a) *Regular reexaminations.* The owner must reexamine the income and family composition of all Qualified Tenants at least once every 12 months. After consultation with the Qualified Tenant and upon verification of the information, the owner must make appropriate adjustments in the Total Tenant Payment in accordance with § 215.45 and determine whether the family's unit size is still appropriate. The owner must adjust the Tenant Rent and the Rent Supplement payments to reflect any change in the Total Tenant Payment, and must carry out any unit transfer required by HUD. At the time of the annual reexamination of family income and composition, the owner must require the Qualified Tenant to meet the disclosure and verification requirements for Social Security Numbers, as provided by part 200, subpart T of this chapter.

(b) *Interim reexaminations.* The Qualified Tenant must comply with the provisions of its lease regarding interim reporting of changes in income. If the owner receives information concerning a change in the Qualified Tenant's income or other circumstances between regularly scheduled income reexaminations, the owner must consult with the Qualified Tenant and make any adjustments determined to be appropriate. Any change in the Qualified Tenant's income or other circumstances that results in an adjustment in the Total Tenant Payment, Tenant Rent, and the Rent Supplement Payment must be verified. See 24 CFR 750.10(d)(2)(i) for the requirements for the disclosure and verification of Social Security Numbers for interim reexaminations involving new family members.

(c) *Termination of assistance.* A Qualified Tenant's eligibility for Rent Supplement Payments continues until the Total Tenant Payment equals the Gross Rent. The rent charged at that point may not exceed the market rent approved by the Secretary. The termination of eligibility at such point will not affect the Qualified Tenant's other rights under its lease, nor will such termination preclude the resumption of payments as a result of later changes in income, rents, or other relevant circumstances during the term of the contract. However, assistance also may be terminated in accordance with any requirements of the lease or with HUD requirements, including the failure of the Qualified Tenant to meet the disclosure and verification requirements for Social Security Members, as provided by part 200, subpart T of this chapter.

(Approved by the Office of Management and Budget under OMB control number 2502–0204 and 2502–0118)

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

21. The authority citation for part 221 continues to read as follows:

Authority: Secs. 211, 221, National Housing Act (12 U.S.C. 1715b, 1715*l*); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); § 221.544(a)(3) is also issued under sec. 201(a), National Housing Act (12 U.S.C. 1707(a)).

22. Part 221, subpart A, is amended by adding a new § 221.57, to read as follows:

§ 221.57 Disclosure and verification of Social Security and Employer Identification Numbers.

To be eligible for mortgage insurance under this subpart, the mortgagor must meet the requirements for the disclosure and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart U, of this chapter.

(Approved by the Office of Management and Budget under OMB control numbers 2502–0204, 2502–0118, and 2502–0059)

23. In part 221, subpart C, § 221.510 is amended by adding a new paragraph (f) and the OMB control number is the end of the section, to read as follows:

§ 221.510 Eligible mortgagors.

* * * * *

(f) *Disclosure and verification of Social Security and Employer Identification Numbers.* To be eligible for mortgage insurance under this subpart, the mortgagor must meet the requirements for the disclosure and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart U, of this chapter.

(Approved by the Office of Management and Budget under control numbers 2502–0204, 2502–0118, and 2502–0059)

24. Section 221.537 is amended by adding a new paragraph (e) and the OMB approval number to the end of the section, to read as follows:

§ 221.537 Additional occupancy requirements; preferred purchasers or tenants.

* * * * *

(e) *Disclosure and verification of Social Security Numbers.* Upon determining an individual's or family's eligibility for initial occupancy under paragraph (a) of this section, and at any subsequent reexamination of a tenant's income for continued occupancy under paragraph (b) of this section, the mortgagor must require the individual or family, or the tenant (as appropriate), to comply with the disclosure and verification requirements for Social Security Numbers, as provided by part 200, subpart T, of this chapter. Failure of the individual or family, or the tenant (as appropriate), to meet such requirements will constitute grounds for denying its eligibility for initial occupancy, or for terminating its tenancy, in accordance with the Commissioner's administrative

instructions and, if applicable, part 200, subpart T, of this chapter.

(Approved by the Office of Management and Budget under OMB control numbers 2502–0204, 2502–0118, and 2502–0059)

PART 232—MORTGAGE INSURANCE FOR NURSING HOMES, INTERMEDIATE CARE FACILITIES, AND BOARD AND CARE HOMES

25. The authority citation for part 232 continues to read as follows:

Authority: Secs. 211, 232, National Housing Act (12 U.S.C. 1715b, 1715w); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

26. Part 232, subpart A, is amended by adding a new § 232.21, to read as follows:

§ 232.21 Disclosure and verification of Social Security and Employer Identification Numbers.

To be eligible for mortgage insurance under this subpart, the mortgagor must meet the requirements for the disclosure and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart U, of this chapter.

(Approved by the Office of Management and Budget under OMB control number 2502–0118)

27. Part 232, subpart C, is amended by adding a new § 232.616 to read as follows:

§ 232.616 Disclosure and verification of Social Security and Employer Identification Numbers.

To be eligible for mortgage insurance under this subpart, the mortgagor must meet the requirements for the disclosure and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart U, of this chapter.

(Approved by the Office of Management and Budget under OMB control number 2502–0118)

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

28. The authority citation for part 234 continues to read as follows:

Authority: Secs. 211, 234, National Housing Act (12 U.S.C. 1715b, 1715y); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). Section 234.520(a)(2)(ii) is also issued under sec. 201(a), National Housing Act (12 U.S.C. 1707(a)).

29. Part 234, subpart A, is amended by adding a new § 234.58, to read as follows:

§ 234.58 Disclosure and verification of Social Security and Employer Identification Numbers.

To be eligible for mortgage insurance under this part, the mortgagor must meet the requirements for the disclosure and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart U, of this chapter.

(Approved by the Office of Management and Budget under OMB control number 2502–0059)

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

30. The authority citation for part 235 continues to read as follows:

Authority: Secs. 211, 235, National Housing Act (12 U.S.C. 1715b, 1715z); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

31. In § 235.1, paragraph (a) is amended to add § 203.35 to the listing of sections.

32. In § 235.10, a new paragraph (e) is added, to read as follows:

§ 235.10 Eligible mortgagors.

* * * * *

(e) To be eligible under this part, the mortgagor or cooperative member must meet the requirements for the disclosure and verification of Social Security Numbers, as provided by part 200, subpart T, of this chapter.

33. In § 235.350, a new paragraph (d) is added, to read as follows:

§ 235.250 Mortgagor's required recertification.

* * * * *

(d) The homeowner must meet the disclosure and verification requirements for Social Security Numbers in connection with any recertification under this section, as provided by part 200, subpart T, of this chapter.

34. Section 235.355 is revised to read as follows:

§ 235.355 Mortgagor's optional recertification.

Upon request of the mortgagor or cooperative member, the mortgagee must accept recertification whenever the mortgagor, his or her spouse, or an adult (21 years or older) member of the family changes or loses employment which results in a decrease in the family income reported in the most recent certification or recertification. This recertification must be on a form prescribed by the Secretary. See 24 CFR 200.1015(d)(2)(i) for the requirements for the disclosure and verification of Social Security Numbers for recertifications involving new family members.

35. In § 235.375, paragraphs (b)(4) and (e) are revised to read as follows:

§ 235.375 Termination, suspension, or reinstatement of the assistance payment contract.

* * * * *

(b) * * *

(4) The mortgagee is unable to obtain from the homeowner (or from the cooperative association on behalf of the cooperative member) a required recertification of occupancy, employment, income, and family composition, and (if required) disclosure and verification of Social Security Numbers, as prescribed in § 235.350.

* * * * *

(e) *Reinstatement.* Where the assistance payments contract is suspended, it may be reinstated by the Secretary at the Secretary's discretion and on such conditions as the Secretary may prescribe. To be eligible for reinstatement under this section, the mortgagor or cooperative member must meet the requirements for the disclosure and verification of Social Security Numbers, as provided by part 200, subpart T, of this chapter.

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENT FOR RENTAL PROJECTS

36. The authority citation for part 236 continues to read as follows:

Authority: Secs. 211, 236, National Housing Act (12 U.S.C. 1715b, 1715z-1); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

37. Part 236, subpart A, is amended by adding a new § 236.11, to read as follows:

§ 236.11 Disclosure and verification of Social Security and Employer Identification Numbers.

To be eligible for mortgage insurance under this part, the mortgagor must meet the requirements for the disclosure and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart T, of this chapter.

(Approved by the Office of Management and Budget under OMB control numbers 2502–0204 and 2502–0118)

38. In § 236.70, paragraph (a)(1) is revised and the OMB approval number is added to the end of the section, to read as follows:

§ 236.70 Occupancy requirements.

(a)(1) In processing applications for admission, the housing owner will

determine eligibility in accordance with procedures prescribed by the Commissioner, including those specified for the disclosure and verification of Social Security Numbers in part 200, subpart T, of this chapter.

* * * * *

(Approved by the Office of Management and Budget under OMB control numbers 2502–0204 and 2502–0118)

39. Section 236.80 is revised to read as follows:

§ 2367.80 Reexamination of income.

(a) *Regular reexaminations.* The owner must reexamine the income and family composition of all Qualified Tenants at least once every 12 months. After consultation with the Qualified Tenant and upon verification of the information, the owner must make appropriate adjustments in the Tenant Rent (or Total Tenant Payment for tenants receiving the benefit of Rental Assistance Payments) in accordance with § 236.55 or § 236.735, and determine whether the Qualified Tenant's unit size is still appropriate. The owner must adjust the Tenant Rent and the Rental Assistance Payment, if applicable, to reflect any change in Total Tenant Payment, and must carry out any unit transfer required by HUD. At the time of the annual reexamination of family income and composition, the owner must require the family to meet the disclosure and verification requirements for Social Security Numbers, as provided by part 200, subpart T, of this chapter.

(b) *Interim reexaminations.* The Qualified Tenant must comply with the provisions of its lease regarding interim reporting of changes in income or family composition. If the owner receives information concerning a change in the Qualified Tenant's income or other circumstances between regularly scheduled reexaminations, the owner must consult with the Qualified Tenant and make any adjustments determined to be appropriate. Any change in the Qualified Tenant's income or other circumstances that results in an adjustment in the Rental Assistance Payment or Tenant Rent must be verified. See 24 CFR § 200.1015(d)(2)(i) for the requirements for the disclosure and verification of Social Security Numbers for interim reexaminations involving new family members.

(c) *Termination of assistance.* A Qualified Tenant loses eligibility for assistance when the Tenant Rent (Total Tenant Payment for tenants receiving the benefit of Rental Assistance Payments) equals the Basic Rent (Gross Rent for RAP tenants). The termination of eligibility at such point will not affect the Qualified Tenant's other rights under its lease, nor will such termination preclude the resumption of payments as a result of later changes in income, rents or other relevant circumstances during the term of the contract. However, assistance or eligibility to pay below Market Rent also may be terminated in accordance with any requirements of the lease or with HUD requirements, including failure to meet the disclosure and verification requirements for Social Security Numbers, as provided by part 200, subpart T, of this chapter.

(Approved by the Office of Management and Budget under OMB control numbers 2502–0204 and 2502–0118)

40. Section 236.710 is revised to read as follows:

§ 236.710 Qualified tenant.

The benefits of rental assistance payments are available only to an individual or a family renting a dwelling unit in a project that is subject to a contract under this subpart or occupying such a dwelling unit as a cooperative member. To qualify for such benefits, the individual or family must satisfy the definition of Qualified Tenant found in § 236.2 of subpart A. In order to receive rental assistance under this subpart, it must have been determined that the income of the individual or family is too low to permit the individual or family to pay the approved Gross Rent with 30 percent of such individual's or family's Adjusted Monthly Income, as defined in subpart A. For requirements concerning the disclosure and verification of Social Security Numbers, see part 200, subpart T, of this chapter.

(Approved by the Office of Management and Budget under OMB control numbers 2502–0204 and 2502–0118)

PART 241—SUPPLEMENTARY FINANCING FOR INSURED PROJECT MORTGAGES

41. The authority citation for part 241 continues to read as follows:

Authority: Secs. 211, 241, National Housing Act (12 U.S.C. 1715b, 1715z–6); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

42. Part 241, subpart A, is amended by adding a new § 241.11, to read as follows:

§ 241.11 Disclosure and verification of Social Security and Employer Identification Numbers.

To be eligible for loan insurance under this subpart, the borrower must meet the requirements for the disclosure and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart U, of this chapter.

(Approved by the Office of Management and Budget under OMB control number 2502–0118)

43. Part 241, subpart C, is amended by adding a new § 241.626, to read as follows:

§ 241.626 Disclosure and verification of Social Security and Employer Identification Numbers.

