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Briefings on How To Use the Federal Register
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Federal Register



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Contents

Federal Register

Vol. 54, No. 197

Friday, October 13, 1989

Agency for Toxic Substances and Disease Registry

NOTICES

Superfund program:

- Hazardous substances priority list (toxicological profiles), 42042

Agricultural Marketing Service

PROPOSED RULES

- Almonds grown in California, 41979

Agriculture Department

See also Agricultural Marketing Service; Animal and Plant Health Inspection Service; Forest Service

NOTICES

- Agency information collection activities under OMB review, 42000

Alcohol, Drug Abuse, and Mental Health Administration

NOTICES

- Meetings; advisory committees: November, 42043

Animal and Plant Health Inspection Service

PROPOSED RULES

- Exportation and importation of animals and animal products:

- Horse quarantine facility standards; fees collection at animal quarantine facilities
- Correction, 42144

Arts and Humanities, National Foundation

See National Foundation on the Arts and the Humanities

Blind and Other Severely Handicapped, Committee for Purchase From

See Committee for Purchase From the Blind and Other Severely Handicapped

Centers for Disease Control

NOTICES

Meetings:

- Mine Health Research Advisory Committee (NIOSH), 42044

- Reproductive potential in females; assessment methods; NIOSH meeting, 42045

Coast Guard

RULES

Drawbridge operations:

- Massachusetts, 41964
- Ohio, 41965

PROPOSED RULES

Drawbridge operations:

- Washington, 41991

Vessel documentation and measurement:

- Controlling interest; citizenship requirements, 41992

NOTICES

Meetings:

- National Boating Safety Advisory Council, 42138 (2 documents)
- Towing Safety Advisory Committee, 42138

Commerce Department

See Export Administration Bureau; International Trade Administration; National Oceanic and Atmospheric Administration

Committee for Purchase From the Blind and Other Severely Handicapped

NOTICES

Procurement list, 1989:

- Additions and deletions, 42009, 42010 (2 documents)

Defense Department

NOTICES

Meetings:

- Science Board task forces, 42010 (2 documents)

Employment and Training Administration

NOTICES

Adjustment assistance:

- AT&T Microelectronics et al., 42113
- Getter Trucking, Inc., 42114
- Imprimis Technology, Inc., 42114

Employment Standards Administration

NOTICES

- Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 42112

Energy Department

See also Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department; Western Area Power Administration

RULES

Financial assistance:

- Discretionary financial assistance applications; objective merit review policy, 41943

Environmental Protection Agency

NOTICES

Environmental statements; availability, etc.:

- Agency statements—
- Comment availability, 42030
- Weekly receipts, 42031

Meetings:

- Reproductive effects of toxicants in human males, study methods; workshop, 42031

Pesticide programs:

- Special review—
- 2,4-D, 2,4-DB, and 2,4-DP, 42032
- Pesticides; emergency exemptions, etc.: Permethrin, etc.; correction, 42144

Toxic and hazardous substances control:

- Chemical testing—
- Data receipt, 42034

Executive Office of the President

See Presidential Documents

Export Administration Bureau**NOTICES**

Export privileges, actions affecting:

Giga Control, Inc., 42002

Meetings:

Computer Systems Technical Advisory Committee, 42003, 42004

(5 documents)

Family Support Administration**RULES**

Public assistance programs:

Aid to families with dependent children (AFDC)—

Job opportunities and basic skills training programs;
child care and supportive services, 42146**Federal Aviation Administration****RULES**

Airworthiness directives:

Boeing, 41958

Lockheed, 41959

McDonnell Douglas, 41960

Airworthiness standards:

Special conditions—

Caproni Model C22J series airplane, 41955

PROPOSED RULES

Airworthiness directives:

Fokker, 41987, 41988

(2 documents)

Airworthiness standards:

Aircraft engines; and rotorcraft; normal and transport
categories—New one-engine-inoperative ratings; new one-engine-
inoperative power ratings and engine type
certification standards, 41986**Federal Communications Commission****RULES**

Frequency allocations and radio treaty matters:

International fixed public radiocommunications, 41974

NOTICES

Meetings:

AM radio improvement issues; En Banc hearing, 42035, 42036

(2 documents)

Federal Emergency Management Agency**RULES**

Flood insurance program:

Manufactured homes in existing manufactured home
parks or subdivisions; elevation requirements
Correction, 42144**Federal Energy Regulatory Commission****NOTICES**

Natural gas certificate filings:

United Gas Pipe Line Co. et al., 42010

Applications, hearings, determinations, etc.:

Alabama-Tennessee Natural Gas Co., 42013

Algonquin Gas Transmission Co., 42013

ANR Pipeline Co., 42014

Carnegie Natural Gas Co., 42014

Columbia Gas Transmission Corp., 42015

Columbia Gulf Transmission Co., 42015

East Tennessee Natural Gas Co., 42016

Florida Gas Transmission Co., 42016

KN Energy, Inc., 42016

Mississippi River Transmission Corp., 42017

(2 documents)

Mississippi River Transmission Corp. et al., 42018

Questar Pipeline Co., 42018

Texas Eastern Transmission Corp., 42019

Texas Gas Transmission Corp., 42019

Transcontinental Gas Pipe Line Corp., 42020

Transwestern Pipeline Co., 42020

Trunkline Gas Co., 42020

Federal Highway Administration**NOTICES**

Environmental statements; notice of intent:

Alameda and Santa Clara Counties, CA, 42139

Hennepin County, MN, 42139

Lehigh County, PA, 42140

Federal Maritime Commission**NOTICES**Agency information collection activities under OMB review,
42036

Agreements filed, etc., 42036, 42037

(3 documents)

Meetings; Sunshine Act, 42143

Federal Reserve System**NOTICES**

Meetings; Sunshine Act, 42143

Federal Trade Commission**NOTICES**

Prohibited trade practices:

Goodyear Tire & Rubber Co. et al., 42037

Ronby Corp. et al., 42040

Fish and Wildlife Service**PROPOSED RULES**

Endangered and threatened species:

Desert tortoise, 42270

NOTICES

Environmental statements; availability, etc.:

Stephens' kangaroo rat; incidental taking; Riverside
County, CA, 42056**Food and Drug Administration****NOTICES**

Food for human consumption:

Tuna, canned; identity standard, 42045

Forest Service**NOTICES**

Environmental statements; availability, etc.:

Angeles National Forest, CA, 42000

Little Missouri National Grasslands, Custer National
Forest, ND, 42001**Health and Human Services Department**

See Agency for Toxic Substances and Disease Registry;

Alcohol, Drug Abuse, and Mental Health

Administration; Centers for Disease Control; Family

Support Administration; Food and Drug Administration;

Health Care Financing Administration; Health

Resources and Services Administration; Public Health

Service

Health Care Financing Administration**RULES****Medicaid:**

- Management information system; mechanized claims processing and information retrieval system; revised definition, 41966

Health Resources and Services Administration

See also Public Health Service

NOTICES

- Grants and cooperative agreements; availability, etc.:
 - Family medicine—
 - Predoctoral training, 42045

Hearings and Appeals Office, Energy Department**NOTICES**

- Decisions and orders, 42021

Housing and Urban Development Department**NOTICES**

- Grants and cooperative agreements; availability, etc.:
 - Facilities to assist homeless—
 - Excess and surplus Federal property, 42047

Interior Department

See Fish and Wildlife Service; Land Management Bureau; National Park Service

Internal Revenue Service**RULES****Income taxes:**

- Capital losses and excess credits; use of pre-change tax attributes
 - Correction, 41962

PROPOSED RULES**Income taxes:**

- Capital losses and excess credits; use of pre-change tax attributes
 - Correction, 41990

International Trade Administration**NOTICES****Antidumping:**

- Spun acrylic yarn from Italy, 42005

Countervailing duties:

- Computer aided software engineering products from Singapore, 42009

International Trade Commission**NOTICES****Import investigations:**

- Artificial breast prostheses, 42058
- Methods of making carbonated candy products, 42057

Interstate Commerce Commission**NOTICES****Motor carriers:**

- Compensated intercorporate hauling operations, 42058
- Railroad operation, acquisition, construction, etc.:
 - CSX Corp. et al., 42058

Railroad services abandonment:

- Central of Georgia Railroad Co., 42059

Justice Department

See also Prisons Bureau

NOTICES**Pollution control; consent judgments:**

- Microfab, Inc., et al., 42059

Milprint, Inc., 42060

R.E.A.G. et al., 42060

Privacy Act:

- Systems of records, 42060

Labor Department

See Employment and Training Administration; Employment Standards Administration; Mine Safety and Health Administration; Pension and Welfare Benefits Administration

Land Management Bureau**NOTICES****Classification of public lands:**

- Idaho; correction, 42144

Environmental statements; availability, etc.:

- California Islands Wildlife Sanctuary, 42047

Meetings:

- Rawlins District Grazing Advisory Board, 42048
- Worland District Advisory Council, 42048

Oil and gas leases:

- Wyoming, 42048

Opening of public lands:

- Montana, 42049
- Nevada, 42049

Realty actions; sales, leases, etc.:

- Colorado, 42050
- Montana, 42050
- Nevada, 42051
- New Mexico, 42050

Survey plat filings:

- Arizona, 42051
- Florida, 42052

Withdrawal and reservation of lands:

- Arizona, 42052
 - (2 documents)
- California, 42053
- California; correction, 42054
- Montana, 42054
- Washington, 42055

Mine Safety and Health Administration**NOTICES****Safety standard petitions:**

- Aluminum Co. of America, 42114, 42115
 - (2 documents)

National Archives and Records Administration**NOTICES**

- Agency records schedules; availability, 42115

National Foundation for the Arts and the Humanities**NOTICES****Meetings:**

- Arts National Council, 42116
- Literature Advisory Panel, 42116

National Institute for Occupational Safety and Health

See Centers for Disease Control

National Oceanic and Atmospheric Administration**RULES****Fishery conservation and management:**

- Bering Sea and Aleutian Islands groundfish, 41977
- Gulf of Alaska groundfish, 41976
- Northeast multispecies, 41975
- Northern anchovy, 41976
- Northern anchovy; correction, 41975

NOTICES**Meetings:**

Caribbean Fishery Advisory Council, 42009

National Park Service**NOTICES**

Concession contract negotiations:
Leeks Lodge Marina, 42057

National Science Foundation**NOTICES**

Antarctic Conservation Act of 1978; permit applications,
etc., 42116
(2 documents)

Nuclear Regulatory Commission**PROPOSED RULES**

Production and utilization facilities; domestic licensing:
Nuclear power plants—
License renewal; technical and policy consideration;
public workshop, 41980

NOTICES

Applications, hearings, determinations, etc.:

All Chemical Isotope Enrichment, Inc., 42117
Cleveland Electrical Illuminating Co. et al., 42118
GPU Nuclear Corp., 42119
Rockwell International Corp., 42119
Yankee Atomic Electric Co., 42119

Office of United States Trade Representative

See Trade Representative, Office of United States

Oversight Board**RULES**

Resolution Funding Corporation; operations, 41948

Pension and Welfare Benefits Administration**NOTICES****Meetings:**

Employee Welfare and Pension Benefit Plans Advisory
Council, 42115

Pension Benefit Guaranty Corporation**RULES****Multiemployer plans:**

Valuation of plan benefits and plan assets following mass
withdrawal—
Interest rates, 41963
Withdrawal liability; notice and collection; interest rates,
41962

Postal Rate Commission**NOTICES**

Mail classification schedule, 1989; first-class delivery
standards realignment; prehearing conference, 42120

Presidential Documents**PROCLAMATIONS***Special observances:*

Domestic Violence Awareness Month, National
(Proc. 6043), 42281
Job Skills Week, National (Proc. 6044), 42283

EXECUTIVE ORDERS

Committees; establishment, renewal, termination, etc.:
Physical Fitness and Sports, President's Council;
membership (EO 12694), 42285

Prisons Bureau**NOTICES**

Environmental statements; availability, etc.:
Brooklyn, NY, 42112

Public Health Service

See also Agency for Toxic Substances and Disease
Registry; Alcohol, Drug Abuse, and Mental Health
Administration; Centers for Disease Control; Food and
Drug Administration; Health Resources and Services
Administration

NOTICES

Agency information collection activities under OMB review,
42046

Securities and Exchange Commission**NOTICES**

Agency information collection activities under OMB review,
42120

Self-regulatory organizations; proposed rule changes:

American Stock Exchange, Inc., 42121
Government Securities Clearing Corp., 42122
Municipal Securities Rulemaking Board, 42124
New York Stock Exchange, Inc., 42127
Pacific Stock Exchange, Inc., 42128

Applications, hearings, determinations, etc.:

Fidelity Guaranty Life Insurance Co. et al., 42129
Public utility holding company filings, 42131

State Department**NOTICES****Meetings:**

International Telegraph and Telephone Consultative
Committee, 42132, 42133
(3 documents)
Shipping Coordinating Committee, 42133

Tennessee Valley Authority**NOTICES**

Environmental statements; availability, etc.:
Reservoir system; aquatic plant control, 42133

Toxic Substances and Disease Registry Agency

See Agency for Toxic Substances and Disease Registry

Trade Representative, Office of United States**NOTICES**

Generalized System of Preferences:

Petition withdrawal under 1989 annual review [Editorial
Note: This document, appearing on page 41889 in the
issue of October 12, 1989, was incorrectly indexed in
the table of contents of that issue.]

Transportation Department

See also Coast Guard; Federal Aviation Administration;
Federal Highway Administration; Urban Mass
Transportation Administration

PROPOSED RULES**Tariffs:**

Airline time and mileage guides, 41989

NOTICES

Agency information collection activities under OMB review,
42134

Aviation proceedings:

Hearings, etc.—

International air service opportunities to more U.S.
cities, 42137

Midway Airlines, Inc., et al., 42137

Treasury Department

See Internal Revenue Service

Urban Mass Transportation Administration

NOTICES

Environmental statements; availability, etc.:

Hunt Valley Corridor, Baltimore, MD, 42141

Veterans Affairs Department

NOTICES

Meetings:

Environmental Hazards Advisory Committee, 42142

Western Area Power Administration

NOTICES

Power rate adjustments:

Loveland Area Projects, CO, 42025

Separate Parts In This Issue

Part II

Department of Health and Human Services, Family Support
Administration, 42146

Part III

Department of the Interior, Fish and Wildlife Service, 42270

Part IV

The President, 42279

Reader Aids

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR	662 (2 documents).....	41975,
Proclamations:		41976
6043.....	42281	672.....
6044.....	42283	675.....
Executive Orders:		41977
12345 (Amended by		Proposed Rules:
EO 12694).....	42285	17.....
12694.....	42285	42270
7 CFR		
Proposed Rules:		
981.....	41979	
9 CFR		
Proposed Rules:		
92.....	42144	
10 CFR		
600.....	41943	
Proposed Rules:		
50.....	41980	
12 CFR		
1510.....	41948	
1511.....	41948	
14 CFR		
21.....	41955	
23.....	41955	
39 (3 documents).....	41958-	
	41960	
Proposed Rules:		
1.....	41986	
27.....	41986	
29.....	41986	
33.....	41986	
39 (2 documents).....	41987,	
	41988	
221.....	41989	
26 CFR		
1.....	41962	
602.....	41962	
Proposed Rules:		
1.....	41990	
602.....	41990	
29 CFR		
2644.....	41962	
2676.....	41963	
33 CFR		
117 (2 documents).....	41964,	
	41965	
Proposed Rules:		
117.....	41991	
42 CFR		
433.....	41966	
44 CFR		
60.....	42144	
45 CFR		
205.....	42146	
224.....	42146	
233.....	42146	
234.....	42146	
238.....	42146	
239.....	42146	
240.....	42146	
250.....	42146	
255.....	42146	
256.....	42146	
46 CFR		
Proposed Rules:		
67.....	41992	
47 CFR		
2.....	41974	
50 CFR		
651.....	41975	

Rules and Regulations

Federal Register

Vol. 54, No. 197

Friday, October 13, 1989

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

DEPARTMENT OF ENERGY

Office of the Secretary

10 CFR Part 600

Financial Assistance Rules; Revised Policy on Objective Merit Review of Discretionary Financial Assistance Applications

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy today is revising subparts A and B of the Financial Assistance Rules, 10 CFR part 600, to establish standards for program offices to follow in conducting the objective merit review of discretionary financial assistance applications, to provide authority for program assistant secretaries to issue general solicitations covering broad areas of research for which financial assistance is being made available, and to establish a requirement whereby applicants may receive an evaluation of their submission. In addition, this revision gives recipients of financial assistance research awards expanded authority to rebudget among categories and authority to carry over funds from one funding period to the next, to incur preaward costs, and to extend project periods without prior approval under certain circumstances. These changes will maintain the Federal stewardship over the funds being awarded while simultaneously allowing research to be done more efficiently and productively.

EFFECTIVE DATE: Effective November 13, 1989.

FOR FURTHER INFORMATION CONTACT:

Edward F. Sharp, Business and Financial Policy Division (MA-422), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586-8192.

Christopher Smith, Office of the Assistant General Counsel for Procurement and Finance (GC-34), U.S. Department of Energy, Washington, DC 20585 (202) 586-1526.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction
- II. Changes to 10 CFR Part 600
- III. Discussion of Comments on Proposed Rule
- IV. Review under Executive Order 12291
- V. Review under the Regulatory Flexibility Act
- VI. Review under the Paperwork Reduction Act
- VII. Review under the National Environmental Policy Act
- VIII. Review Under Executive Order 12612

I. Introduction

With this final rule, the Department of Energy (DOE) is amending its Financial Assistance Rules to establish standards for program offices in setting up procedures for the objective merit review of discretionary financial assistance applications. The changes also allow recipients of financial assistance research awards authority, without obtaining prior approval from the Contracting Officer, to (1) rebudget among categories; (2) carry over funds from one funding period to the next; (3) incur limited preaward costs; and (4) extend project periods without additional funds.

Also, today's rule establishes an outline for a Department-wide process for the review of applications for financial assistance. Requests for financial assistance funds are to be reviewed and evaluated by the DOE based on scientific merit of the project, applicant's qualifications, adequacy of applicant's facilities and resources, project appropriateness to the mission of the DOE, and other appropriate factors established and set forth by the cognizant program office. The DOE review process is to consist of review by DOE personnel for scientific and technical merit and program policy matters and may include external review by Federal (including DOE) and non-Federal personnel either as part of a standing committee, ad hoc committee, or field reader review for scientific and technical merit. The Federal/non-Federal composition of the review groups may vary, as long as objective review standards are maintained.

Additionally, this rule allows the issuance of general solicitations such that applications which are in the subject area of one of the programs listed in the solicitation may be treated as having been in response to the general solicitation.

Finally, a provision regarding evaluations of applications provides that, upon request, the applicant will receive a written summary of the evaluation.

The DOE has concluded that the other changes regarding prior approvals, carryovers, preaward costs and project extensions (which are the DOE's implementation of recommendations stemming from the Federal Demonstration Project) will provide additional flexibility to financial assistance recipients and reduce the work involved in managing financial assistance awards without adversely affecting appropriate Federal oversight of certain awards.

II. Changes to 10 CFR Part 600

Section 600.3 is amended by inserting in alphabetical order definitions for "ad hoc committee," "field readers," "objective merit review," "responsible official," and "standing committee," and changing the definition of "research."

Section 600.9 is amended by revising paragraph (a)(1) to provide authority for program assistant secretaries to issue general solicitations. Paragraph (c)(10) is amended to allow program offices to establish due dates or periods appropriate for the receipt of applications. Multiple receipt dates throughout the year may be established which would permit applications to be "bunched" and reviewed in comparison to each other. Paragraph (c)(12)(vi) is changed to provide that solicitations must contain specific requirements for non-statutory cost sharing when cost sharing is to be considered in the selection process.

Section 600.16 is amended by revising paragraph (a) to establish the responsibility of the program office for setting up an objective merit review system and ensuring its satisfactory functioning. A new paragraph (b) is added to set out basic review requirements, including the goal to normally obtain review by at least three individuals who have no other responsibilities concerning the financial assistance applications being reviewed.

A new paragraph (c) has been added to outline requirements for comparative review. A new paragraph (d) has been added to describe the types of review processes which may be used, which include field readers, standing committees, and ad hoc committees. A new paragraph (e) has been added establishing a requirement for providing the applicant with an evaluation of his/her application. A new paragraph (f) has been added to address situations in which the reviewer has an interest in the application being reviewed. A new paragraph (g) has been added to establish deviation procedures from this part of the rule. Existing paragraphs (b) and (c) have been redesignated paragraphs (h) and (i).

Section 600.31 is amended by including a provision allowing recipients of financial assistance research awards to extend the final year of a project period without receiving the prior approval of the DOE. Recipients must take this action prior to the originally established expiration date and notify the DOE within ten days of the extension.

Section 600.32 is amended to allow recipients of financial assistance research awards to carry over unexpended funds in a continuation award without the prior approval of the DOE.

Section 600.103 is amended to eliminate all Federal prior approval requirements for a recipient of financial assistance research awards (including those in OMB Circulars A-21 and A-110) except for change in objective or scope, temporary replacement or change of principal investigator, change of key personnel, and change of the institution to which the award is made. It is also amended to establish the authority of these recipients to incur pre-award costs of up to 90 days prior to a new or renewal award. The section also provides that, if a recipient takes such an action, the DOE is not, therefore, obligated to issue an award.

III. Discussion of Comments on Proposed Rule

On March 15, 1989 (54 FR 10670), DOE published a proposed rule to establish standards for program offices in setting up procedures for the objective merit review of discretionary financial assistance applications, and to implement the provisions of the Federal Demonstration Project (FDP) which would allow recipients of financial assistance research awards expanded authority to act in several areas without obtaining prior approval from the Contracting Officer. Written comments were to be submitted by April 14, 1989.

Three institutions of higher education submitted comments.

All three commenters requested that DOE change its proposal which limits the recipient's ability to extend the length of the project period without additional funds to the last budget period of a project period. They assert that the proposed provision (600.31(d)(1)) is contrary to what is being permitted in the FDP which, they contend, allows any budget period to be extended. They also view reserving the extension without additional funds authority to the last budget period to be an unnecessary restriction.

DOE has reviewed the applicable provision in the FDP and determined the limitation in the proposed rule is not inconsistent with that provision. DOE has also verified with other Federal participants in the FDP that the intention and implementation of the applicable provision have been to limit that authority to the final budget period of the project period. Additionally, it is noted that if recipients did have the authority to extend earlier budget periods, funding needs for the project might well extend into a later fiscal year than the federal agency had anticipated, thereby complicating its budget planning.

For the reasons stated in the previous paragraph, DOE will continue to limit the provision regarding extensions without additional funds to the final budget period as provided in the proposed rule.

The three commenters also requested that DOE change the provision in the proposed rule that permits DOE to adjust the amounts awarded in future budget periods based on the amount the recipient estimates is remaining in the previously completed year (§ 600.32(c)(2)). They noted that this is not consistent with the similar provision in the FDP concerning carryover and that such adjustments would have to rely on an estimate that would be of questionable reliability as it would be made well in advance of the end of the budget year.

DOE agrees with these comments and has changed the final rule to conform with the provision regarding carryover in the FDP. The recipient will have the ability to carryover funds without the approval of DOE, but will be required to report to DOE the amount of funds unobligated in the Financial Status Report to be submitted after the budget period is over. A sentence has been added which permits DOE to request recipients to provide information in the progress report regarding budget expenditures.

One commenter stated that the words " * * the costs must be otherwise in accordance with these rules" in § 600.103(g)(2)(iii) are confusing and unneeded. After careful consideration of the comment, DOE has concluded that while some readers may see the phrase as simply expressing a truism (that is, a recipient may not do what it is not permitted to do), it is important to retain the phrase so that the removal of prior approval requirements in the proposed rule not be interpreted as a general waiver of other portions of DOE's financial assistance rules and the applicable OMB circulars. For example, a cost would still have to be allowable to be incurred, even if agency prior approval were not needed to incur it.

One commenter stated that Contracting Officers should have the authority to approve pre-award costs retroactively. DOE's financial assistance rules currently provide that the Contracting Officer may approve pre-award costs prior to incurrence. Retroactive approval would require a deviation under § 600.4. DOE did not propose to change the retroactive approval requirement in the proposed rule and still does not see a reason to do so.

As a result of comments by DOE staff, the following clarifying changes have been made to the proposed rule.

The role of field readers acting as a standing committee in § 600.16(d)(iii) is clarified to emphasize that even though geographically dispersed, they should operate as if they were a standing committee to the degree possible.

In § 600.31(d)(1), the apostrophe after "recipients" and the word "award" have been deleted to remove an awkward phrasing.

In § 600.31(d)(2), the introductory clause is moved to the middle of the sentence and the word "other" is deleted. In § 600.31(d)(2)(i), the references to "research" and "non-research" are eliminated. These changes retain the authority of a Contracting Officer to authorize extensions without additional funds for all types of financial assistance. This authority currently exists in DOE's financial assistance rules and was inadvertently limited in the proposed rule.

In § 600.32(c)(2), the sentence "The recipient shall not be entitled to reimbursement if a continuation award is not made" has been relocated in the section to make its meaning clearer.

Section 600.103(g) is changed to drop the phrase "in the absence of appropriations". Absence of appropriations is envisioned to be already covered by the next clause "if

an award is not subsequently made" and raised the concern that a Contracting Officer might be giving approval for pre-award costs even though funds have not been appropriated.

IV. Review Under Executive Order 12291

Today's rule was reviewed under Executive Order 12291 (February 17, 1981). The DOE has concluded that the rule is not a "major rule" because its promulgation will not result in: (1) An annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete in domestic or export markets. In accordance with requirements of the Executive Order, this rulemaking has been reviewed by the Office of Management and Budget (OMB).

V. Review Under the Regulatory Flexibility Act

These regulations were reviewed under the Regulatory Flexibility Act of 1980, Public Law 96-354, 94 Stat. 1164, which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities; i.e., small businesses, small organizations, and small governmental jurisdictions. The DOE has concluded that the rule would only affect small entities as they apply for and receive financial assistance and does not create additional economic impact on small entities. The DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

VI. Review Under the Paperwork Reduction Act

No information collection or recordkeeping requirements are imposed upon the public by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980, 44 USC 3501, *et seq.*, or OMB's implementing regulations at 5 CFR part 1320.

VII. Review Under the National Environmental Policy Act

The DOE has concluded that promulgation of these wholly procedural rules clearly would not represent a

major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.* (1976)), the Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508), and the DOE guidelines (10 CFR part 1021) and, therefore, does not require an environmental impact statement pursuant to NEPA.

VIII. Review Under Executive Order 12612

Executive Order 12612 requires that regulations or rules be reviewed for substantial direct effects on States, on the relationship between the National Government and the States, or in the distribution of power among various levels of government. If there are sufficient substantial direct effects, E.O. 12612 requires preparation of a federalism assessment to be used in all decisions involved in promulgating or implementing a regulation or rule.

Today's regulatory amendments will have some direct effect on State recipients of financial assistance who receive research awards. The number of awards affected is very small, however, and thus there will be insufficient direct effect to warrant the preparation of a federalism assessment by DOE.

List of Subjects in 10 CFR Part 600

Administrative practice and procedure, Cooperative agreements/energy, Copyrights, Debarment and Suspension, Educational institutions, Energy, Grants/energy, Hospitals, Indian Tribal governments, Individuals, Inventions and patents, Nonprofit organizations, Reporting requirements, Small businesses.

In consideration of the foregoing, the DOE hereby amends chapter II of title 10 of the Code of Federal Regulations by amending part 600 as set forth below.

Issued in Washington, DC October 6, 1989.

Berton J. Roth,

Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set out in the preamble, part 6500 of chapter II, title 10 of the Code of Federal Regulations is amended as follows:

PART 600—[AMENDED]

1. The authority citation for part 600 continues to read as follows:

Authority: Sec. 644 and 646, Pub. L. 95-91, 91 Stat. 599 (42 U.S.C. 7254 and 7256); Pub. L. 97-258, 96 Stat. 1003-1005 (31 U.S.C. 6301-6308), unless otherwise noted.

2. Section 600.3 is amended by adding new definitions for "Ad hoc committee," "Field readers," "Objective merit

review," "Responsible official," and "Standing committee" in alphabetical order and by revising the definition of "Research" as follows:

§ 600.3 Definitions

Ad hoc committee means a temporary committee established to perform a single, specific short-term task, after which the committee disbands.

Field readers means persons with expertise to evaluate a specific application or category of applications. Field readers may act as independent individuals or as members of a group with the review generally being done by mail.

Objective merit review means a thorough, consistent and independent examination of applications based on pre-established criteria by persons knowledgeable in the field of endeavor for which support is requested. This sort of review is conducted to provide advice to selecting officials based on an evaluation of the scientific or technical merit. The reviewers themselves may be engaged in comparable efforts in institutions or organizations similar to the applicant's or have in the past been directly involved in such activities.

Research means any scientific or engineering activity which (1) constitutes a systematic, intensive study directed specifically toward greater knowledge or understanding of the subject studied and contributes to a continuing flow of new knowledge; or (2) is directed toward applying new knowledge to meet a recognized need; and/or (3) applies such knowledge toward the production of useful methods, including design, development and improvement of prototypes and new processes to meet established requirements.

Responsible official means the Head of a Departmental Element or a Program Assistant Secretary. These individuals are responsible for the system of objective merit review of financial assistance applications funded by their program or department element. The functions associated with the objective merit review may be delegated, but only to the level specified in the relevant sections of this part. The responsible official, however, remains ultimately responsible for the execution of these functions.

Standing committee means a long-term committee established to review applications and may be used when

required by legislation or when significant numbers of applications on specific topics are received periodically.