To be eligible for loan insurance under this subpart, the borrower must meet the requirements for the disclosure and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart U, of this chapter.

(Approved by the Office of Management and Budget under OMB control number 2502–0118)

PART 242—MORTGAGE INSURANCE FOR HOSPITALS

44. The authority citation for part 242 continues to read as follows:

Authority: Secs. 211, 233(f), 242, National Housing Act (12 U.S.C. 1715b, 1715n(f), 1715z–7); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

45. Part 242, subpart A, is amended by adding a new § 242.24, to read as follows:

§ 242.24 Disclosure and verification of Social Security and Employer Identification Numbers.

To be eligible for mortgage insurance under this part, the mortgagor must meet the requirements for the disclosure and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart U, of this chapter.

(Approved by the Office of Management and Budget under OMB control number 2502–0118)

PART 244—MORTGAGE INSURANCE FOR GROUP PRACTICE FACILITIES TITLE XI

46. The authority citation for part 244 continues to read as follows:

Authority: Secs. 211, 1104, National Housing Act (12 U.S.C. 1715b, 1719aaa–5); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

47. Section 244.20 is revised to read as follows:

§ 244.20 Eligible mortgagors.

In order to be eligible as a mortgagor under this subpart, the applicant must:

(a) Establish to the satisfaction of the Commissioner that it qualifies as a group practice unit, as that term is defined in § 244.1(c); and

(b) Meet the requirements for the disclosure and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart U, of this chapter.

(Approved by the Office of Management and Budget under OMB control number 2502–0118)

PART 247—EVICTIONS FROM CERTAIN SUBSIDIZED AND HUD-OWNED PROJECTS

48. The authority citation for part 247 continues to read as follows:

Authority: Sec. 101, Housing and Urban Development Act of 1965 (12 U.S.C. 1701s); secs. 211, 221, 236, National Housing Act (12 U.S.C. 1715b, 1715*l*, 1715z–1); sec. 202, Housing Act of 1959 (12 U.S.C. 1701q); secs. 3, 5, 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

49. In § 247.3, paragraph (c) is revised and the OMB control number is added at the end of the section, to read as follows:

§ 247.3 Entitlement of tenants to occupancy.

* * * * *

(c) *Material noncompliance.* The term "material noncompliance with the rental agreement" includes:

(1) One or more substantial violations of the rental agreement;

(2) Repeated minor violations of the rental agreement that (i) disrupt the livability of the project, (ii) adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related project facilities, (iii) interfere with the management of the project, or (iv) have an adverse financial effect on the project;

(3) Failure of the tenant to time supply all required information on the income and composition, or eligibility factors, of the tenant household (including failure to meet the disclosure and vertification requirements for Social Security Numbers, as provided by 24 CFR part 200, subpart T, or 24 CFR part 750 (as appropriate)), or knowingly providing incomplete or inaccurate information; and

(4) Non-payment of rent or any other financial obligation due under the rental agreement (including any portion thereof) beyond any grace period permitted under State law, except that the payment of rent or any other financial obligation due under the rental agreement after the due date, but within the grace period permitted under State law, constitutes a minor violation.

(Approved by the Office of Management and Budget under OMB control number 2502–0204)

PART 250—COINSURANCE FOR STATE HOUSING FINANCE AGENCIES

50. The authority citation for part 250 continues to read as follows:

Authority: Secs. 211, 244, National Housing Act (12 U.S.C. 1715b, 1715z–9); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

51. In part 250, subpart B, § 250.113 is amended by revising the heading, by redesignating the existing paragraph as paragraph (a), by adding a new paragraph (b), and by adding the OMB approval number to the end of the section to read as follows:

§ 250.113 Regulation of mortgagors; Disclosure.

* * * * *

(b) To be eligible for mortgage coinsurance under this part, the mortgagor must meet the requirements for the disclosure and vertification of Social Security and Employer Identification Numbers, as provided by part 200, subpart U, of this chapter.

(Approved by the Office of Management and Budget under OMB control number 2502–0118)

PART 251—COINSURANCE FOR THE CONSTRUCTION OR SUBSTANTIAL REHABILITATION OF MULTIFAMILY HOUSING PROJECTS

52. The authority citation for part 251 continues to read as follows:

Authority: Secs. 211, 244, National Housing Act (12 U.S.C. 1715b, 1715z(9)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

53. In part 251, subpart C, § 251.202 is amended by revising the heading, by redesignating the existing text as paragraph (a), by adding a new paragraph (b) and by adding the OMB approval number to the end of the section, to read as follows:

§ 251.202 Eligible mortgagors; Disclosure.

* * * * *

(b) To be eligible for mortgage coinsurance under this part, the mortgagor must meet the requirements for the disclosure and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart U, of this chapter.

(Approved by the Office of Management and Budget under OMB control number 2502–0118)

PART 252—COINSURANCE OF MORTGAGES COVERING NURSING HOMES, INTERMEDIATE CARE FACILITIES, AND BOARD AND CARE HOMES

54. The authority citation for part 252 continues to read as follows:

Authority: Secs. 211, 244, National Housing Act (12 U.S.C. 1715b, 1715z–9); sec 7(d), Department of Housing and Urban Development Act (42 U.S.C. 93535(d)).

55. In part 252, subpart C, § 252.202 is amended by revising the heading, by redesignating the present paragraph as paragraph as (a), by adding a new paragraph (b), and by adding the OMB approval number to the end of the section, to read as follows:

§ 252.202 Eligible mortgagors; Disclosure.

* * * * *

(b) To be eligible for mortgage coinsurance under this part, the mortgagor must meet the requirements for the disclosure and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart U, of this chapter.

(Approved by the Office of Management and Budget under OMB control number 2502–0118)

PART 255—COINSURANCE FOR THE PURCHASE OR REFINANCING OF EXISTING MULTIFAMILY HOUSING PROJECTS

56. The authority citation for part 255 continues to read as follows:

Authority: Secs. 211, 214, National Housing Act (12 U.S.C. 1715b, 1715z(9)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

57. In part 255, subpart C, § 255.202 is amended by revising the heading by redesignating the existing paragraph as paragraph (a), by adding a new paragraph (b), and by adding the OMB approval number at the end of the section, to read as follows:

§ 255.202 Eligible mortgagors; Disclosure.

* * * * *

(b) To be eligible for mortgage coinsurance under this part, the mortgagor must meet the requirements for the disclosure and verification of Social Security and Employer Indentification Numbers, as provided by part 200, subpart U, of this chapter.

Approved by the Office of Management and Budget under OMB control number 2502–0118)

PART 290—MANAGEMENT AND DISPOSITION OF HUD-OWNED MULTIFAMILY HOUSING PROJECTS

58. The authority citation for part 290 continues to read as follows:

Authority: Secs. 202, 203, 204, Housing and Community Development Amendments of 1978 (12 U.S.C. 1715z–1b, 1701z–11, 1701z–12); secs. 207, 211, National Housing Act (12 U.S.C. 1713, 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

59. Section 290.17 is amended by adding a new paragraph (g) and the OMB control number at the end of the section, to read as follows:

§ 290.17 Rental rates.

* * * * *

(g) *Disclosure and verification of Social Security Numbers.* Any certifications or reexaminations of the income of tenants or prospective tenants in connection with tenancy under this section are subject to the requirements for the disclosure and verification of Social Security Numbers, as provided by part 200, subpart T, of this chapter.

Approved by the Office of Management and Budget under OMB control number 2502–0204)

PART 510—SECTION 312 REHABILITATION LOAN PROGRAM

60. The authority citation for part 510 continues to read as follows:

Authority: Sec. 312, United States Housing Act of 1964 (42 U.S.C. 1452b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). Sec. 510.106 is also issued under the authority of sec. 165, Housing and Community Development Act of 1987 (42 U.S.C. 3543).

61. Part 510 is amended by adding a new § 510.106 to read as follows:

§ 510.106 Disclosure and verification of Social Security and Employer Identification Numbers.

(a) *Disclosure: individual borrowers.* Each individual borrower must submit the following information to the processing entity when the borrower's eligibility for a loan under this part is being determined:

(1)(i) The complete and accurate SSN(s) assigned to the borrower and to each member of the borrower's household who will be obligated to pay the debt evidenced by the loan documents; and

(ii) The documentation referred to in paragraph (d)(1) of this section to verify each such SSN; or

(2) If any individual referred to in paragraph (a)(1)(i) of this section has not been assigned an SSN, a certification executed by the individual(s) involved that meets the requirements of paragraph (f) of this section.

(b) *Disclosure: certain officials of entity borrowers.* Each officer, director, principal stockholder (as defined in HUD administrative instructions), or other official of an entity borrower (as specified in HUD administrative instructions) must submit the following information to the processing entity when the borrower's eligibility for a loan under this part is being determined:

(1) The complete and accurate SSN(s) assigned to each such individual; and

(2) The documentation referred to in paragraph (d)(1) of this section to verify each SSN.

(c) *Disclosure: entity borrowers.* Each entity borrower must submit the following information to the processing entity when the borrower's eligibility for a loan under this part is being determined.

(1) The complete and accurate EIN(s) assigned to the borrower; and

(2) The documentation referred to in paragraph (d)(2) of this section to verify the EIN(s).

(d) *Required documentation*—(1) *Social Security Numbers.* The documentation necessary to verify the SSN of an individual who is required to disclose his or her SSN(s) under paragraphs (a) and (b) of this section is a valid SSN card issued by the Social Security Administration of the Department of Health and Human Services, or such other evidence of the SSN (including one or more alternate documents or such other substantiation of the SSN) as HUD may prescribe in administrative instructions. Examples of such evidence may include a State driver's license that displays the SSN of the individual.

(2) *Employer Identification Numbers.* The documentation necessary to verify the EIN(s) of an entity borrower that is required to disclose its EIN(s) under paragraph (c) of this section is the official, written communication from the IRS assigning the EIN(s) to the borrower, or such other evidence of the EIN(s), (including such substantiation) as HUD may prescribe in administrative instructions.

(e) *Rejection of documentation or certification.* The processing entity may reject documentation referred to in paragraph (d) of this section, or a certification provided under paragraph (a)(2) of this section, only for such reasons (including the timeliness of the submission) as HUD may prescribe in administrative instructions.

(f) *Form and manner of certifications.* The certification referred to in paragraph (a)(2) of this section must be in the form and manner that HUD prescribes in administrative instructions. If an individual who is required to execute the certification is less than 18 years of age, it must be executed by his or her parent or guardian, or (in accordance with HUD administrative instructions) by the individual or another person.

(g) *Penalties for failing to disclose and verify Social Security and Employer Identification Numbers*—(1) *Denial of eligibility: Individual borrowers.* The processing entity must deny the eligibility for a loan under this part of an individual borrower who fails to meet the SSN disclosure, documentation and verification, and certification requirements specified in this section.

(2) *Denial of eligiblity: Entity borrowers.* The processing entity must deny the eligibility for a loan under this part of an entity borrower if:

(i) The borrower does not meet the EIN disclosure and verification requirements specified in this section; or

(ii) Any of the officials of the entity borrower referred to in paragraph (b) of this section does not meet the SSN disclosure, and documentation and verification requirements, specified in this section.

(h) *Limitations on the collection, maintenance, use, and dissemination of Social Security and Employer Identification numbers, and on information derived therefrom.* The collection, maintenance, use, and dissemination of SSNs and EINs obtained pursuant to this section, and of any information derived therefrom, must be conducted to the extent applicable, in compliance with the Privacy Act (5 U.S.C. 552a) and all other provisions of Federal, State, and local law.

(i) *Implementation.* The provisions of this section apply to all individual and entity borrower eligibility determinations initiated on or after November 6, 1989.

(j) *Definitions.* As used in this section:

Employer Identification Number (EIN) means the taxpayer identifying number of an individual, trust, estate, partnership, association, company, or corporation that is assigned pursuant to section 6011(b) of the Internal Revenue Code of 1986, or corresponding provisions of prior law, or pursuant to section 6109 of the Code. The EIN has nine digits separated by a hyphen as follows: 00–0000000.

Entity borrower means a borrower, other than an individual borrower. Examples of an entity borrower include a partnership, corporation, or any other association or entity.

Individual borrower means an individual or individuals that seek to obtain a loan under this part.

Processing entity means the person or entity responsible for determining the eligibility of borrowers that seek to obtain a loan under this part.

Social Security Number (SSN) means the number that is assigned to a person by the Social Security Administration of the Department of Health and Human Services, and that identifies the record of the person's earnings reported to the Administration. The SSN has nine digits separated by hyphens, as follows: 000–00–0000; it does not include a number with a letter as a suffix that is used to identify an auxiliary beneficiary under the Social Security System.

(Approved by the Office of Management and Budget under OMB Control No. 2506–0076.)