3. Section 600.9 is amended by revising paragraphs (a)(1) and (c)(8), (10), and (12)(vi) as follows:

§ 600.9 Solicitation.

(a) General. * * *

(1) A Program Assistant Secretary may annually issue a program notice describing research areas in which financial assistance is being made available. Such notice shall also state whether the research areas covered by the notice are to be added to those listed in a previously issued program rule. If they are to be included, then applications received as a result of the notice may be treated as having been in response to that previously published program rule. If they are not to be included, then applications received in response to the notice are to be treated as unsolicited applications. Solicitations (other than a program rule which serves to solicit applications), e.g., PONS and PRDAS, may be issued only by a DOE Contracting Officer.

(c) * * *

(8) The name of the responsible DOE Contracting Officer (or, for program notices, the program office contact) to contact for additional information, and, as appropriate, an address where application forms may be obtained;

(10) Appropriate periods or due dates for submission of applications and a statement describing the consequences of late submission. If programs have established a series of due dates to allow for the comparison of applications against each other, these dates shall be indicated in the solicitation;

(12) * * *

(vi) Sources of financing available to the project. Any expectation concerning cost sharing shall be clearly stated. While cost sharing is encouraged, unless the cost sharing expectation is addressed in the solicitation, it shall not be considered in the evaluation process and shall be considered only at the time the award is negotiated.

4. Section 600.16 is amended by revising paragraph (a), redesignating paragraphs (b) and (c) as (h) and (i), and by adding new paragraphs (b) through (g) as follows:

§ 600.16 Reviewer affiliation.

(a) *General.* (1) Each responsible official must establish and publish in the *Federal Register* the details of the system of objective merit review which

covers the financial assistance program administered by each cognizant program office within his or her jurisdiction within 120 days of the issuance of this rule for existing programs and prior to the review of applications for new programs. More than one program may adopt the same system. If a program wants to review an application or group of applications using the criteria and procedures of an already established review system other than its own, it may do so by following the deviation procedure described in paragraph (g) of this section. DOE employees designated by responsible officials to carry out the review process shall ensure that the evaluation of applications is conducted in a fair and objective manner.

(2) Objective merit review of financial assistance applications is intended to be advisory and is not intended to replace the authority of the program official with responsibility for deciding whether an award will be made. It is expected that the cognizant project/program officer (scientific monitor) who normally also reviews the proposals for technical/scientific merit, will, additionally, review it from a program policy perspective. Nevertheless, the objective merit review system must set forth the relationship between the reviewing individuals, or the review committees or groups, and the official who has the final decision-making authority. In defining this relationship, the system must set out, as a minimum, the decision-making and documentation processes to be followed by the authorized official responsible for selection when an adverse recommendation has been received through the objective merit review process.

(3)(i) This section applies to all new and renewal applications (except applications for conferences/symposia and for awards which come under the criteria of paragraph (a)(3)(ii) of this section) in programs which make discretionary financial assistance awards and to any other financial assistance programs in which objective merit review is required by the authorizing legislation.

(ii) For projects in which multiple renewals are probable, an objective merit review need not necessarily be done at each renewal, but instead at appropriate points in the overall project period. A determination that a project need not be reviewed at each renewal shall be made in writing by the project officer at the time the initial award is issued, or at least one year prior to the date a renewal award would be issued, and concurred in by an official at least one level above the official responsible for selecting the application for award.

The determination shall also indicate the reports required under the award. The criteria on which the determination that a project need not be reviewed at each renewal is based shall be included in the system of objective merit review to be established by the responsible official in accordance with paragraphs (a) (1) and (2) of this section.

(4) Each responsible official shall insure consistency among DOE field offices in the implementation of the review system(s) for his/her program area.

(5) Each formal review system must contain the elements listed in paragraphs (b) through (e) of this section.

(b) *Basic review standards.* (1) Each application may be assessed from a policy/programmatic perspective prior to undergoing merit review. Those that meet policy and programmatic considerations shall generally be reviewed by at least three qualified persons in addition to the official responsible for selection.

(2) The reviewers of any particular application may be any mixture of federal or non-federal experts, including individuals from within the cognizant program office, except as indicated otherwise below (see paragraphs (b)(3), (5) and (d)(2)(ii) of this section). The DOE shall select external (non-DOE Federal or non-federal) reviewers on the basis of their professional qualifications and expertise in the field of research.

(3) In selecting persons in accordance with § 600.16(b) (1) and (2) to review applications, such selection of additional reviewers shall not include, to the extent possible, anyone who, on behalf of the Federal Government, performed or is likely to perform any of the following duties for any of the applications:

(i) Providing substantive technical assistance to the applicant;

(ii) Approving/disapproving or having any decision-making role regarding the application;

(iii) Serving as the project officer or otherwise monitoring or evaluating the recipient's programmatic performance;

(iv) Serving as the Contracting Officer (CO), or performing business management functions for the project; or

(v) Auditing the recipient or the project.

Anyone who has line authority over a person who is ineligible to serve as a reviewer because of the above limitations is also ineligible to serve as a reviewer.

(4) It may occasionally be necessary, after the fact, to change project officer designation, thereby resulting in an

individual who participated in the review of an application being appointed as the project officer. This will not be considered a violation of this policy of objective merit review provided the assignment was not expected when the review was conducted.

(5) Persons outside the cognizant program office must not have been employees of that office, including having line authority over that office, for one year prior to participation as a reviewer in the objective merit review process for the program.

(c) *Comparative review.* (1) In order to enhance the validity of the evaluation and rating process, applications can be evaluated in comparison to each other.

(2) If a program area has issued a program notice, the responsible official may implement review procedures which will result in applications being evaluated in comparison to each other. Applications in response to that notice may be assigned to a group of field readers, to a standing committee, or to an ad hoc committee, as discussed below, which is capable of reviewing them, and may be considered along with other applications which were submitted in response to the program notice. Such an application may also be eligible for review under an applicable program announcement. For solicitations, review procedures may also permit comparative evaluation with field readers, a standing committee, or an ad hoc committee being used as appropriate.

(d) *Types of review groups.* (1) *Field readers.* (i) Objective merit review of applications may be obtained by using field readers to whom applications are sent for review and comment. Field readers may also be used as an adjunct to financial assistance application review committees when, for example, the type of expertise needed or the volume of financial assistance applications to be reviewed requires such auxiliary capacity.

(ii) Safeguards should be instituted to ensure that field readers clearly understand the process, their role, and the criteria upon which the applications are to be evaluated.

(iii) For those situations in which a standing committee is the appropriate review mechanism (see paragraph (d)(2) of this section), but a group of field readers must be used instead, it should function as nearly like a committee as possible. For example, if all members of the standing committee were to evaluate all of the applications under review, then all field readers must receive all of the applications to be reviewed even though they are in geographically

separate locations and all field readers should be instructed to follow the procedures established for evaluating the applications.

(2) *Standing committees.* (i) Standing committees are normally appropriate when required by legislation or when the following conditions prevail:

(A) A sufficient number of applications on specific topics to justify the use of a standing committee(s) is received by the program on a regular basis in accordance with a predetermined review schedule;

(B) There are a sufficient number of persons with the required expertise who are willing and able to (1) accept appointments, (2) serve over reasonably protracted periods of time, and (3) convene at regularly scheduled intervals or at the call of the chairperson; and

(C) The legislative authority for the particular program(s) involved extends for more than one year.

(ii) Persons outside the cognizant program office shall constitute at least half the reviewers on such committees unless a deviation from this requirement has been approved under § 600.16(g) below.

(3) *Ad hoc committees.* (i) Ad hoc review committees may not exceed one year in duration and are appropriately used when use of a standing committee is not feasible or when one of the following conditions prevails:

(A) A small number of applications is received on an intermittent basis;

(B) The program is one of limited duration, usually less than one year;

(C) The applications to be reviewed have been solicited to meet a specific program objective and cannot appropriately be reviewed by a standing committee because of subject matter, time constraints, or other limitations;

(D) The volume of applications received necessitates convening an additional committee(s) of available reviewers; or

(E) It is determined that the applications submitted have special review requirements, e.g., construction of a facility, the complexity of subject matter cuts across the areas of expertise of two or more standing committees, or the subject matter is of a special, nonrecurring nature.

(ii) Ad hoc committees may not be used for reviewing financial assistance applications for any program for which a standing committee has been established (except for paragraph (d)(3)(i)(D) of this section) unless a deviation is approved under § 600.16(g) below.

(e) *Review summary.* Upon request, applicants are to be provided with a

written summary of the evaluation of their application.

(f) *Reviewers with interest in application being reviewed.* Reviewers must comply with the requirements for the avoidance of conflict of interest established in § 600.17. In establishing a system of objective merit review required in § 600.16(a)(1), the responsible official shall develop procedures which will permit DOE to evaluate whether a conflict of interest exists. A committee or group of field readers which includes as objective merit reviewers any individuals who cannot meet the requirements of § 600.17 or the program's review procedures, with regard to a particular application being reviewed, e.g., officials mentioned in paragraphs (b) (3) and (5) of this section, shall operate as follows:

(1) These individuals or officials may not review, discuss, and/or make a recommendation on an application(s) in which they have a conflict of interest.

(2) In the case of a review committee, the committee member must absent himself or herself from the committee meeting during the review and discussion of the application(s) in which he/she has a conflict of interest.

(g) *Deviations.* (1) In any instance in which a program's pre-established review system is not to be used to review an application, group of applications, or class of applications, written prior approval for utilization of a different procedure, which itself must, to the extent possible, conform to the provisions of this section pertaining to objective merit review, must be obtained from the responsible official or his or her designee.

(2) If the deviation sought applies to a class of applications and constitutes a deviation from the requirements of this part, approval for deviation must be obtained in accordance with § 600.4. If such request for deviation is approved, all details of the review procedure utilized and the proceedings and determination must be fully documented.

* * * * *

5. Section 600.31 is amended by revising paragraph (d) to read as follows:

§ 600.31 Funding.

* * * * *

(d) *Extensions.* (1) Recipients of research awards may extend the expiration date of the final budget period of the project (thereby extending the project period) if additional time beyond the established expiration date is needed to assure adequate completion of the original scope of work within the

funds already made available. A single extension, which shall not exceed twelve (12) months, may be made for this purpose, and must be made prior to the originally established expiration date. The recipient must notify the cognizant DOE Contracting Officer in the awarding office in writing within ten (10) days of making the extension.

(2) DOE may extend any budget period of any type of financial assistance without the need for competition or a justification of restricted eligibility if:

(i) In the case of the final budget period of a project period, the additional time necessary is 18 months or less in total, or for all other budget periods, the additional time necessary is 6 months or less in total; and

(ii) The grantee submits a written request for an extension before the expiration date of the budget period in process and includes a justification for the extension along with an expenditure plan for the use of any additional funds requested. An expenditure plan need not be provided when no additional funds are requested, unless the grantee intends to rebudget funds in such a way as to require DOE prior approval or unless the grantee is instructed otherwise by the Contracting Officer.

6. Section 600.32 is amended by revising paragraph (c)(2), removing paragraph (d), redesignating paragraphs (e) and (f) as (d) and (e) and revising newly redesignated paragraphs (d) and (e) as follows:

§ 600.32 Calculation of award.

(c) *Unobligated balances—* * * *

(2) *Research grants.* Any unobligated balance of funds which remains at the end of any funding period, except the final funding period of the project period, may be carried over to the next funding period, and may be used to defray costs of the period into which it is carried over. The recipient shall not be entitled to reimbursement if a continuation award is not made. Recipients may be requested to provide information with regard to expenditures in the progress report covering the previously completed period. The recipient shall also include in the Financial Status Report, for the previously completed period, the amount of the unobligated balance as of the end of the funding period.

(d) *Added funding not required.* Nothing in paragraph (c) of this section shall in any way require the DOE to increase the total amount obligated for the project.

(e) *Adjustments.* Whenever DOE adjusts the amount of an award under this subpart, it shall also make an appropriate upward or downward adjustment to the amount of required cost sharing in order that the adjusted award maintain any required percentage of DOE and non-Federal participation in the costs of the project.

7. Section 600.103 is amended by revising paragraphs (b)(6) and (g) to read as follows:

§ 600.103 Cost determinations.

(b) *Cost principles.* * * *

(6) Before a recipient may make changes in the following areas on research financial assistance awards, the written approval of the cognizant Contracting Officer at the DOE is required: (i) Changes in objectives or scope, (ii) temporary replacement or change of principal investigator or change of key personnel, and (iii) change of the institution to which the award is to be made. All other Federal prior approval requirements, including those in OMB Circulars A-21 and A-110, are waived for research awards. The recipient may maintain such internal prior approval systems as it considers necessary.

(g) *Preaward costs—*(1) *All Awards.* Any preaward expenditures are made at the recipient's risk. Approval of preaward costs by the Contracting Officer or incurrence by the recipient does not impose any obligation on DOE if an award is not subsequently made, or if an award is made for a lesser amount than the recipient expected.

(2) *Research awards only.* (i) For new or renewal research awards, recipients may incur preaward costs up to ninety (90) days prior to the effective date of the award. Preaward costs for periods preceding 90 days prior to the effective date of the award are allowable only if approved in writing, prior to incurrence, by a DOE Contracting Officer.

(ii) For continuation awards within a multiple year project, prior to receipt of continuation funding, preaward expenditures by recipients are not subject to the limitation or approval requirements of paragraph (g)(2)(i) of this section.

(iii) Preaward costs, as incurred by the recipient, must be necessary for the effective and economical conduct of the project, and the costs must be otherwise in accordance with these rules and may not include those specific costs for which agency prior approval is required under the circulars. In any instance in which the circulars permit the agency to

grant prior approval to the recipient, it is the Department's intention to do so.

(3) *Other than research awards.* All other financial assistance recipients may incur preaward costs only if the expenditure is approved in writing, prior to incurrence, by the Contracting Officer. In the case of governmental entities, the approval must additionally be reflected on the award notice.

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BILLING CODE 6400-01-M

OVERSIGHT BOARD

12 CFR Parts 1510 and 1511

The Resolution Funding Corporation—Operations

AGENCY: Oversight Board.

ACTION: Final rule.

SUMMARY: The Oversight Board has adopted final regulations for the Resolution Funding Corporation. The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("Act"), established the Resolution Funding Corporation and the Resolution Trust Corporation. The Resolution Funding Corporation is required by the Act to provide funds to the Resolution Trust Corporation to enable it to carry out its purposes under the Act. These regulations prescribe the manner in which the Resolution Funding Corporation will operate and clarify the manner in which assessments will be made to capitalize the Resolution Funding Corporation.

EFFECTIVE DATE: These regulations are effective September 21, 1989.

FOR FURTHER INFORMATION CONTACT: Bradford B. Baker, Acting Executive Secretary, or Robert Frierson, attorney, at (202) 387-7575.

SUPPLEMENTARY INFORMATION:

A. General

On August 9, 1989, the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") was enacted into law. Among other things, the FIRREA added section 21B to the Federal Home Loan Bank Act (the "Act") which established a corporation known as the Resolution Funding Corporation ("Funding Corporation") to provide funds necessary for the Resolution Trust Corporation ("RTC") to carry out its purpose under the FIRREA. The Funding Corporation will issue bonds, notes, debentures, or similar obligations, and with the net proceeds thereof, it will purchase capital

certificates to be issued by the RTC. Pursuant to the provisions of FIRREA, the Federal home loan banks ("banks"), among others, are to provide funds to capitalize the Funding Corporation. The Oversight Board, established by title V, section 501(a)(1) of the FIRREA ("Board"), has general oversight over the Funding Corporation and Directorate of the Funding Corporation ("Directorate"), which is subject to such regulations, orders, and directions as the Board may prescribe.

The Board shall ensure that the aggregate amount of funds to capitalize the Funding Corporation is sufficient to purchase noninterest bearing instruments that are direct obligations of the United States and which, at maturity, will equal the aggregate amount of principal on the obligations of the Funding Corporation. The banks are also required to pay the administrative expenses, including custodian fees, of the Funding Corporation. To the extent that the Funding Corporation has not obtained funds sufficient to pay the interest due on its obligations from first, the earnings on certain assets of the Funding Corporation and, second, proceeds from the RTC, the banks shall pay each calendar year a certain amount to the Funding Corporation, less the amounts required in such year by the Financing Corporation, chartered pursuant to section 21 of the Act, and the Funding Corporation Principal Fund, to pay such interest expenses. To the extent the foregoing amounts are insufficient to cover interest payments, the FSLIC Resolution Fund shall transfer to the Funding Corporation any net proceeds from the sale of assets received from the RTC. Finally, the Secretary of the Treasury shall pay to the Funding Corporation such amounts necessary to cover any remaining shortfalls in interest payments.

B. Administrative Expenses Assessments for the Funding Corporation

Pursuant to new section 21B of the Act, the banks are required to pay the administrative expenses, including custodian fees, of the Funding Corporation. Each bank is required to pay an amount determined by multiplying the total administrative expenses for any period by the percentage calculated by dividing—

(i) The aggregate amount each bank is required to invest in the Funding Corporation pursuant to sections 21B(e)(4) and (5) of the Act; by,

(ii) The aggregate amount the Board has required all banks to invest as of the date of the determination under such sections.

This determination will not take into account amounts invested in the Funding Corporation by certain banks pursuant to section 21B(e)(6) of the Act for a bank whose investment was in excess of the limitation set forth in section 21B(e)(3) of the Act.

In order for the banks to be able to budget for anticipated administrative expenses, including custodian fees, the regulations enacted today provide that, on an annual basis, the banks will receive, from the Directorate, an approved budget of the Funding Corporation, detailing such expenses. Further, the Directorate will perform the calculation, based upon a method approved by the Board, and in accordance with section 21B(c)(7) of the Act, of each bank's pro rata share and will collect such expenses from the banks. Each bank will be required to forward its pro rata share of such expenses within ten (10) business days after receipt of notice from the Directorate of its pro rata share.

Section 21B provides that the Funding Corporation shall have no paid employees. However, the statute authorizes the Directorate, with the approval of the Federal Housing Finance Board, to authorize the officers, employees, or agents of the banks to act on behalf of the Funding Corporation.

C. Assessments of the Federal Home Loan Banks for the Funding Corporation

The regulations promulgated today clarify the manner in which the banks will be assessed in order to capitalize the Funding Corporation, and thereby fund the Funding Corporation Principal Fund, and also clarify the manner in which the banks will be assessed for interest payments on the outstanding obligations of the Funding Corporation when certain other sources of funds have been exhausted. Pursuant to the regulations promulgated today, the Directorate will coordinate the assessment of the banks. Such coordination will require receipt of earnings projections from the banks and funding projections from the Directorate, reviewed by the Board. On the basis of these projections, the Directorate shall calculate the amount of available bank funds and forward such calculation to the banks. Thereafter, the Directorate shall advise the banks at least fifteen (15) days in advance of the due date of the amount of funds actually required by the Funding Corporation. In calculating the limit pursuant to sections 21B(e)(3)(B) and (C) of the Act, if the amount invested in the Financing Corporation and the Funding Corporation exceeds \$300,000,000 in the aggregate in any one year, the excess amount shall be

credited in the following year or years, as the case may be. The Financing Corporation and the Funding Corporation shall coordinate the capital contribution demands of the respective entities.

D. Establishment, Maintenance and Funding of Reserve Accounts

The amount of any bank's allocation of the funds required to be provided to capitalize the Funding Corporation may exceed the maximum amount limitation applicable to such bank under section 21B(e)(3) of the Act. In such instances, such bank will become a "deficient bank" and the "remaining banks" will be required to pay, in addition to the amount required under section 21B(e)(5) of the Act, a prorated portion of the deficient bank's excess amount. A remaining bank's prorated portion of the excess amount will be included in the maximum amount limitation for that bank under section 21B(e)(3) of the Act so that a remaining bank will not also become a deficient bank because of its contribution on behalf of a deficient bank. Banks may also become deficient through the payment of interest expenses, and the regulations provide a mechanism for the payment of such deficiencies.

The regulations promulgated today also clarify that a bank which becomes deficient, with respect to interest payments or capital contributions, is required to set funds aside in separate reserve accounts, available only to reimburse the remaining banks for investments or interest payments made on behalf of the deficient bank. A deficient bank must set aside, on a quarterly basis, in the aggregate, twenty percent (20%) of its net earnings (as defined in section 21B(k)(6) of the Act) in any year, or the amount of the deficiency if such deficiency is less than twenty percent (20%) of its net earnings. Such amounts will continue to be set aside each quarter until such deficiency is repaid. Interest shall begin to accrue two (2) years after the investments under section 21B(e)(6) of the Act are made on behalf of a deficient bank. Finally, the Directorate is to direct the disbursement of funds set aside in the reserve accounts to the remaining banks on an annual basis.

E. Industry Assessments

In addition to bank contributions through the purchase of Funding Corporation stock, in order to obtain additional funding for the Funding Corporation Principal Fund, section 21B authorizes the Funding Corporation, with the approval of the Board of

Directors of the FDIC, to collect assessments from Savings Association Insurance Fund ("SAIF") members. Such assessments may be in an amount up to the maximum amount which may be assessed against SAIF members under section 7 of the Federal Deposit Insurance Act, as amended, 12 U.S.C. 1811, *et seq.*, ("FDIA"). However, in making such assessments, the Funding Corporation must deduct from the maximum assessment allowed, the amount of an assessment which may be made by the Financing Corporation which has first priority on all such assessments.

To the extent that capital contributions from the banks and industry assessments are insufficient to capitalize the Funding Corporation Principal Fund, the Directorate shall request that the FDIC transfer funds to the Funding Corporation representing proceeds from liquidating dividends and payments made on claims received by the FSLIC Resolution Fund, established pursuant to section 11A of the FDIA, from receiverships.

F. Authorization of Establishment of Investment Policies and Procedures

The regulations authorize the Directorate with Board approval to establish investment policies and procedures from time to time with respect to assets of the Funding Corporation which are not required to be transferred to the RTC. Such policies and procedures are to be consistent with the provisions of section 21B(g) of the Act.

G. Federal Reserve Banks as Depositories and Fiscal Agents

The regulations provide that the Federal Reserve banks are to be used as depositories, fiscal agents and custodians of the Funding Corporation.

H. Book-Entry Procedures

The Funding Corporation is authorized pursuant to section 21B(f) of the Act to issue bonds, notes, debentures, and similar obligations. These regulations establish book-entry procedures for the obligations issued by the Resolution Funding Corporation. This part provides that the Federal Reserve banks may issue, service and maintain Resolution Funding Corporation obligations in book-entry form. In addition, this part sets forth the book-entry procedures including the transfer, pledge, and servicing of book-entry Funding Corporation obligations.

I. Procedural Requirements

The Board is adopting these regulations as a final rule effective

September 21, 1989. The Board finds that, pursuant to 5 U.S.C. 553(b)(3)(B) and (d)(3), notice and public procedure and a delayed effective date are impracticable, unnecessary, and contrary to the public interest.

The Board finds that it is in the public interest for the Funding Corporation to be able to issue its obligations at the earliest possible opportunity and that the Funding Corporation will be unable to commence its operations until these operational rules are adopted. In connection with this finding, the Board notes that funds raised by the Funding Corporation will be transferred to the RTC to resolve cases, pursuant to section 21A of the Act, involving depository institutions previously insured by the Federal Savings and Loan Insurance Corporation ("FSLIC") and placed into conservatorship or receivership between January 1, 1989, and the date of enactment of the FIRREA, and the three-year period beginning on the date of enactment. The Funding Corporation's transfer of funds to the RTC will permit the maintenance of public confidence in the nation's depository institutions and will enable the RTC to meet its responsibilities under the Act. Accordingly, the Board finds that it is contrary to the public interest to delay the adoption of the rules in order to provide for such notice and public procedure.

Moreover, the Board is of the view that notice and public procedure are unnecessary, because the rules set forth in part 1510 generally only codify the statutory rules already applicable under section 21B of the Act. Therefore, the new rules impose no new legal burden on insured institutions or the banks. Similarly, providing notice and public procedure and a delayed effective date would be contrary to the public interest because the Board could not immediately discharge its statutory responsibilities.

Finally, the Board finds that these regulations relate to agency organization, procedure, or practice within the meaning of 5 U.S.C. 553, and are therefore exempt from notice and public procedure provisions pursuant to 5 U.S.C. 553(a)(2).

Because no notice of proposed rulemaking is required for these regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Similarly, it has been determined that these regulations do not constitute a major rule for purposes of Executive Order 12291.

List of Subjects in 12 CFR Parts 1510 and 1511

Federal home loan banks, Federal Reserve System, Financing Corporation, Resolution Funding Corporation, Resolution Trust Corporation, Securities.

Accordingly, the Board hereby amends title 12, chapter XV, Code of Federal Regulations, as set forth below.

Subchapter B and parts 1510 and 1511 are added to chapter XV to read as follows:

SUBCHAPTER B—RESOLUTION FUNDING CORPORATION

PART 1510—RESOLUTION FUNDING CORPORATION OPERATIONS

Sec.

- 1510.1 Definitions.
- 1510.2 General authority.
- 1510.3 Authorization of establishment of investment policies and procedures.
- 1510.4 Authority to issue obligations.
- 1510.5 Federal Reserve banks as depositories and fiscal agents.
- 1510.6 Budget and expenses.
- 1510.7 Billing of administrative expenses.
- 1510.8 Issuance expenses.
- 1510.9 Capitalization of Funding Corporation.
- 1510.10 Funding Corporation Principal Fund Reserve Account.
- 1510.11 Interest payments and interest reserve account.
- 1510.12 Request for funds for interest payments.
- 1510.13 Reports to Board.
- 1510.14 Reports to Congress.
- 1510.15 Review of books and records.

Authority: Sec. 511, Pub. L. 101-73, 103 Stat. 394 (1989) (12 U.S.C. 1441b).

§ 1510.1 Definitions.

General. Unless another definition is provided in this subchapter, the following definitions will apply to terms used in this subchapter.

"Act" means the Federal Home Loan Bank Act as amended (12 U.S.C. 1421 *et seq.*).

"Administrative expenses" means costs incurred as necessary to carry out the functions of the Funding Corporation, including custodian fees; but does not include any interest on, or redemption premium with respect to, any obligation of the Funding Corporation or any issuance costs.

"Bank or banks" means a Federal home loan bank or all the Federal home loan banks.

"Board" means the Oversight Board established in section 21A(a)(1) of the Act.

"Custodian fees" means any fee incurred by the Funding Corporation in connection with the transfer of any security to, or the maintenance of any security in, the Funding Corporation

Principal Fund and any other expense incurred in connection with the establishment or maintenance of the Funding Corporation Principal Fund.

"Deficient bank" means a bank whose allocation under section 21B(e)(5) of the Act exceeds the amount applicable to such bank under section 21B(e)(3) of the Act as provided in section 21B(e)(6) of the Act.

"Directorate" means the Directorate of the Funding Corporation.

"Excess amount" means the amount by which a bank's required contribution pursuant to section 21B(e)(5) of the Act exceeds the maximum amount limitation applicable to such Bank pursuant to section 21B(e)(3) of the Act as provided in section 21B(e)(6) of the Act.

"FDIC" means the Federal Deposit Insurance Corporation established pursuant to section 1 of the Federal Deposit Insurance Act, as amended, 12 U.S.C. 1811, *et seq.*

"Financing Corporation" means the Financing Corporation established pursuant to section 21(a) of the Act.

"FSLIC Resolution Fund" means the FSLIC Resolution Fund established pursuant to section 11A(a)(1) of the Federal Deposit Insurance Act, as amended 12 U.S.C. 1811, *et seq.*

"Funding Corporation" means the Resolution Funding Corporation established pursuant to section 21B(b) of the Act.

"Funding Corporation Principal Fund" means the separate account established under section 21B(g)(2) of the Act.

"Issuance costs" means issuance fees and commissions incurred by the Funding Corporation in connection with the issuance or servicing of any obligation of the Funding Corporation, and includes legal and accounting expenses, trustee and fiscal and paying agent charges, costs incurred in connection with preparing and printing offering materials, and advertising expenses, to the extent that any such cost or expense is incurred by the Funding Corporation in connection with the issuance of any obligation.

"Net earnings" means net earnings without reduction for chargeoffs or expenses incurred by a bank for the purchase of capital stock of the Financing Corporation or payments relating to the Funding Corporation required by the Board under sections 21B (e) and (f) of the Act.

"Remaining bank" means a bank that is not allocated an amount under section 21B(e)(5) of the Act that exceeds its maximum amount limitation applicable to such bank under section 21B(e)(3) of the Act as provided in section 21B(e)(6) of the Act.

"RTC" means the Resolution Trust Corporation established pursuant to section 21A(b)(1)(A) of the Act.

§ 1510.2 General authority.

The Funding Corporation may exercise all authority granted to it by the Act and by its bylaws, whether or not specifically implemented by Board regulations, subject to the limitations and interpretations contained in this part and such regulations, orders and directions as the Board may prescribe.

§ 1510.3 Authorization of establishment of investment policies and procedures.

The Directorate may establish from time to time, with the approval of the Board, investment policies and procedures from time to time with respect to assets of the Funding Corporation which are not required to be invested in the capital certificates issued by the RTC and are not needed for current interest payments. These investment policies and procedures shall be consistent with the provisions of section 21B(g) of the Act.

§ 1510.4 Authority to issue obligations.

(a) Upon direction by the Board, the Directorate is authorized to cause the Funding Corporation to create and issue in one or more issues, one or more series of Funding Corporation bonds, notes, debentures or similar obligations in an aggregate principal amount up to the maximum permissible from time to time under section 21B(f)(1) of the Act and having such other terms and conditions as may be specified by the Directorate at the time or times of their issuance. Before any issue is offered for sale, the approval of the Department of Treasury shall be obtained pursuant to section 21B(h)(3) of the Act and 31 U.S.C. 9108.

(b) The net proceeds of each obligation issued by the Funding Corporation shall be used in accordance with the provisions of section 21B(f)(4) of the Act.

§ 1510.5 Federal Reserve bank to be depositaries and fiscal agents.

The Federal Reserve banks are to act as depositaries for or fiscal agents or custodians of the Funding Corporation. Subject to approval by the Oversight Board, the Directorate may also authorize establishment of demand deposit accounts at one or more financial institutions.

§ 1510.6 Budget and expenses.

(a) The Funding Corporation shall annually submit to the Directorate by November 15, a budget of its proposed expenditures, including administrative expenses for the following year.

(b) By December 1 of each year the Directorate shall submit an approved budget to the Board for final approval.

(c) After such budget has been approved by the Board, the Directorate shall transmit a copy of the budget to each bank president.

(d) In the event that the Funding Corporation projects or anticipates incurring expenses which exceed its approved budget, then an amended budget shall be submitted for approval by the Board in the same manner as the original budget.

§ 1510.7 Billing of administrative expenses.

(a) All administrative expenses of the Funding Corporation shall be paid by the banks.

(b) The amount each bank shall pay shall be determined in the manner provided in section 21B(c)(7)(B) of the Act.

(c) On a periodic basis but not less than semiannually, the Directorate shall determine, based upon a method approved by the Board and in accordance with section 21B(c)(7)(B) of the Act, each bank's pro rata share of the Funding Corporation's administrative expenses, as approved by the Board pursuant to § 1510.6 of this part, and the Directorate shall bill each bank accordingly.

(d) Each bank shall remit its pro rata share of the administrative expenses within ten (10) business days after receipt of the bill as provided by paragraph (c) of this section.

(e) The aggregate amount of administrative expenses for which the banks may be billed for any period, under a budget approved pursuant to § 1510.6 of this part, shall be adjusted as necessary to reflect any differences between such aggregate expenses projected for the period and those actually incurred in prior periods during the calendar year or to reflect any changes in the estimate of such aggregate expenses expected to be incurred in the coming period; however, in no event shall the aggregate of all bills issued to the banks exceed the budget, or the amended budget approved pursuant to section 1510.6 of this part.

§ 1510.8 Issuance expenses.

After receipt of the proceeds (less any discount, plus any premium) of any obligation issued by the Funding Corporation and prior to the purchase of capital certificates issued by the RTC, pursuant to section 21A of the Act, or refunding any previously issued obligation, pursuant to section 21B(f)(1)

of the Act, the Funding Corporation shall deduct its issuance costs as budgeted in the budget approved by the Board.

§ 1510.9 Capitalization of Funding Corporation.

(a) *Funding projections.* (1) Not later than December 15 and June 15 of each year, the Directorate shall project how it will raise funds for the Funding Corporation (including the amount of funds needed from the banks) and pay interest on outstanding obligations of the Funding Corporation during the following year, specifically including the projected dollar amount to be raised and the projected settlement date(s). Not later than March 15, June 15, September 15, and December 15 of each year, the Directorate shall update its projections for the remainder of the year and confirm the dollar amount raised and the settlement dates and amount of interest paid in the preceding period.

(2) Not later than December 15 of each year, each bank shall submit to the Directorate a statement prepared by an officer at such bank containing such bank's earning projections for the following year. Not later than March 15, June 15, September 15 and December 15 of each year, such officer shall provide to the Directorate an updated report containing the previous quarter's earnings and updating the projections for the remainder of the year.

(3) Not later than each December 20 and June 20, the Directorate shall submit the funding projections to the Board for review. Not later than March 20, June 20, September 20 and December 20 of each year, the Directorate shall submit the updated projections to the Board for review.

(4) Not later than December 31 and June 30, the Directorate shall notify each bank of the amount of projected funds needed by the Directorate from the banks, the aggregate amount available from all the banks and each bank's projected pro rata share calculated in accordance with the provisions of section 21B of the Act. In no event shall the amount projected to be requested from the banks in any given calendar year exceed the three hundred million dollar (\$300,000,000) maximum amount limitation set forth in sections 21B(e)(3)(B) and (C) of the Act, plus applicable amounts in section 21B(e)(3)(A) of the Act.

(5) Once the funding projections are approved by the Board, not later than December 31 and June 30 of each year, the Directorate shall provide the banks with projections of how it will raise funds for the Funding Corporation (including the amount of funds needed

from the banks) and pay interest on outstanding obligations of the Funding Corporation during the following year, specifically including the projected dollar amount to be raised and the projected settlement date(s). Once the updated projections are approved by the Board, not later than March 31, June 30, September 30, and December 31 of each year, the Directorate shall provide the banks with a report updating its projections for the remainder of the year and confirming the dollar amount raised and the settlement dates and amount of interest paid in the preceding quarter.

(6) The projections required by this subsection shall not apply to amounts required to capitalize the Funding Corporation prior to October 31, 1989.

(b) *Capital assessments of Federal home loan banks.*—(1) *General.* (i) Upon direction by the Board, the Directorate shall require each bank to invest in nonvoting capital stock of the Funding Corporation so that the Funding Corporation may defease its obligations proposed to be issued pursuant to section 21B of the Act.

(ii) The banks collectively are directed to purchase, when and as instructed by the Directorate, in one or more issues, Funding Corporation nonvoting capital stock at a purchase price of \$1.00 per share. Such stock shall be subject to such terms and conditions as are prescribed in the bylaws of the Funding Corporation, as the same may be amended from time to time. The amount of stock which each bank shall be required to purchase within each issue shall be:

(A) as to the amount of Funding Corporation stock purchased pursuant to section 21B(e)(3) of the Act and Financing Corporation stock purchased pursuant to section 21(d)(3) of the Act, in the aggregate, up to the initial one billion dollars (\$1,000,000,000) in accordance with the ratios prescribed in section 21B(e)(4) of the Act.

(B) as to the amount of Funding Corporation stock purchased pursuant to section 21B(e)(3) of the Act and Financing Corporation stock purchased pursuant to section 21(d)(3) of the Act, in the aggregate, in excess of one billion dollars (\$1,000,000,000), in accordance with the ratios prescribed in section 21B(e)(5) of the Act.

(iii) (A) If the amount any bank is required to invest in capital stock of the Funding Corporation exceeds its maximum investment limitation as determined pursuant to section 21B(e)(3) of the Act, the Directorate is authorized to require each remaining bank to invest in such additional capital stock of the Funding Corporation as provided for in section 21B(e)(6) of the Act.

(B) The amount of Funding Corporation stock required to be purchased by the banks shall be determined by deducting, pursuant to sections 21B(e)(3)(A) and (B) of the Act, the amount of Financing Corporation capital stock that the banks are required to purchase pursuant to section 21 of the Act. If the amount of Financing Corporation capital stock that the banks are required to purchase exceeds the annual three hundred million dollar (\$300,000,000) limitation on purchases of Funding Corporation capital stock prescribed by sections 21B(e)(3)(B) and (C) of the Act, then the amount of Financing Corporation capital stock purchased in excess of such limitations shall be credited in the following year or years, as the case may be.

(iv) The shares shall have a par value of \$1.00 per share and may be transferable at not less than par value only among the banks.

(v) Shares of Funding Corporation stock shall be issued in certificate or in book entry form. The Directorate shall establish procedures for appointing a registrar and a transfer agent.

(2) *Request for funds to capitalize the Funding Corporation.* (i) Approximately forty-five (45) days in advance of the date that funds are needed by the RTC, the Board shall advise the Directorate in writing of the amount of funds required and the due date.

(ii) The Directorate shall determine, according to a method approved by the Board, and in accordance with sections 21B(e)(4) and (5) of the Act, each bank's pro rata share of the amount needed to defease the obligations issued by the Funding Corporation in accordance with the provisions of section 21B of the Act. The Directorate shall notify each bank, in writing, at least 15 days in advance of the amount and due date of its pro rata share.

(iii) Each bank shall wire immediately available and finally collected funds to the Funding Corporation on the due date.

(iv) The time for the notice requirements shall not apply to requests for funds to capitalize the Funding Corporation made prior to October 31, 1989.

(c) *Industry assessments.* (1) The Funding Corporation is authorized to collect, with the approval of the Board of Directors of the FDIC, the assessments of SAIF members, pursuant to section 21B(e)(7)(A) of the Act, through a joint collection agent.

(2) The Funding Corporation, based upon projections of the amount needed for the Funding Corporation Principal Fund and projections of the amounts

available from the banks and from SAIF members' assessments, shall determine the amount of available bank funds pursuant to sections 21B(e) (3), (4), (5), and (6) of the Act and shall also determine the percentage of assessments on SAIF members needed, if any, to fund the Funding Corporation Principal Fund. In making the determination of the percentage of assessments needed from SAIF members, the Funding Corporation shall deduct the amount assessed, if any, by the Financing Corporation, pursuant to section 21B(e)(7)(A)(iii) of the Act and the limitations prescribed in section 21B(e)(7)(A) of the Act.

(3) Based upon the determination made under paragraph (c)(2) of this section, the Funding Corporation shall notify the FDIC, the Financing Corporation and the joint collection agent of the percentage of assessments from SAIF members it needs.

(d) *Receivership proceeds.* To the extent the amounts available pursuant to paragraphs (b) and (c) of this section are insufficient to fund the Funding Corporation Principal Fund, upon written request from the Directorate, the FDIC shall transfer funds to the Funding Corporation representing proceeds from liquidating dividends and payments made on claims received by the FSLIC Resolution Fund from receiverships. Such written request shall state the amount of funds needed and the date by which the funds are needed.

§ 1510.10 Funding Corporation Principal Fund Reserve Account

(a) Upon becoming a deficient bank, a bank shall set aside in a reserve account the amounts required by section 21B(e)(6)(D) of the Act.

(b) The balance, if any, in the reserve account shall be available for the sole purpose of purchasing such capital stock from the remaining banks as was purchased on behalf of a deficient bank.

(c) Each quarter each deficient bank shall, prior to the payment of dividends, if any, set aside in the reserve account twenty percent (20%) of net earnings, or the amount of the deficiency if such deficiency is less than twenty percent (20%) of net earnings, which funds will be used to make the purchases of stock required under section 21B(e)(6)(C) of the Act. Notwithstanding the foregoing, the amount set aside in the reserve accounts pursuant to this paragraph (c) and pursuant to § 1510.11 of this part and pursuant to section 21(d) of the Act, in the aggregate, is not required to exceed twenty percent (20%) of the net earnings of the deficient bank.

(d) Interest shall begin to accrue two (2) years after the investments under

section 21B(e)(6) of the Act are made on behalf of a deficient bank. Interest shall accrue quarterly on the deficient amount at a rate equal to the annual average cost of funds of the banks in the most recent year. Interest payments shall be set aside quarterly by a deficient bank into the reserve account and such interest payments are not included in the twenty percent (20%) of net earnings amount set forth in paragraph (c) of this section.

(e) Annually, not later than each January 31, all amounts set aside in the reserve account shall be remitted to the remaining banks in the amounts determined by the Directorate, in accordance with a method approved by the Board and in accordance with section 21B of the Act, and shall be remitted in the order that each investment was made on behalf of a deficient bank.

(f) When appropriate, the Directorate shall direct a remaining bank to transfer the necessary shares of Funding Corporation stock to a deficient bank upon receipt of funds disbursed from the deficient bank's reserve account.

§ 1510.11 Interest payments and interest reserve account.

(a) The Directorate shall make a written request for funds to pay interest on obligations of the Funding Corporation from the following sources and in the following order:

(1) Earnings of the Funding Corporation not invested in the Funding Corporation Principal Fund.

(2) Proceeds from: (i) The liquidating dividends and payments made on claims received by the RTC from receiverships to the extent such proceeds are determined by the Board to be in excess of funds presently necessary for resolution costs; and (ii) Warrants and participations acquired by the RTC.

(3) To the extent funds from paragraphs (a)(1) and (a)(2) of this section are not sufficient to cover the amount of interest payments due on obligations of the Funding Corporation, the banks shall pay the Funding Corporation each calendar year the aggregate amount as set forth in section 21B(f)(2)(C) of the Act.

(i) Each bank's individual share of such amount shall be as prescribed in sections 21B(f)(2)(C) (i) and (ii) of the Act. In instances where any bank(s) is (are) unable to fund interest payments in the amounts prescribed by section 21B(f)(2)(C)(ii) of the Act, out of retained earnings, the banks which have no such deficiency shall fund the amount of the aggregate deficiencies in accordance with the calculation set forth in sections 21B(f)(2)(C)(ii) (I) and (II) of the Act.

Notwithstanding the preceding sentence, a bank's contributions for such interest payments on behalf of other bank(s) shall not be made to the extent it causes such bank to have deficit retained earnings.

(ii) Any bank on whose behalf interest payments were made under paragraph (a)(3)(i) of this section shall quarterly, prior to the payment of dividends, and after making the payments required by § 1510.10, excluding any interest payments made pursuant to § 1510.10(d), set aside in a reserve account separate from the reserve account required for reimbursements of capital contributions to the Funding Corporation, twenty percent (20%) of net earnings, or the amount of the deficiency if such deficiency is less than twenty percent (20%) of net earnings, which funds will be used to reimburse the banks that made payments on behalf of the bank(s) which was unable to fund its interest payments. Until such time as the deficiency amount has been repaid, the bank on whose behalf interest payments were made shall continue to set aside twenty percent (20%) of net earnings on a quarterly basis. Notwithstanding the foregoing, the amounts set aside in the reserve account pursuant to this paragraph (a)(3)(ii) and § 1510.10 of this part and pursuant to section 21(d) of the Act, in the aggregate, are not required to exceed twenty percent (20%) of net earnings.

(iii) Annually, not later than each January 31, all amounts set aside in the reserve account shall be remitted to the banks that made interest payments on behalf of another bank(s) in amounts determined by the Directorate. Banks which have made interest expense payments on behalf of other banks shall receive reimbursement in the order of the interest expense contributions made by such banks. In determining the amount due to each bank for interest payments made on behalf of another bank, the Directorate shall multiply the available funds in the reserve account by the percentage arrived at by dividing, for each separate deficiency—

(A) The cumulative amount of interest expenses paid by a bank on behalf of such bank; by

(B) The cumulative amount of interest expenses paid by all the banks on behalf of such bank for that deficiency.

(4) Any net proceeds from the sale of assets received from the RTC by the FSLIC Resolution Fund.

(b) To the extent that the funds from the sources identified in paragraph (a) of this section are insufficient, the Department of Treasury shall pay to the Funding Corporation such additional

amounts as may be necessary to pay such interest, upon receipt of a certification from the Directorate, in a form satisfactory to the Department of the Treasury. The certification at a minimum shall state the total amounts paid by the Funding Corporation from the sources listed in paragraph (a) of this section and the amounts necessary to make up the deficiency. Any amount paid by the Department of Treasury shall become a liability of the Funding Corporation to be repaid to the Department of Treasury upon the dissolution of the Funding Corporation, to the extent of its remaining assets.

§ 1510.12 Request for funds for interest payments.

(a) At least 30 days in advance of the date that funds are needed by the Funding Corporation for interest payments pursuant to section 21B(f)(2) of the Act, the Directorate shall determine each bank's pro rata share in accordance with the provisions of section 21B(f)(2) of the Act and a methodology approved by the Board. The Directorate thereafter shall notify each bank, in writing, and at least 15 days in advance of such date, of the amount and due date of its pro rata share.

(b) Each bank shall wire immediately available and finally collected funds to the Funding Corporation on the due date.

§ 1510.13 Reports to Board.

Within ten (10) business days of the close of each calendar quarter commencing with the quarter ended September 30, 1989, the Directorate shall submit to the Board a report for the previous calendar quarter stating:

(a) The number of shares of the capital stock of the Funding Corporation which the banks were required to purchase and the dates of the purchases;

(b) The types and amounts of securities purchased pursuant to section 21B(g) of the Act;

(c) The amount of any obligations issued during the quarter pursuant to section 21B(f)(1) of the Act and the basic terms and conditions of such obligations; the amount of any obligations proposed to be issued during the current quarter and any anticipated significant differences in the basic terms and conditions of those obligations from previously issued obligations; and the aggregate amount of obligations issued as of the end of the last quarter and the maximum amount of obligations which the Funding Corporation was permitted to issue as of that date pursuant to section 21B(f)(1) of the Act;

(d) The amount of capital certificates purchased from the RTC during the last quarter and the aggregate amount purchased during all previous quarters and the percentage of all proceeds from obligations which the Funding Corporation had invested in the RTC as of the end of the last quarter;

(e) The aggregate amount assessed against the banks, the aggregate amount assessed against the SAIF members, and the aggregate amounts collected from the other specified sources;

(f) Any significant changes in the Funding Corporation's investment policies or any other developments that the Directorate deems significant which occurred during the last quarter or are expected to occur during the current quarter;

(g) The amount of funds distributed to remaining banks from the reserve accounts established pursuant to sections 1510.10 and 1510.11 of this part; and

(h) Such other information as the Board may require.

§ 1510.14 Reports to Congress.

The Directorate and the Board shall prepare such reports as are necessary to enable the Board to comply with the reporting requirements set forth in section 21B(i) of the Act for submission of the reports to Congress and the President.

§ 1510.15 Review of books and records.

An office designated by the Board shall review the books and records of the Funding Corporation at least annually to determine whether the Funding Corporation is performing its functions in accordance with the provisions of section 21B of the Act and this part.

PART 1511—BOOK-ENTRY PROCEDURE

Sec.

1511.1 Definitions.

1511.2 Authority of Reserve banks.

1511.3 Transfer or pledge.

1511.4 Federal Reserve bank liability.

1511.5 Servicing book-entry Funding Corporation securities; payment of interest, payment at maturity or upon call.

Authority: Sec. 511, Pub. L. 101-73, 103 Stat. 394 (1989) (12 U.S.C. 1441b).

§ 1511.1 Definitions.

In this part, unless the context otherwise requires or indicates:

"Act" means the Federal Home Loan Bank Act as amended (12 U.S.C. 1421 *et seq.*).

"Reserve bank" means a Federal Reserve bank and its branches acting as Fiscal Agent of the Resolution Funding

Corporation and when indicated acting in its individual capacity.

"Funding Corporation" means the Resolution Funding Corporation established pursuant to section 21B(b) of the Act.

"Funding Corporation security" means a Funding Corporation bond, note, debenture and similar obligations issued under Section 21B of the Act.

"Pledge" includes a pledge of, or any other security interest in, Funding Corporation securities as collateral for loans or advances or to secure deposits of public monies or the performance of an obligation.

§ 1511.2 Authority of Reserve banks.

Each Reserve bank is hereby authorized, in accordance with the provisions of this part, to:

(a) Issue Funding Corporation securities by means of entries on its records which shall include the name of the depositor, the amount, the loan title (or series) and maturity date;

(b) Otherwise service and maintain Funding Corporation securities; and

(c) Issue a confirmation or transaction in the form of a written advice (serially numbered or otherwise) which specifies the amount and description of any securities, that is, loan title (or series) and maturity date, sold or transferred and the date of the transaction.

§ 1511.3 Transfer or pledge.

(a) A transfer or a pledge of Funding Corporation securities to a Reserve bank (in its individual capacity or as fiscal agent of the United States), or to the United States, or to any transferee or pledgee eligible to maintain an appropriate book-entry account in its name with a Reserve bank under this part, is effected and perfected, notwithstanding any provision of law to the contrary, by a Reserve bank making an appropriate entry in its records of the securities transferred or pledged. The making of such an entry in the records of a Reserve bank shall:

(1) Have the effect of a delivery in bearer definitive form of Funding Corporation securities;

(2) Have the effect of a taking of delivery by the transferee or pledgee;

(3) Constitute the transferee or pledgee a holder; and

(4) If a pledge, effect a perfected security interest therein in favor of the pledgee. A transfer or pledge of Funding Corporation securities effected under this paragraph shall have priority over any transfer, pledge, or other interest, theretofore or thereafter effected or perfected under paragraph (b) of this section or in any other manner.

(b) A transfer or a pledge of Funding Corporation securities, or any interest therein, which is maintained by a Reserve bank (in its individual capacity or as fiscal agent of the Funding Corporation) in a book-entry account under this part is effected, and a pledge is perfected, by any means that would be effective under applicable law to effect a transfer or to effect and perfect a pledge of the Funding Corporation securities, or any interest therein, if the securities were maintained by the Reserve bank in bearer definitive form. For purposes of transfer or pledge hereunder, Funding Corporation securities maintained by a Reserve bank shall, notwithstanding any provision of law to the contrary, be deemed to be maintained in bearer definitive form. A Reserve bank maintaining Funding Corporation securities either in its individual capacity or as fiscal agent of the Funding Corporation is not a bailee for purposes of notification of pledges of those securities under this section, or a third person in possession for purposes of acknowledgment of transfers thereof under this subsection. Where Funding Corporation securities are recorded on the books of a depository (a bank, banking institution, financial firm, or similar party, which regularly accepts in the course of its business Funding Corporation securities as a custodial service for customers, and maintains accounts in the names of such customers reflecting ownership of or interest in such securities) for account of the pledgor or transferor thereof and such securities are on deposit with a Reserve bank in a book-entry account hereunder, such depository shall, for purposes of perfecting a pledge of such securities or effecting delivery of such securities to a purchaser under applicable provisions of law, be the bailee to which notification of the pledge of the securities may be given or the third person in possession from which acknowledgment of the holding of the securities for the purchaser may be obtained. A Reserve bank will not accept notice or advice of a transfer or pledge effected or perfected under this subsection, and any such notice or advice shall have no effect. A Reserve bank may continue to deal with its depositor in accordance with the provisions of this part, notwithstanding any transfer or pledge effected or perfected under this section.

(c) No filing or recording with a public recording office or office shall be necessary or effective with respect to any transfer or pledge of Funding Corporation securities or any interest therein.

(d) A transfer of Funding Corporation securities within a Reserve bank shall be made in accordance with procedures established by the bank not inconsistent with this part. The transfer of Funding Corporation securities by a Reserve bank may be made through a telegraphic transfer procedure.

(e) All requests for transfer or withdrawal must be made prior to the maturity or date of call of the securities.

§ 1511.4 Federal Reserve bank liability.

A Reserve bank which has received Funding Corporation securities and effected pledges, made entries regarding them, or transferred or delivered them according to the instructions of its depositor is not liable for conversion or for participation in breach of fiduciary duty even though the depositor had no right to dispose of or take other action in respect of the securities.

§ 1511.5 Servicing book-entry Funding Corporation securities; payment of interest, payment at maturity or upon call.

Interest becoming due on Funding Corporation securities shall be charged in the account of the Resolution Funding Corporation on the interest-due date and remitted or credited in accordance with the depositor's instructions. Such securities shall be redeemed on the date of maturity or call, using the proceeds of the noninterest bearing instruments maintained by Funding Corporation for such purpose, and the redemption proceeds, principal and interest, shall be credited in accordance with the depositor's instructions.

Daniel P. Kearney,

President and Chief Executive Officer.

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BILLING CODE 4810-25-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 064CE, Special Conditions 23-ACE-45]

Special Conditions; Caproni Model C22J Series Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are being issued to become part of the type certification basis for the Caproni Vizzola Costruzioni Aeronautiche, S.p.A. Model C22J Series Airplane. These airplanes will have novel or unusual design features when compared

to the state of technology envisaged in the airworthiness standards for normal, utility, acrobatic, and commuter category airplanes. These novel and unusual design features include the use of advanced composite materials, pressurized fuel tanks, and electronic engine control system protection from lightning and high energy radio frequency, for which the regulations do not contain adequate or appropriate airworthiness standards. These special conditions contain the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that provided by the applicable airworthiness standards.

EFFECTIVE DATE: November 13, 1989.

FOR FURTHER INFORMATION CONTACT:

Ervin Dvorak, Aerospace Engineer, Standards Office (ACE-110), Small Airplane Directorate, Aircraft Certification Service, Central Region, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426-5688.

SUPPLEMENTARY INFORMATION:

Background

On July 8, 1983, Caproni Vizzola Costruzioni Aeronautiche, S.p.A. Vizzola Ticino (Varese), Italy, filed an application to the FAA Brussel's Office for U.S. type certification for its Model C22J airplane. They made a new application for U.S. type certificate on October 29, 1988. The Caproni Model C22J airplane is a small, two-place, twin-engine jet airplane with a maximum takeoff weight (with tip tanks) of 2,767 pounds. Two Microturbo TRS-18 turbojet engines are installed side-by-side in the fuselage aft of the cockpit. The airplane is fully aerobatic and has a maximum operating altitude of 25,000 feet.

Type Certification Basis

The type certification basis for the Caproni Model C22J airplane is as follows: Part 21 of the Federal Aviation Regulations (FAR), § 21.29; part 23 of the FAR, effective February 1, 1965, including amendments 23-1 through 23-33; part 36 of the FAR, effective December 1, 1969, as amended by amendments 36-1 through the amendment effective on the date of type certification; SFAR 27 effective February 1, 1974, as amended by amendments 27-2 through 27-5; exemptions, if any; and special conditions adopted by this rulemaking action.

Discussion

Special conditions may be issued or amended, as necessary, as part of the

type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with § 11.49, after public notice as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become part of the type certification basis, as provided by § 21.17(a)(2).

The proposed type design of the Caproni Model C22J airplane contains a number of novel or unusual design features not envisaged by the applicable part 23 airworthiness standards. Special conditions are considered necessary because the airworthiness standards of part 23 do not contain adequate or appropriate safety standards for the novel or unusual design features of the Model C22J airplane.

Landing Gear

The Model C22J airplane landing gear structure is made of composite material. This material and its assembly is completely different from the typical material in landing gear structures that have been predominant since the early 1940's. Composite materials of the type used on the Model C22J airplane are generally not susceptible to initiation of fatigue cracks by the application of repetitive loads, but are susceptible to damage in the form of cracks, breaks, and delaminations from intrinsic and discrete sources growing under application of repetitive loads. Because of this and other factors, the FAA has determined that the fatigue requirements of part 23 are inadequate to assure that composite material structure can withstand the repeated loads of variable magnitude expected in service.

The use of composite materials and extensive bonding of these materials in the landing gear structure is a novel and unusual design feature with respect to the type of airplane construction envisaged by the existing airworthiness standards of part 23. Because the requirements of part 23 do not require the level of substantiation necessary for composite material structure, a special condition is being issued to include the necessary airworthiness standards as a part of the type certification basis for the Model C22J airplane. This special condition is being issued to ensure that a level of safety exists for airplanes made from bonded composite materials equivalent to those existing part 23 airplanes.

This special condition will require composite structural components critical to safe flight be evaluated by damage

tolerance criteria. When damage tolerance is shown to be impractical, this special condition is worded to permit approval, based on safe-life testing. The damage tolerance consideration applies to the landing gear structure, since failure of this structure could have catastrophic results. Metal detail designs may continue to be evaluated to the fatigue requirements of § 23.572.

Damage tolerance criteria for composite structure, in combination with the existing material requirements of part 23, such as §§ 23.603 and 23.613, will provide a level of safety for the composite material landing gear structure used in the Model C22J airplane equivalent to that required by the airworthiness standards of part 23.

The lack of adequate service experience with composite material structures in airplanes type certificated to the airworthiness standards of part 23, the unusual mechanical properties characteristics, and the experience with composite material structural bonding, to date, necessitate issuing special conditions to assure an appropriate level of safety for the Model C22J landing gear structure. This special condition is intended to require: (1) Accounting for environmental effects, i.e., temperature and humidity on material mechanical properties in all structural substantiation analyses and tests; (2) limit load residual strength with impact damage from discrete sources; (3) ability to carry ultimate load with realistic intrinsic and discrete impact damage at the threshold of detectability; and (4) design features to prevent disbands greater than the disbands for which limit load capability has been shown. Proof testing of each production component to limit load and reliance on manufacturing quality control procedures between limit and ultimate load may be used in lieu of design features provided each bonded joint is subjected to its critical design limit load during the proof testing. Acceptable non-destructive testing techniques do not yet exist in state-of-the-art composite technology to reliably identify weak bonds. However, proof testing of each production article may be discontinued if such tests are developed and accepted by the FAA.

Because the composite material and bonding may require preventive maintenance and inspection procedures different from those commonly utilized for existing landing gear structure, this special condition requires that instructions for continued airworthiness be established in addition to those required by § 23.1529.

Lightning Protection

The regulations incorporated by reference include standards for protection from damage to the structure of the airplane by lightning (§ 23.867) and from ignition of fuel vapor (§ 23.954). These standards do not provide the level of safety for the electronic system that is inherently provided by traditional designs which utilize mechanical means to connect the engine to the flight deck. The forward fuselage of the Model C22J airplane, though not a primary structure, is made of composite material. Electronic systems need additional protection when installed in composite airframe structure, which provides less shielding. For airplanes employing the use of composite materials, the lightning produced voltages and currents could increase substantially and additional protecting design features should be installed.

The Model C22J airplane with the Microturbo TRS-18 turbojet engines is being designed with the propulsion systems using only electrical interfaces for critical functions such as crew inputs to engines. These systems can be susceptible to disruption to both the command/response signals and the operational mode as a result of direct lightning strike attachment or electrical and magnetic interference. To ensure that a level of safety is achieved equivalent to that of existing aircraft, a special condition is being issued which requires that these components be designed and installed to preclude component damage and interruption of function due to both direct and indirect effects of lightning.