62. 24 CFR chapter VII is amended by adding a new part 750, to read as follows:

PART 750—DISCLOSURE AND VERIFICATION OF SOCIAL SECURITY NUMBERS AND EMPLOYER IDENTIFICATION NUMBERS BY APPLICANTS AND PARTICIPANTS IN CERTAIN HOUSING ASSISTANCE PROGRAMS

Subpart A—General

Sec.

750.1 Summary and purpose.
750.3 Applicability.
750.5 Definitions.

Subpart B—Disclosure and Verification of Social Security and Employer Identification Numbers

750.10 Disclosure and verification of Social Security and Employer Identification Numbers.
750.15 Penalties for failing to disclose and verify Social Security and Employer Identification Numbers.
750.20 Limitation on the collection, maintenance, use, and dissemination of Social Security and Employer Identification Numbers, and on information derived therefrom.

Subpart C—Implementation

750.25 Implementation.

Authority: Sec. 165, Housing and Community Development Act of 1987 (42 U.S.C. 3543); secs. 3, 6, 8, 17, 205, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437d, 1437f, 1437o, 1437(ee)); sec. 202, Housing Act of 1959 (12 U.S.C. 1701q); sec 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General

§ 750.1 Summary and purpose.

(a) *Summary.* (1) This part implements section 165 of the Housing and Community Development Act of 1987 (42 U.S.C. 3543), as it pertains to the section 8 Housing Assistance Payments programs and the Public and Indian Housing program administered by the Department under 24 CFR chapters VIII and IX, respectively.

(2) This part requires applicants that seek to receive, and certain recipients of, housing assistance under any of the covered programs to disclose, and to submit documentation to verify, their Social Security Numbers. Individuals, and certain officials of corporations and other entities, that seek to participate as private owners in certain covered programs must disclose and verify their Social Security or Employer Identification Numbers, as appropriate. The failure of any person or entity to make the required disclosure and verification constitutes grounds for denial of eligibility, or termination of assistance or tenancy (or both), under the progam involved.

(3) Section 165 is implemented for HUD's unassisted mortgage and loan insurance and coinsurance programs under 24 CFR chapter II, subchapter B, at 24 CFR part 200, subpart T. The provision is implemented for the assisted mortgage and loan insurance and related programs administered by the Department under 24 CFR chapter II, subchapter B, at 24 CFR part 200, subpart U; and for the section 312 Rehabilitation Loan program, at 24 CFR 510.106.

(b) *Purpose.* The purpose of this part is to enable the Department to use Social Security and Employer Identification Numbers to help decrease the incidence of fraud, waste, and abuse in the covered programs. Specific examples of how the Department may use these Numbers include (but are not limited to) the following:

(1) Identifying a person or entity in manual or automated records.

(2) Identifying a person or entity during debt collection efforts.

(3) Cross-checking among the Department's automated systems for the previous or current participation of the person or entity in other programs.

(4) Identifying persons or entities in the records of other Federal agencies for the purpose of obtaining information on their eligibility for, or level of benefits in, the Department's programs.

(5) Identifying persons or entities for the purpose of requesting information about them from other government or private sources during audit or investigation.

(6) Confirming the identity of a person or entity with the Social Security Administration or the Internal Revenue Service.

(7) Ensuring that the person or entity is eligible for the covered program and that the level of benefits provided to it is appropriate.

(Approved by the Office of Management and Budget under OMB Control No. 2502–0204.)

§ 750.3 Applicability.

This part applies to the following housing assistance programs contained in chapters VIII and IX of this title:

(a) *Part 880,* section 8 Housing Assistance Payments Program for New Construction.

(b) *Part 881,* section 8 Housing Assistance Payments Program for Substantial Rehabilitation.

(c) *Part 882,* section 8 Housing Assistance Payments Program for Housing Certificates and Moderate Rehabilitation.

(d) *Part 883,* section 8 Housing Assistance Payments Program for State Housing Agencies.

(e) *Part 884,* section 8 Housing Assistance Payments Program, New Construction Set-aside for section 515 Rural Rental Housing Projects.

(f) *Part 885,* Loans for Housing for the Elderly or Handicapped.

(g) *Part 886,* section 8 Housing Assistance Payments Program—Special Allocations (subpart A, Loan Management, and subpart C, Property Disposition).

(h) *Part 887,* Housing Vouchers.

(i) *Part 900,* section 23 Housing Assistance Payments Program—New Construction and Substantial Rehabilitation.

(j) *Part 904,* Low Rent Housing Homeownership Opportunities.

(k) *Part 905,* Indian Housing.

(l) *Part 960,* Admission to, and Occupancy of, Public Housing.

§ 750.5 Definitions.

As used in this part:

Assistance applicant has the following meaning for the programs referred to in § 750.3:

(a) *Parts 880, 881, 882, 883, 884, 885, 886, 887, and 900:* A family that seeks rental assistance under the program.

(b) *Part 904:* A prospective homebuyer under the program.

(c) *Part 905:* A prospective tenant or homebuyer under the program.

(d) *Part 960:* A prospective tenant under the program.

Employer Identification Number (EIN) means the taxpayer identifying number of an individual, trust, estate, partnership, association, company, or corporation that is assigned pursuant to section 6011(b) of the Internal Revenue Code of 1986, or corresponding provisions of prior law, or pursuant to section 6109 of the Code. The EIN has

nine digits separated by a hyphen, as follows: 00–0000000.

Entity applicant means a partnership, corporation, or any other association or entity that seeks to participate as a private owner in any of the project-based assistance programs contained in 24 CFR part 880, 881, 882, 884, 885, or 886. Entity applicant does not include a public entity, such as a PHA or a State Housing Finance Agency.

HUD or *Department* means the United States Department of Housing and Urban Development.

Individual owner applicant means an individual who seeks to participate as a private owner in any of the project-based assistance programs contained in 24 CFR part 880, 881, 882, 884, 885, or 886.

Participant has the following meaning for the programs referred to in § 750.3.

(a) *Parts 880, 881, 882, 883, 884, 885, 886, 887, and 900:* A family receiving rental assistance under the program.

(b) *Part 904:* A homebuyer under the program.

(c) *Part 905:* A tenant or homebuyer under the program.

(d) *Part 960:* A tenant under the program.

Public housing agency (PHA) means any State, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) that is authorized to engage or assist in the development or operation of housing for lower income families under 24 CFR chapters VIII or IX. The term includes Indian Housing Authorities.

Processing entity means the person or entity that is responsible for making eligibility determinations and any income reexaminations under any of the programs referred to in § 750.3.

Social Security Number (SSN) means the number that is assigned to a person by the Social Security Administration of the Department of Health and Human Services, and that identifies the record of the person's earnings that are reported to the Administration. The SSN has nine digits separated by hyphens, as follows: 000–00–0000; it does not include a number with a letter as a suffix that is sued to identify an auxiliary beneficiary under the Social Security System.

Subpart B—Disclosure and Verification of Social Security and Employer Identification Numbers

§ 750.10 Disclosure and vertification of Social Security and Employer Identification Numbers.

(a) *Disclosure: assistance applicants.* Each assistance applicant must submit the following information to the processing entity when the applicant's eligibility under the program involved is being determined:

(1)(i) The complete and accurate SSN(s) assigned to the applicant and to each member of the applicant's household who is at least six years of age; and

(ii) The documentation referred to in paragraph (f)(1) of this section to verify each such SSN; or

(2) If the applicant or any member of the applicant's household who is at least six years of age has not been assigned an SSN, a certification executed by the individual(s) involved that meets the requirements of paragraph (j) of this section.

(b) *Disclosure: individual owner applicants.* Each individual owner applicant must submit the following information to the processing entity when the applicant's eligibility under the program involved is being determined:

(1)(i) The complete and accurate SSN(s) assigned to the applicant and to each member of the applicant's household who will be obligated to pay the debt evidenced by the mortgage documents; and

(ii) The documentation referred to in paragraph (f)(1) of this section to verify the SSN(s); or

(2) If any individual referred to in paragraph (a)(1)(i) of this section has not been assigned an SSN, a certification executed by the individual that meets the requirements of paragraph (j) of this section.

(c) *Disclosure: certain officials of entity applicants.* Each officer, director, principal stockholder (as defined in HUD administrative instructions), or other official of an entity applicant (as specified in HUD administrative instructions) must submit the following information to the processing entity when the applicant's eligibility under the program involved is being determined:

(1) The complete and accurate SSN(s) assigned to each such individual; and

(2) The documentation referred to in paragraph (f)(1) of this section to verify each SSN.

(d) *Disclosure: participants*—(1) *Initial disclosure by those who were participants before November 6, 1989.* Each participant whose initial determination of eligibility under the program involved was initiated before November 6, 1989, must submit the following information to the processing entity at the next regularly scheduled income reexamination for the program involved:

(i)(A) The complete and accurate SSN(s) assigned to the participant and to each member of the participant's family who is at least six years of age; and

(B) The documentation referred to in paragraph (f)(1) of this section to verify each such SSN; or

(ii) If the participant or any member of the participant's household who is at least six years of age has not been asssigned an SSN, a certification executed by the individual(s) involved that meets the requirements of paragraph (j) of this section.

(2) *Subsequent disclosure by participants who have made an initial disclosure under this section.* Once a participant has disclosed and verified SSN(s), or submitted a certification(s) that no SSN(s) has been assigned, as provided by paragraph (a) (as an applicant) or paragraph (d)(1) (as a preexisting participant) of this section, the following rules apply:

(i) If the participant's household adds a new member(s) who is at least six years of age, the participant must submit to the processing entity, at the next interim or regularly scheduled income reexamination that includes the new member(s):

(A) The complete and accurate SSN(s) assigned to each new member and the documentation referred to in paragraph (f)(1) of this section to verify the SSN(s) for each new member; or

(B) If the new member(s) has not been assigned an SSN, a certification executed by the individual(s) involved that meets the requirements of paragraph (j) of this section.

(ii) If the participant or any member of the participant's household who is at least six years of age obtains a previously undisclosed SSN, or has been assigned a new SSN (including any member who is six years of age or older and has been assigned an SSN, as required by section 6109(e) of the Internal Revenue Code of 1986), the participant must submit to the processing entity at the next regularly scheduled income reexamination:

(A) The complete and accurate SSN(s) assigned to the participant or household member(s) involved; and

(B) The documentation referred to in paragraph (f)(1) of this section to verify the SSN(s) of each such individual.

(iii) HUD (and in the case of the public housing program, or the section 8 Certificate, Voucher, or Moderate Rehabilitation program, the PHA) may specify in administrative instructions additional SSN disclosure and verification requirements, including the nature of the disclosure and the verification required, and the time and

manner for making the disclosure and verification.

(e) *Disclosure: entity applicants.* Each entity applicant must submit the following information to the processing entity when the applicant's eligibility under the program involved is being determined:

(1) The complete and accurate (EIN(s) assigned to the applicant; and

(2) The documentation referred to in paragraph (f)(2) of this section to verify the EIN(s).

(f) *Required documentation*—(1) *Social Security Numbers.* The documentation necessary to verify the SSN of an individual who is required to disclose his or her SSN(s) under paragraphs (a) through (d) of this section is a valid SSN card issued by the Social Security Administration of the Department of Health and Human Services, or such other evidence of the SSN, (including one or more alternate documents or such other substantiation of the SSN) as HUD (and in the case of the public housing program, or the section 8 Certificate, Voucher, or Moderate Rehabilitation program, the PHA) may prescribe in administrative instructions. Examples of such evidence may include:

(i) A State driver's license that displays the SSN of the individual; and

(ii) If a PHA conducts reexaminations of participants' income by mail, copies of the documentation required under this paragraph (f)(1).

(2) *Employer Indentification Numbers.* The documentation necessary to verify the EIN(s) of an entity applicant that is required to disclose its EIN(s) under paragraph (e) of this section is the official, written communication from the IRS assigning the EIN(s) to the entity applicant, or such other evidence of the EIN(s) (including such substantiation) as HUD may prescribe in administrative instructions.

(g) *Special documentation rules for assistance applicants and participants*—(1) *Certification of inability to meet documentation requirements.* If an individual who is required to disclose his or her SSN(s) under paragraph (a) (assistance applicants) or paragraph (d) (participants) of this section is able to disclose the SSN, but cannot meet the documentation requirements of paragraph (f)(1) of this section, the assistance applicant or participant (as appropriate) must submit to the processing entity the individual's SSN(s) and a certification executed by the individual that the SSN(s) submitted has been assigned to the individual, but that acceptable documentation to verify the SSN(s) cannot be provided.

(2) *Acceptance or certification by processing entity.* Except as provided by paragraph (h) of this section, the processing entity must accept the certification referred to in paragraph (g)(1) of this section, and continue to process the applicant's or participant's eligibility to participate in the program involved.