Protection From Unwanted Effect of High Energy Radio Frequency (HERF)

Airplane designs which utilize metal skins and mechanical command and control means have traditionally been less susceptible to the effects of RF energy from ground-based transmitters. There is a trend toward increased use of composite structures that do not provide the HERF shielding normally provided by metal skins and electrical and electronic command systems to perform critical airplane functions such as engine control. Therefore, the effective measures against the effects of high energy radio frequency fields must be provided for by the design and installation of these systems. The primary factors that have contributed to this increased concern are: (1) The increasing use of sensitive electronics that perform critical and essential functions; (2) the reduced

electromagnetic shielding afforded airplane systems by advanced technology airframe materials; (3) the adverse service experience of military airplanes which use these technologies; and (4) the number and power of radio frequency emitters increases and expected future increases.

In showing compliance with the regulations for protection against hazards caused by the exposure to high energy radio frequency fields, electrical and electronics systems which perform critical and essential functions must be considered. The hazards addressed include those which would result in a catastrophic failure condition to the airplane. Failures that would be a hazard to the airplane, but not catastrophic, are considered under § 23.1309. To prevent this occurrence, airplane systems which perform critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not adversely affected when the airplane is exposed to high energy radio fields. Airplane systems which perform essential functions must be protected to ensure that essential functions can be recovered after the airplane has been exposed to the high energy radio frequency fields. Manual mode reversion is considered an acceptable method of retaining the essential functions. Reliance on redundancy as a means of protection against the effects of external RF fields is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

No universally accepted guidance to define the maximum energy level in which civilian airplane system installations must be capable of operating safely has been established. At this time, the FAA and other airworthiness authorities are working to establish an agreed level of RF energy level representative of that to which the airplane will be exposed in service. This special condition requires that the airplane be evaluated under an interim standard for the protection of the electronic system and its associated wiring harness.

Electronic Engine Control System

The applicable airworthiness requirements for the engine installation do not contain adequate standards by which to determine an acceptable level of safety for an electronic engine control system installed on a part 23 airplane. Therefore, special conditions are required to establish that the overall

electronic engine control system exhibits an acceptable level of system integrity and reliability equivalent to a hydromechanical system meeting current airworthiness standards.

Pressurized Fuel Tanks

The applicable airworthiness requirements for the pressurized fuel tanks installations do not contain adequate standards by which to determine an acceptable level of safety on a part 23 airplane. Therefore, special conditions are required which are based on § 25.965(d) pressurized fuel tanks requirements.

Discussion of Comments

Notice of Proposed Special Conditions, Notice No. SC-23-ACE-45, Docket 064CE, was published in the *Federal Register* on March 10, 1989 (54 FR 10160) and the comment period closed July 10, 1989. The FAA received no comments in response to Notice No. SC-23-ACE-45; therefore, these special conditions are adopted as proposed.

Conclusion

This action affects only specified model series airplanes. It is not a rule of general applicability and applies only to the series and models of airplanes identified in these special conditions.

List of Subjects in 14 CFR Parts 21 and 23

Aircraft, Air transportation, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 21.16 and 21.17; and 14 CFR 11.28 and 11.49.

Adoption of Special Conditions

In consideration of the foregoing, the following special conditions are issued as a part of the type certification basis for the Caproni Model C22J Series airplanes:

1. Evaluation of Composite Structures (Landing Gear)

In lieu of complying with § 23.572, and in addition to the requirements of §§ 23.603, 23.613, and 23.723, the landing gear composite structure must be evaluated to damage tolerance criteria prescribed in paragraphs (a) through (h) of this special condition, unless shown to be impractical. In cases shown to be impractical, the aforementioned structure must be evaluated in accordance with criteria of paragraphs (a) and (i) of this special condition. Where bonded joints are used, the structure must also be evaluated in

accordance with the residual strength criteria in paragraph (g) of this special condition.

(a) It must be demonstrated by tests, or by analysis supported by tests, that the structure is capable of carrying ultimate load with impact damage. The level of impact damage considered need not be more than the established threshold of detectability considering the inspection procedures employed.

(b) The growth rate of damage that may occur from fatigue, corrosion, intrinsic effects, manufacturing defects; e.g., bond defects, or damage from discrete sources under repeated loads expected in service; i.e., between the time at which damage becomes initially detectable and the time at which the extent of damage reaches the value selected by the applicant for residual strength demonstration, must be established by tests or by analysis supported by tests.

(c) The damage growth, between initial detectability and the value selected for residual strength demonstrations, factored to obtain inspection intervals, must permit development of an inspection program suitable for application by operation and maintenance personnel.

(d) Instructions for continued airworthiness for the structure must be established consistent with the results of the damage tolerance evaluations. Inspection intervals must be set so that after the damage initially becomes detectable by the inspection method specified, the damage will be detected before it exceeds the extent of damage for which residual strength is demonstrated.

(e) Loads spectra, load truncation, and the locations and types of damage considered in the damage tolerance evaluations must be documented in test proposals.

(f) The structure must be shown by residual strength tests, or analysis supported by residual strength tests, to be able to withstand critical limit flight and landing loads considered as ultimate loads, with the extent of damage consistent with the results of the damage tolerance evaluations.

(g) In lieu of a non-destructive inspection technique which assures ultimate strength of each bonded joint, the limit load capacity of each bonded joint critical to safe flight and landing must be substantiated by either of the following methods used singly or in combination:

(1) The maximum disbands of each bonded joint consistent with the capability to withstand the loads in paragraph (f) of this special condition must be determined by analysis, tests, or both. Disbands of each bonded joint greater than this must be prevented by design features.

(2) Proof testing must be conducted on each production article which will apply the critical bonded joint.

(h) The effects of material variability and environmental conditions must be accounted for in the damage tolerance evaluations and in the residual strength tests; e.g., exposure to temperature, humidity, erosion, ultraviolet radiation, and/or chemicals, on the strength and durability properties of the composite materials must be accounted for in the

damage tolerance evaluations and in the residual strength tests.

(i) For those landing gear structures where damage tolerance method is shown to be impractical, the strength of such landing gear structure must be demonstrated by tests, or analysis supported by tests, to be able to withstand the repeated loads of variable magnitude expected in service. Impact damage in composite material components which may occur must be considered in the demonstration. The impact damage level considered must be consistent with detectability by the inspection procedures employed.

2. Protection of Systems From Lightning and High Energy Radio Frequency (HERF) Fields

(a) Each system which performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not adversely affected when the airplane is exposed to: (1) Lightning and (2) high energy radio frequency fields external to the airplane.

(b) Each essential function of the system must be protected to ensure that the essential function can be recovered after the airplane has been exposed to: (1) Lightning and (2) high energy radio frequency fields external to the airplane.

(c) For the purposes of the above, the following definitions apply:

(1) *Critical functions.* Functions whose failure would contribute to or cause a failure condition which would prevent the continued safe flight and landing of the airplane.

(2) *Essential functions.* Functions whose failure would contribute to or would cause a hazardous failure condition which would significantly impact the safety of the airplane or the ability of the flight crew to cope with adverse operating conditions.

3. Electronic Engine Controls

In addition to the requirements of §§ 23.901(b) and 23.903(c), the components of the electronic engine control system for each engine, both airframe and engine furnished, that affect thrust in either the forward or reverse direction and are required for continued safe operation, must have the level of integrity and reliability of a hydromechanical system meeting current airworthiness standards.

4. Pressurized Fuel Tanks

In addition to the requirements of § 23.965, it must be shown by analysis or tests that the pressurized fuel tanks can withstand the maximum pressure likely to occur on the ground or in flight.

Issued in Kansas City, Missouri on September 27, 1989.

Barry D. Clements,
Manager, Small Airplane Directorate,
Aircraft Certification Service.
[FR Doc. 89-24164 Filed 10-12-89; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-209-AD; Amendment 39-6355]

Airworthiness Directives; Boeing Models 737-100, -200, and -200C Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737-100, -200, and -200C series airplanes, which requires inspection of the lower row of fasteners at the Stringer 14 lap joint in the vicinity of Body Station 727, and repair, if necessary. This action is prompted by a report of a 33.5 inch crack in the Stringer 14 fuselage skin lap joint. This condition, if not corrected, could lead to rapid decompression and the inability of the fuselage to support flight loads.

EFFECTIVE DATE: October 23, 1989.

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

FOR FURTHER INFORMATION CONTACT: Mr. Steven C. Fox, Airframe Branch, ANM-120S; telephone (206) 431-1923. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: On September 20, 1989, the manufacturer informed the FAA of a report from an operator of a Boeing Model 737 series airplane who had discovered a crack in the Stringer 14 lap joint fuselage skin approximately 33.5 inches long, extending aft from Body Station 727. The crack has been attributed to fatigue. Presently, however, it is not clear whether crack initiation was due to diagonal tension shear wrinkling, or to stress caused by heavy skin spliced to thin skin surfaces. (The latter condition is the subject of AD 89-20-04, Amendment 39-6326 (54 FR 39342; September 26, 1989), applicable to Boeing Model 727 series airplanes.) The FAA has determined that such cracking, if not detected and corrected, could lead to rapid decompression and the inability of the fuselage to support flight loads.

The FAA has reviewed Boeing Alert Service Bulletin 737-53A1135, dated September 26, 1989, which describes procedures for inspections for cracks of the Stringer 14 lap joint at Body Station 727 and 60 inches aft, and procedures for necessary repairs if cracks are found.

Since this condition is likely to exist or develop on other airplanes of this same type design, this AD requires inspection of Boeing Model 737-100, -200, -200C series airplanes, line numbers 1 to 920, for cracks in the lower fuselage skin at the Stringer 14 lap joint at the lower row of fasteners and one inch below, and repair of cracks, if necessary. (Airplanes manufactured subsequent to line number 920 were changed during production to include a different design in this area and, therefore, are not subject to the unsafe condition addressed by this action.)

As explained above, it is not clear whether crack initiation is due to diagonal tension shear wrinkling or heavy skin spliced to thin skin. Therefore, this action requires operators to submit a report to the FAA of any findings of cracks and the compliance status of the airplane with the modification described in Boeing Service Bulletin 737-53-1065 (which adds panel stiffeners to the skin below the Stringer 14 lap joint). The data obtained from these reports will assist the FAA in determining whether additional rulemaking is necessary.

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

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

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

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1963); and 14 CFR 11.89.

§ 39.13 [Amended]

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

Boeing: Applies to Model 737-100, -200, and -200C series airplanes, line number 1 to 920, with more than 40,000 total landings, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent rapid decompression and the inability of the fuselage to support flight loads, accomplish the following:

A. Within 10 days after the effective date of this AD, unless the interior inspections and repairs described in paragraph B., below, has been accomplished within the last 60 days, perform a one-time external close detailed visual inspection for evidence of cracking of the fuselage Stringer 14 lap joint, left and right, at Body Station 727 and aft therefrom for a distance of 60 inches. If cracks are found, conduct the inspections defined in paragraph B., below, and repair prior to further flight, in accordance with the repair procedure specified in Boeing Alert Service Bulletin 737-53A1135, dated September 26, 1989.

B. Within 30 days after the effective date of this AD, perform an internal detailed visual inspection of the fuselage Stringer 14 lap joint, left and right, and an internal high frequency eddy current inspection at Body Station 727 and aft therefrom for a distance of 60 inches, in accordance with Boeing Alert

Service Bulletin 737-53A1135, dated September 26, 1989, for cracks in the lower skin at the lower row of fasteners and one inch below the center line of the lower row of fasteners. If cracks are found, repair prior to further flight, in accordance with the repair procedure defined in that service bulletin.

C. Within 15 days after the completion of the inspections required in paragraph B., above, where cracking was detected, submit a report to the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, through the Principal Maintenance Inspector (PMI). The report must include the line number of the airplane inspected, the number of cycles, the inspection method used, the size and location of the crack, and the status of compliance with Boeing Service Bulletin 737-53-1065, dated January 4, 1985, or later revisions.

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

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

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

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

This amendment becomes effective October 23, 1989.

Issued in Seattle, Washington, on September 29, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-24161 Filed 10-12-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-25-AD; Amendment 39-6354]

Airworthiness Directives; Lockheed Model L-1011 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to certain Lockheed Model L-1011 series airplanes, which currently requires extending and rerouting overheat sensors for the air conditioning bleed air ducts located below the Mid-Electric Service Center (MESC) floor, removing excess flow sensors, modifying structure, and installing isolation barriers. This amendment requires a further modification to the previously mandated rework, and the installation of additional overheat sensors and improved isolation barriers. This amendment is prompted by reports of an incident where the No. 2 air conditioning pack duct failed under the MESC floor and activated the overheat sensor for the No. 3 pack instead of its own overheat sensor. This condition, if not corrected, could result in loss of all AC/DC electrical power, including the emergency bus.

EFFECTIVE DATE: November 13, 1989.

ADDRESSES: The applicable service information may be obtained from Lockheed Aeronautical Systems Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Order Administration, Department 65-33, Unit 20, Plant A-1. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert T. Razzeto, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5355.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by revising AD 85-07-05, Amendment 39-5028 (50 FR 13014, April 2, 1985), applicable to certain Lockheed Model L-1011 series airplanes, to require installation of additional overheat sensors and improved isolation barriers, was published in the *Federal Register* on June 6, 1989 (54 FR 24188).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The Air Transport Association (ATA) of America requested that the compliance time for accomplishment of the modification be extended from the proposed 1,800 flight hours to 3,600 flight

hours. ATA stated that four of its affected member operators were advised by Lockheed that the required modification parts will necessitate a lead time of 28 to 32 weeks to obtain. Considering that these airplanes are utilized a minimum of 9 hours per day, the ATA suggested that the proposed compliance time be extended so that sufficient time is allowed for operators to schedule this modification after their part kits were received. The FAA concurs with this request. Contrary to information previously received, the FAA has verified that the lead time for obtaining the required modification parts will exceed the proposed compliance time of 1,800 flight hours. In light of this situation, and in consideration of the Model L-1011 service history, the FAA has determined that extending the compliance time to the suggested 3,600 flight hours will accommodate the time necessary for affected operations to order, obtain, and install the modification, without adversely affecting safety.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of this AD.

There are approximately 249 Model L-1011 series airplanes of the affected design in the worldwide fleet. It is estimated that 91 airplanes of U.S. registry will be affected by this AD, that it will take approximately 7 manhours per airplane to accomplish the required actions, and that the average labor cost will be \$40 per manhour, with parts costing \$13,000 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$1,208,480.

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

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact,

positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.69.

§ 39.13 [Amended]

2. Section 39.13 is amended by amending Amendment 39-5028 (50 FR 13014, April 2, 1985), AD 85-07-05, as follows:

Lockheed Aeronautical Systems Company:

Applies to Model L-1011 series airplanes, Serial Numbers -1002 through -1221 that have not been modified in accordance with Lockheed Service Bulletin 093-21-184, dated November 21, 1983, certificated in any category. Compliance required as indicated, unless previously accomplished.

To minimize the potential for unrecoverable loss of all AC/DC electrical power, including the emergency bus, accomplish the following:

A. Within 3,600 flight hours after May 9, 1985 (the effective date of Amendment 39-5028), extend and reroute Fenwall thermal overheat sensors below the Mid-Electrical Service Center (MESC) floor, remove excess flow sensors, and modify the structure below the MESC floor in accordance with the Lockheed Service Bulletin 093-21-214, Revision 1, dated December 9, 1983; Revision 2, dated September 10, 1984; Revision 3, dated April 21, 1986; or Part 1 of the Accomplishment Instructions of Revision 4, dated August 15, 1988.

B. Within 3,600 flight hours after May 9, 1985 (the effective date of Amendment 39-5028), extend the duct isolation barrier in accordance with Lockheed Service Bulletin 093-21-222, Basic Issue, dated January 9, 1984; Revision 1, dated April 30, 1984; or Revision 2, dated August 15, 1988.

C. Within 3,600 flight hours after the effective date of this amendment, further extend the duct isolation barrier, add overheat sensors, and revise the insulation blanket retention, in accordance with Lockheed Service Bulletin 093-21-227, Basic Issue dated August 15, 1988.

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

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

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Lockheed Aeronautical Systems Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Order Administration, Department 65-33, Unit 20, Plant A-1. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment amends Amendment 39-5028, AD 85-07-05.

This amendment becomes effective November 13, 1989.

Issued in Seattle, Washington, on September 29, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.
[FR Doc. 89-24162 Filed 10-12-89; 8:45am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-206-AD; Amendment 39-6356]

Airworthiness Directives; McDonnell Douglas Model DC-9-81 (MD-81), DC-9-82 (MD-82), DC-9-83 (MD-83), DC-9-87 (MD-87), and MD-88 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to McDonnell Douglas Model DC-9-81 (MD-81), DC-9-82 (MD-82), DC-9-83 (MD-83), DC-9-87 (MD-87), and MD-88 series airplanes, which requires replacement of the eight motor-to-valve body screws of the power transfer unit shut off (PTU S/O) valve. This amendment is prompted by two reports of dual hydraulic system failure

in flight. This condition, if not corrected, could result in a landing without normal hydraulic systems, necessitating the use of backup, non-powered control systems.

EFFECTIVE DATE: October 23, 1989.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90801; attn: Director of Publications, C1-L00 (54-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Robert T. Razzeto, Aerospace Engineer, Los Angeles Aircraft Certification Office, Systems and Equipment Branch, ANM-131L, FAA, Northwest Mountain Region, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5355.

SUPPLEMENTARY INFORMATION: There have been two recent incidents of McDonnell Douglas Model DC-9-82 (MD-82) series airplanes experiencing dual hydraulic system failures in flight. This limited the airplanes to the hydraulic power stored in the wheel brake accumulators and the thrust reverser accumulators. In one case, the airplane landed and sustained minor damage to the main landing gear door. In the second failure, the airplane drifted off the runway and the nose landing gear collapsed. It has been determined that, in both cases, the power transfer unit shut off (PTU S/O) valve, Whittaker Controls part number (P/N) 240695, failed. Two adjacent motor-to-valve attach screws also failed due to fatigue, causing the valve body to separate and hydraulic fluid to be lost in that one system. The valve jammed in the open position, depressurizing the remaining hydraulic system. Four other instances of screw failure have been found during maintenance or preflight inspections. This condition, if not corrected, could lead to landing without normal hydraulic systems, necessitating the use of backup, non-powered control systems.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD requires replacement of the PTU S/O valve motor-to-valve screws at intervals not to exceed 2,000 landings. In addition, this AD provides an optional terminating action for the repetitive screw replacements by replacing PTU S/O valve P/N 240695 with PTU S/O valve

P/N 240695-1, which has been FAA-approved and incorporated in production. The FAA considers the requirements of this AD as interim action and may consider further rulemaking to require further corrective action to ensure that Model DC-9 PTU S/O valve will not cause dual hydraulic system failure.

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

The authority citation for part 39 continues to read as follows:

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

§ 39.13 [Amended]

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

McDonnell Douglas: Applies to Model DC-9-81 (MD-81), DC-9-82 (MD-82), DC-9-83 (MD-83), DC-9-87 (MD-87), and MD-88 series airplanes, equipped with Whittaker Controls power transfer unit shut off (PTU S/O) valve, part number (P/N) 240695, certificated in any category. Compliance required as indicated.

To prevent dual hydraulic system failure, accomplish the following:

A. Prior to the accumulation of 2,000 landings, or within 200 landings after the effective date of this AD, whichever occurs later, unless accomplished within the last 1,800 landings, replace the PTU S/O valve motor-to-valve attach screws, P/N NAS 1101E4-14, with new screws of the same part number, in accordance with the installation instructions of McDonnell Douglas Telex MD-80-COM-24/JCE, dated September 18, 1989. Thereafter, replace the screws at intervals not to exceed 2,000 landings.

B. Replacement of Whittaker Controls PTU S/O valve, P/N 240695, with PTU S/O valve, P/N 240695-1, constitutes terminating action for the requirements of paragraph A. of this AD.

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

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

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

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90801; ATTN: Director of Publications, C1-L00 (54-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment becomes effective October 23, 1989.

Issued in Seattle, Washington, on September 29, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-24163 Filed 10-12-89; 8:45am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8264]

RIN 1545-AK28

Temporary Regulations Under Section 383 of the Internal Revenue Code of 1986; Use of Pre-Change Attributes

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to temporary regulations.

SUMMARY: This document contains corrections to Treasury Decision 8264, which was published Wednesday, September 20, 1989, (54 FR 38664). The temporary regulations relate to the use of certain corporate tax attributes under section 383 of the Internal Revenue Code of 1986 that are attributable to the period preceding an ownership change of the corporation.

FOR FURTHER INFORMATION CONTACT: Lori J. Jones, 202-566-3205 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations that are the subject of these corrections provide guidance under section 383 relating to the manner and method of absorbing the section 383 limitation with respect to certain capital losses and excess credits after there has been an ownership change of a corporation within the meaning of section 382.

Need for Correction

As published, T.D. 8264 contains typographical errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the temporary regulations (T.D. 8264) which was the subject of FR Doc. 89-22108, is corrected as follows:

1. On page 38664, column 2, in the heading, the RIN number "1545-AK26" is removed and the RIN number "1545-AK28" is added in its place.

2. On page 38664, column 3, the first paragraph under the caption "Paperwork Reduction Act", fifth line from the bottom of this paragraph, the OMB number "1545-0123" is removed and the OMB number "1545-1120" is added in its place.

§ 602.101 [Corrected]

3. On page 38671, column 1, § 602.101, Par. 6., last two lines of this instructional paragraph, the OMB number "1545-0123" is removed and the OMB number "1545-1120" is added in its place.

Dale D. Goode,

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

[FR Doc. 89-24103 Filed 10-12-89; 8:45 am]

BILLING CODE 4830-01-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2644

Notice and Collection of Withdrawal Liability; Adoption of New Interest Rate

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Notice and Collection of Withdrawal Liability. That regulation incorporates certain interest rates published by another Federal agency. The effect of this amendment is to add to the appendix of that regulation a new interest rate to be effective from October 1, 1989, to December 31, 1989.

EFFECTIVE DATE: October 1, 1989.

FOR FURTHER INFORMATION CONTACT: John Foster, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; telephone 202-778-8850 (202-778-8859 or TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Under section 4219(c) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Pension Benefit Guaranty Corporation ("the PBGC") promulgated a final regulation on Notice and Collection of Withdrawal Liability. That regulation, codified at 29 CFR part 2644, deals with the rate of interest to be charged by multiemployer pension plans on withdrawal liability payments that are overdue or in default, or to be credited by plans on overpayments of withdrawal liability. The regulation allows plans to set rates, subject to certain restrictions. Where a

plan does not set the interest rate, § 2644.3(b) of the regulation provides that the rate to be charged or credited for any calendar quarter is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 ("Selected Interest Rates").

Because the regulation incorporates interest rates published in Statistical Release H.15, that release is the authoritative source for the rates that are to be applied under the regulation. As a convenience to persons using the regulation, however, the PBGC collects the applicable rates and republishes them in an appendix to part 2644. This amendment adds to this appendix the interest rate of 10½ percent, which will be effective from October 1, 1989, through December 31, 1989. This rate represents a decrease of ½ percent from the rate in effect for the third quarter of 1989. See 54 27872 (July 3, 1989). This rate is based on the prime rate in effect on September 15, 1989.

Beginning with this amendment for the fourth quarter of 1989, the PBGC will publish this quarterly interest rate on the 15th of the first month of the quarter (or, if the 15th falls on a weekend or Federal holiday, on the last regular business day preceding the 15th). We are doing this as a convenience to the public, so that all PBGC interest rates will be published on (or immediately preceding) the 15th day of a month. The PBGC does not believe that moving publication of this part 2644 interest rate from the first day of the quarter to the 15th day is likely to cause any significant inconvenience for multiemployer plans.

The appendix to 29 CFR part 2644 does not prescribe interest rates under the regulation; the rates prescribed in the regulation are those published in Statistical Release H.15. The appendix merely collects and republishes the rates in a convenient place. Thus, the interest rates in the appendix are informational only. Accordingly, the PBGC finds that notice of and public comment on this amendment would be unnecessary and contrary to the public interest. For the above reasons, the PBGC also believes that good cause exists for making this amendment effective immediately.

The PBGC has determined that this amendment is not a "major rule" within the meaning of Executive Order 12291, because it will not have an annual effect

on the economy or \$100 million or more; nor create a major increase in costs or prices for consumers, individual industries, or geographic regions, nor have significant adverse effects on competition, employment, investment, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 2644

Employee benefit plans, Pensions.

In consideration of the foregoing, part 2644 of subchapter F of chapter XXVI of title 29, Code of Federal Regulations, is amended as follows:

PART 2644—NOTICE AND COLLECTION OF WITHDRAWAL LIABILITY

1. The authority citation for part 2644 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3) and 1399(c)(6).

Appendix A [Amended]

2. Appendix A is amended by adding to the end of the table therein a new entry as follows:

From	To	Date of quotation	Rate (percent)
10/01/89	12/31/89	09/15/89	10.50

Issued at Washington, DC, on this 6th day of October, 1989.

James B. Lockhart, III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 89-24236 Filed 10-12-89; 8:45 am]

BILLING CODE 7708-01-M

29 CFR Part 2676

Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal—Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of November 1989.

EFFECTIVE DATE: November 1, 1989.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington DC 20006; 202-778-8820 (202-778-8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as

possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (See 5 U.S.C. 533 (b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of \$100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676

Employee benefit plans and pensions.

In consideration of the foregoing, part 2676 of subchapter H of chapter XXVI of Title 29, Code of Federal Regulations, is amended as follows:

PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation for part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates therein the following new entry:

§2676.15 Interest

(c) Interest rates.

* * * * *

For valuation dates occurring in the month—

The values of i_k are:—

	i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}	i_{15}	i_{16}
November 1989	.08875	.08625	.08375	.08	.07625	.07125	.07125	.07125	.07125	.07125	.065	.065	.065	.065	.065	.05875

Issued at Washington, DC, on this 6th day of October 1989.

James B. Lockhart, III,
Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 89-24235 Filed 10-12-89; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD1 89-119]

Drawbridge Operation Regulations; Apponagansett River, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: At the request of the Town of Dartmouth, the Coast Guard is issuing temporary regulations governing the Padanaram (Gulf Road) drawbridge across the Apponagansett River, at mile 1.0, at Dartmouth, Massachusetts commencing October 1 through November 30, 1989 to provide that the draw need open on signal on the hour and half hour from 5 a.m. to 9 p.m. At all other times the draw shall open on signal if at least six hours notice is given. Public vessels of the United States and state and local vessels used for public safety shall be passed as soon as possible. The temporary regulation is being made to examine the effect on vehicular and marine traffic during the above period. This action should accommodate the needs of vehicular traffic, and still provide for the reasonable needs of navigation.

DATE: This temporary regulation becomes effective on October 1, 1989, and terminates on November 30, 1989. Comments must be received by November 30, 1989.

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

SUPPLEMENTARY INFORMATION: This temporary deviation from the regulations is issued under 33 CFR 117.43 to evaluate suggested changes in the drawbridge regulations to reduce vehicular and marine traffic congestion. Statistics provided by the bridge owner and harbor master show that traffic density averages between 400 and 900 cars per hour across the two lane bridge between 8 a.m. and 10 p.m. during the boating season. Because of congestion in the lower harbor and a lack of moorings, the harbor master has had to place an increasing number of moorings for

sailboats on the north side of the bridge. Additionally, the primary hauling and launching facilities are also north of the bridge. Thus, the regulation which frequently allows the bridge to remain closed for up to two hours during the morning, noon, and evening rush hours creates safety problems for mariners. When the bridge finally opens, the extensive number of vessels requiring passage cause long and frequent openings during off periods.

Persons affected by these temporary regulations may comment on their impact on both marine and vehicular traffic, including observed effects (beneficial and detrimental), and any suggestion for changes. Persons submitting comments should include their name and address, identify the bridge, and give reasons for support of or opposition to these temporary regulations. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

ADDRESSES: Comments should be mailed to Commander (obr), First Coast Guard District, Bldg. 135A, Governors Island, NY 10004-5073. The comments and other materials referenced in this notice will be available for inspection and copying at this address. Normal office hours are between 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays. Comments may also be hand-delivered to this address.

Drafting Information

The drafters of this notice are Jose M. Arca Jr., project officer, and LT. Robert E. Korroch, project attorney.

Discussion of Regulations

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for these regulations and good cause exists for making it effective in less than 30 days after Federal Register publication. Publishing a Notice of Proposed Rulemaking and delaying its effective date would be contrary to the public interest since implementation of these temporary regulations is necessary to evaluate their effect during a period when both boating and vehicular traffic are in conflict. Additionally, strong public interest supports this action.

Economic Assessment And Certification

These temporary regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this temporary regulation has been

found to be so minimal that a full regulatory evaluation is unnecessary. The intent of this temporary regulation is to collect information to assess how the regulations accommodate vehicular and marine traffic. The scheduled openings will permit more uniform, frequent, and established opening times to permit both vehicular and marine traffic to utilize the bridge with minimum disruption to the other mode of transportation. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that the impacts will not have a significant economic effect on a substantial number of small entities.

Federalism Implication Assessment

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

List of Subjects in 33 CFR Part 117

Bridges.

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g); 33 CFR 117.43.

2. Section 117.587 is revised to read for the period of October 1, 1989 through November 30, 1989 as follows:

§ 117.587 Apponagansett River.

(a) The following requirements apply to all bridges across the Apponagansett River:

(1) Public vessels of the United States and State and Local vessels used for public safety shall be passed as soon as possible.

(2) Mooring facilities shall be maintained on bridge piers or fenders for vessels to make fast to while waiting for the draw to open.

(3) The bridge owners shall provide and keep in good legible condition clearance gauges with figures not less than 10 inches high designed, installed and maintained in accordance to the provisions of 118.160 of this chapter.