(3) *Effect on applicants.* If the processing entity determines that the assistance applicant is otherwise eligible to participate in the program, the applicant may not become a participant in the program, unless it submits to the processing entity the documentation required under paragraph (f)(1) of this section within the time period specified in paragraph (g)(5) of this section. During such period, the applicant will retain the position that it occupied in the program at the time the determination of eligibility was made, including (as appropriate) its place on any waiting list maintained for the program.

(4) *Effect on participants.* If the processing entity determines that the participant otherwise continues to be eligible to participate in the program, participation will continue, provided that the participant submits to the processing entity the documentation required under paragraph (f)(1) of this section within the time period specified in paragraph (g)(5) of this section.

(5) *Time for submitting documentation.* The time period referred to in paragraphs (g) (4) and (5) of this section is 60 calendar days from the date on which the certification referred to in paragraph (g)(1) of this section is excuted, except that the processing entity may, in its discertion and in such circumstances as it may permit, extend this period for up to an additional 60 days, if the individual is at least 62 years of age and is unable to submit the required documentation within the initial 60-day period.

(h) *Rejection of documentation or certification.* The processing entity may reject documentation referred to in paragraph (f) of this section, or a certification provided under paragraph (a)(2), (b)(2) (d), or (g)(1) of this section, only for such reasons (including the timeliness of the submission) as HUD (and in the case of the public housing program, or the section 8 Certificate, Voucher, or Moderate Rehabilitation program, the PHA) may prescribe in administrative instructions.

(i) *Information on SSNs and EINs.* (1) information regarding SSNs and SSN cards may be obtained by contacting the local Social Security Office or consulting the Social Security Administration regulations at 20 CFR chapter III (see particularly, part 422).

(2) Information regarding EINs may be obtained by contacting the local office of the Internal Revenue Service or consulting the appropriate regulations for the Internal Revenue Service.

(j) *Form and manner of certifications.* The certifications referred to in paragraph (a)(2), (b)(2), (d), and (g)(1) of this section must be in the form and manner that HUD (and in the case of the public housing program, or the section 8 Certificate, Voucher, or Moderate Rehabilitation program, the PHA) prescribes in administrative instructions. If an individual who is required to execute a certification is less than 18 years of age, it must be executed by his or her parent or guardian, or (in accordance with administrative instructions issued by HUD and, it the case of the public housing program, or the section 8 Certificate, Voucher, or Moderate Rehabilitation program, the PHA) by the individual or another person.

(Approved by the Office of Management and Budget under OMB control number 2502–0204)

§ 750.15 Penalties for failing to disclose and verify Social Security and Employer Identification Numbers.

(a) *Denial of eligibility: assistance applicants and individual owner applicants.* The processing entity must deny the eligibility of an assistance applicant or of an individual owner applicant in accordance with the provisions governing the program involved, if the applicant does not meet the applicable SSN disclosure, documentation and verification, and certification requirements specified in § 750.10.

(b) *Denial of eligibility: entity applicants.* The processing entity must deny the eligibility of an entity applicant in accordance with the provisions governing the program involved; if:

(1) The applicant does not meet the applicable EIN disclosure and verification requirements specified in § 750.10; or

(2) Any of the officials of the entity applicant referred to in § 750.10(c) does not meet the applicable SSN disclosure, and documentation and verification requirements specified in § 750.10.

(c) *Termination of assistance or tenancy: participants;* The processing entity must terminate the assistance or the tenancy (or both) of a participant in accordance with the provisions governing the program involved, if the participant does not meet the applicable SSN disclosure, documentation and verification, and certification requirements specified in § 750.10.

(d) *Cross reference.* Individuals should consult the regulations and administrative instructions for the programs referred to in § 750.3 for further information on the use of SSNs and EINs in determining the eligibility of applicants, and the continued eligibility of participants.

(Approved by the Office of Management and Budget under OMB control number 2502–0204)

§ 750.20 Limitations on the collection, maintenance, use, and dissemination of Social Security and Employer Identification Numbers, and on information derived therefrom.

The collection, maintenance, use, and dissemination of SSNs and EINs obtained pursuant to this part, and of any information derived therefrom, must be conducted, to the extent applicable, in compliance with the Privacy Act (5 U.S.C. 552a) and all other provisions of Federal, State. and local law.

(Approved by the Office of Management and Budget under OMB control number 2502–0204)

Subpart C—Implementation

§ 750.25 Implementation.

(a) *Applicants.* The provisions of this part, and the conforming changes made with respect to the disclosure, documentation and verification, and use of SSNs and EINs for applicants in the regulations governing the programs referred to in § 750.3, apply to all applicant eligibility determinations initiated on or after November 6, 1989.

(b) *Participants.* The provisions of this part, and the conforming changes made with respect to the disclosure, documentation and verification, and use of SSNs for participants in the regulations governing the programs referred to in § 750.3, apply to each regularly scheduled reexamination (and in the circumstances specified in § 750.10(d)(2)(i), each interim reexamination) of the income of a participant initiated by the processing entity on or after November 6, 1989.

(Approved by the Office of Management and Budget under OMB control number 2502–0204)

PART 813—DEFINITION OF INCOME, INCOME LIMITS, RENT AND REEXAMINATION OF FAMILY INCOME FOR THE SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS AND RELATED PROGRAMS

63. The authority citation for part 813 continues to read as follows.

Authority: Secs. 3, 5(b), 8, 16, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f, 1437n); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

64. In § 813.109, paragraph (a) is revised and the OMB control number is added at the end of the section, to read as follows:

§ 813.109 Initial determination, verification, and reexamination of family income and composition.

(a) *Responsibility for initial determination and reexamination.* The owner or PHA shall be responsible for determination of eligibility for admission, for determination of Annual Income, Adjusted Income and Total Tenant Payment, and for reexamination of family income and composition at least annually, as provided in pertinent program regulations and handbooks (see, *e.g.*, part 880, subpart F, and part 881, subpart F, which, for purposes of this part, shall apply (as appropriate) to projects developed under part 885, subparts B and C; part 882, subparts B and E; part 883, subpart G; part 884, subpart B; part 886, subparts A and C; part 887, subpart H; and for the disclosure and verification of Social Security Numbers. As used in this part, the "effective date" of an examination or reexamination refers to:

(1) In the case of an examination for admission, the effective date of the initial occupancy; and

(2) In the case of a reexamination of an existing tenant, the effective date of the redetermined housing assistance payment with respect to the Housing Voucher program (part 887) and the effective date of the redetermined Total Tenant Payment.

* * * * *

(Approved by the Office of Management and Budget under OMB control number 2577–0083)

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

65. The authority citation for 24 CFR part 880 continues to read as follows:

Authority: Secs. 3, 5, 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

66. Part 880, subpart C, § 880.305 is amended by revising the heading by adding a new paragraph (m), and by adding the OMB control number to the end of the section, to read as follows:

§ 880.305 Contents of preliminary proposal; Disclosure.

* * * * *

(m) To be eligible to become an owner of housing assisted under this part, the owner (other than a PHA) must meet the requirements for the disclosure and verification of Social Security and Employer Identification Numbers, as provided by 24 CFR part 750.

(Approved by the Office of Management and Budget under OMB control number 2502–0204)

67. In § 880.601, paragraph (b) is revised and the OMB control number is added at the end of the section, to read as follows:

§ 880.601 Responsibilities of owner.

* * * * *

(b) *Management and maintenance.* The owner is responsible for all management functions (including provision of Federal selection preferences in accordance with § 880.613, selection of tenants, obtaining and verifying Social Security Numbers submitted by families (as provided by 24 CFR part 750), reexamination of family income, evictions and other terminations of tenancy, and collection of rents) and all repair and maintenance functions (including ordinary and extraordinary maintenance and replacement of capital items). All these functions must be performed in compliance with applicable Equal Opportunity requirements.

* * * * *

(Approved by the Office of Management and Budget under OMB control number 2502–0204)

68. In § 880.603, the introductory text of paragraph (b), and paragraphs (b)(3) and (c), are revised and the OMB control number is added to the end of the section, to read as follows:

§ 880.603 Selection and admission of assisted tenants.

* * * * *

(b) *Determination of eligibility and selection of tenants.* The owner is responsible for determining whether the applicant is eligible, in accordance with parts 812 and 813 of this chapter, and part 750 of chapter VII. The owner is also responsible for the selection of families, including giving a Federal selection preference in accordance with § 880.613.

* * * * *

(3) If the owner determines that an applicant is ineligible on the basis of income or family composition, or because of failure to meet the disclosure and verification requirements for Social Security Numbers (as provided by 24 CFR part 750), or that the owner is not selecting the applicant for other reasons, the owner will promptly notify the applicant in writing of the determination and its reasons, and that the applicant

has the right to meet with the owner or managing agent in accordance with HUD requirements. Where the owner is a PHA, the applicant may request an informal hearing. If the PHA determines that the applicant is not eligible, the PHA will notify the applicant and inform the applicant that he or she has the right to request HUD review of the PHA's determination. The applicant may also exercise other rights if the applicant believes that he or she is being discriminated against on the basis of race, color, creed, religion, sex, or national origin. The informal review provisions for the denial of a Federal preference under § 880.613 are contained in paragraph (k) of that section.

* * * * *

(c) *Reexamination of Family income and composition*—(1) *Regular reexaminations.* The owner must reexamine the income and composition of all families at least every 12 months. Upon verification of the information, the owner must make appropriate adjustments in the Total Tenant Payment in accordance with part 813 of this chapter and determine whether the family's unit size is still appropriate. The owner must adjust Tenant Rent and the Housing Assistance Payment to reflect any change in Total Tenant Payment and must carry out any unit transfer required by HUD. At the time of the annual reexamination of family income and composition, the owner must require the family to meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 750.

(2) *Interim reexaminations.* The family must comply with provisions in its lease regarding interim reporting of changes in income. If the owner receives information concerning a change in the family's income or other circumstances between regularly scheduled reexaminations, the owner must consult with the family and make any adjustments determined to be appropriate. Any change in the family's income or other circumstances that results in an adjustment to the Total Tenant Payment, Tenant Rent, and Housing Assistance Payment must be verified. See 24 CFR 750.10(d)(2)(i) for the requirements for the disclosure and verification of Social Security Numbers at interim reexaminations involving new family members.

(3) *Continuation of housing assistance payments.* A family's eligibility for Housing Assistance Payments continues until the Total Tenant Payment equals the Gross Rent. The termination of eligibility at such point will not affect the family's other rights under its lease, nor will such termination preclude the resumption of payments as a result of later changes in income, rents, or other relevant circumstances during the term of the Contract. However, eligibility also may be terminated in accordance with HUD requirements for such reasons as failure to submit requested verification information, including failure to meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 750.

(Approved by the Office of Management and Budget under OMB control number 2502-0204)

69. In § 880.607, paragraph (b)(3) is revised, and the OMB control number is added to the end of the section, to read as follows:

§ 880.607 Termination of tenancy and modification of lease.

* * * * *

(b) * * *

(3) *Material noncompliance.* Material noncompliance with the lease includes: (i) One or more substantial violations of the lease; or (ii) repeated minor violations of the lease that disrupt the livability of the building; adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related facilities; interfere with the management of the building; or have an adverse financial effect on the building. Failure of the family to timely submit all required information on family income and composition or eligibility factors (including failure to disclose and verify Social Security Numbers, as provided by 24 CFR part 750, or knowingly providing incomplete or inaccurate information) will constitute a substantial violation of the lease. Nonpayment of rent or any other financial obligation due under the lease (including any portion thereof) beyond any grace period permitted under State law will constitute a substantial violation of the lease. The payment of rent or any other financial obligation due under the lease after the due date but within the grace period permitted under State law will constitute a minor violation.

* * * * *

(Approved by the Office of Management and Budget under OMB control number 2502-0204)

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

70. The authority citation for 24 CFR part 881 continues to read as follows:

Authority: Secs. 3, 5, 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

71. Part 881, subpart C, is amended by adding a new § 881.312, to read as follows:

§ 881.312 Disclosure and verification of Social Security and Employer Identification Numbers by owners.

To be eligible to become an owner of housing assisted under this part, the owner (other than a PHA) must meet the disclosure and verification requirements for Social Security and Employer Identification Numbers, as provided by 24 CFR part 750.

(Approved by the Office of Management and Budget under OMB control number 2502-0204)

72. In § 881.601, paragraph (b) is revised and the OMB control number is added to the end of the section, to read as follows:

§ 881.601 Responsibilities of owner.

* * * * *

(b) *Management and maintenance.* The owner is responsible for all management functions (including provision of Federal selection preferences in accordance with § 881.613, selection of tenants, obtaining and verifying Social Security Numbers submitted by families (as provided by 24 CFR part 750), reexamination of family income, evictions and other terminations of tenancy, and collection of rents) and all repair and maintenance functions (including ordinary and extraordinary maintenance and replacement of capital items). All these functions must be performed in compliance with applicable Equal Opportunity requirements.

* * * * *

(Approved by the Office of Management and Budget under OMB control number 2502-0204)

73. In § 881.603, the introductory text of paragraph (b), and paragraphs (b)(3) and (c), are revised and the OMB control number is added to the end of the section, to read as follows:

§ 881.603 Selection and admission of assisted tenants.

* * * * *

(b) *Determination of eligibility and selection of tenants.* The owner is responsible for determining whether the applicant is eligible, in accordance with parts 812 and 813 of this chapter, and part 750 of chapter VII. The owner is also responsible for the selection of families, including giving a Federal

selection preference in accordance with § 881.613.

* * * * *

(3) If the owner determines that an applicant is ineligible on the basis of income or family composition, or because of failure to meet the disclosure and verification requirements for Social Security Numbers (as provided by 24 CFR part 750), or that the owner is not selecting the applicant for other reasons, the owner will promptly notify the applicant in writing of the determination and its reasons, and that the applicant has the right to meet with the owner or managing agent in accordance with HUD requirements. Where the owner is a PHA, the applicant may request an informal hearing. If the PHA determines that the applicant is not eligible, the PHA will notify the applicant and inform the applicant that he or she has the right to request HUD review of the PHA's determination. The applicant may also exercise other rights if the applicant believes that he or she is being discriminated against on the basis of race, color, creed, religion, sex, or national origin. The informal review provisions for the denial of a Federal preference under § 881.613 are contained in paragraph (k) of that section.

* * * * *

(c) *Reexamination of family income and composition*—(1) *Regular reexaminations.* The owner must reexamine the income and composition of all families at least once every 12 months. After consultation with the family and upon verification of the information, the owner must make appropriate adjustments in the Total Tenant Payment in accordance with part 813 of this chapter and determine whether the family's unit size is still appropriate. The owner must adjust the Tenant Rent and the Housing Assistance Payment to reflect any change in Total Tenant Payment and must carry out any unit transfer required by HUD. At the time of the annual reexamination of family income and composition, the owner must require the family to disclose and verify Social Security Numbers, as provided by 24 CFR part 750.

(2) *Interim reexaminations.* The family must comply with the provisions of its lease regarding interim reporting of changes in income. If the owner receives information concerning a change in income between regularly scheduled reexaminations, the owner must consult with the family and make any adjustments determined to be appropriate. Any change in the family's income or other circumstances that results in an adjustment in the Total Tenant Payment, Tenant Rent, and Housing Assistance Payment must be verified. See 24 CFR 750.10(d)(2)(i) for the requirements for the disclosure and verification of Social Security Numbers at interim reexaminations involving new family members.

(3) *Continuation of housing assistance payments.* A family's eligibility for Housing Assistance Payments continues until the Total Tenant Payment equals the Gross Rent. The termination of eligibility at such point will not affect the family's other rights under its lease, nor will such termination preclude the resumption of payments as a result of later changes in income, rents, or other relevant circumstances during the term of the Contract. However, eligibility also may be terminated, in accordance with HUD requirements, for such reasons as failure to submit requested verification information, including failure to meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 750.

(Approved by the Office of Management and Budget under OMB control number 2502-0204)

74. In § 881.607, paragraph (b)(3) is revised and the OMB control number is added to the end of the section, to read as follows:

§ 881.607 Termination of tenancy and modification of lease.

* * * * *

(b) * * *

(3) *Material noncompliance.* Material noncompliance with the lease includes: (i) One or more substantial violations of the lease; or (ii) repeated minor violations of the lease that disrupt the livability of the building; adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related facilities; interfere with the management of the building; or have an adverse financial effect on the building. Failure of the family to timely submit all required information on family income and composition or eligibility factors (including failure to disclose and verify Social Security Numbers (as provided by 24 CFR part 750), or knowingly provide incomplete or inaccurate information) will constitute a substantial violation of the lease. Nonpayment of rent or any other financial obligation due under the lease (including any portion thereof) beyond any grace period permitted under State law will constitute a substantial violation of the lease. The payment of rent or any other financial obligation due under the lease after the due date but within the grace period permitted under State law will constitute a minor violation.

* * * * *

(Approved by the Office of Management and Budget under OMB control number 2502-0204)

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

75. The authority citation for 24 CFR part 882 continues to read as follows:

Authority: Secs. 3, 5, 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

76. In § 882.116, paragraphs (c) and (m) are revised and the OMB control number is added at the end of the section, to read as follows:

§ 882.116 Responsibilities of the PHA.

* * * * *

(c) Receipt and review of applications for Certificates of Family Participation; provision of a Federal preference in selecting applicants for participation in accordance with § 882.219; verification of family income and other factors relating to eligibility and amount of assistance (including obtaining and verifying Social Security Numbers submitted by families, as provided by 24 CFR part 750); and maintenance of a waiting list in accordance with this part;

* * * * *

(m) Reexamination of Family Income, composition, and extent of medical or child care expenses; redeterminations, as appropriate, of the amount of Total Tenant Payment and amount of housing assistance payment in accordance with part 813 of this chapter; and obtaining and verifying Social Security Numbers submitted by families, as provided by 24 CFR part 750;

* * * * *

(Approved by the Office of Management and Budget under OMB control number 2577-0083)

77. In § 882.118, paragraph (a)(1) is revised and the OMB control number is added to the end of the section, to read as follows:

§ 882.118 Obligations of the family.

(a) The family must:

(1) Supply such certification, release, information, or documentation as the PHA or HUD determines to be necessary, including the submission of Social Security Numbers and verifying documentation (as provided by 24 CFR part 750), and submissions required for

an annual or interim reexamination of family income and composition.

* * * * *

(Approved by the Office of Management and Budget under OMB control number 2577–0083)

78. In § 882.209, paragraph (a)(2) is revised and the OMB control number is added to the end of the section, to read as follows:

§ 882.209 Selection and participation.

(a) * * *

(2) The PHA must determine whether an applicant for participation: (i) Qualifies as a family; (ii) has disclosed and verified Social Security Numbers, as provided by 24 CFR part 750; and (iii) is income-eligible.

* * * * *

(Approved by the Office of Management and Budget under OMB approval number 2577–0083)

79. In § 882.212, paragraphs (a), (b), and (c) are revised and the OMB control number is added to the end of the section, as follows:

§ 882.212 Reexamination of family income and composition.

(a) *Regular reexaminations.* The PHA must reexamine the income and composition of all families at least once every 12 months. After consultation with the family and upon verification of the information, the PHA must make appropriate adjustments in the Total Tenant Payment in accordance with part 813 of this chapter and determine whether the family's unit size is still appropriate (see § 882.213). The PHA must adjust the Tenant Rent and the Housing Assistance Payment to reflect any change in Total Tenant Payment. At the time of the annual reexamination of family income and composition, the PHA must require the family to disclose and verify Social Security Numbers, as provided by 24 CFR part 750.

(b) *Interim reexaminations.* The family must comply with § 882.118 for the interim reporting of changes in income. If the PHA receives information concerning a change in the family's income or other circumstances between regularly scheduled reexaminations, the PHA just consult with the family and make any adjustments determined to be appropriate. Any change in the family's income or other circumstances that results in an adjustment in the Total Tenant Payment, Tenant Rent, and Housing Assistance Payment must be verified. See 24 CFR § 750.10(d)(2)(i) for the requirements for the disclosure and verification of Scoial Security Numbers at interim reexaminations involving new family members.

(c) *Continuation of housing assistance payments.* A family's eligibility for Housing Assistance Payments shall continue until the Total Tenant Payment equals the Gross Rent. The termination of eligibility at such point will not affect the family's other rights under its lease, nor will such termination preclude the resumption of payments as a result of later changes in income, rents or other relevant circumstances during the term of the Contract. However, eligibility also may be terminated in accordance with HUD requirements for such reasons as failure to submit requested verification information, including failure to meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 750.

* * * * *

(Approved by the Office of Management and Budget under OMB control number 2577–0083)

80. In § 882.514 paragraph (a)(1) is revised and the OMB control number is added to the end of the section, to read as follows:

§ 882.514 Family participation.

(a) *Initial determination of family eligibility.* (1) The PHA is responsible for receipt and review of applications, and determination of family eligibility for participation in accordance with HUD regulations (see parts 812 and 813, and 24 CFR part 750). The PHA is responsible for verifying the source and amount of the family's income and other information necessary for determining income eligibility and the amount of the assistance payments.

* * * * *

(Approved by the Office of Management and Budget under OMB control number 2577–0083)

81. Section 882.515 is revised to read as follows:

§ 882.515 Reexamination of family income and composition.

(a) *Regular reexaminations.* The PHA must reexamine the income and composition of all families at least once every 12 months. After consultation with the family and upon verification of the information, the PHA must make appropriate adjustments in the Total Tenant Payment in accordance with part 813 of this chapter and determine whether the family's unit size is still appropriate (see § 882.213). The PHA must adjust the Tenant Rent and the Housing Assistance Payment to reflect any change in Total Tenant Payment. At the time of the annual reexamination of family income and composition, the PHA must require the family to disclose and verify Social Security Numbers, as provided by 234 CFR part 750.

(b) *Interim reexaminations.* The family must comply with § 882.118 for the interim reporting of changes in income. If the PHA receives information concerning a change in the family's income or other circumstances between regularly scheduled income reexaminations, the PHA must consult with the family and make any adjustments determined to be appropriate. Any change in the family's income or other circumstances that results in an adjustment in the Total Tenant Payment, Tenant Rent, and Housing Assistance Payment must be verified. See 24 CFR 750.10(d)(2)(i) for the requirements for the disclosure and verification of Social Security Numbers for interim reexaminations involving new family members.

(c) *Continuation of housing assistance payments.* A family's eligibility for Housing Assistance Payments shall continue until the Total Tenant Payment equals the Gross Rent. The termination of eligibility at such point will not affect the family's other rights under its lease, nor will such termination preclude the resumption of payments as a result of later changes in income, rents or other relevant circumstances during the term of the Contract. However, eligibility also may be terminated in accordance with HUD requirements for such reasons as failure to submit requested verfication information, including failure to meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 750.

(Approved by the Office of Management and Budget under OMB approval number 2577–0083)

PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENICES

82. The authority citation for 24 CFR part 883 continues to read as follows:

Authority: Secs. 3, 5, 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

83. Part 883, subpart D, is amended by adding a new § 883.412, to read as follows:

§ 883.412 Disclosure and verification of Social Security and Employer Identification Numbers by owners.

To be eligible to develop and own housing assisted under the program, the owner (other than a public entity) must meet the disclosure and verification requirements for Social Security and

Employer Identification Numbers, as provided by 24 CFR part 750.

(Approved by the Office of Management and Budget under OMB control number 2502–0204)

84. In § 883.702, paragraph (b) is revised and the OMB control number is added to the end of the section, to read as follows:

§ 883.702 Responsibilities of owner.

* * * * *

(b) *Management and maintenance.* The owner is responsible for all management functions (including provision of Federal selection preferences in accordance with § 883.714, selection of tenants, obtaining and verifying Social Security Numbers submitted by families (as provided by 24 CFR part 750), reexamination of family income, evictions and other terminations of tenancy, and collection of rents) and all repair and maintenance functions (including ordinary and extraordinary maintenance and replacement of capital items). All these functions must be performed in compliance with applicable Equal Opportunity requirements.

* * * * *

Approved by the Office of Management and Budget under OMB control number 2502–0204

85. In § 883.704, the introductory text of paragraph (b), and paragraphs (b)(3), and (c), are revised and the OMB control number is added to the end of the section, to read as follows:

§ 883.704 Selection and admission of tenants.

* * * * *

(b) *Determination of eligibility and selection of tenants.* The owner is responsible for determining whether the applicant is eligible, in accordance with parts 812 and 813 of this chapter and part 750 of chapter VII. The owner is also responsible for the selection of families, including giving a Federal selection preference in accordance with § 883.714.

* * * * *

(3) If the owner determines that an applicant is ineligible on the basis of income or family composition, or because of failure to meet the disclosure and verification requirements for Social Security Numbers (as provided by 24 CFR part 750), or if the owner is not selecting the applicant for other reasons, the owner will promptly notify the applicant in writing of the determination and its reasons, and that the applicant has the right to meet with the owner or managing agent in accordance with HUD requirements. Where the owner is a PHA, the applicant may request an informal hearing. If the PHA determines that the applicant is not eligible, the PHA will notify the applicant and inform the applicant that he or she has the right to request a review by the Agency and HUD of the PHA's determination. The applicant may also exercise other rights if the applicant believes that he or she is being discriminated against on the basis of race, color, religion, sex, or national origin. The informal review provisions for the denial of a Federal preference under § 883.714 are contained in paragraph (k) of that section.