(b) The draw of the Padanaram Highway (Gulf Road) drawbridge, mile 1.0 at South Dartmouth, shall open as follows:

(1) From 1 October to 30 November 1989 from 5:00 a.m. to 9:00 p.m. need open on signal only on the hour and half hour.

(2) At all other times, on signal if at least six hours notice is given.

Dated: October 4, 1989.

R. I. Rybacki,

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

[FR Doc. 89-24247 Filed 10-12-89; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD09 89-07]

Drawbridge Operation Regulations; Portage River, OH

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Ottawa County Engineer, the Coast Guard is amending regulations governing the Monroe Street highway bridge at mile 0.4 across the Portage River in Port Clinton, Ohio. The periods of time during which the draw opens on a regulated schedule will be extended. Also, the category of commercial vessels entitled to priority passage through the draw during regulated periods will be limited to commercial vessels of ten gross tons or more, or carrying fifteen passengers or more. This change is being made because of vehicular traffic tie-ups, caused by an increase in recreational vessel traffic during periods when the draw is required to open on signal at the beginning and end of the navigation season. Also, an increase in the number of charter vessels licensed to carry fifteen passengers or less and vessels of ten gross tons or less is causing additional vehicular traffic tie-ups because these commercial vessels were exempt from the regulated periods, causing the bridge to open within short periods of time before and after a scheduled opening. Other minor adjustments are being made to the restricted periods. The Monroe Street bridge will now be subject to two different periods during the year, instead of the four different periods currently in effect, and these two new periods will be consistent with the two periods currently in effect for the Conrail Railroad bridge, mile 1.5, at Port Clinton. As before, both bridges will always open as soon as possible for special category vessels. These actions will accommodate the current needs of vehicular traffic and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on November 13, 1989.

FOR FURTHER INFORMATION CONTACT: Robert W. Bloom, Jr., telephone number (216) 522-3993.

SUPPLEMENTARY INFORMATION: On May 26, 1989, the Coast Guard published proposed rules Vol. 54, No. 101, FR 22785 and FR 22786 concerning this amendment. The Commander, Ninth Coast Guard District, also published the proposal as a Public Notice dated June 12, 1989. Interested persons were given until July 10, 1989, and July 11, 1989, respectively, to submit comments.

Drafting Information

The drafters of these regulations are Fred H. Mieser, project officer, and Lieutenant Commander M. Eric Reeves, U.S. Coast Guard project attorney.

Discussion of Comments

No comments were received as a result of publication in the *Federal Register* and Public Notice.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulations and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. Extending the time that the bridge will open on the hour and half-hour to include the periods of May 1 through May 14 and November 1 through November 30 will relieve vehicular traffic tie-ups due to random bridge openings. Previously, the bridge opened on signal during these two periods of time. Also, requiring vessels of less than ten gross tons and vessels licensed to carry less than fifteen passengers to comply with the hour and half-hour openings will relieve additional vehicular traffic tie-ups caused by random bridge openings for the passage of these vessels. Additionally, removing bridgetenders from the Monroe Street highway bridge, and Conrail railroad bridge starting on December 1 instead of December 2, allows the owners of both bridges to begin winter operation of the bridges one day earlier during a time when there is little or no vessel traffic on the river. Since the impact of these regulations is expected to be so minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

Federalism

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

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-01(g); 33 CFR 117.43.

2. Section 117.851 is amended by revising paragraphs (a), (c), and (d) to read as follows:

§ 117.851 Portage River.

(a) Public vessels of the United States, State or local government vessels used for public safety, vessels in distress and vessels seeking shelter from rough weather shall be passed through the draws listed in this section as soon as possible. Except as provided in paragraph (c)(1)(ii) with respect to the Monroe Street bridge, commercial vessels shall be passed through the draws of this section as soon as possible.

(c) The draw of the Monroe Street bridge, mile 0.4 at Port Clinton, shall open as follows:

(1) From May 1 through November 30—

(i) Between the hours of 12 midnight and 6 a.m., the draw shall open on signal.

(ii) Between the hours of 6 a.m. and 12 midnight, the draw shall open on signal. However, the draw need not open on signal during this time for recreational craft and commercial vessels licensed to carry fifteen or less passengers, or less than ten gross tons, unless in distress or seeking shelter from rough weather. For these vessels, the draw need open only from three minutes before to three minutes after the hour and half-hour.

(2) From December 1 through April 30, the draw shall open on signal if at least 24 hours' notice is given.

(d) The draw of the Conrail bridge, mile 1.5 at Port Clinton, shall open on signal. However, from December 1

through April 30, the draw shall open on signal if at least 24 hours' notice is given.

Dated: September 28, 1989.
D.H. Ramsden,
Captain, U.S. Coast Guard, Commander, 9th
Coast Guard District, Acting,
[FR Doc. 89-24248 Filed 10-12-89; 8:45 am]
BILLING CODE 4910-14-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 433

[BQC-59-FC]

RIN 0938-AA63

Medicaid Program; Medicaid Management Information System; Revised Definition of "Mechanized Claims Processing and Information Retrieval System"

AGENCY: Health Care Financing
Administration (HCFA), DHHS.

ACTION: Final rule with comment period.

SUMMARY: We are making a number of revisions to regulations concerning mechanized claims processing and information retrieval systems ("system" or "systems"). We are revising definitions to show that we will not make available Federal funding at 75 and 90 percent of State Medicaid agency expenditures for eligibility determination systems because they do not meet the definition of a "mechanized claims processing and information retrieval system" or of an enhancement to that system. We are also conforming our regulations to changes made by sections 9503(b)(2) and 9518 of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 (Pub. L. 99-272), which involve technical changes. One change affects the frequency and scope of our system reviews, and the other involves the date by which States that are not exempt by law must have an operating system.

DATES: The rule is effective November 13, 1989.

To ensure consideration, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by 5:00 p.m. on December 12, 1989.

ADDRESS: Mail comments to the following address:

Health Care Financing Administration,
Department of Health and Human
Services, Attention: P.O. Box 26676,
Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey
Building, 200 Independence Ave., SW.,
Washington, DC, or,
Room 132, East High Rise Building, 6325
Security Boulevard, Baltimore,
Maryland.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments.

In commenting, please refer to file code. Comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT:
Rick Friedman, 301-966-3292.

SUPPLEMENTARY INFORMATION:

I. Background

Basis of the System

A Medicaid management information system (commonly known as the MMIS or referred to as "the system") is a mechanized system of claims processing and information retrieval used in State Medicaid programs under title XIX of the Social Security Act (the Act). The system, originally authorized by section 1903(a)(3) of the Act, is used to process Medicaid claims from providers and to retrieve and produce utilization data and management information about medical care and services furnished to recipients. Each State (with some exceptions) is required by section 1903(r) of the Act to have in place an operational and approved system or be subject to reductions of Federal financial participation (FFP).

Section 1903(a)(3) of the Act authorizes FFP at 90 percent of the sums a State Medicaid agency expends for the design, development, or installation of a mechanized claims processing and information retrieval system that the Secretary determines is likely to provide more efficient, economical and effective administration of the program and at 75 percent for the operation of these systems. (Hereafter, we will refer to 90 percent and 75 percent FFP as "enhanced" FFP since it is greater than the 50 percent FFP authorized for most Medicaid administrative expenses.)

Current Regulations

Our regulations concerning mechanized claims processing and information retrieval systems are at 42

CFR part 433, subpart C. Section 433.111 defines terms used in obtaining enhanced Federal funding for mechanized claims processing and information retrieval systems. A State agency's system must comply with the requirements in § 433.112 through § 433.122 to enable the agency to obtain enhanced funding for the design, development, installation or enhancement of a system. These sections discuss the availability of enhanced FFP, identify the conditions a system must meet for approval and reapproval and specify that an agency must meet system requirements and performance standards if it is to continue to receive enhanced funding. The sections also explain that enhanced funding for automated eligibility systems is not available as such systems are not part of mechanized claims processing and information retrieval systems nor are they enhancements to such systems. Section 433.123 describes procedures we follow to ensure that we inform interested parties adequately before we make changes in conditions of approval or reapproval and in system requirements for required systems eligible for enhanced funding.

A State that chooses to develop, enhance or replace its required system or subsystems must first submit for approval an advanced planning document (APD). The general HHS requirements for approval of APDs are found at 45 CFR part 95, subpart F, which prescribe the conditions under which HHS will approve FFP at applicable rates for costs of automated data processing for the Medicaid program and for the Aid to Families with Dependent Children (AFDC) and the Child Support Enforcement program (titles IV-A and IV-D of the Act, respectively). On December 18, 1986, HHS revised 42 CFR 433.111 by removing the content of the definitions of all the terms found there previously (except that of "mechanized claims processing and information retrieval system") and cross-referring the reader to 45 CFR 95.605 for definitions of the other terms. The term "improvement" was replaced by "enhancement" in §§ 433.111 and 433.112. See 45 CFR 95.625(b).

II. Proposed Changes to Regulations

On August 11, 1988, we published a notice of proposed rulemaking (53 FR 30317). We proposed to change our rules so that we would approve an APD as being likely to provide more efficient, economical and effective administration of the State plan only for a mechanized claims processing and information

retrieval system that consists of the federally required, or core, subsystems of that system, which we describe in part 11 of the State Medicaid Manual or federally required changes to the system or subsystem.

A. "Mechanized Claims Processing and Information Retrieval System"

We proposed in the notice of proposed rulemaking to revise the current definition of "mechanized claims processing and information retrieval system" in 42 CFR 433.111 so that it consists of the HCFA-required, or core, subsystems specified in the State Medicaid Manual. We proposed that if a State were to initiate changes to its system as likely to provide more efficient, economical and effective administration of the State plan and HCFA approved the changes, they would be funded at the regular matching rate of 50 percent in accordance with § 433.15(b)(7) and 45 CFR part 95, subpart F.

Under the proposed revised definition, "mechanized claims processing and information retrieval system" would be the six Statewide core subsystems of software and hardware used (1) to process claims by providers of medical care and services for items and services furnished to eligible recipients under the Medicaid program and (2) to retrieve and produce service utilization and management information that is required by the Medicaid single State agency and Federal government for Medicaid program administration and audit purposes. The system would be used to process claims only for items and services covered under the State plan.

B. Enhancements

We also proposed to delete the term "enhancement" found in current § 433.111. Neither the term "enhancement" nor "improvement", as enhancement was formerly called, appear in the statute. Under our proposal, we would fund only HCFA-approved core systems and subsystems and HCFA-required changes at the enhanced funding rates. Conversely, we proposed that any modification suggested by a State that is not approved by HCFA as a core system requirement would not be viewed by HCFA as an "improvement" for purposes of enhanced FFP.

Under our proposal, the only changes for which we had planned to allow 75 or 90 percent funding would be HCFA-required changes to the required core system or subsystems. We proposed to fund any other system design and development changes that were

approved at the regular 50 percent matching rate.

Under § 433.112, we proposed to approve 90 percent FFP only when the requirements published in the Federal Register and in Part 11 of the State Medicaid Manual for the system being designed, developed, or installed are met. Approval of a system for 75 percent FFP for operation continued to depend on that system meeting the published requirements as required by § 433.116.

C. Technical Clarifications

We also proposed to revise § 433.112(a) to read as it did from July 30, 1985 to December 18, 1986, except that it would not include the term "improvement". When this section was revised on December 18, 1986, the language that was in the Code of Federal Regulations before July 30, 1985 was inadvertently used. Since there was no intention to change the substance of this paragraph in December, 1986, we proposed to restore the earlier language.

D. Use of "System" Instead of "MMIS"

We also proposed to change the references in the regulations from "MMIS" (which appear in §§ 433.121, 433.130 and 433.131), to "system," which is the short form for the term "mechanized claims processing and information retrieval system" and is currently in use in all sections in part 433, subpart C except § 433.131. We have not defined "MMIS" in regulations and would make the change for consistency.

III. Proposed Revisions to Implement Public Law 99-272

We also proposed revising our regulations to implement section 1903(A) of the Act to conform with changes made by sections 9503(b)(2) and 9518 of the Consolidated Omnibus Budget Reconciliation Act (COBRA), Pub. L. 99-272, as enacted April 7, 1986.

Section 9503(b)(2)(A) of COBRA amends section 1903(r)(4)(A) of the Act by requiring the Secretary to review each approved system at least once every three years, instead of once a year. Section 9503(b)(2)(B) amends section 1903(r)(4)(A) of the Act to permit the Secretary, at his discretion, to review either the entire system of a system State agency or only those standards, system requirements and other conditions demonstrating weakness in previous reviews.

Section 9518 of COBRA amends section 1903(r)(1)(B) of the Act so that State agencies must have had an approved system no later than September 30, 1985, instead of September 30, 1982. The amendment

applies to payment made under section 1903(a) of the Act for calendar quarters beginning on or after October 1, 1982.

We proposed to revise § 433.119, conditions for yearly approval; notice of decision, to show that we would review each system operation at least once every three years and to indicate that we would not have to review the entire system but we would, at a minimum, have to review parts of the system operation that showed weaknesses in the previous review.

We would revise § 433.122 to delete the references to "yearly" review.

We proposed to revise § 433.113, reduction of FFP for failure to operate a system and obtain initial approval, to change the deadline by which an agency must have an approved system to September 30, 1985.

IV. Funding For Optional Systems and Subsystems

In the proposed rule, we discussed funding for third party liability and for eligibility determination systems.

A. Third Party Liability

We interpret section 9503(a) of COBRA as requiring State Medicaid agencies to have an approved plan of action for third-party liability (TPL) and to use the system to carry out the plan of action. We currently require these statutory TPL changes as part of the core system by regulation (42 CFR 433.122(b)(2)). If these requirements are not currently part of any system approved for enhanced matching, they should be implemented as system requirements to all approved systems for which enhanced matching is claimed. If system modifications are required in some States to meet COBRA requirements, we will continue to make enhanced FFP available for modifications to those TPL systems that are part of the required core system.

B. Eligibility Determination Systems

1. Background

Since 1977, HCFA has made available 90 percent FFP for the design, development, installation or improvement of eligibility determination systems, subject to approved APDs, and 75 percent FFP for the subsequent operation of these systems, on the basis that applications for eligibility were "claims" and that a system processing these "claims" was a part of the mechanized claims processing and information retrieval system.

In 1981, section 403(a)(3)(B) of the Act was added by section 406 of Public Law 96-265; it requires the Secretary to provide 90 percent FFP for the design,

development and installation of a mechanized eligibility determination system that meets the requirements of section 402(a)(30) of the Act for Aid to Families with Dependent Children (AFDC). In addition, the section requires the Secretary to determine that the systems are "likely to provide more efficient, economical, and effective administration of the plan and to be compatible with the claims processing and information retrieval systems utilized in the administration of State plans approved under title XIX * * *." SSA published an interim final rule (45 CFR 205.35 through 205.38) on September 30, 1981 (46 FR 47784) to implement this provision, and a final rule on April 17, 1986 (51 FR 13001). The 90 percent FFP has been available for quarters beginning on and after July 1, 1981.

2. Proposal

AFDC agencies now receive 90 percent FFP for implementing eligibility determination systems. An automated eligibility determination system such as the AFDC Family Assistance Management Information System (FAMIS), is in reality not part of a mechanized claims processing and information retrieval system for Medicaid.

Congress purposely required that 90 percent FFP be made available for AFDC eligibility determination systems by adding section 403(a)(3)(B) of the Act, effective July 1, 1981, and did not do so for Medicaid. Any incentive provided by partial title XIX enhanced funding before 1981 has been superseded by the explicit funding authority under section 403(a)(3) of the Act. This authority has encouraged 44 States to design eligibility determination systems, principally with title IV funding. Because there is no explicit statutory funding authority under title XIX, HCFA is not required to make enhanced FFP available for eligibility determination system. In addition, there is no further need to do so.

As a result, we proposed that eligibility determination systems would no longer be eligible for any enhanced FFP for Medicaid purposes under the proposed definition of mechanized claims processing and information retrieval systems, since enhanced FFP would be available only for costs directly attributable to approved Medicaid systems. Because eligibility determination systems would not be used to process claims by "providers of medical care and services for the medical care and services furnished to the recipients", we would not require

their implementation or operation, as part of the core subsystems.

3. FFP for an Eligibility Determination System

We proposed that, in order to receive any FFP for Medicaid purposes for an eligibility determination system after the effective date of the final rule, a State agency would have to submit an APD in accordance with the requirements of 45 CFR part 95, subpart F, for funding. If we approve the APD, the State agency would receive 50 percent FFP for administrative costs under section 1903(a)(7) of the Act for the system's design, development, installation, and operation.

We proposed that a State Medicaid agency with a currently approved APD for a mechanized eligibility determination system would receive Medicaid enhanced funding at 90 percent under paragraph 1903(a)(3)(A) of the Act until the effective date of these final regulations. Once these regulations are effective, all Medicaid enhanced funding would terminate after the effective date and Medicaid funding for operation of mechanized eligibility determination systems would be reduced to the 50 percent rate under section 1903(a)(7) of the Act at that time. Any APDs approved by HCFA for eligibility determination systems after the effective date of the final rule would be reduced to the 50 percent rate at that time. Eligibility determination system operations being funded at the enhanced operations rate of 75 percent before the effective date of the final regulation would be funded by HCFA at the 50 percent rate after the effective date.

We proposed to add a paragraph to § 433.112 to exclude eligibility determination systems specifically from funding at enhanced rates.

V. Comments and Responses

We received comments from 29 commenters: 24 Medicaid agencies, one computer company, one group for promoting technology to improve delivery of human services, a State Medicaid directors' association, a health center association and the systems technical advisory group. Below we state their comments and our responses to them.

Comment: Almost all of the commenters disagreed with our proposal to stop paying enhanced FFP for State-initiated "enhancements" (or improvements) because they believed lack of enhanced FFP will prevent States from making changes, which contribute to the efficiency, effectiveness and economy of the program, to their systems. One of these

commenters was also concerned about a drop in funding for APDs that are already approved. Three commenters believed the change would affect Federal-State relationships; one commenter thought that the ability of States to share innovations would be hampered, thus reducing further chances at economy, efficiency and effectiveness.

Response: We agree that lack of enhanced FFP for State-initiated enhancements may prevent some States from making important enhancements that will improve the effectiveness, efficiency and economy of their systems. Therefore, we will not delete the term "enhancement" found in § 433.111. Likewise, we will continue to fund enhancements based on APDs approved by HCFA at enhanced funding levels, although we are considering additional options for matching rates paid for enhancements. (See section VIII below.) However, after the effective date of this regulation, enhanced funding will not be available for eligibility determination systems, as these systems are not part of mechanized claims processing and information retrieval systems.

With respect to APDs for eligibility determination systems approved before the effective date of this final regulation, in the interest of fairness, the 90-percent FFP rate will continue to be available for design, development, installation or enhancement of a system or subsystem up to the approved expenditure ceiling. However, FFP at 50 percent, not at 75, will be paid for operation of eligibility determination systems after the effective date of the final regulation regardless of when the APD or system was approved. Any APDs or revisions to APDs approved after the effective date of the final regulation will be funded at the revised rate of 50 percent described in the final regulation.

We do not expect States to welcome a reduction of FFP rates for automated eligibility determination systems under Medicaid. However, the Secretary is obligated to interpret the statute and review and revise policy periodically if necessary. We do not believe that State staff reductions or increased error rates can be directly attributed to this regulation or to the reduced FFP rates, particularly because the AFDC program will continue to fund the development of automated eligibility systems at 90 percent FFP.

Comment: One commenter noted that a special HCFA work group is developing basic requirements for an MMIS that will replace the general systems design and result in the removal from the State Medicaid Manual of the

six core subsystems as they are known today: this activity is moving away from the subsystem model while the proposed rule emphasizes the six subsystems exclusively.

Response: While it is true that a work group is developing basic requirements that will replace the general systems design and result in the removal of the six core subsystems from the State Medicaid Manual, none of its work is final and we are not yet ready to propose such replacement. When any change is made in the MMIS, as a result of the work group's efforts, the requirements will be announced through appropriate documents.

Comment: Two commenters believed that we should add a definition of "maintenance" to the rules; otherwise, the States and HCFA will continually disagree as to whether a change is maintenance or an enhancement.

Response: We consider maintenance to be the routine operational exercising and functioning of the system to keep it ready and fit for performing at the standard and condition for which it was approved. Enhancements advance the system performance beyond its original condition. As defined in Departmental regulations (45 CFR part 95, subpart F), enhancement means modifications that change the functions of software and hardware beyond their original purposes, not just to correct errors or deficiencies that may have been present in the software or hardware, or to improve the operational performance of the software or hardware. We are not revising our regulations to reflect this explanation but will incorporate it into appropriate instructions in the State Medicaid Manual. Furthermore, we will continue to pay enhanced FFP for State-initiated and Federally required enhancements to approved MMIS systems.

Comment: Ten commenters were concerned about funding for system changes required by statute that are not required by HCFA in regulation. Of special concern to several commenters was the fact that 90% FFP is available only after we have published the change in the Federal Register and the State Medicaid Manual, which creates a lengthy delay in implementation because we do not retroactively approve system changes.

Response: We agree with these commenters. We will fund at 90 percent FFP any enhancements to the required system that the statute requires, whether self-implementing or not. The State should implement any statutory requirements in the absence of implementing regulations. To the extent that a State agency has to enhance the

system again after we issue implementing regulations or instructions, we will also pay for those enhancements to the required system at the 90 percent level. We are revising the definition of "Mechanized claims processing and information retrieval system" in § 433.111(b) to accommodate the changes.

Comment: Eight commenters disagreed with the revisions to reduce funding to 50 percent based on the idea that Congress intended us to make funding available at enhanced rates. (Three of the commenters were specifically addressing the revisions concerning eligibility determination systems.) The commenters contended either that we have not been authorized to discontinue enhanced funding or that the statute mandates implicitly enhanced FFP for system improvements, including eligibility determination systems. One of the commenters making the latter point indicated that we are required to pay enhanced FFP for costs that are attributable to the design, development or installation or to the operation of a mechanized claims processing system. Some commenters argued that if we had the authority originally to fund enhancements and eligibility determination systems, we cannot now say we do not have the authority to so fund.

Response: We do not agree with these commenters. Congress has provided the Secretary with discretionary authority to fund such mechanized claims processing and information retrieval systems "as the Secretary determines" are likely to provide more efficient, economical, and effective administration of the State plan (section 1903(a)(3) of the Act.) This same discretionary authority exists under sections 403(a)(3) and 1903(a)(3) of the Act for the Secretary to define limits of the system and fund accordingly. The Secretary has determined that almost all State Medicaid programs have realized a substantial benefit by initially implementing required MMISs.

Congress has not provided explicit funding authority to Medicaid for eligibility determination systems. Congress did provide explicit statutory authority to title IV (section 403(a)(3) of the Act) and has required certain AFDC and Child Support Enforcement systems to be compatible with Medicaid systems. Title IV regulations (45 CFR 205.38) explicitly provide requirements for funding and compatibility of the systems with Medicaid systems. Within his discretionary authority the Secretary has now determined that title IV should fund these eligibility determination systems, not title XIX. Title XIX will

provide 50-percent FFP for any Medicaid costs associated with eligibility determination.

Comment: Two commenters were concerned with the system performance review (SPR) process and its relationship to noncore subsystems. They wondered whether future SPRs will be limited to core subsystems since the noncore systems are not considered critical enough to be integral to the MMIS.

Response: System performance review for reapproval is a review of the entire system for which FFP at any rate is claimed to determine if the system is likely to provide improved administration of the State plan. In many States the required subsystems make up the system. We expect that any additional parts of the system, including those not required, will also be subject to review and reapproval to assure that Federal funds are being properly claimed and spent and to assure that all parts of the system are cost beneficial and contributing to the proper and efficient administration of the Medicaid program, as required by section 1902(a)(30) of the Act and other parts of State plan requirements. In addition, Departmental requirements at 45 CFR part 95, subpart F, are applied during all system reviews. However, we will not review automated Medicaid eligibility determination systems as part of system performance review as these are not part of mechanized claims processing and information retrieval systems.

Comment: Three commenters were concerned about the effect of the revisions on the third party liability (TPL) subsystem. They wanted to know if the system will be eligible for enhanced funding, including both HCFA-mandated and State-proposed enhancements to the subsystem.

Response: Because of State comments on our proposal we will continue to offer enhanced funding for the design, development, installation or enhancement of the required system. Any State-initiated changes approved after this regulation becomes final will be funded at 90 percent for design, development and installation and at 75 percent for operations.

Comment: One commenter had several specific questions concerning expansion of current MMISs: (1) Would HCFA approve an APD requesting enhanced FFP for the enhancement/expansion of the core subsystems, yet disapprove such requests for the development of new and separate subsystems, keeping in mind that several States would incorporate a prior approval component into their claims

processing subsystem and that a Risk Underwriting component could be included into the management and administrative reporting subsystem? (2) Will the operation of subsystems revised with 50 percent FFP be funded at 75 percent or at 50 percent? (3) Would HCFA approve an APD for system changes to support a DRG reimbursement methodology at 90 or 50 percent FFP? (4) Will APDs for equipment or services where the total estimated Federal and State funding for the acquisition is less than (a) \$200,000 over a twelve month period, (b) \$300,000 for the total acquisition, or (c) \$25,000, where the equipment/services are acquired noncompetitively, continue to be exempt from prior federal approval if the State claims 50 percent FFP?

Response: In response to the first two questions, all enhancements to the required approved system will be funded at enhanced rates. States may, based on an approved APD, install features that go beyond the defined MMIS and receive enhanced FFP for them. However, automated eligibility determination systems will not be considered enhancements to the mechanized claims processing and information retrieval system. We expect States to identify capabilities that uniquely serve that State and to reap administrative and program savings from such optional capabilities. We are willing to share in and support unique capabilities at the enhanced FFP rates for both installation and operation of such optional capabilities.

However, APDs for eligibility determination systems approved before the effective date of the final regulation will be funded at the rates for design, development or installation in effect before the final regulation is effective. After the effective date of the regulations, APDs for eligibility determination systems and all operations of those systems will be funded by title XIX at the regular FFP rate of 50 percent. The title XIX cost of projects for eligibility determination that are approved and begun after the regulation is effective will be shared equally by the States and by the Federal Government.

With respect to the third question, HCFA will pay for system changes to support a DRG reimbursement methodology at enhanced rates.

The fourth question concerned thresholds and requirements for APD approvals that are in regulations, at 45 CFR part 95, subpart F.

Comment: Three commenters were concerned about the use of the MMIS for another program such as title XX and Medicare cross-over claims.

Response: We did not intend to imply nor to propose that information retrieved through the MMIS be used solely for Medicaid purposes. We meant that payment of FFP is related to the extent the system is used solely for Medicaid purposes. If a system is used for title XX or XVIII purposes as well as title XIX, the cost of its operation would be prorated to each program.

Comment: Three commenters believed that the MMIS should not be limited to six core subsystems, as to do so hampers the ability of the State to administer its program effectively and efficiently. One commenter thought it unfair that the State had implemented and operated an EPSDT subsystem at enhanced rates but now would receive only 50 percent FFP.

Response: We have changed our proposal and will continue enhanced funding for EPSDT system functions if EPSDT subsystem functions are part of an approved system. The claims processing and followup portions of the EPSDT subsystem may be funded as part of an approved system, but not those case management functions that go beyond the concept of claims processing and information retrieval.

Comment: One commenter stated that our proposed revisions limiting 75 percent FFP only to "costs directly attributable to approved systems" conflict with the Grant Appeals Board decision that allowed for "attributable indirect costs".

Response: The Department Appeals Board (DAB) decision No. 648, based on AT-78-33 and Transmittal 1 of the State Medicaid Manual (SMM), required payment of indirect costs not directly attributable to MMIS. Transmittal No. 8 of the SMM (1986) rescinded AT-78-33 and superseded Transmittal No. 1. The DAB decision No. 1023, March 13, 1989, upheld and confirmed the policy expressed in Transmittal No. 8 of the SMM. This regulation merely codifies our policy of paying enhanced FFP only for costs directly attributable to systems approved under section 1903(a)(3) and (r).

Comment: One commenter objected to the failure of the proposed rule to define the six required core subsystems; they should have been set forth in the proposed rule instead of defined in the SMM.

Response: We do not believe it is necessary or practical to name the subsystems in regulations, rather than in the SMM. Without changing substantive system requirements, we are in the process of considering a future conceptual revision of the MMIS to depart from the concept of subsystem and to include only two parts of a

system as stated in the statute: namely, claims processing and information retrieval. These two parts would continue to contain all of the substantive content of the current six subsystems with the first four: Recipient, Provider, Claims Processing and Reference comprising the claims processing part and the other two reporting subsystems: Management and Administrative Reporting and Surveillance and Utilization Review comprising the other part called information retrieval. This permits abandoning the outmoded concept of "subsystem" without substantive change to the system requirements. Any substantive change in the requirements would be published in the **Federal Register**.

Comment: One commenter believed that we should define "MMIS" in regulations, rather than changing reference to it to "system".

Response: "MMIS" is the popular name for the system; the statutory name for it is "mechanized claims processing and information retrieval system", so we chose the more formal designation to parallel the law.

Comment: Six commenters had comments about APDs and paperwork burden. One commenter thought that States should not have to obtain HCFA approval on enhancements. The commenters disagreed that our revisions would reduce the number of APDs generated, as the States would still have to complete APDs to determine whether a change is eligible for enhanced FFP; one commenter considered this illegal. One of the commenters disagreed that preparing an APD is a waste of time, stating that it helps define projects for both the State and HCFA Regional Office.