* * * * *

(c) *Reexamination of family income and composition*—(1) *Regular reexaminations.* The owner must reexamine the income and composition of all families at least once every 12 months. After consultation with the family and upon verification of the information, the owner must make appropriate adjustments in the Total Tenant Payment in accordance with part 813 of this chapter and determine whether the family's unit size is still appropriate. The owner must adjust the Tenant Rent and the Housing Assistance Payment to reflect any change in Total Tenant Payment and must carry out any unit transfer required by HUD. At the time of the annual reexamination of family income and composition, the owner must require the family to disclose and verify Social Security Numbers, as provided by 24 CFR part 750.

(2) *Interim reexaminations.* The family must comply with the provisions of its lease regarding interim reporting of changes in income. If the owner receives information concerning a change in the family's income or other circumstances between regularly scheduled reexaminations, the owner must consult with the family and make adjustments determined to be appropriate. Any change in the family's income or other circumstances that results in an adjustment in the Total Tenant Payment, Tenant Rent, and Housing Assistance Payment must be verified. See 24 CFR 750.10(d)(2)(i) for the requirements for the disclosure and verification of Social Security Numbers for interim reexaminations involving new family members.

(3) *Continuation of housing assistance payments.* A family's eligibility for Housing Assistance Payments continues until the Total Tenant Payment equals the Gross Rent. The termination of eligibility at such point will not affect the family's other rights under its lease, nor will such termination preclude the resumption of payments as a result of later changes in income, rents or other relevant circumstances during the term of the Contract. However, eligibility also may be terminated, in accordance with HUD requirements, for such reasons as failure to submit requested verification information, including failure to meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 750.

(Approved by the Office of Management and Budget under OMB control number 2502–0204

86. In § 883.708, paragraph (b)(3) is revised and the OMB control number is added to the end of the section, to read as follows:

§ 883.708 Termination of tenancy and modification of lease.

* * * * *

(b) * * *

(3) *Material noncompliance.* Material noncompliance with the lease includes: (i) One or more substantial violations of the lease; or (ii) repeated minor violations of the lease that disrupt the livability of the building, adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related facilities; interfere with the management of the building; or have an adverse financial effect on the building or project. Failure of the family to timely submit all required information on family income and composition or eligibility factors (including failure to disclose and verify Social Security Numbers, as provided by 24 CFR part 750), or knowingly providing incomplete or inaccurate information, will constitute a substantial violation of the lease. Nonpayment of rent or any other financial obligation due under the lease (including any portion thereof) beyond any grace period permitted under State law will constitute a substantial violation of the lease. The payment of rent or any other financial obligation due under the lease after the due date but within the grace period permitted under State law will constitute a minor violation.

* * * * *

(Approved by the Office of Management and Budget under OMB control number 2502–0204)

PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS

87. The authority citation for part 884 continues to read as follows:

Authority: Secs. 3, 5, 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

88. In § 884.118, paragraphs (a)(3) and (a)(7) are revised and the OMB control number is added to the end of the section, to read as follows:

§ 884.118 Responsibilities of the owner.

(a) * * *

(3) Performance of all management functions, including the taking of applications; selection of families, including verification of income, provision of Federal selection preferences in accordance with § 884.226, obtaining and verifying Social Security Numbers submitted by applicants (as provided by 24 CFR part 750), and other pertinent requirements; and determination of eligibility and amount of tenant rent in accordance with HUD-established schedules and criteria.

* * * * *

(7) Reexamination of family income and composition; redetermination, as appropriate, of the amount of Tenant Rent and the amount of housing assistance payment in accordance with part 813; and obtaining and verifying Social Security Numbers submitted by participants, as provided by 24 CFR part 750.

* * * * *

(Approved by the Office of Management and Budget under OMB control number 2502–0204).

89. Part 884, subpart A, is amended by adding a new § 884.117, to read as follows:

§ 884.117 Disclosure and verification of Social Security and Employer Identification Numbers by owners.

To be eligible to become an owner of housing assisted under this part, the owner (other than a PHA) must meet the diclosure and verification requirements for Social Security and Employer Identification Numbers, as provided by 24 CFR part 705.

(Approved by the Office of Management and Budget under OMB control number 2502–0204)

90. In § 884.218, paragraphs (a) and (b) are revised and the OMB control number is added to the end of the section, to read as follows:

§ 884.218 Reexamination of family income and composition.

(a) *Regular reexaminations.* The owner must reexamine the income and composition of all families at least once each year. Upon verification of the information, the owner must make appropriate adjustments in the Total Tenant Payment in accordance with part 813 of this chapter and determine whether the family's unit size is still appropriate. The owner must adjust the Tenant Rent and the Housing Assistance Payment to reflect any change in Total Tenant Payment and carry out any unit transfer required by HUD. At the time of the annual reexamination of family income and composition, the owner must require the family to disclose and verify Social Security Numbers, as provided by 24 CFR part 750.

(b) *Interim reexaminations.* The family must comply with the provisions of its lease regarding interim reporting of changes in income. If the owner receives information concerning a change in the family's income or other circumstances between regularly scheduled reexaminations, the owner must consult with the family and make any adjustments determined to be appropriate. Any change in the family's income or other circumstances that result in an adjustment in Total Tenant Payment, Tenant Rent, and Housing Assistance Payment must be verified. See 24 CFR 750.10(d)(2)(i) for the requirements for the disclosure and verification of Social Security Numbers at interim reexaminations involving new family members.

* * * * *

(Approved by the Office of Management and Budget under OMB control number 2502–0204)

PART 885—LOANS FOR HOUSING FOR THE ELDERLY OR HANDICAPPED

91. The authority citation for part 885 continues to read as follows:

Authority: Sec. 202, Housing Act of 1959 (12 U.S.C. 1701q); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

92. Part 885, subpart B, is amended by adding a new § 885.211, to read as follows:

§ 885.211 Disclosure and verification of Social Security and Employer Identification Numbers by owners.

To be eligible to become an owner of housing assisted under this subpart, the owner must meet the diclosure and verification requirements for Social Security and Employer Identification Numbers, as provided by 24 CFR part 750.

(Approved by the Office of Management and Budget under OMB control numbers 2502–0204 and 2502–0267)

92a. Part 885, subpart C, is amended by adding a new § 885.711 to read as follows:

§ 885.711 Disclosure and verification of Social Security and Employer Identification Numbers by owners.

To be eligible to become an owner of housing assisted under this subpart, the owner must meet the disclosure and verification requirements for Social Security and Employer Identification Numbers, as provided by 24 CFR part 750.

(Approved by the Office of Management and Budget under OMB control numbers 2502–0204 and 2502–0267)

92b. In § 885.950, paragraphs (a), (c)(1), (2), and (c)(3)(ii), and the introductory language of paragraph (b), are revised and the OMB control numbers are added at the end of the section, to read as follows:

§ 885.950 Selection and admission of tenants.

(a) *Application for admission.* The Borrower must accept applications for admission to the project in the form prescribed by HUD. Applicant families applying for assisted units (or residential spaces in a group home) must complete a certification of eligibility as part of the application for admission. Applicant families must meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 750. Both the Borrower and the applicant family must complete and sign the application for admission. On request, the Borrower must furnish copies of all applications for admission to HUD.

(b) *Determination of eligibility and selection of tenants.* The Borrower is responsible for determining whether applicants are eligible for admission and for the selection of families. To be eligible for admission, an applicant family must be a handicapped family (as defined in § 885.5); must meet any project occupancy requirements approved by HUD under § 885.755(a)(1); must meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 750; and must be a lower income family, as defined by § 813.102 (as modified by § 885.5). Under certain circumstances, HUD may permit the leasing of units (or residential space in a group home) to ineligible families under § 885.915.

* * * * *

(c) *Reexamination of family income and composition*—(1) *Regular reexaminations.* If the family occupies an assisted unit (or residential space in a group home), the Borrower must reexamine the income and composition of the family at least every 12 months.

Upon verification of the information, the Borrower must make appropriate adjustments in the total tenant payment in accordance with part 813, as modified by § 885.5, and must determine whether the family's unit size is still appropriate. The Borrower must adjust tenant rent and the project assistance payment, and must carry out any unit transfer in accordance with HUD standards. At the time of a reexamination under this paragraph (c)(1), the Borrower must require the family to meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 750.

(2) *Interim reexaminations.* If the family occupies an assisted unit (or residential space in a group home), the family must comply with the provisions in its lease regarding interim reporting of changes in income. If the Borrower receives information concerning a change in the family's income or other circumstances between regularly scheduled reexaminations, the Borrower must consult with the family and make any adjustments determined to be appropriate. See 24 CFR 750.10(d)(2)(i) for the requirements for the disclosure and verification of Social Security Numbers at interim reexaminations involving new family members. Any change in the family's income or other circumstances that result in an adjustment in the total tenant payment, tenant rent, and project assistance payment must be verified.

(3) * * *

(ii) A family's eligibility for project assistance payment may also be terminated in accordance with HUD requirements for such reasons as failure to submit requested verification information, including information relating the disclosure and verification of Social Security Numbers, as provided by 24 CFR part 750.

(Approved by the Office of Management and Budget under OMB control numbers 2502–0204 and 2502–0267)

92c. In § 885.955, paragraph (a)(2) is revised, and the OMB control numbers are added at the end of the section, to read as follows:

§ 885.955 Obligations of the family.

(a) * * *

(2) Supply such certification, release, information, or documentation as the Borrower or HUD determines necessary, including information and documentation relating to the disclosure and verification of Social Security Numbers, as provided by 24 CFR part 750.

* * * * *

(Approved by the Office of Management and Budget under OMB control numbers 2502–0204 and 2502–0267)

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

93. The authority citation for 24 CFR part 886 continues to read as follows:

Authority: Secs. 3, 5, 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

94. In part 886, subpart A, § 886.105 is amended by revising the heading, by adding a new undesignated paragraph at the end, and by adding the OMB control number to the end of the section, to read as follows:

§ 886.105 Content of application; Disclosure.

* * * * *

To be eligible to become an owner of housing assisted under this subpart, the owner must meet the disclosure and verification requirements for Social Security and Employer Identification Numbers, as provided by 24 CFR part 750.

(Approved by the Office of Management and Budget under OMB control number 2502–0204)

95. In § 886.119, paragraphs (a)(3) and (a)(7) are revised and the OMB control number is added at the end of the section, to read as follows:

§ 886.119 Responsibilities of owner.

(a) * * *

(3) Performance of all management functions, including the taking of applications; selection of families, verification of income, provision of Federal selection preferences in accordance with § 886.132, obtaining and verifying Social Security Numbers submitted by applicants (as provided by 24 CFR part 750), and other pertinent requirements; and determination of eligibility and amount of Tenant Rent in accordance with part 813 of this chapter.

* * * * *

(7) Reexamination of family income and composition; redetermination, as appropriate, of the amount of Tenant Rent and the amount of housing assistance payment in accordance with part 813; collection of rent; and obtaining and verifying participant Social Security Numbers, as provided by 24 CFR part 750.

* * * * *

(Approved by the Office of Management and Budget under OMB control number 2502–0204)

96. Section 886.124 is revised to read as follows:

§ 886.124 Reexamination of family income and composition.

(a) *Regular reexaminations.* The owner must reexamine the income and composition of all families at least once each year. Upon verification of the information, the owner must make appropriate adjustments in the Total Tenant Payment in accordance with part 813 of this chapter and determine whether the family's unit size is still appropriate. The owner must adjust the Tenant Rent and the Housing Assistance Payment to reflect any change in Total Tenant Payment and carry out any unit transfer required by HUD. At the time of the annual reexamination of family income and composition, the owner must require the family to disclose and verify Social Security Numbers, as provided by 24 CFR part 750.

(b) *Interim reexaminations.* The family must comply with provisions in its lease regarding the interim reporting of changes in income. If the owner receives information concerning a change in the family's income or other circumstances between regularly scheduled reexaminations, the owner must consult with the family and make any adjustments determined to be appropriate. Any change in the family's income or other circumstances that results in an adjustment to Total Tenant Payment, Tenant Rent, and Housing Assistance Payment must be verified. See 24 CFR 750.10(d)(2)(i) for the requirements for the disclosure and verification of Social Security Numbers for interim reexaminations involving new family members.

(c) *Continuation of housing assistance payments.* A family's eligibility for housing assistance payments will continue until the Total Tenant Payment equals the Gross Rent. The termination of eligibility will not affect the family's other rights under its lease, nor will such termination preclude the resumption of payments as a result of later changes in income, rents, or other relevant circumstances during the term of the Contract. However, eligibility also may be terminated in accordance with program requirements for such reasons as failure to submit requested verification information, including failure to meet the disclosure and verification requirement for Social Security Numbers, as provided by 24 CFR part 750.

(Approved by the Office of Management and Budget under OMB control number 2502–0204)

97. In part 886, subpart C, a new § 886.305 is added, to read as follows:

§ 886.313 Disclosure and verification of Social Security and Employer Identification Numbers by owners.

To be eligible to become an owner of housing assisted under this subpart, the owner must meet the disclosure and verification requirements for Social Security and Employer Identification Numbers, as provided by 24 CFR part 750.

(Approved by the Office of Management and Budget under OMB control number 2502–0204)

98. In § 886.318, paragraphs (a)(3) and (a)(6) are revised and the OMB control number is added at the end of the section, to read as follows:

§ 886.318 Responsibilities of the owner.

(a) * * *

(3) Performance of all management functions, including the taking of applications; selection of families in accordance with the owner's tenant selection factors approved by HUD and the Federal preferences in accordance with § 886.337; obtaining and verifying Social Security Numbers submitted by applicants, as provided by 24 CFR part 750; verification of income and other pertinent requirements; and determination of eligibility and amount of tenant rent in accordance with part 813 of this chapter;

(6) Reexamination of family income, composition, and extent of exceptional medical or other unusual expenses; redeterminations, as appropriate, of the amount of Tenant Rent and the amount of housing assistance payment in accordance with part 813 of the chapter; and obtaining and verifying Social Security Numbers submitted by participants, as provided by 24 CFR part 750.

(Approved by the Office of Management and Budget under OMB control number 2502–0204)

99. Section 886.324 is revised to read as follows:

§ 886.324 Reexamination of family income and composition.

(a) *Regular reexaminations.* The owner must reexamine the income and composition of all families at least once each year. Upon verification of the information, the owner must make appropriate adjustments in the Total Tenant Payment in accordance with part 813 of this chapter and determine whether the family's unit size is still appropriate. The owner must adjust the Tenant Rent and the Housing Assistance Payment to reflect any change in Total Tenant Payment and carry out any unit transfer required by HUD. At the time of the annual reexamination of family income and composition, the owner must require the family to disclose and verify Social Security Numbers, as provided by 24 CFR part 750.

(b) *Interim reexaminations.* The family must comply with the provisions in its lease regarding interim reporting of changes in income. If the owner receives information concerning a change in the family's income or other circumstances between regularly scheduled reexaminations, the owner must consult with the family and make any adjustments determined to be appropriate. Any change in the family's income or other circumstances that results in an adjustment in Total Tenant Payment, Tenant Rent, and Housing Assistance Payment must be verified. See 24 CFR 750.10(d)(2)(i) for the requirements for the disclosure and verification of Social Security Numbers for interim reexaminations involving new family members.

(c) *Continuation of housing assistance payments.* A family's eligibility for housing assistance payments will continue until the Total Tenant Payment equals the Gross Rent. The termination of eligibility at such point will not affect the family's other rights under its lease, nor will such termination preclude the resumption of payments as a result of later changes in income, rents, or other relevant circumstances during the term of the Contract. However, eligibility also may be terminated in accordance with HUD requirements for such reasons as failure to submit requested verification information, including failure to meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 750.

(Approved by the Office of Management and Budget under OMB control number 2502–0204)

PART 887—HOUSING VOUCHERS

100. The authority citation for part 887 continues to read as follows:

Authority: Secs. 3, 5, 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

101. In § 887.105, paragraph (b)(1) is revised and the OMB control number is added to the end of the section, to read as follows:

§ 887.105 PHA responsibilities.

(b) * * *

(1) Publish and disseminate information concerning the availability and nature of housing assistance for lower income families (see § 887.107); invite owners to make units available for leasing in the program and develop working relationships with real estate associations and other appropriate groups (see § 887.109); explain program procedures to owners, including those who have been approached by housing voucher holders; obtain and verify Social Security Numbers submitted by families, as provided by 24 CFR part 750; comply with equal opportunity requirements, including efforts to provide opportunities for recipients to seek housing outside areas of economic and racial concentration.

(Approved by the Office of Management and Budget under OMB control number 2577–0083)

102. In § 887.355, paragraph (a) is revised and the OMB control number is added to the end of the section, to read as follows:

§ 887.355 Regular reexamination of family income and composition.

(a) The PHA must reexamine family income and family size and composition at least annually, and in accordance with part 813 of this chapter. At the time of the annual reexamination, the PHA must obtain and verify Social Security Numbers submitted by families, as provided by 24 CFR part 750.

(Approved by the Office of Management and Budget under OMB control number 2577–0083)

103. Section 887.357 is revised to read as follows:

§ 887.357 Interim reexamination of family income and composition.

A family may request a redetermination of the housing assistance payment at any time, based on a change in the family's income, adjusted income, size or composition. See 24 CFR 750.10(d)(2)(i) for the requirements for the disclosure and verification of Social Security Numbers for interim reexaminations involving new family members.

(Approved by the Office of Management and Budget under OMB control number 2577–0083)

104. In § 887.401, paragraph (a)(1) is revised and the OMB control number is added at the end of the section, to read as follows:

§ 887.401 Family responsibilities.

(a) A family must:

(1) Supply any certificate, release, information, or documentation that the PHA or HUD determines to be necessary in the administration of the program (including the disclosure and verification of Social Security Numbers (as provided by 24 CFR part 750)), and other information required for use by the

PHA in a regularly scheduled reexamination or interim reexamination of family income and composition in accordance with HUD requirements.

(Approved by the Office of Management and Budget under OMB control number 2577–0083)

PART 900—SECTION 23 HOUSING ASSISTANCE PAYMENTS PROGRAM—NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION

105. The authority citation for part 900 continues to read as follows:

Authority: Sec. 10(b), United States Housing Act of 1937 (42 U.S.C. 1410(b)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

106. In § 900.103, paragraphs (i) and (j) are revised and the OMB control number is added at the end of the section, to read as follows:

§ 900.103 Basic policies.

* * * * *

(i) *Responsibilities of the LHA.* The LHA is responsible for determining family eligibility for assistance in accordance with provisions of parts 912 and 913, and family eligibility and continuing eligibility for assistance in accordance with 24 CFR part 750; determining the amount of adjusted income, the amount of rent payable by the family, and housing assistance payments in accordance with part 913; issuing Certificates of Family Participation to eligible families; notifying families determined eligible; approving owner-family leases; making housing assistance payments on behalf of eligible families; reexamining family eligibility at least annually; inspecting units before leasing, and at least annually thereafter, to determine that the units are maintained in decent, safe and sanitary condition (failure to do so shall constitute a Substantial Default by the LHA under the Annual Contributions Contract); authorizing evictions; and complying with equal opportunity requirements. The LHA must provide advice and guidance to eligible families in finding suitable housing, including advice and guidance to families experiencing discrimination, in an affirmative manner to further the policies of title VI of the Civil Rights Act of 1964, title VIII of the Civil Rights Act of 1968 and Executive Order 11063.

(j) *Responsibilities of the family.* A family receiving housing assistance under this program is responsible for fulfilling all its obligations under both the lease with the owner and the Certificate of Family Participation issued to it by the LHA; for cooperating with reexamination requirements; and for disclosing and verifying Social Security Numbers, as provided by 24 CFR part 750.

* * * * *

(Approved by the Office of Management and Budget under OMB control number 2577–0083)

107. In § 900.202, paragraphs (d)(3) and (f)(2)(iii) are revised and the OMB control number is added at the end of the section, to read as follows:

§ 900.202 Project operation.

* * * * *

(d) * * *

(3) That the request cannot be approved because the family is not eligible (including ineligibility caused by the family's failure to meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 750), or the dwelling unit or the proposed lease does not meet program requirements.

* * * * *

(f) * * * (2) * * *

(iii) The LHA determines that the family continues to be eligible for such assistance (including continued eligibility under 24 CFR part 750).

* * * * *

(Approved by the Office of Management and Budget under OMB control number 2577–0083)

PART 904—LOW RENT HOUSING HOMEOWNERSHIP OPPORTUNITIES

108. The authority citation for part 904 continues to read as follows:

Authority: United States Housing Act of 1937 (42 U.S.C. 1437–1437(q); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

109. In § 904.104, paragraph (c) is revised and the OMB control number is added at the end of the section, to read as follows:

§ 904.104 Eligibility and selection of homebuyers.

* * * * *

(c) *Determination of eligibility and preparation of list.* The LHA, without participation of a recommending committee (see paragraph (e)(1) of this section), must determine the eligibility of each applicant family in respect to the income limits for the development and the disclosure and verification of Social Security Numbers (as provided by 24 CFR part 750), and must then assign each eligible applicant its appropriate place on a waiting list for the development, in sequence based upon the date of the application, suitable type or size of unit, qualification for a Federal preference in accordance with § 904.122, and factors affecting preference or priority established by the LHA's regulations. Notwithstanding the fact that the LHA may not be accepting additional applications because of the length of the waiting list, the LHA may not refuse to place an applicant on the waiting list if the applicant is otherwise eligible for participation and claims that he or she qualifies for a Federal preference as provided in § 904.122(c)(2), unless the LHA determines, on the basis of the number of applicants who are already on the waiting list and who claim a Federal preference, and the anticipated number of admissions to housing under Turnkey III, that—

(1) There is an adequate pool of applicants who are likely to qualify for a Federal preference; and

(2) It is unlikely that, on the basis of the LHA's system for applying the Federal preferences, the preference or preferences that the applicant claims, and the preferences claimed by applicants on the waiting list, the applicant would qualify for admission before other applicants on the waiting list.

* * * * *

(Approved by the Office of Management and Budget under OMB control number 2577–0083)

110. In § 904.107, paragraph (m)(1) is revised and the OMB control number is added at the end of the section, to read as follows:

§ 904.107 Responsibilities of homebuyer.

* * * * *

(m) *Termination by LHA.* (1) If the homebuyer breaches the Homebuyers Ownership Opportunity Agreement by failure to make the required monthly payment within 10 days after its due date, by misrepresenting or withholding information (including the failure to meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 750) in applying for admission or in connection with any subsequent reexamination of income and family composition, or by failure to comply with any of the other homebuyer obligations under the Agreement, the LHA may terminate the Agreement. No termination under this paragraph may occur less than 30 days after the LHA gives the homebuyer notice of its intent to do so in accordance with paragraph (m)(3) of this section.

* * * * *

(Approved by the Office of Management and Budget under OMB control number 2577–0083)

PART 905—INDIAN HOUSING

111. The authority citation for 24 CFR part 905 continues to read as follows:

Authority: Secs. 201, 202, 203, 205, United States Housing Act of 1937 (42 U.S.C. 1437aa, 1437bb, 1437cc, 1437ee); sec. 7(b), Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

112. Section 905.302 is amended by adding a new paragraph (b)(2)(v) and the OMB control number to the end of the section, to read as follows:

§ 905.302 Admission policies.

* * * * *

(b) * * *

(2) * * *

(v) To achieve compliance with 24 CFR part 750, which requires applicants and participants to disclose and verify Social Security Numbers at the time eligibility is determined and at later income reexaminations.

(Approved by the Office of Management and Budget under OMB control number 2577–0083)

113. Section 905.406 is amended by adding a new paragraph (a)(3) and the OMB control number at the end of the section, to read as follows:

§ 905.406 Selection of MH homebuyers.

(a) *Admission policies.* * * *

(3) All admissions under this part are subject to the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 750.

* * * * *

(Approved by the Office of Management and Budget under OMB control number 2577–0083)

PART 913—DEFINITION OF INCOME, INCOME LIMITS, RENT AND REEXAMINATION OF FAMILY INCOME FOR THE PUBLIC HOUSING AND INDIAN HOUSING PROGRAMS

114. The authority citation for part 913 continues to read as follows:

Authority: Secs. 3, 6, 16, 201, 202, 203, 205, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437d, 1437n, 1437aa, 1437bb, 1437cc, 1437ee); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

115. In § 913.109, paragraph (a) is revised and the OMB control number is added to the end of the section, to read as follows:

§ 913.109 Initial determination, verification, and reexamination of family income and composition.

(a) *Responsibility for initial determination and reexamination.* The PHA is responsible for determination of eligibility for admission; for determination of Annual Income, Adjusted Income and Total Tenant Payment; and for reexamination of family income and composition at least annually, as provided in pertinent program regulations and handbooks (part 960, subpart B, and 24 CFR part 750). As used in this part, the "effective date" of an examination or reexamination refers to (1) in the case of an examination for admission, the effective date of initial occupancy, and (2) in the case of a reexamination of an existing tenant, the effective date of the redetermined Total Tenant Payment.