Response: The commenters are correct in stating that our revisions do not reduce the number of APDs generated and that the preparation of an APD is not a waste of time. However, we do not agree that requiring an APD is illegal or that States should not have to obtain our approval on enhancements. An APD is required by 45 CFR part 95, subpart F for any expenditure for systems regardless of matching rates if the amount is at or above a specified threshold; the submission and approval of an APD is a requirement without regard to the matching rate.

Comment: Seventeen commenters disagreed with our decision to reduce funding for eligibility determination systems for one or more of the following reasons:

- They believed the statement HCFA made that a State Medicaid agency's

involvement in eligibility determinations is minimal is not true, and becomes even less true as more and more legislation is passed that increases the number of Medicaid-only individuals. In their opinion, many "Medicaid-only" determinations are not and will never be included under one of the integrated systems with another agency. Estimated costs of eligibility determinations for Medicaid-only individuals ranged from 20 to 30.25 percent of the cost of all eligibility determinations.

- They believed that the eligibility determination system is an integral part of a mechanized claims processing and information retrieval system without which opportunities for abuse and errors increase and delays in payment may result. They felt it is also essential to or indistinguishable from the recipient subsystem.

- In their opinion, there will be no incentive to develop the system where it does not yet exist (in some States) and systems will take longer to develop because of scarce resources.

- It was the view of some that some MMIS functions may be accomplished more efficiently and at less cost in the eligibility determination system than in the MMIS; however, they furnished no data to substantiate their view.

- Although Congress did not explicitly authorize enhanced rates for a Medicaid eligibility determination system as it does for title IV, the commenters questioned whether Congress did not feel it was necessary, in view of the fact that we were already funding these systems at 90 percent.

- They noted that title IV significantly limits costs that are reimbursable at 90 percent, whereas under existing regulations HCFA authorized all costs attributable to MMIS installation or design to be reimbursable at 90 percent.

- They cited, in accordance with federal circular A-87, "a cost is allocable to a particular cost objective to the extent of benefits received by such objective", and concluded that HCFA cannot cogently maintain that costs for eligibility determination systems should be funded under title IV-A.

Response: The commenters are correct that the enactment of several laws during the last few years has added new groups of Medicaid eligibles and that determination of eligibility for some of these groups is more complex than simply accepting the determinations of the AFDC and SSI programs that make the determinations for the large majority of Medicaid eligibles. However, the legislation that added the new eligibles did not provide enhanced FFP for the determination of

eligibility within the title XIX program for these most recent groups of eligibles. As a result, title XIX can offer only 50-percent FFP or regular administrative FFP for the cost of eligibility determination for applicants. Once eligibility determinations are made the input and use of data on the recipients by the approved MMIS system may be funded at an enhanced matching rate.

We do not agree with commenters who believe abuse and errors will increase under the proposed revisions to the rules. The accuracy of eligibility determinations is exclusively measured by the Medicaid eligibility quality control (MEQC) program and not by MMIS or SPR reviews. Congress set a 3 percent threshold error rate for MEQC and the national average error rate was 2.3 percent before eligibility determination systems began to be implemented. Few States exceed the threshold, and we expect this to continue. Also, there is no evidence that MMIS recipient eligibility files are updated more frequently or more quickly or accurately after an automated eligibility determination system has been installed.

We do not believe that incentives would no longer exist for States to develop eligibility determination systems where they do not now exist. In 1981, Congress offered incentive funding under title IV for such systems, and the need for Medicaid funding diminished, although the importance of the function and activity did not. (The incentive to design these systems is now in title IV funding exclusively.) We now are withholding our former stopgap funding because enhanced funding under title IV is available. Title IV systems are being installed in most States and are required to be compatible with title XIX systems.

As we noted in the preamble to the proposed rule, in the absence of enhanced funding for eligibility determination systems in the late 1970's, we offered partial Medicaid funding to support the development of such systems. Although some commenters believe that this may have influenced Congress to not enact legislation on this subject, we disagree. We believe that if it had been Congress' intent to have funding under both titles IV and XIX, they would have so provided. Rather, our interpretation is that there is little point in having two programs pay for the same activity.

Commenters are correct in their observation that having two agencies address the same issue sometimes results in one limiting activities more than another. Under these rules, consistency will be achieved within the Department and the title IV position will

prevail. Since 1986 title IV has substantially limited enhancements or system changes for eligibility determination systems to those required by statute or by the Secretary in regulations.

Contrary to the view of the commenters, the Department does not expect costs to shift between title IV and title XIX. Cost allocation methods will remain the same. Under the current cost allocation plan title XIX pays only for functions that exclusively benefit the Medicaid program. Most State eligibility determination systems send data to MMIS recipient subsystems on a regular basis. Few if any MMIS systems gain access to the eligibility determination systems directly during the processing of each claim. (One State was of the opinion that an eligibility determination is unrelated to MMIS.) After this regulation is effective, a State with direct access to an integrated eligibility system for purposes of processing Medicaid claims will receive an FFP rate of 75 percent (if the State has an approved MMIS system) for the cost of gaining access to or obtaining these data. There may be some Medicaid functions that are not related directly to the MMIS that will be funded at 50-percent FFP, such as the determination of eligibility for medically needy only.

Comments: Ten commenters objected to the reduction of FFP for eligibility determination systems on the basis that their States have substantial sums invested in developing the systems and for which there is an approved APD.

Response: In response to the commenters' concerns about the proposed rule, we are revising the regulations as proposed at § 433.112(b)(6) to offer 90 percent FFP for developing an integrated eligibility determination system when the APD was approved before the effective date of these final rules, November 13, 1989. Any APDs or revisions to APDs approved after November 13, 1989, will be funded at 50 percent. We are not, however, making any revisions to our proposal to not offer 75 percent FFP for operating an eligibility determination system after November 13, 1989, regardless of the date the APD was approved.

Comment: Two commenters wanted to know whether the State AFDC and Food Stamp programs agree that it is their almost exclusive responsibility to make Medicaid eligibility determinations and whether the U.S. Department of Agriculture and the Family Services Administration are willing to provide enhanced

reimbursement for the full cost of all eligibility determination functions.

Response: The interagency agreements between HCFA and FSA and HCFA and USDA are not affected by this rule. The agreements establish a uniform cost allocation system for use by States when apportioning the cost of their eligibility determination systems to a particular government agency. The FSA and USDA agree with this regulation, which affects only the amount allocated to HCFA. This rule will not affect the FSA or USDA.

Comment: One commenter thought that we should continue yearly reviews rather than once-every-three-years reviews as permitted by statute.

Response: Section 1903(r)(4) of the Act was amended to permit reduction of yearly reviews for reapproval of systems to at least once every three years. HCFA proposed this reduction because State systems had shown reduced deficiencies in reviews over the years, and because of reduced resources in HCFA and in the States for performing the reviews.

VI. Revisions to Regulations

We are adopting as final the revisions we proposed, with two exceptions. As a result of comments received, we are making the following changes:

A. In § 433.111, we are revising the definitions to clarify that all enhancements to the required approved MMIS system are eligible for enhanced FFP. We are also clarifying that Medicaid eligibility determination systems are not enhancements.

B. We are revising § 433.112 so that APDs for eligibility determination systems that we have approved before the effective date of the regulations remain eligible for any promised 90 percent. However, all 75 percent FFP for operations of such systems will end on the effective date of the regulation.

C. As a technical change, we are revising the proposed § 433.119(c) to omit reference to the fiscal year as a review period. The initial purpose of the revisions to § 433.119 was to allow for a review period longer than one year; the inclusion of "fiscal year" in paragraph (c) was inadvertent.

D. As further technical changes, we conform the wording of § 433.110 to the statute and correct the name of the Departmental Appeals Board wherever it appears.

VII. Notice

HCFA has issued a Program Memorandum (PM 88-14, December 1988) and Transmittal 10 to part 11 of the State Medicaid Manual (SMM) that offer enhanced funding for eligibility

determination systems. This final regulation rescinds both the provision of enhanced funding for eligibility determination systems and any other conflicting policy, such as that contained in part 15 of the SMM.

VIII. Request for Comments

Apart from excluding eligibility determination systems from the definition of mechanized claims processing and information retrieval systems, we are not changing FFP rates for approved system enhancements from those currently in the CFR. However, in August 1989, after the end of the NPRM's comment period, the General Accounting Office issued a report entitled "ADP Systems: Better Control Over States' Medicaid Systems Needed." The GAO believes that enhancements are activities attributable to the operation of a system. The GAO thus recommended that 75%, rather than 90%, FFP should be provided to States for all approved enhancements to their systems. In light of the GAO report, we are studying its recommendations carefully. Given the recommendations, we may consider further options to change matching rates paid for enhancements and we solicit further comment on this issue.

We are publishing this as a final rule with comment in order to solicit comments only on the GAO recommendation and its ramifications. If the GAO recommendation is adopted, current regulations need to be changed to provide for 75% FFP for approved enhancements. In addition, HCFA would have to consider what MMIS expenditures would remain eligible for 90% FFP. One interpretation of section 1903(a)(3) of the Social Security Act to be considered is that 90% FFP is available only for the initial "design, development, or installation" of a mechanized claims processing and information retrieval system. This interpretation would make 90% FFP available only for a State's initial establishment of such a system and not for subsequent modification of a system or replacement of complete system. We solicit comments on this interpretation of the statute.

IX. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any final rule that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy of \$100 million or more;

- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

There are currently 46 States and the District of Columbia that have a certified mechanized claims processing and information retrieval system in operation. These States and the District of Columbia will not receive enhanced FFP for those parts of their systems that do not fit the new definition of "mechanized claims processing and information retrieval systems".

The provisions of this final rule differ from the proposed in that systems approved for 90 percent FFP before the effective date of these regulations will continue to be eligible for this enhanced rate. In addition, these final regulations provide for continued funding at 90 and 75 percent for State-initiated as well as Federally-mandated enhancements.

We expect that some States will bear an increased share of data processing costs, but we believe the increase will be a minimal burden to any single State. This final rule does not meet the \$100 million criterion nor do we believe that it meets the other E.O. 12291 criteria. Therefore, this final rule is not a major rule under E.O. 12291, and a regulatory impact analysis is not required.

B. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a final rule will not have a significant economic impact on a substantial number of small entities. Under the RFA, States are not considered small entities.

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a final rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside of a Metropolitan Statistical Area.

Since this rule will affect States, which are not considered small entities, we have determined, and the Secretary certifies, that this final rule will not be likely to have a significant economic

impact on a substantial number of small entities. Therefore, we have not prepared a regulatory flexibility analysis.

In addition, we are not preparing an analysis regarding small rural hospitals since we have determined, and the Secretary certifies, that this final regulation will not have a significant economic impact on the operations of a substantial number of small rural hospitals.

VIII. Paperwork Burden

These changes do not impose paperwork collection requirements. Consequently, they need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3801 et seq.).

List of Subjects in 42 CFR Part 433

Administrative practice and procedure, Assignment of rights, Claims, Contracts (Agreements), Cost allocation, Federal financial participation, Federal matching provision, Grant-in-Aid program—health, Mechanized Claims Processing and Information Retrieval Systems, Medicaid, State fiscal administration, Third party liability.

42 CFR part 433 is amended as set forth below:

PART 433—STATE FISCAL ADMINISTRATION

1. The authority citation for Part 433, Subpart C continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. The table of contents for part 433 is amended by revising the titles of §§ 433.120, and 433.121 as follows:

Subpart C—Mechanized Claims Processing and Information Retrieval Systems

433.120 Procedures for reduction of FFP after reapproval review.

433.121 Reconsideration of the decision to reduce FFP after reapproval review.

3. Section 433.110(a)(2)(ii) is revised to read as follows:

§ 433.110 Basis, purpose and scope.

(a) * * *

(2) * * *

(ii) Requires a Federal performance review at least every three years of the mechanized claims processing and information retrieval systems; and

4. In § 433.111, paragraph (b) is revised to read as follows:

§ 433.111 Definitions.

(b) "Mechanized claims processing and information retrieval system" or "system" means the system of software and hardware used to process Medicaid claims from providers of medical care and services for the medical care and services furnished to recipients under the medical assistance program and to retrieve and produce service utilization and management information required by the Medicaid single State agency and Federal Government for program administration and audit purposes. The system consists of

(1) Required subsystems specified in the State Medicaid Manual;

(2) Required changes to the required system or subsystem that are published in accordance with § 433.123 of this subpart and specified in the State Medicaid Manual; and

(3) Approved enhancements to the system. Eligibility determination systems are not part of mechanized claims processing and information retrieval systems or enhancements to those systems.

5. In § 433.112, paragraph (a) is revised, the introductory language of paragraph (b) is republished for the convenience of the reader, paragraph (b)(6) is revised, and paragraph (c) is added to read as follows:

§ 433.112 FFP for design, development, installation or enhancement of mechanized claims processing and information retrieval systems.

(a) FFP is available at the 90 percent rate in State expenditures for the design, development, installation or enhancement of a mechanized claims processing and information retrieval system only if the APD is approved by HCFA prior to the State's expenditures of funds for these purposes.

(b) HCFA will approve the system described in the APD if the following conditions are met:

(6) The Department has a royalty free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use and authorize others to use, for Federal Government purposes, software, modifications to software, and documentation that is designed, developed, or installed with 90 percent FFP.

(c) Eligibility determination systems are not part of mechanized claims processing and information retrieval systems and are not eligible for 75 percent FFP under this subpart. These

systems are also not eligible for 90 percent FFP for any APD approved after November 13, 1989.

§ 433.114 [Amended]

6. In § 433.114(b)(2), the word "Grant" is removed.

7. In § 433.113, the introductory language of paragraph (a) is republished for the convenience of the reader and paragraph (a)(2) is revised as follows:

§ 433.113 Reduction of FFP for failure to operate a system and obtain initial approval.

(a) Except as waived under § 433.130 or 433.131, FFP will be reduced as specified in paragraph (b) of this section unless the Medicaid agency has in continuous operation a mechanized claims processing and information retrieval system that meets the following conditions:

(2) The system is operational by September 30, 1985; and

8. Section 433.119 is revised as follows:

§ 433.119 Conditions for reapproval; notice of decision.

(a) HCFA will review at least once every three years each system operation initially approved under § 433.114 and reapprove it for FFP at 75 percent of expenditures if the following conditions are met:

(1) The system meets the conditions of § 433.112(b) (1), (3), (4), and (7) through (9).

(2) The system meets the conditions of § 433.116 (d) through (h).

(3) The system meets the performance standards for reapproval and the system requirements in part 11 of the State Medicaid Manual as periodically amended.

(4) Automated eligibility determination systems approved or operating on or before November 13, 1989, will not qualify for FFP at 75 percent of expenditures after November 13, 1989.

(b) HCFA may review an entire system operation or focus its review on parts of the operation. However, at a minimum, HCFA will review standards, system requirements and other conditions of reapproval that have demonstrated weakness in a previous review or reviews.

(c) HCFA will issue to each Medicaid agency, by the end of the first quarter after the review period, a written notice informing the agency whether its system is reapproved or disapproved. If the

system is disapproved, the notice will also include—

(1) HCFA's decision to reduce FFP for system operations, and the percentage to which it is reduced, beginning with the next calendar quarter;

(2) The findings of fact upon which the determination was made; and

(3) A statement that State claims in excess of the reduced FFP rate will be disallowed and that any such disallowance will be appealable to the Grant Appeals Board.

9. Section 433.120 is amended by revising the title and paragraph (a) to read as follows:

§ 433.120 Procedures for reduction of FFP after reapproval review.

(a) If HCFA determines after the reapproval review that the system no longer meets the conditions of reapproval in § 433.119, HCFA will reduce FFP for system operations for at least four quarters. However, no system will be subject to reduction of FFP for at least the first four quarters after the quarter in which the system is initially approved as eligible for 75 percent FFP.

10. Section 433.121 is amended by revising the title and paragraphs (a) and (b) to read as follows:

§ 433.121 Reconsideration of the decision to reduce FFP after reapproval review.

(a) The agency may appeal to the Departmental Appeals Board under 45 CFR part 16, a disallowance concerning a reduction in FFP claimed for system operation caused by a disapproval of the State's system. If the Board finds such a disallowance to be appropriate, the discretionary determination to reduce FFP by a particular percentage amount (instead of by a lesser percentage) is not subject to review by the Board unless the percentage reduction exceeds the range authorized by section 1903(r)(B) of the Act.

(b) The decisions concerning whether to restore any FFP retroactively and the actual number of quarters for which FFP will be restored under § 433.122 of this subpart are not subject to administrative appeal to the Departmental Appeals Board under 45 CFR part 16.

11. Section 433.122 is revised as follows:

§ 433.122 Reapproval of a disapproved system.

When FFP has been reduced under § 433.120(a), and HCFA determines upon subsequent review that the system meets all current performance standards, system requirements and

other conditions of reapproval, the following provisions apply:

(a) HCFA will resume FFP in expenditures for system operations at the 75 percent level beginning with the quarter following the review determination that the system again meets conditions of reapproval.

(b) HCFA may retroactively waive a reduction of FFP in expenditures for system operations if HCFA determines that the waiver could improve the administration of the State Medicaid plan. However, HCFA cannot waive this reduction for any quarter before the fourth quarter immediately preceding the quarter in which HCFA issues the determination (as part of the review process) stating that the system is reapproved.

§§ 433.130 and 433.131 [Amended]

12. Sections 433.130 and 433.131 are amended by replacing the term "MMIS" wherever it appears with the word "system".

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance)

Dated: August 7, 1989.

Louis B. Hays,

Acting Administration, Health Care Financing Administration.

Approved: September 25, 1989.

Louis W. Sullivan,

Secretary.

[FR Doc. 89-24305 Filed 10-12-89; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[DA-89-1201]

Waiver of Part 2 of the Commission's Rules To Permit an International Fixed Public Radiocommunications Link Between Gambell, AK, and Provideniya, Magadan, U.S.S.R.; Alascom Inc.

AGENCY: Federal Communications Commission.

ACTION: Rule waiver.

SUMMARY: This item waives § 2.106 of the Commission's Rules with regard to an application by Alascom, Inc. (Alascom), to establish an international fixed public radiocommunication (IFPR) link between Gambell, Alaska, and Provideniya, Magadan, U.S.S.R. This action results in the first direct point-to-point terrestrial telecommunications service between the U.S. and the U.S.S.R. in the Arctic region.

EFFECTIVE DATE: November 13, 1989.

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

FOR FURTHER INFORMATION CONTACT: Raymond LaForge, Office of Engineering and Technology, FCC, (202) 653-8117.

Memorandum Opinion and Order

[File No. C4-89-003-P/L DA 89 1201]

Adopted: August 31, 1989.

Released: October 5, 1989.

By the Commission:

1. Alascom, Inc. (Alascom), requests a waiver of § 2.106 of the Commission's Rules to establish an international fixed public radiocommunication (IFPR) link between Gambell, Alaska, and Provideniya, Magadan, U.S.S.R. in the 450-460 MHz frequency band. This frequency band is allocated domestically to the land mobile service.

2. According to Alascom, the 450-460 MHz band was chosen because the availability of equipment necessary to efficiently provide this service is limited and also because this frequency band is within the range of frequencies that have been negotiated with Soviet officials. Alascom advises that this will be the first direct point-to-point, terrestrial telecommunications service between the U.S. and the U.S.S.R. in the Arctic region. Alascom states that the proposed IFPR link will extend about 60 miles across the Bering Strait between the United States and the Soviet Union. Alascom points out that this area, slightly south of the Arctic Circle, is one of the most isolated and desolate on earth and the probability of the proposed link causing interference to other stations is extremely remote.

3. Alascom states that there is ample precedent for granting the requested waiver. On October 9, 1974, the Commission granted a similar authorization to RCA Alaska Communications, Inc., a predecessor of Alascom. That license authorized the provision of temporary fixed service throughout the state of Alaska on several frequencies, including some in the 450-460 MHz range. Therefore, Alascom contends that the Commission has waived its Rules, when there is sufficient cause, in order to foster common carrier service in remote locations.

4. The U.S. State Department, on April 3, 1989, approved the telephone interconnection between the two countries contingent upon satisfaction of any Coordination Committee on Export Control (COCOM) requirements; completed coordination with the Department of Commerce; and, compliance with appropriate FCC rules.

On July 27, 1989, the Common Carrier Bureau issued a Special Temporary Authority to construct the proposed link.

5. We note that the proposed IFPR link will improve radiocommunications between the U.S. and the U.S.S.R. We agree with Alascom that it is extremely unlikely that any other users of the spectrum will be affected by granting the waiver due to the orientation of the link over water and due to the desolate environment. We note that no objections to Alascom's application were filed. We also are cognizant of the special circumstances in coordinating frequencies and suitable equipment with the U.S.S.R. We agree that precedent exists for such a waiver. In light of these factors, we conclude that the waiver is in the public interest and we are granting the waiver as requested.

6. Accordingly, *it is ordered*, that the Table of Frequency Allocations, § 2.106 of the Commission's Rules, *Is Waived*, to permit Alascom, Inc. to establish an IFPR link between Gambell, Alaska, U.S.A. and Provideniya, Magadan, U.S.S.R. in the 450-460 MHz band. This action is taken pursuant to the authority of 47 U.S.C., 154(i), 302 and 303, and pursuant to authority delegated to the Chief Engineer in § 0.241 of the Commission's Rules, 47 CFR 0.241

Federal Communications Commission.

Thomas P. Stanley,
Chief Engineer.

[FR Doc. 89-24098 Filed 10-12-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[Docket No. 90772-9172]

RIN 0648-AC26

Northeast Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice; Interpretive rule for requirements for stowage of nets.

SUMMARY: NOAA issues this notice pursuant to authority of 50 CFR 651.20(f)(3) which authorizes the Director, Northeast Region, NMFS, (Regional Director) to specify alternative methods of net storage by notice in the Federal Register. This notice provides guidance for proper stowage of small mesh nets under the two approved alternatives at 50 CFR 651.20(f)(1) and (2). This guidance will provide flexibility for fishermen while promoting

compliance and will maintain reasonable enforceability.

EFFECTIVE DATE: October 6, 1989 through December 31, 1989.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Resource Management Specialist, 508-281-9273.

SUPPLEMENTARY INFORMATION: The New England Fishery Management Council (Council) prepared and submitted Amendment 2 to the Fishery Management Plan for the Northeast Multispecies Fishery. The amendment was approved and a rule implementing that part of the amendment that authorizes the Regional Director to specify alternative methods of net stowage by notice in the Federal Register was published on January 31, 1989 (54 FR 4798). Section 651.20(f)(3) of the multispecies regulations authorizes this guidance for stowing nets. The Northeast Region, NMFS, worked with the Council's Groundfish Committee and the U.S. Coast Guard to develop this guidance for stowing nets on reels in a manner that complies with 50 CFR 651.20(f)(2).

Classification

This action is authorized by 50 CFR part 651, and is taken in compliance with E.O. 12291.

The Assistant Administrator for Fisheries, NOAA, has determined that because this action is an interpretive rule, notice and opportunity to comment, and 30-day delay of its effective date, are not required pursuant to section 553(b)(A) and (d)(2) of the Administrative Procedure Act.

List of Subjects in 50 CFR Part 651

Fishing, Fisheries, Vessel permits and fees.

Dated: October 5, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 651 is amended as follows:

PART 651—NORTHEAST MULTISPECIES FISHERY

1. The authority citation for 50 CFR Part 651 continues to read as follows:

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

2. Section 651.20 is amended by adding the following note at the end of the section to read as follows:

§ 651.20 Regulated mesh area and gear limitations.

* * * * *

Note to § 651.20:

For guidance concerning the manner of securing nets, see appendix A of this part.

PART 651—[AMENDED]

3. Part 651 is amended by adding an appendix following § 651.20 to read as follows:

Appendix A to § 651.20—Guidance on Securing Nets

Guidance on securing nets: A net is considered to be stored below deck if it is located below the main working deck from which the net is deployed and retrieved. Towing wires (any wires including the "leg" wires), must be detached from the net.

A net is considered to be stowed and lashed down on deck if it is fan folded and bound around its circumference and securely fastened to the deck or the rail of the vessel. The towing wires (any wires including the "leg" wires) must also be detached from the net.

A net on a reel is considered to be "stowed and lashed down on deck" only if the entire surface of the net on the reel is covered with canvas or similar material which is securely bound, the towing wires (any wires including the "leg" wires) are detached from the net, and the cod end is removed from the net and stored below deck or stowed in accordance with §§ 651.20(f)(1) and 651.20(f)(2) as interpreted in the first two paragraphs of this Appendix.

[FR Doc. 89-24091 Filed 10-6-89; 3:58 pm]

BILLING CODE 3510-22-M

50 CFR Part 662

[Docket No. 90775-9215]

Northern Anchovy Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule; corrections.

SUMMARY: This document corrects the effective dates for a paragraph suspended and a paragraph added to 50 CFR 662.20 relating to harvest quotas that was implemented in the emergency interim rule for the Northern Anchovy Fishery, published September 29, 1989 (54 FR 40112).

EFFECTIVE DATES: The emergency rule is effective from 0001 hours Pacific Daylight Time (PDT) September 25, 1989, until 2400 hours PDT December 23, 1989.

FOR FURTHER INFORMATION CONTACT: James J. Morgan, Fisheries Management and Analysis Branch, Southwest Region, NMFS, 213-514-6667.

In FR Doc. 89-22979 beginning on page 40112 in the issue of September 29, 1989, make the following corrections.

PART 662—[CORRECTED]

On page 40113, column two, immediately under the authority citation, instruction paragraph 2 is revised to read as follows:

§ 662.20 [Corrected]

"2. In § 662.20, paragraph (b)(1) is suspended from September 25, 1989, to December 23, 1989, and a new paragraph (b)(3) is added to be effective from September 25, 1989, to December 23, 1989, to read as follows:"

Dated: October 6, 1989.

James E. Douglas, Jr.,
Deputy Assistant Administrator For
Fisheries, National Marine Fisheries Service.
[FR Doc. 89-24144 Filed 10-12-89; 8:45 am]
BILLING CODE 3510-22-M

50 CFR Part 662

[Docket No. 90775-9225]

Northern Anchovy Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of final harvest quotas.

SUMMARY: NOAA announces the final estimated spawning biomass and determination of harvest quotas for the northern anchovy fishery in the exclusive economic zone (EEZ) for the 1989-90 fishing season. The harvest quotas have been determined by application of the formulas in the Northern Anchovy Fishery Management Plan (FMP) and its implementing regulations. Those regulations require this announcement to be made on or about August 1 each year. The optimum yield (OY) is set at 4,900 metric tons (mt) plus an unspecified amount for use as live bait; there is no U.S. harvest quota for reduction fisheries. There is no allocation for joint venture processing (JVP), nor for total allowable level of foreign fishing (TALFF).

EFFECTIVE DATE: October 12, 1989.

FOR FURTHER INFORMATION CONTACT: James J. Morgan, Fisheries Management and Analysis Branch, Southwest Region, NMFS, 213-514-6667.

SUPPLEMENTARY INFORMATION: In consultation with the California Department of Fish and Game and the NMFS Southwest Fisheries Center, the Director of the Southwest Region (Regional Director) has made a final determination that the spawning biomass of the central subpopulation of northern anchovy, *Engraulis mordax* is estimated to be 237,000 mt. The biomass estimate is derived from, and is equivalent to, the Egg Production

Method of measurement, but is based on the Stock Synthesis Model.

Documentation of the spawning biomass estimate is contained in Administrative Report LJ-89-17, published by the Southwest Fisheries Center, NMFS. As required by the FMP and its implementing regulations, the Regional Director calculated preliminary determinations of harvest quotas for the 1989-1990 anchovy fishing season, which were published with a request for comments in the *Federal Register* on August 22, 1989 (54 FR 34800). No public comments were received during the comment period. The preliminary determinations were discussed at a public meeting of the Pacific Fishery Management Council (Council) on July 13, 1989. Based on calculations called for by the FMP and Council discussion, the Regional Director establishes the preliminary determinations as final harvest quotas, as follows:

1. The total U.S. harvest quota or OY of northern anchovy is 4,900 mt plus an unspecified amount for use as live bait.

2. The total U.S. harvest quota for reduction purposes resulting from the annual process specified in the FMP is zero. This process provides no reduction harvest allocation when the spawning biomass is below 300,000 mt. As is explained below, a limited reduction fishery for the 1989-1990 fishing season has instead been authorized by emergency rule.

3. The U.S. harvest allocation for non-reduction fishing (i.e., fishing for anchovy for use as dead bait and direct human consumption) is 4,900 mt.

4. The domestic annual processing capacity (DAP) is 1,468 mt. The FMP states that this amount equals the maximum level of reduction plus non-reduction processing during the previous 3 years.

5. There is no U.S. harvest limit for the live bait fishery.

6. The amount allocated to JVP is zero because there is no history of, nor are there applications for, joint ventures.

7. Domestic annual harvest capacity (DAH) is 1,468 mt. This is the sum of DAP and JVP.

8. The total allowable level of foreign fishing (TALFF) is zero. When the spawning biomass is below 300,000 mt, there is no allocation for foreign fishing.

As mentioned in the *Federal Register* announcement of August 22, 1989, estimated northern anchovy total biomass is high and spawning biomass is low; final figures are 1,008,000 mt and 237,000 mt respectively. The unusually low spawning biomass relative to the total biomass is primarily due to the effects of cold water and is not due to recruitment failure or overfishing. The

Council, noting the high anchovy standing stock abundance and seeing no reason to rule out all reduction fishing, decided at the July 13, 1989, meeting to request that the Secretary of Commerce issue an emergency rule to permit a 5,000 mt reduction fishery during the 1989-1990 season to accommodate the unusual stock conditions caused by unusually low sea surface temperatures. The Council also decided to prepare an amendment to the FMP to provide for a minimum reduction quota based on total biomass. The Secretary published an emergency rule authorizing a 5,000 mt reduction fishery for the 1989-1990 season in the *Federal Register* (54 FR 40112, September 29, 1989). The quotas published in this notice do not affect that emergency rule in any way.