* * * * *

(Approved by the Office of Management and Budget under OMB control number 2577–0083)

PART 960—ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING

116. The authority citation for 24 CFR part 960 continues to read as follows:

Authority: Secs. 3, 5, 6, 16, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437d, 1437n); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

117. In § 960.204, paragraph (c)(5) is revised to read as follows:

§ 960.204 PHA tenant selection policies.

* * * * *

(c) * * *

(5) Be in compliance with State, local and Federal laws and regulations, including the nondiscrimination requirements of title VI of the Civil Rights Act of 1964, the provisions of the ACC, and 24 CFR part 750.

* * * * *

118. In § 960.206, paragraph (a) is revised and the OMB control number is added to the end of the section, to read as follows:

§ 960.206 Verification procedures.

(a) *General.* Adequate procedures must be developed to obtain and verify information with respect to each applicant. (See part 913 of this chapter and 24 CFR part 750). Information relative to the acceptance or rejection of an applicant or the grant or denial of a Federal preference under § 960.211, must be documented and placed in the applicant's file.

* * * * *

(Approved by the Office of Management and Budget under OMB control number 2577–0083)

119. Section 960.209 is revised to read as follows:

§ 960.209 Reexamination of family income and composition.

(a) *Regular reexaminations.* The PHA must reexamine the income and composition of all tenant families at least once every 12 months and determine whether the family's unit size is still appropriate. After consultation with the family and upon verification of the information, the PHA must make appropriate adjustments in the Total Tenant Payment and Tenant Rent in accordance with part 913 of this chapter. At the time of the annual reexamination of family income and composition, the PHA must require the family to disclose and verify Social Security Numbers, as provided by 24 CFR part 750.

(b) *Interim reexaminations.* The family must comply with the provisions of its lease regarding interim reporting of changes in income. If the PHA receives information concerning a change in the family's income or other circumstances between regularly scheduled reexaminations, the PHA must consult with the family and make any adjustments determined to be appropriate. Any change in the family's income or other circumstances that results in adjustment in the Total Tenant Payment or Tenant Rent must be verified. 24 CFR 750.10(d)(2)(i) for the requirements for the disclosure and verification of Social Security Numbers for interim reexaminations involving new family members.

(Approved by the Office of Management and Budget under OMB control number 2577–0083)

Dated: May 22, 1989.

Jack Kemp,

Secretary.

[FR Doc. 89–22752 Filed 9–26–89; 8:45 am]

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federal register

Wednesday
September 27, 1989

Part V

Department of Housing and Urban Development

Office of the Secretary

Responsibilities of the Secretary Under the Financial Institutions Reform, Recovery and Enforcement Act of 1989; Regulatory Review Board; Notice of Internal Organization

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-89-2038; FR-2686]

Responsibilities of the Secretary Under the Financial Institutions Reform, Recovery and Enforcement Act of 1989; Regulatory Review Board

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of internal organization.

SUMMARY: This notice informs the public of the organizational means by which the Secretary of Housing and Urban Development will exercise the various authorities and responsibilities given to the Secretary under the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (Public Law No. 101-73, approved August 9, 1989), as well as the Secretary's existing regulatory authority over the Federal National Mortgage Association under its Charter Act (12 U.S.C. 1716). The Secretary is creating within the Department a Regulatory Review Board to assist the Secretary in these various tasks.

FOR FURTHER INFORMATION CONTACT: J. Stephen Britt, Deputy General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-7244. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION:

a. Statutory Background

The Department has supervisory authority over the Federal National Mortgage Association (FNMA) under title III of the National Housing Act and has issued regulations governing FNMA that are codified at 24 CFR part 81. Now section 731(c) of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) gives the Secretary similar authority over the reconstituted Federal Home Loan Mortgage Corporation (FHLMC).

In addition, section 501 of FIRREA makes the Secretary a member of the Oversight Board of the Resolution Trust Corporation (RTC), which is created to take over certain functions of the Federal Savings and Loan Insurance Corporation (FSLIC), along with the Secretary of the Treasury, the Chairman of the Federal Reserve, and two independent members. The duties of the Oversight Board are, among other things, to develop and establish overall strategies, policies and goals for the RTC; to review rules, regulations, and procedures of the RTC; to review the overall performance of the RTC and require reports and audits; to establish a national advisory board and regional advisory boards; and to authorize RTC's sale of capital certificates to the newly created Resolution Funding Corporation.

By virtue of section 702 of FIRREA, the Secretary of Housing and Urban Development is also one of the Directors of the Federal Housing Finance Board (FHFB), which succeeds to the credit and financing responsibilities of the now-abolished Federal Home Loan Bank Board over Federal Home Loan Banks. In addition to the Secretary, four citizens appointed by the President and confirmed by the Senate will serve on this Board. Until at least two of those directors are appointed and confirmed, the Secretary alone acts for the Board.

Finally, the Secretary is to serve on the Interim Board of Directors of the reconstituted Federal Home Loan Mortgage Corporation—until the first meeting of the voting common shareholders, when shareholders will elect thirteen directors to join five Presidential appointees as the new Freddie Mac permanent board, in accordance with section 731(b)(2) of FIRREA. After the Secretary's interim directorship ends, he will continue to exercise the Department's regulatory authority over the Federal Home Loan Mortgage Corporation.

b. Coordination of the Secretary's Responsibilities

There is a clear need for coordination of these new responsibilities of the Secretary under FIRREA with the Department's existing oversight authority over FNMA and with the conduct of HUD's own programs. All the affected entities have a role to play in the conduct of a National Housing Policy and their insurance, regulatory and mortgage-purchase functions present many opportunities for cooperation and innovation.

In order to coordinate HUD's oversight and regulatory authority over these entities and to ensure that housing policy considerations, especially those advancing low and moderate income housing, are consistently applied, the Secretary is creating, within the Department of Housing and Urban Development, a Regulatory Review Board. This Board will collect the necessary information for all related policy and regulatory actions, formulate options as appropriate, and present recommendations to the Secretary for decision. The Under Secretary will be the Chairman of the Regulatory Review Board, and the other members of the Board shall be the President of the Government National Mortgage Association (GNMA), the General Counsel, the Assistant Secretary for Housing-FHA Commissioner, and the Assistant Secretary for Policy Development and Research.

At present, the Regulatory Review Board will assign one staff member to arrange meetings, prepare correspondence, draft option papers, and prepare Board recommendations. The Board will draw upon other staff in the Department for assistance, as necessary.

The Regulatory Review Board's responsibilities will include, but not be limited to, the following:

—Review of policy and regulatory matters before the RTC Oversight Board, the Federal Housing Finance Board, and the FHLMC Interim Board, and recommend actions to the Secretary in his capacity as a member of these Boards;

—Conduct of policy and regulatory oversight and review, and operational monitoring of the FHLMC;

—Conduct of policy and regulatory oversight and review, and operational monitoring of the operations of the FNMA;

—Undertaking any other action that the Secretary shall assign in connection with his responsibilities regarding the RTC Oversight Board, the Federal Housing Finance Board, the FHLMC, the FNMA, and HUD's own programs.

Dated: September 19, 1989.

Jack Kemp,

Secretary.

[FR Doc. 89-22853 Filed 9-26-89; 8:45 am]

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federal register

Wednesday
September 27, 1989

Part VI

Department of Transportation

Federal Railroad Administration

49 CFR Part 219

Alcohol/Drug Regulations; Designation of Post-Accident Testing Laboratory; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 219

[FRA Docket No. RSOR-6, Notice No. 26]

RIN 2130-AA43

Amendment to Alcohol/Drug Regulations; Designation of Post-Accident Testing Laboratory

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Final rule.

SUMMARY: FRA issues an amendment to its final rule on Control of Alcohol and Drug Use in Railroad Operations that designates a new post-accident testing laboratory. The address of the new laboratory is CompuChem Laboratories—Western Division, Attention: Clinical Department, 600W North Market Boulevard, Sacramento, California 95834.

DATES: This final rule amendment is effective October 1, 1989. However, railroads arranging for shipment of toxicology kits on or after the date of publication of this Federal Register should instruct medical facilities to ship those kits to the new laboratory.

FOR FURTHER INFORMATION CONTACT: Dr. Sam Holley, Manager, Railroad Safety Alcohol and Drug Program (RRS-10), Office of Safety, FRA, Washington, DC 20590 (Telephone: (202) 366-0501).

SUPPLEMENTARY INFORMATION: This amendment announces designation of a new FRA contract laboratory for the purpose of analysis of specimens submitted under the program of mandatory post-accident toxicological testing. The new laboratory address must be used in shipping toxicology kits pursuant to Subpart C of part 219, title 49, Code of Federal Regulations. Railroads should obtain new mailing labels directly from the designated laboratory, which will also handle sale of new and replacement toxicology kits. In order to ensure a smooth transition to the new laboratory, to the extent practicable toxicology kits prepared for shipment on and after the date of this Federal Register should be shipped to the new designated laboratory.

Regulatory Procedures

The Administrator finds that notice and opportunity for comment are not required because the subject amendment involves a rule of agency organization, procedure and practice. The Administrator further finds that there is good cause for making the rule effective in less than 30 days from the date of publication, since transfer of contractual responsibility will occur on October 1, 1989, at the end of the current contract period. Continuity of operations is important to ensure that specimens are analyzed in a timely manner.

This amendment to the final rule has been evaluated in accordance with existing regulatory policies. It is neither a "major" rule under Executive Order 12291 nor a "significant" rule as defined under DOT policies and procedures. The amendment does not have any paperwork, Federalism, or economic impact. Because the amendment does not have any economic impact, FRA has not prepared a regulatory evaluation. It is certified that this rule will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act (5 U.S.C. 60 et seq.).

Therefore, in consideration of the foregoing, part 219, title 49, Code of Federal Regulations is amended as follows:

List of Subjects in 49 CFR Part 219

Railroad safety, Control of alcohol and drug use.

PART 219—[AMENDED]

1. The authority citation for Part 219 continues to read as follows:

Authority: 45 U.S.C. 431, 437, and 438, as amended; Pub. L. 100-342; and 49 CFR 1.49(m).

2. Part 219 is amended as follows:

Appendix B—[Revised]

The text of Appendix B—Designation of Laboratory for Post-Accident Toxicological Testing is revised to read as follows:

The following laboratory is currently designated to conduct post-accident toxicological analysis under Subpart C of this part:

CompuChem Laboratories—Western Division, Attention: Clinical Department, 600W North Market Boulevard, Sacramento, California 95834. Telephone No. (915) 923-0840.

Issued in Washington, DC, on September 25, 1989.

Susan M. Coughlin,

Deputy Administrator.

[FR Doc. 89-22986 Filed 9-26-89; 10:41 am]

BILLING CODE 4910-06-M

federal register

Wednesday
September 27, 1989

Part VII

The President

Executive Order 12691—President's Advisory Committee on the Points of Light Initiative Foundation

Federal Register
Vol. 54, No. 186
Wednesday, September 27, 1989

Presidential Documents

Title 3—

The President

Executive Order 12691 of September 23, 1989

President's Advisory Committee on the Points of Light Initiative Foundation

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to establish, in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App. 2), an advisory committee on the Points of Light Initiative, a foundation to be established to foster and promote community service, it is hereby ordered as follows:

Section 1. *Establishment.* (a) There is established the President's Advisory Committee on the Points of Light Initiative Foundation ("Committee"). The Committee shall be composed of not more than five members to be appointed by the President.

(b) The President shall appoint a Chairman and Vice Chairman from among the members of the Committee.

Sec. 2. *Functions.* The Committee shall advise the President, by written report to be submitted within forty-five (45) days of the Committee's first meeting, with respect to the legal structure of the Points of Light Initiative Foundation and the legislation needed to establish the Foundation.

Sec. 3. *Administration.* (a) The Director of the Office of National Service in the Executive Office of the President and the heads of executive agencies shall provide, to the extent permitted by law, the Committee with such information with respect to community service issues and such other support as it may require for purposes of carrying out its functions under this order.

(b) Members of the Committee shall serve without compensation for their work on the Committee. However, members appointed from among private citizens of the United States shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in Government service (5 U.S.C. 5701–5707).

(c) The Office of National Service in the Executive Office of the President shall provide, to the extent permitted by law and subject to the availability of funds, the Committee with administrative services, funds, and other support services as may be necessary for the effective performance of its functions hereunder.

(d) Notwithstanding any other executive order, the functions of the President under the Federal Advisory Committee Act, as amended, except that of reporting to the Congress, which are applicable to the Committee, shall be performed by the Director of the Office of National Service, in accordance with guidelines and procedures established by the Administrator of General Services.

Sec. 4. *General.* The term of the Committee shall expire on June 30, 1991, unless sooner extended.

THE WHITE HOUSE,
September 23, 1989.

[FR Doc. 89-22991
Filed 9-26-89; 10:49 am]
Billing code 3195-01-M

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