Classification

This action is authorized by 50 CFR part 662 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 662

Fisheries.

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

Dated: October 6, 1989.

James E. Douglas, Jr.,
Deputy Assistant Administrator For
Fisheries, National Marine Fisheries Service.
[FR Doc. 89-24145 Filed 10-12-89; 8:45 am]
BILLING CODE 3510-22-M

50 CFR Part 672

[Docket No. 81132-9033]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the portion of the total allowable catch (TAC) of sablefish allocated to hook-and-line gear in the Southwest Outside/East Yakutat districts of the Eastern Regulatory Area of the Gulf of Alaska will be taken by October 7, 1989. The Secretary of Commerce (Secretary) is prohibiting retention of sablefish by longline vessels fishing in these districts from 12:00 noon, Alaska daylight Time (A.d.t.), on October 7, 1989, through December 31, 1989.

DATES: Effective from 12:00 noon, A.d.t., on October 7, 1989, until midnight, Alaska Standard Time, December 31, 1989. Comments will be accepted until October 23, 1989.

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

FOR FURTHER INFORMATION CONTACT: Jessica A. Gharrett, Resource Management Specialist, 907-586-7229.

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

Section 672.24(b)(1) of current regulations restricts the hook-and-line catch of sablefish in the Southeast Outside/East Yakutat districts of the Eastern Regulatory Area to 95 percent of the TAC. The 1989 TAC specified for sablefish in these districts is 5,980 mt (54 FR 6524, February 13, 1989); the portion of the TAC allocated to hook-and-line gear is 5,680 mt. Under § 672.24(b)(3)(ii), if the share of the sablefish TAC assigned to any type of gear for any area or district is reached, further catches of sablefish must be treated as prohibited species by persons using that type of gear for the remainder of the year.

The directed hook-and-line fishery for sablefish started April 1, 1989, in the Gulf of Alaska. The Southeast Outside/East Yakutat districts hook-and-line fishery for sablefish was closed on April 17, 1989 (54 FR 16126, April 21, 1989), and that notice was subsequently modified to allow retention of sablefish as bycatch while fishing for other groundfish species, effective May 3, 1989 (54 FR 19375, May 5, 1989). The Regional Director reports that vessels using hook-and-line gear have landed 5,666 mt of sablefish through September 16, 1989, in the Southeast Outside/East Yakutat districts. The balance of the TAC of 5,680mt allocated to hook-and-line gear is expected to be harvested by October 7, 1989.

Therefore, pursuant to § 672.24(b)(3)(ii), the Secretary is prohibiting retention of sablefish caught

with hook-and-line gear in the Southeast Outside/East Yakutat districts of the Eastern Regulatory Area effective 12:00 noon, A.d.t., October 7, 1989.

Allocation of the sablefish resource between hook-and-line and trawl gear in the Southeast Outside/East Yakutat districts, will be jeopardized unless this notice takes effect promptly. Therefore, NOAA finds for good cause that prior opportunity for public comment on this notice is contrary to the public interest and its effective date should not be delayed.

Public comments on this notice of closure may be submitted to the Regional Director at the address above until October 23, 1989. If written comments are received which oppose or protest this action, the Secretary will reconsider the necessity of this action, and, as soon as practicable after that reconsideration, will publish in the *Federal Register* a notice that either continues effectiveness of the closure, responding to comments received, or that modifies or rescinds the closure.

Classification

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

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

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

Dated: October 6, 1989.

David S. Crestin,

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

[FR Doc. 89-24146 Filed 10-13-89; 4:41 pm]

BILLING CODE 3510-22-M

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 90407-9170]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustment.

SUMMARY: NOAA announces the apportionment of amounts of Alaskan groundfish to the domestic annual processing (DAP) and to the joint venture processing (JVP) portions of the

domestic annual harvest (DAH). This action, taken under provisions of the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI), is necessary to assure optimum use of groundfish in that area. It is a conservation and management measure intended to promote fishery objectives of the North Pacific Fishery Management Council.

DATES: Effective October 6, 1989. Comments will be accepted through October 21, 1989.

ADDRESS: Comments should be mailed to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802, or be delivered to Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

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

SUPPLEMENTARY INFORMATION: The FMP is implemented by rules appearing at 50 CFR 611.93 and Part 675.

Initial specifications of DAH, DAP, and JVP for groundfish of the Bering Sea and Aleutian Islands for 1989 were published on January 25, 1989 at 54 FR 3605. The same notice established a 15-percent non-specific reserve and then apportioned additional amounts from that reserve to JVP for squid, arrowtooth flounder, and "other species" in order to provide bycatch amounts for other targeted JVP fisheries.

Many of the JVP amounts were revised on September 3, 1989 (54 FR 37112, September 7, 1989) based on new information about DAP potential. This information indicated some amounts excess to DAP needs in 1989, as well as DAP amounts that could require supplementation. Amounts that may be needed to supplement DAP were retained in the non-specific reserve, to be apportioned to DAP if the need arose later in the year. Amounts in DAP and reserve in excess of DAP requirements were apportioned to JVP.

On September 16, 1989 (54 FR 36686, September 20, 1989), the DAP for Atka mackerel was supplemented by 3,043 metric tons (mt) of the non-specific reserve.

Reapportionment

The following actions are taken by this notice to reapportion groundfish from the non-specific reserve.

TABLE 1.—BERING SEA/ALEUTIANS REAPPORTIONMENTS OF TAC

[Values are in metric tons]

		Current	This action	Revised
Greenland turbot.....	DAP	6,600	+1,200	7,800
TAC=8,000; ABC=20,300.....	JVP	200	0	200
Arrowtooth flounder.....	DAP	5,100	0	5,100
TAC=5,100; ABC=163,700.....	JVP	700	+2,000	2,700
Total (TAC=2,000,000).....	DAP	1,348,357	+1,200	1,349,557
	JVP	602,089	+2,000	604,089
	Reserves	49,554	-3,200	46,354

To the BSAI DAP

Domestic processors have reported higher than anticipated catches of Greenland turbot during September. At recent catch rates, the current quota (6,600 mt) will be reached shortly. In order to extend the DAP fishing season and allow full use of the available Greenland turbot TAC, 1,200 mt is apportioned from the non-specific reserve to DAP for Greenland turbot. This apportionment does not result in overfishing of Greenland turbot, as the resulting total allowable catch amount is less than its acceptable biological catch (ABC).

To the BSAI JVP

JVP fisheries have experienced higher

than anticipated catches of arrowtooth flounder. Rather than require arrowtooth flounder to be discarded, as would occur if the JVP quota were reached, the JVP for arrowtooth flounder is increased by 2,000 mt. This amount is in excess of DAP needs.

Classification

This action is taken under the authority of 50 CFR 675.20(b) and complies with Executive Order 12291.

The Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment. Immediate effectiveness of this notice is necessary to benefit domestic fishermen who otherwise

would be required to terminate a fishery earlier than necessary. However, interested persons are invited to submit comments in writing to the address above for 15 days after the effective date of this notice.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

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

Dated: October 6, 1989.

David S. Crestin,

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

[FR Doc. 89-24148 Filed 10-6-89; 4:41 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 54, No. 197

Friday, October 13, 1989

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

DEPARTMENT OF AGRICULTURE

Agriculture Marketing Service

7 CFR Part 981

[AMS-FV-89-090PR]

Almonds Grown in California; Administrative Rules and Regulations Concerning Crediting for Marketing Promotion and Paid Advertising Expenditures

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This action proposes to change the administrative rules and regulations established under the Federal marketing order for California almonds to allow handlers to receive credit against their assessments for payments for color advertisements enclosed in frames mounted on fixtures outside and in front of retail food stores. This proposed change is based on a recommendation of the Almond Board of California (Board), which is responsible for local administration of the order, and other available information. The change would give handlers additional flexibility in obtaining credit against their advertising assessments under the marketing order for California almonds.

DATES: Comments must be received by November 13, 1989.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456. Comments should reference the docket number and the date and page number of this issue of the *Federal Register* and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Allen Belden, Marketing Specialist,

Marketing Order Administration Branch, F&V, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20250-6456; telephone: (202) 447-5120.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under marketing agreement and Order No. 981 (7 CFR part 981), both as amended, hereinafter referred to as the "order," regulating the handling of almonds grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

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

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

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

There are approximately 100 handlers of almonds who are subject to regulation under the almond marketing order and approximately 7,500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than \$500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than \$3,500,000. The majority of handlers and producers of California almonds may be classified as small entities.

This proposed rule invites comments on a change to the administrative rules and regulations of the almond marketing order. The proposed change would give handlers an additional opportunity to receive credit against the creditable portion of their annual assessments. It is

the view of AMS that the change would allow almond handlers greater flexibility in the advertising methods for which they may receive credit while it would not impose any additional costs on handlers.

This action proposes to revise § 981.441 of subpart—Administrative Rules and Regulations and is based on a recommendation of the Board and other available information.

Section 981.41(c) of the order provides that the Board, with the approval of the Secretary, may allow handlers to receive credit for their direct marketing promotion expenditures, including paid advertising, against that portion of such handlers' assessment obligations which is designated for marketing promotion, including paid advertising. That paragraph also provides that handlers shall not receive credit for allowable expenditures that would exceed the amount of such creditable assessments. Section 981.41(e) further provides that before crediting is undertaken, and after recommendations are received from the Board, the Secretary shall prescribe appropriate rules and regulations as are necessary to effectively administer the order provisions for crediting handler marketing promotion and paid advertising expenditures.

Section 981.441 currently prescribes rules and regulations to regulate crediting for marketing promotion, including paid advertising. Section 981.441(c) prescribes requirements which specifically apply to crediting for paid advertising. This action proposes to revise § 981.441(c)(3)(i) to allow handlers credit against their creditable assessments for 100 percent of such handlers' payments for processed color advertisements of almonds enclosed in frames mounted on fixtures outside and in front of retail food stores. This action also proposes to revise § 981.441(c)(6)(v) to require handlers desiring to receive credit for this type of advertising to submit documentation to the Board to verify that such advertising was conducted and payments were made. Handlers would be required to submit a copy of the supermarket invoice to the advertising agency, a copy of the actual advertisement, a published rate card from a nationally recognized firm, and a copy of the agency invoice to the handler.

Handlers would have to conduct this type of advertising through an

advertising firm. The advertising firm would pay the retail food store for displaying the advertisement. Therefore, the payment to the retail food store would not come directly from the handler. The required documentation would allow the Board to readily differentiate payments for this type of creditable advertising from other types of payments often made by handlers to retail food stores, such as payments for shelf space, which are not creditable expenditures. This is necessary as both payments for advertising and for shelf space are customarily consolidated under the general heading "advertising" on invoices from retailers to handlers.

Since the inception of the creditable advertising and promotion program in 1972, new activities for which credit may be received have been added to the order's rules and regulations. The Board has attempted to add new activities which benefit a wide range of handlers who market their almonds in different types of outlets. This action could give handlers using a brand name an increased opportunity to receive credit against their creditable assessments and increase almond sales through additional promotion for the benefit of all handlers.

The information collection requirements contained in the provisions of the administrative rules and regulations proposed to be revised by this action have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB No. 0581-0071.

Based on the above, the Administrator of the AMS has determined that the issuance of this proposed rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 981

Almonds, California, and Marketing agreements and orders.

For the reasons set forth in the preamble, 7 CFR part 981 is proposed to be amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 981 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-74.

Subpart—Administrative Rules and Regulations

2. Section 981.441 is amended by

revising paragraphs (c)(3)(i) and (c)(6)(v) to read as follows:

§ 981.441 Crediting for marketing promotion including paid advertising.

(c) * * *

(3) * * *

(i) For 100 percent of a handler's payment to an advertising medium: (A) For a genetic advertisement of California almonds; (B) for an advertisement of the handler's brand of almonds; (C) when either of these advertisements includes reference to a complementary commodity or product; (D) for a trade media advertisement that displays branded food products containing almonds, or announces a handler's future promotion activities, including joint promotions, and the entire expenditure is borne by the handler; (E) for in-store supermarket advertisements using fixed position or video media, when such payments are made through an advertising firm: (1) Fixed position advertisements must include at least two of the following: (i) Processed color displays enclosed in plastic frames and mounted on supermarket shopping carts; (ii) overhead directories enclosed in frames placed at the end or middle of supermarket aisles; or (iii) processed color advertisements enclosed in frames and mounted on a supermarket shelf; (2) Video advertisements must be shown on a fixed video monitor running television commercials or infomercials for specific products on a rotating basis; or (F) for processed color displays enclosed in frames mounted on fixtures outside and in front of retail food stores when payments are made through an advertising firm.

(6) * * *

(v) For in-store supermarket advertising and for mounted advertising enclosed in frames outside and in front of retail food stores, submit a copy of the company invoice, a copy of the actual advertisement or video tape, a published rate card from a nationally recognized company, and a copy of the agency invoice, if any.

Dated: October 6, 1989.

William J. Doyle,
Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-24151 Filed 10-13-89; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150-AD04

Nuclear Power Plant License Renewal; Public Workshop on Technical and Policy Consideration

AGENCY: Nuclear Regulatory Commission.

ACTION: Advance notice of proposed rulemaking; notice of workshop.

SUMMARY: The Nuclear Regulatory Commission (NRC) has been considering what requirements should be placed on nuclear power plants in granting licenses to operate beyond the term of the initial 40-year license. Public comments on license renewal requirements have been solicited twice through the *Federal Register*. The first solicitation on seven major license renewal issues was published on November 6, 1986. The second solicitation was part of an advanced notice of proposed rulemaking published on August 29, 1988. The advance notice requested comments on NUREG-1317, "Regulatory Options for Nuclear Plant License Renewal," August 1988. Comments were summarized and analyzed in NUREG/CR-5332, "Survey and Analysis of Public Comments on NUREG-1317: Regulatory Options for Nuclear Plant License Renewal," March 1989. The NRC staff has now completed development of a tentative statement of regulatory requirements for license renewal. The staff wishes to receive comments on a number of specific technical and policy issues prior to drafting a proposed rule and draft regulatory guides for license renewal. In order to solicit information and comments on these issues from the public and regulated industry, the staff plans to conduct a workshop. Written comments on the material covered in the workshop will also be welcome. Advance notification of desire to make statements during the workshop is requested.

DATES: Notification of intent to attend the workshop, concurrent session preferences, and desire to make a statement during a specific session should be received by the staff no later than November 1, 1989. More detailed information on each session will be available after October 31, 1989. This information will be mailed to all individuals and organizations who notify NRC of their intent to attend and to others who request it. The workshop will be held on November 13 and 14,

1989. Written comments on matters covered by the workshop received by December 1, 1989, will be considered along with comments made during the workshop when drafting a proposed rule and draft regulatory guides.

ADDRESSES: The workshop will be held at the Sheraton Reston Hotel, 11810 Sunrise Valley Drive, Reston, VA 22091. Notification of intent to attend, desire to make a statement during a specific session, and written comments should be sent to Donald Cleary, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Donald Cleary, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492-3936.

SUPPLEMENTARY INFORMATION:

Introduction

The workshop has been arranged for the purpose of eliciting information and views on the approach to license renewal rulemaking summarized in this notice. Special emphasis will be placed on substantive technical issues. The scope includes a broad range of regulatory issues, identification and bounding of the significant technical issues bearing on safety, the need for standards, and the appropriate role and scope of deterministic and probabilistic risk assessments in the safety evaluations involved. Views on the schedule for the rulemaking and alternatives for addressing National Environmental Policy Act (NEPA) issues are also included. The workshop will not deal with the numerous procedural issues which are central to the specification of a license renewal rule. Public comments have been solicited previously on two occasions. A solicitation for comments on seven major procedural and technical issues was published on November 6, 1986, "Request for Comments on Development of Policy for Nuclear Power Plant License Renewal," (51 FR, Vol. 51, pages 40334-40335). On August 29, 1988, an advanced notice of proposed rulemaking was published (53 FR, Vol. 53, pages 32919-32920). This notice solicited comments on NUREG-1317, "Regulatory Options for Nuclear Plant License Renewal," August 1988. Comments on the full range of procedural as well as technical and policy issues will be solicited again when a proposed license renewal rule is published about late May 1990.

The following material includes a tentative workshop agenda, discussion of how the workshop will be organized

and conducted, and information on issues and questions that will be covered in the workshop. Following the discussion of the workshop organization and conduct, a discussion is provided of the staff's preliminary regulatory philosophy and guiding principles for developing a proposed rule on license renewal. This discussion is followed by an outline of a conceptual approach to a license renewal rule, which illustrates how a rule embodying these principles might be structured. The primary technical focus of the workshop will be on sections XX.9, XX.19 and XX.25 of the rule outline. More detailed information on each session will be available after October 31, 1989. This information will be mailed to all individuals and organizations who notify NRC of their intent to attend and to others who request it. The workshop discussion and comments will assist the staff in developing the elements of a proposed license renewal rule.

Tentative Agenda

November 13, 1989

7:30 am Registration
8:30 am Introduction
8:45 am Regulatory Philosophy and General Approach
9:30 am Session 1—Overview of Conceptual Approach to a License Renewal Rule
10:00 am Break
10:15 am Session 1 Continued
12:00 pm Lunch
1:15 pm Concurrent Sessions (with one 20-minute break); Session 2—Reactor Pressure Boundary; Session 3—Fluid and Mechanical Systems; Session 4—Screening Systems, Structures and; Components Important to Safety; Session 5—Continuation of Session 1
5:00 pm Adjourn

November 14, 1989

8:00 am Registration
8:30 am Concurrent Sessions (with one 20-minute break); Session 6—Containments; Session 7—Electrical Systems; Session 8—Environmental Effects
11:45 am Lunch
1:15 pm Summary of Breakout Sessions
2:45 pm Break
3:00 pm Comments and Discussion
4:00 pm Recap and Conclusions
4:30 pm Adjourn

Workshop Content and Structure

The workshop has been designed to elicit information and views on the policy and substantive technical issues involved in the nuclear power plant license renewal rulemaking and

regulatory guide development. The scope of issues to be covered by the workshop is broadly defined in the subsequent sections, "Preliminary Regulatory Philosophy and Approach for License Renewal Regulation" and "Outline of a Conceptual Approach to a License Renewal Rule." Discussion of the substantive technical requirements will be guided by sections XX.9 Content of Application—Technical Information, XX.19 Standards for Issuance of Renewal License, and XX.25 Additional Records and Recordkeeping Requirements in the outline of a conceptual approach.

The opening presentation on the staff preliminary regulatory philosophy and approach for license renewal is intended to provide an overview of the regulatory philosophy that the staff proposes as a basis for developing policy, technical, and legal positions regarding a license renewal rule. No comments will be taken at this point in the program. Opportunity for comment on issues raised in the opening presentation will be available as the issues are discussed in Sessions 1 and 5.

In Session 1 the staff will systematically review the spectrum of policy and technical issues that must be dealt with in developing a rule and regulatory guidance. The session will result in a common framework of information and understanding to be taken into the remainder of the sessions. Also the range of attendee views on various issues will begin to emerge through their comments. Areas to be covered include overall approach to formulating a rule, licensing basis for renewal, screening methodology, content of application, trending and recordkeeping, and National Environmental Policy Act (NEPA) requirements.

In Session 1 the staff will review and explain the requirements proposed in the outline and current thinking on the scope and content of regulatory guides. The staff is considering two key regulatory guides to accompany the rulemaking.

1. Guidance for Developing Technical Information for Nuclear Power Plant Operating License Renewal Applications. The scope of this guide will include:

- Methodology for selection of systems, structures, and components
- Identification of stressors and environment
- Identification of degradation sites at the installed location
- Aging mechanisms
- Tracking and recordkeeping

- Maintenance, refurbishment, replacement

2. Screening and Selection of Important-to-Safety Systems, Structures, and Components. The scope of this guide will include:

- Deterministic approach
- Probabilistic risk method
- Hybrid approach involving deterministic and probabilistic methods

Two additional topics also have been identified for potential regulatory guides useful for implementing the rule.

1. Recordkeeping and Trending
2. Methods and Criteria for Fatigue Analysis

The following set of general questions are offered to aid in moving discussion from the general requirements stated in the outline to a more detailed evaluation of the technical issues that must be resolved in order to develop the concrete regulatory language of a proposed rule and draft regulatory guides.

- To what extent is it clear how each individual requirement in sections XX.9, XX.19, and XX.25 might be fulfilled?

- To what extent might there be a redundancy with existing regulations?

- What are problems and uncertainties in fulfilling each requirement?

- To what extent can these problems and uncertainties be dealt with in a rule?

- To what extent should these problems and uncertainties be dealt with in staff guidance documents? What guidance documents should be developed?

- To what extent should the license renewal process rely upon probabilistic risk assessment (PRA) insights, and what value might be associated with the conduct of a Level 3 PRA?

In Sessions 2, 3, 4, 6, and 7 the issues developed in Session 1 will be examined by applying these questions to four system, structure, and component groupings and to the screening of systems, structures, and components important to safety. In Session 5 the policy issues identified in Session 1 will be examined in greater depth.

Session 7 on environmental effects will explore the scheduling and merits of preparing a generic environmental assessment or impact statement, the findings of which could be codified in 10 CFR part 51. This would generically consider and bound to the extent possible the environmental effects of license renewal, thereby limiting the scope of effects that need to be evaluated in individual license renewal actions. Issues to be addressed include:

- Sources of initiators of environmental effects

- Scope and magnitude of potential effects

- Scope of severe accident analyses
- Spent fuel storage considerations
- Alternative sources of energy, scope of treatment

- Experimental knowledge, environmental studies, analyses and data sources

- Potential effectiveness of a generic environmental impact statement in bounding future plant-specific environmental impact statements

At each session the staff will first make a presentation; then comments will be taken from parties in the order in which they notified the staff of their intent to comment in a specific session. The order for comment will be:

1. Parties who notified the staff by November 1, 1989
2. Parties registering to comment prior to 8:30 a.m. the day of the session
3. Parties who have not given prior notice

Comments will be limited to 15 minutes for those representing organizations and 5 minutes for individuals. These limits may be adjusted up or down based on the number of commenters. A transcript will be made of the complete workshop.

Preliminary Regulatory Philosophy and Approach for License Renewal Regulation

The following discussion presents a general overview of the regulatory philosophy which the staff proposes be used in developing the policy, technical, and legal positions regarding a license renewal rule.

The regulatory policy that the staff proposes for license renewal is founded on two key principles. The first principle is that the "current licensing basis" at a specific reactor provides and maintains a level of safety for operation during the initial term that is sufficient to provide adequate assurance of the public health and safety and common defense and security, and that the same level of safety is also adequate for continued operation during any renewal period. The second and equally important principle is that any license renewal policy must provide assurance that the level of safety provided by a nuclear power plant's current licensing basis will not degrade during the renewal period.

The first principle is founded on the Commission's initial finding of adequate protection for the initial design and construction of a nuclear power plant, as well as the Commission's continuing oversight and regulatory actions with respect to nuclear power plants. The Commission may issue an operating

license to a utility only if it can make the findings required by 10 CFR 50.57. More specifically, the Commission must conclude that the facility will operate in compliance with the application as amended and the rules and regulations of the Commission. Further, the Commission must conclude that the authorized activities can be conducted without endangering the health and safety of the public and that the issuance of an operating license will not be inimical to the common defense and security or the public health and safety. Thus, when the Commission issues an initial operating license, it has determined that the design, construction, and proposed operation of the facility satisfies all of the Commission's requirements and provides adequate protection of the public health and safety and common defense and security.

However, the licensing basis upon which the Commission found adequate protection does not remain fixed for the term of the operating license. Rather, the licensing basis continues to evolve and expand during the term of operation, in part because of the continuing regulatory activities of the Commission. These include research, inspections, and the identification and resolution of potential safety concerns. New regulations are promulgated by the Commission that may require plant modifications on a plant-specific basis; generic and unresolved safety issues are resolved that may recommend that licenses evaluate and modify their designs; and additional evaluations are routinely required as the Commission identifies areas of plant operation that require additional understanding. Thus, the Commission-required changes to a plant's licensing basis provides ongoing assurance that the original Commission conclusion of adequate protection of the health and safety and common defense and security continue to remain valid throughout the remaining term of the facility's operating license.

The second principle follows from the first: if the current licensing basis provides adequate assurance to public health and safety and common defense and security, then licensees must continue to comply with the current licensing basis as it evolves in order for the Commission to have continued assurance of adequate protection. The staff believes that assurance of such compliance into the renewed period of operation rests on two factors: licensee programs for ensuring continued safe operation of the plant, and the Commission's regulatory oversight programs. The licensee programs

include self-inspection, maintenance, and surveillance programs that monitor and test the physical condition of plant equipment as the plant operates. Through these programs, licensees identify the degradation of components to a number of different environmental stressors and are, in general, able to replace or refurbish their equipment so that the necessary safety features would work when actually called upon under transient or accident conditions.

The Commission employs an oversight role in ensuring that the licensee's programs are effective through its inspection program. The NRC inspection program historically has been constructed around a series of inspection procedures that provide for the routine examination of activities at an operating nuclear facility on a recurring schedule. The NRC inspection program employs a balanced look at a cross section of plant activities considered important to maintaining safety. It has the specific purpose of obtaining sufficient information on licensee performance, through direct observation and verification of licensee activities, to determine whether the facility is being operated safely; whether the licensee management control program is effective; and whether the regulatory requirements are being met. The program includes inspection of the licensee's performance in functional technical disciplines such as operations, radiological controls, maintenance, surveillance, environmental protection, physical security, and engineering. It is important to note, however, that implementation of the Commission inspection program does not supplant the licensee's programs or responsibilities. Rather, it provides a feedback mechanism and an independent verification of the effectiveness of the licensee's implementation of its programs to ensure that operations are being conducted safely and in accordance with applicable NRC requirements.

The staff is currently developing an approach for license renewal that embodies the principles outlined above. It is the staff's intention that the license renewal rule and accompanying regulatory materials will clearly define the safety requirements that the licensee must address in order for the Commission to approve the licensee's renewal application. The staff's current effort is focusing on two areas: (1) The definition of and regulatory requirements relative to the "current licensing basis," and (2) defining the technical requirements necessary to ensure continued assurance of adequate

protection during the renewed term of operation, with emphasis on degradation and aging.

With regard to the "current licensing basis," the staff intends to propose that the license renewal rule require the renewal application to contain a summary of all regulatory requirements and commitments so that the "current licensing basis" for the plant will be clearly understood and located in one document—the renewal application (which would be updated to the date of issuance of the renewal license). The staff is presently working to define the term, "current licensing basis." As currently being developed by the staff, it would include all the information and commitments contained in the current FSAR, as well as other docketed correspondence.

With respect to degradation and aging in the renewed term of operation, the staff is working to determine what licensee actions are required to provide assurance that systems, structures, and components important to continued safe plant operation will not be degraded by aging mechanisms such as fatigue, erosion, thermal or radiation-induced embrittlement, corrosion, service wear, and chemical effects. Those structures, systems, and components that are effectively covered by existing ongoing NRC requirements and/or licensee programs, or are not subject to aging mechanisms need not be addressed in the application (and need not be within the scope of the hearing process). While not completely developed at the moment, the scope of structures, systems and components (SSCs) to be addressed will probably be similar to that identified in the rulemaking for environmental qualification of electrical equipment. Licensees would then be required to identify where in existing plant programs, the degradation mechanisms are being monitored to provide reasonable assurance that replacement or refurbishment schedules for degrading equipment are being developed or service lifetime for equipment established. The staff is also considering whether additional recordkeeping requirements should be developed that would require retention of documentation regarding the design and environmental conditions for which the equipment must function, and the degradation mechanisms that might exist at the installed equipment location. A trending system of performance and key parameters may also be required to be instituted.

The staff is considering requirements related to severe accidents that must be satisfied as a precondition to

submission of a renewal application. In summary, the staff would propose that a renewal applicant have completed both the IPE and Accident Management programs. Further, the renewal applicant should have completed or have scheduled all planned plant modifications that were identified through these severe accident programs. The focus of this requirement would be to ensure that closure of the severe accident issues have been reached for the plant under its initial license prior to applying for the renewed license.

The staff intends to propose that the renewal decision depend on whether the facility provides adequate protection to the public health and safety and common defense and security, based upon the following factors: (1) Whether the current licensing basis has been accurately described, (2) whether the licensee has described an adequate program to address degradation or aging of SSCs that are important to safety, and (3) whether severe accident issues have been adequately addressed and resolved. Certain issues would not have to be addressed in the renewal application, although the description of "current licensing basis" for the facility would include the regulatory requirements and licensee commitments with respect to these issues, for purposes of having a legal basis for enforcement action during the renewed term. Issues likely to be excluded from the scope of the renewal decision include staffing, training program, organizational structure, operation QA program, health physics/ALARA programs, security program, procedures, structures, systems, and components covered under the inservice inspection (ISI) and inservice testing (IST) programs, containment testing and periodic surveillances specified in the technical specifications, emergency planning and EQ matters addressed by § 50.49, as well as others. Any lack of compliance by a licensee with these requirements is more appropriately the subject of a § 2.206 petition, and the circumstance of a renewal application should not provide a forum for assessing compliance with requirements that do not form the basis for the Commission's renewal decision. The license renewal rule, together with the recent changes to Part 2, will provide a framework for focusing any necessary hearings on the safety issues relevant to the license renewal decision.

The staff intends to propose that no application for renewal will be accepted more than 20 years before the expiration of the current operating license. In addition, it would propose that the

renewal term of a renewed license be limited to the balance of years remaining on the license currently in effect plus no more than an additional 20 years. The staff has not identified a firm technical concern that would justify this limitation; however, the staff wishes to proceed cautiously when projecting the remaining useful life of present reactors.

The staff believes that the timely renewal provision of 10 CFR 2.109 must be revised. Various estimates have been made concerning what is a reasonable time period for the review of a renewal application. Estimates by both the Commission and the industry suggest that a 2-to-3-year period (including hearings) may be necessary to approve a renewal of an operating license. Provided that a sufficient application is made in accordance with the timely renewal provisions of the revised § 2.109, plant operation under the provisions of the preexisting license may continue while the renewal application is under review. Recognizing that there is not a strong basis for selecting a particular cutoff time, the staff intends to propose that a sufficient application for renewal of an operating license should be received no later than 3 years prior to the expiration of the operating license in effect for the timely renewal provision to apply.

The staff will propose that the renewal license be a type of license that would become effective immediately and would void the license previously in effect. This license, termed a "supersession license," would remove any ambiguity that would otherwise exist concerning the conditions under which a licensee would operate a plant during any period that may overlap the issuance of the renewal license and the term of the pre-existing license.

Under §§ 50.54(bb) and 50.75, licensees are required to submit a funding plan for disposal of irradiated fuel and a funding plan for decommissioning. One year before the operating license is to expire, licensees are required by § 50.82 to file an application for termination of the operating license together with a decommissioning plan. The staff is considering exempting plants that have submitted acceptable renewal applications from these requirements while the applications are under staff review, but in no case more than 1 year after the expiration of the original operating license. If submission of the materials required by §§ 50.75(f), 50.54(bb), and 50.82 has been postponed and the license should withdraw its renewal application, or if the application

is denied, the staff believes that the licensee should provide the necessary plans no more than 6 months later.

With regard to compliance with the requirements of the National Environmental Policy Act (NEPA), the staff has determined that an environmental assessment is required at minimum to support the license renewal rulemaking. Apart from this task, the staff is considering two changes to the current regulations. First, the staff is evaluating whether the requirement in 10 CFR 51.20(b)(2) that an EIS be prepared for every license renewal application should be modified to allow the NRC the option of preparing an environmental assessment for the purpose of determining whether an EIS should be prepared. Second, the staff is considering whether either a generic assessment or a generic environmental impact statement (GEIS) should be prepared to describe and evaluate, on a generic basis, any environmental impacts that are common to, or may be enveloped by, all (or a significant number of) nuclear power plants. It is the staff's intention that if such a generic evaluation is prepared, its substantive findings would be adopted as a rule. The findings so codified could not be challenged in any individual license renewal proceeding unless an intervenor could show, on the basis of new information, that the evaluation and conclusions set forth in the rule were incorrect for the particular facility.

The staff does not intend to revise part 51's requirement that a renewal applicant submit a supplement to the existing environmental report prepared in connection with the initial licensing. Some clarifying changes in part 51 may be necessary to make clear that the supplemental environment report (ER) in support of a license renewal application should address those changes that have occurred since the initial licensing. In addition, if the Commission determines that a generic assessment or generic statement should be prepared, part 51 would be amended to specify that the ER provide a comparison of the plant-specific site parameters to those used in the generic document to identify environmental issues outside the scope of the generic evaluation. It would be necessary to compare the existing plant data with those used generically to ensure that the plant conditions were bounded by the generic evaluation.

The staff intends to propose a change to the Backfit Rule, 10 CFR 50.109, to specifically designate the issuance of a renewal license as an event after which the requirements of the Backfit Rule would apply. As presently written, the

Backfit Rule does not specifically refer to renewed licenses. The proposed change would remove any ambiguity in this regard.

Outline of a Conceptual Approach to a License Renewal Rule

XX.1 Purpose and Scope

This subpart governs the issuance of renewed operating licenses for nuclear power facilities licensed pursuant to sections 103 or 104b of the Atomic Energy Act of 1954, as amended (68 Stat. 919), and title II of the Energy Reorganization Act of 1974 (88 Stat. 1242).

XX.3 Definitions

As used in this part,

(a) "Current licensing basis" means the original licensing basis as described in the licensee's Final Safety Analysis Report (FSAR) at the time the initial license was granted plus those additional requirements that have been imposed and those commitments that have been made by the licensee during the period of plant operation up to the time of application for license renewal. This includes, but is not limited to, plant-specific compliance with the Commission regulations as prescribed in parts 2, 19, 20, 21, 30, 40, 50, 51, 55, 72, 73, 100 and the appendices thereto of title 10 of the Code of Federal Regulations; orders; license conditions; exemptions, except for those which have time dependence based on the expected plant life or whose technical evaluation would be affected by aging degradation; adjudicatory decisions; and technical specifications. In addition, the current licensing basis would include written commitments made in docketed correspondence such as responses to NRC bulletins and generic letters and other licensee correspondence.

(b) "Degradation mechanisms" means the aging phenomena identified in paragraph XX.9(c)(3) of this subpart.

(c) "Systems, structures, and components (SSCs) important to safety" means the purposes of this subpart:

(1) Safety-related SSCs, which are those relied upon to remain functional during and following design basis events to ensure the integrity of the reactor coolant pressure boundary, the capability to shut down the reactor and maintain it in a safe shutdown condition, and the capability to prevent or mitigate the consequences of accidents that could result in potential offsite exposures comparable to the part 100 guidelines. Design basis events are defined the same as in 10 CFR 50.49(b)(1).

(2) Non-safety-related SSCs whose failure under postulated environmental conditions could prevent satisfactory accomplishment of safety functions specified in subparagraphs () through () of paragraph () of this definition by the safety-related SSCs.

(3) Certain post-accident monitoring equipment.

(d) "Nuclear power facilities" means a commercial nuclear power facility of a type described in 10 CFR 50.21(b) or 50.22.

(e) "Renewal term" means the period of time which is the sum of the remaining number of years on the operating license currently in effect, plus the additional amount of time beyond the expiration of the operating license (not to exceed 20 years) which is requested in the renewal application. The total number of years for any renewal term shall not exceed 40 years.

(f) All other terms in this part have the same meaning set out in 10 CFR 50.2 or section 11 of the Atomic Energy Act, as applicable.

XX.5 Filing of Application

(a) The filing of an application for a renewed license shall be in accordance with subpart A, part 2, and §§ 50.4 and 50.3 of this part.

(b) An application for a renewed license shall not be submitted to the Commission earlier than 20 years before the expiration of the operating license currently in effect.

(c) An applicant may combine an application for a renewed license with applications for other kinds of licenses.

(d) An application may incorporate by reference information contained in previous applications, statements, or reports filed with the Commission, provided that such references are clear and specific.

(e) Applications shall be prepared such that all Restricted Data and other defense information are separated from unclassified information, in accordance with § 50.33(j).

(f) Notwithstanding § 2.109 of this title, a sufficient application for renewal of a nuclear power plant operating license must be filed no later than 3 years prior to expiration of the existing operating license for the timely renewal provision of that section to apply.

XX.7 Contents of Application—General Information

(a) Each application shall provide the information specified in § 50.33 (a) through (e), (h), (i) of part 50.

XX.9 Contents of Application—Technical Information

Each application for a renewed license shall include a Final Safety Analysis Report (FSAR). The FSAR shall include information that describes the facility, presents the design bases and the limits on its operation, and presents a safety analysis of the structures, systems, and components as a whole. Each FSAR shall include the following information:

(a) *Identification of Current Licensing Basis*—A description of the current licensing basis for the facility, including all regulations and exemptions therefrom, orders, license conditions, regulatory guides, and commitments made by the licensee in response to bulletins and generic letters.

(b) *Compliance with Current Licensing Basis*—[Certification that/description and analysis of how] the facility complies with the current licensing basis.

(c) *Degradation*—An evaluation demonstrating that degradation of the facility's structures, systems, and components have been identified, evaluated, and properly accounted for to ensure that the current licensing basis, including margins of safety inherent in the facility's licensing basis, will be maintained throughout the term of the renewed license. This evaluation shall:

- (1) Identify, using an acceptable methodology, all systems, structures, and components important to safety;
- (2) Identify the design requirements and functions and environmental conditions under which the equipment must operate, such as stress and load allowables, temperature, pressure, humidity, radiation, and chemistry at the installed location and under all design basis events;

(3) Determine which of the following degradation mechanisms may affect the systems, structures, and components identified in paragraph (c)(1) above:

- (i) Fatigue/Vibration
- (ii) Corrosion
- (iii) Erosion
- (iv) Service wear
- (v) Thermal embrittlement
- (vi) Radiation embrittlement
- (vii) Chemical and biological effects
- (viii) Creep/shrinkage
- (ix) Degradation due to operational environment

(4) Describe, with appropriate technical bases, what will ensure that the systems, structures, and components identified in paragraph (c)(1) will continue to maintain the design, functional, and environmental requirements identified in paragraph (c)(2) throughout the term of the

renewed license, for each of the degradation mechanisms determined to be relevant under paragraph (c)(3).

(5) A description and technical basis for a program of identifying, evaluating, and trending of the effects of all relevant degradation mechanisms for all SSCs important to safety.

(d) *Severe Accident Outliers Resolutions*—Sufficient documentation showing that the Individual Plant Examination (IPE) required by Generic Letter 88-20 has been completed and approved by the NRC staff, and a description and technical basis for all staff-approved corrective actions, including an Accident Management Program, which have been or will be implemented because of the results of the IPE. For those corrective actions that have not yet been implemented, a staff-approved schedule shall be provided showing the date of completion.

(e) *Technical Specifications*—A list of, and technical bases for, all technical specifications, which shall be prepared in accordance with the requirements of § 50.36 and shall properly account for any plant modifications and the degradation mechanisms and necessary activities identified in XX.9(c) above. Revisions made pursuant to the renewal application shall be clearly identified and annotated to show their relationship to previously approved technical specifications.

XX.11 Contents of Application—Environmental Information

(a) Each license renewal application shall include a supplement to the licensee's existing environmental report that complies with the requirements of subpart A of part 51 of this title.

XX.13 Postponement of Compliance with Requirements on Decommissioning and Irradiated Fuel Management

(a) If a sufficient application for a renewed license has been submitted in a timely manner and has not been denied, the submission of a preliminary decommissioning plan required by § 50.75(f), the notification and report required by § 50.54(bb), and submission of an application for termination of license under § 50.82 shall be postponed for that period of time until a final determination of the renewal application has been made by the Commission but no later than 1 year after the expiration date of the operating license currently in effect.

(b) If submission of the materials required by §§ 50.75(f), 50.54(bb), and 50.82 has been postponed pursuant to the section above and the application for a renewed license has been denied,

the licensee shall submit the required reports within 6 months of the disapproval.

XX.15 Report of the Advisory Committee on Reactor Safeguards

Each renewal application shall be referred to the Advisory Committee on Reactor Safeguards for a review and report. Any report shall be made part of the record of the application and made available to the public, except to the extent that security classification prevents disclosure.

XX.17 Hearings

A notice of an opportunity to request a hearing will be published in the *Federal Register*, in accordance with 10 CFR 2.105 of part 2. In the absence of a request therefor filed within 30 days by a person whose interest may be affected, the Commission may issue a renewed operating license without a hearing.

XX.19 Standards for Issuance of Renewed License

A renewed operating license may be issued by the Commission, up to the full term authorized by Section XX.21(b), upon finding on the basis of compliance with the standards set forth below, that there is reasonable assurance that the facility can be operated for the term of the license without endangering the public health and safety or the common defense and security:

(a) The current licensing basis for the facility has been completely and accurately described;

(b) All systems, structures, and components for the facility that are important to safety have been identified;

(c) All applicable degradation mechanisms have been identified for those structures, systems, and components;

(d) Appropriate actions have been or will be taken with respect to degradation of those systems, structures, and components, such that there is reasonable assurance that the activities authorized by the renewed operating license can be conducted in accordance with the current licensing basis;

(e) An acceptable program of identifying, evaluating and trending the effects of all relevant degradation mechanisms for all SSCs important to safety will be implemented at the plant.

XX.21 Issuance of Renewed License

(a) A renewed license shall be of the class for which the operating license currently in effect was issued.

(b) A renewed license will be issued for a fixed period of time to be specified in the license but in no case to exceed 40

years from the date of issuance. The term of a renewal license will be equal to the period of time remaining on the operating license currently in effect at the time of the approval of the application plus the additional period of time requested by the licensee (but no longer than 20 years), but not to exceed the estimated useful life of the facility.

(c) The renewed license shall become effective immediately upon its issuance, thereby superseding the operating license previously in effect.

(d) Each renewed license shall include appropriate provisions with respect to any uncompleted items of plant modification, and such limitations or conditions as are required to ensure that operation during the period of completion of such items will not endanger public health and safety.

XX.23 Requirements During Term of Renewed License

During the term of a renewed license, licensees shall continue to comply with all Commission regulations (including 10 CFR 50.59, 50.70, 50.71, 50.72, 50.73, 50.74, 50.75, and 50.78).

XX.25 Additional Records and Recordkeeping Requirements

A record of the documentation required by, or otherwise necessary to document compliance with the provisions of this subpart must be retained by the licensee in an auditable and retrievable form for the term of the renewed operating license.

Dated in Rockville, Maryland, this 10th day of October, 1989.

For the Nuclear Regulatory Commission
Warren Minners,
*Director, Division of Safety Issue Resolution,
 Office of Nuclear Regulatory Research.*
 [FR Doc. 89-24328 Filed 10-12-89; 8:45 am]
 BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 27, 29, and 33

[Docket Nos. 26018 and 26019; Notice Nos. 89-26 and 89-27]

Airworthiness Standards; New Rotorcraft One-Engine-Inoperative Power Ratings and Rotorcraft Engine Type Certification Standards

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting to discuss two associated

notices of proposed rulemaking (NPRM) dealing with (1) proposed new one-engine-inoperative (OEI) power ratings for multiengine, turbine-powered rotorcraft; and (2) proposed new OEI ratings for rotorcraft engines.

DATES: The public meeting will begin at 9 a.m. on November 16, 1989.

ADDRESSES: The meeting will be held at the Holiday Inn North/Conference Center, 2540 Meacham Blvd., Fort Worth, Texas 76106; telephone (817) 625-9911.

FOR FURTHER INFORMATION CONTACT:

Mr. Ray Twa, Rotorcraft Standards Staff, ASW-110, FAA, Fort Worth, Texas 76193-0110, telephone (817) 624-5158, or Mr. Donald F. Perrault, Engine and Propeller Standards Staff, ANE-110, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7081.

SUPPLEMENTARY INFORMATION: Notice No. 89-26 (54 FR 39086) was published in the *Federal Register* on September 22, 1989. This notice proposes to amend parts 27 and 29 of the Federal Aviation Regulations (FAR) to incorporate new one-engine-inoperative (OEI) power ratings for multiengine, turbine-powered rotorcraft.

A corresponding notice, Notice No. 89-27, was also published in the *Federal Register* (54 FR 39080) on September 22, 1989. Notice No. 89-27 proposes correlating changes to parts 1 and 33 of the FAR to provide new OEI ratings for rotorcraft engines.

Both notices respond to a petition for rulemaking from Aerospace Industries Associations of America, Inc. (AIA), to amend parts 1, 27, 29, and 33 of the FAR to establish new 30-second, 2-minute, and continuous OEI power ratings. For administrative reasons, two notices were issued; however, both notices will be jointly discussed at the public meeting.

Copies of both notices are being mailed to all interested parties. Any interested party who has not received a copy of the notices by November 1, 1989, may contact Debra H. Myers, FAA, Rotorcraft Standards Staff, ASW-110, Fort Worth, TX 76193-0110, telephone (817) 624-5118.

Issued in Fort Worth, Texas, on September 28, 1989.

James D. Erickson,

*Acting Manager, Rotorcraft Directorate,
 Aircraft Certification Service.*

[FR Doc. 89-24167 Filed 10-12-89; 8:45 am]

BILLING CODE 4010-13-M

14 CFR Part 39

[Docket No. 89-NM-192-AD]

Airworthiness Directives; Fokker Model F-28 Mark 1000, 2000, 3000, and 4000 Series Airplanes**AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to revise an existing airworthiness directive (AD), applicable to all Fokker Model F-28 Mark 1000, 2000, 3000, and 4000 series airplanes, which currently requires supplemental structural inspections, and repair or replacement, as necessary, to ensure continued airworthiness. This action would revise the inspection program to add or revise significant structural items to inspect for fatigue cracks. This proposal is prompted by a structural re-evaluation by the manufacturer which identified additional structural elements where fatigue damage is likely to occur. Fatigue cracks in these areas, if not detected and corrected, could result in a reduction of the structural integrity of these airplanes.

DATES: Comments must be received no later than November 28, 1989.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-192-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 431-1978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to

the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-address, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-192-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On March 15, 1989, the FAA issued AD 89-07-16, Amendment 39-6170 (54 FR 11940; March 23, 1989), to incorporate into the FAA-approved Maintenance Inspection Program, items defined in the Fokker Structural Integrity Program (SIP) Document No. 28438, Part I, including revisions up through March 20, 1986. That action was prompted by a structural reevaluation, which had identified certain significant structural components where fatigue damage is likely to occur. The AD requires inspections for fatigue cracks, and repair or replacement, as necessary, to assure continued airworthiness. Fatigue cracks in these areas, if not detected and corrected, could result in a reduction in the structural integrity of these airplanes.

Since issuance of that AD, Fokker SIP document No. 28438, Part I, has been revised to add or revise items for inspection, repair, or replacement. These additional or revised items were included as a result of (1) fatigue analysis and tests, (2) service experience, (3) follow-up action to an airworthiness directive that required a one-time inspection and report of findings to the manufacturer, and (4) in some cases, an interim repair.

Fokker has issued Fokker Document No. 28438, Part I, including revisions up through November 1, 1988, which adds or revises items for inspection, and repair or replacement as necessary. The Rijksluchtvaartdienst, which is the

airworthiness authority of the Netherlands, has classified this revised Fokker document as mandatory.

The airplane model is manufactured in the Netherlands and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same design registered in the United States, and AD is proposed which would revise AD 89-07-16 to require incorporation of the latest revisions of Fokker SIP Document No. 28438, Part I, revised up through November 1, 1988, into the FAA-approved maintenance program.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

It is estimated that 48 airplanes of U.S. registry would be affected by this AD. Implementation of the inspections, repairs, or replacements specified in the revisions to the SIP document into an operator's maintenance program is estimated to require 103 manhours per airplane per year, at an average labor cost of \$40 per manhour (approximately \$4,120 per airplane). Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$197,760 the first year and annually thereafter.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by revising AD 89-07-16, Amendment 39-6170 (54 FR 11940, March 23, 1989) as follows:

Fokker: Applies to Model F-28 Mark 1000, 2000, 3000 and 4000 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To ensure the continuing structural integrity of these airplanes, accomplish the following:

A. Within six months after the effective date of this AD, incorporate into the FAA-approved maintenance program the inspections, inspection intervals, repairs or replacements defined in the Fokker Structural Inspection Program (SIP) Document No. 28438, Part I, including revisions up through November 1, 1988; and inspect, repair, and replace, as applicable. The non-destructive inspection techniques referenced in this document provide acceptable methods for accomplishing the inspections required by this AD. Inspection results, where a crack is detected, must be reported to Fokker, in accordance with the instructions of the above document.

B. Cracked structure detected during the inspections required by paragraph A., above, must be repaired or replaced prior to further flight, in accordance with the instructions in SIP Document No. 28438, revised November 1, 1988.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

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

All persons affected by this directive who have not already received the appropriate service documents from the

manufacturer may obtain copies upon request to Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on September 29, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-24166 Filed 10-12-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-191-AD]

Airworthiness Directives; Fokker Model F-27 Mark 100, 200, 300, 400, 500, 600, and 700 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to revise an existing airworthiness directive (AD), applicable to all Fokker Model F-27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, which currently requires supplemental structural inspections, and repair or replacement, as necessary, to ensure continued airworthiness. This action would revise the inspection program to add or revise significant structural items to inspect for fatigue cracks. This proposal is prompted by a structural re-evaluation by the manufacturer which identified additional structural elements where fatigue damage is likely to occur. Fatigue cracks in these areas, if not detected and corrected, could result in a reduction of the structural integrity of these airplanes.

DATES: Comments must be received no later than November 28, 1989.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-191-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane

Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT:

Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 431-1978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-191-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On March 15, 1989, the FAA issued AD 89-07-11, Amendment 39-6168 (54 FR 11939, March 23, 1989), to incorporate into the FAA-approved Maintenance Inspection Program items defined in Fokker Structural Integrity Program (SIP) Docket No. 27438, Part I, including revisions up through February 1, 1987. That action was prompted by a structural reevaluation, which had identified certain structural components where fatigue damage is likely to occur. The AD requires inspections for fatigue cracks, and repair, or replacement, as necessary, to assure continued airworthiness. Fatigue cracks in these

areas, if not detected and corrected, could result in a reduction of the structural integrity of these airplanes.

Since issuance of that AD, Fokker SIP Document No. 27438, Part I, has been revised to add or revise items for inspection, repair, or replacement. These additional or revised items were included as a result of (1) fatigue analysis and tests, (2) service experience, (3) follow-up action to an airworthiness directive that required a one-time inspection and report of findings to the manufacturer, and (4) in some cases, an interim repair.

Fokker has issued Fokker Document No. 27438, Part I, including revisions up through August 15, 1988, which adds or revises items for inspection, and repair or replacement, as necessary. The Rijksluchtvaartdienst, which is the airworthiness authority of the Netherlands, has classified the Fokker Document as mandatory.

This airplane model is manufactured in the Netherlands and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would revise AD 89-07-11 to require incorporation of the latest revision of Fokker SIP Document No. 27438, Part I, revised up through August 15, 1988, into the FAA-approved maintenance program.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

It is estimated that 33 airplanes of U.S. registry would be affected by this AD. Implementation of the inspections, repairs, or replacement specified in the revisions to the SIP document into an operator's maintenance program is estimated to require 50 manhours per airplane per year, at an average labor cost of \$40 per manhour (approximately \$2,000 per airplane). Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be \$66,000 the first year and annually thereafter.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order

12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by revising AD 89-07-11, Amendment 39-6168 (54 FR 11939, March 23, 1989), as follows:

Fokker: Applies to Model F-27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, all serial numbers, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To ensure the structural integrity of these airplanes, accomplish the following:

A. Within six months after the effective date of this AD, incorporate into the FAA-approved maintenance inspection program the inspections, inspection intervals, repairs, or replacements defined in Fokker SIP Document No. 27438, Part I, including revisions up through August 15, 1988; and inspect, repair, and replace, as applicable. The non-destructive inspection techniques referenced in this document provide acceptable methods for accomplishing the inspections required by this AD. Inspection results, where a crack is detected, must be reported to Fokker, in accordance with the instructions of the above document.

B. Cracked structure detected during the inspection required by paragraph A., above, must be repaired or replaced, prior to further flight, in accordance with instructions in

Document No. 27438, including revisions up through August 15, 1988.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on September 28, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.
[FR Doc. 89-24165 Filed 10-12-89; 8:45 am]

BILLING CODE 4910-13-M

Office of the Secretary

14 CFR Part 221

[OST Docket No. 41034; Notice No. 89-20]

RIN 2105-AA39

Airline Time and Mileage Guides

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Department has decided to solicit additional comments before finalizing a rulemaking issued by the Civil Aeronautics Board (Board) in 1982. The Board's rulemaking proposed to remove airline tariff requirements for statements of fares or rates based upon units of distance or time. These provisions appeared to be unnecessary, since the Board encouraged innovation in air carrier pricing methods. The change was proposed at the Board's own initiative to remove superfluous regulation.

DATE: December 12, 1989.

ADDRESS: Five (5) copies of any comments should be sent to the Documentary Services Division, C-55, U.S. Department of Transportation, 400 7th Street SW., Washington, DC 20590. Comments should refer to Docket 41034. Persons wishing acknowledgement of their comments should include a stamped, self-addressed postcard with their comments. The Docket clerk will time and date-stamp the card and return it to the commenter.

FOR FURTHER INFORMATION CONTACT: Thomas G. Moore, Tariffs Division, Office of International Aviation, P-44, Department of Transportation, 400 7th Street SW., Washington, DC 20590, (202) 366-2414.

SUPPLEMENTARY INFORMATION:

Background

By the Notice of Proposed Rulemaking issued October 27, 1982 (47 FR 47599) (NPRM) the Civil Aeronautics Board tentatively concluded that the regulations which prohibited air carriers from filing tariffs which contained statements of fares or rates based upon units of distance or time were unnecessary. The Board noted that such regulations appeared to apply only to charter tariffs which were no longer required to be filed, and therefore appeared to serve no useful purpose.

The Board also stated that under the proposal, carriers would in most cases be permitted to file tariffs that state fares or rates by any reasonable methods. The comment period on the NPRM closed on December 13, 1982.

Comments

Comments on the proposed rulemaking were received from Transamerica Airlines, Inc. (Transamerica). Transamerica stated that it had no objection to the adoption of the rulemaking, provided that the removal of the regulations would not present a barrier to their reintroduction if the Board required charter tariffs to be filed in the future.

Disposition of Rulemaking

In view of the elapsed time since the rulemaking, we are requesting whether there is any additional information that we should consider before finalizing this rulemaking.

Executive Order 12291, Regulatory Flexibility Act, Paperwork Reduction Act, and Federalism Assessment

The Department certifies that this rule is not a major rule as defined by Executive Order 12291. It would not result in an annual effect on the

economy of \$100 million or more. There would be no increase in production costs or prices for consumers, individual industries, Federal, State, or local governments, agencies, or geographical regions. Furthermore, it would not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Similarly, the Supplemental Notice of Proposed Rulemaking is not significant under the Department's regulatory policies and procedures. Furthermore, no regulatory evaluation is necessary because the economic impact of the proposal would be minimal.

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the concepts discussed therein do not have sufficient federalism implications to warrant the preparation of a federalism assessment.

With respect to the Paperwork Reduction Act of 1980, Public Law 96-511, this rule contains no new information collection requirements that require the approval of the Office of Management and Budget pursuant to the Act.

Issued in Washington, DC on October 5, 1989.

Jeffrey N. Shane,
Assistant Secretary for Policy and
International Affairs.

[FR Doc. 89-24142 Filed 10-12-89; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[CO-69-87]

RIN 1545-AK26

Use of Pre-Change Attributes

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to the notice of proposed rulemaking (CO-69-87), which was published Wednesday, September 20, 1989, (54 FR 38695). The proposed regulations relate to the use of certain corporate tax attributes under section 383 of the Internal Revenue Code of 1986 that are attributable to the period

preceding an ownership change of the corporation.

FOR FURTHER INFORMATION CONTACT: Lori J. Jones, 202-566-3205 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The proposed regulations that are the subject of these corrections provide guidance under section 383 relating to the manner and method of absorbing the section 383 limitation with respect to certain capital losses and excess credits after there has been an ownership change of a corporation within the meaning of section 382.

Need for Correction

As published, the proposed regulations (CO-69-87) inadvertently omitted language and contains typographical errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the proposed regulations (CO-69-87) which was the subject of FR Doc. 89-22107, is corrected as follows:

1. On page 38695, column 2, first paragraph under the caption "Paperwork Reduction Act", fifth line from the bottom of this paragraph, the OMB number "(1545-1120)" is added following the language "Budget, Paperwork Reduction Project". On the second line from the bottom of this paragraph, the language "IRS Reports Clearances Officer TR:FP" is removed and the language "IRS Reports Clearance Officer T:FP" is added in its place.

2. On page 38695, column 3, fourth line, the language "burden: 247,500 hours." is removed and the language "burden: 22,500 hours." is added in its place.

3. On page 38695, column 3, beginning a new paragraph on the fifth line, add the language "Estimated total annual recordkeeping burden: 225,000 hours."

4. On page 38695, column 3, third paragraph, first line, the language "Estimated number of respondents:" is removed and the language "Estimated number of respondents/recordkeepers:" is added in its place.

Dale D. Goode,

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

[FR Doc. 89-24104 Filed 10-12-89; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD13 89-06]

**Drawbridge Operation Regulations;
Lake Washington Ship Canal, Seattle,
WA**

AGENCY: Coast Guard, DOT.

ACTION: Notice of Proposed rulemaking.

SUMMARY: At the request of the City of Seattle (City), the Coast Guard is considering a change to the regulations governing operation of the Montlake Bridge across the Lake Washington Ship Canal, mile 5.4, at Seattle, Washington. The proposal is being made because tests conducted by the City and the results of a 60-day trial regulation indicate that the change will relieve vehicular traffic congestion attributable to openings of the Montlake Bridge. This action should accommodate the needs of vehicular traffic and should still provide for the needs of navigation. The proposed rule would be a continuation of the temporary rule currently in effect. It extends the weekday afternoon closed period by one half hour (3:30 p.m. to 6:00 p.m. instead of the present 4:00 p.m. to 6:00 p.m.) and allows openings only on the hour and half hour Monday through Friday, from 12:30 p.m. to 3:30 p.m. and from 6:00 p.m. to 6:30 p.m.

DATE: Comments should be received on or before November 27, 1989.

ADDRESSES: Comments should be mailed to Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174-1067. The comments and other materials referenced in this notice will be available for inspection and copying at 915 Second Avenue, Room 3564. Normal office hours are between 7:45 a.m. and 4:15 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Bridge Section, Aids to Navigation and Waterways Management Branch, (Telephone: (206) 442-5864).

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting comments on the feasibility and impact of the rule on both marine and vehicular traffic. Comments should include observed effects, both beneficial and detrimental, and any suggestions for changes. Persons submitting comments should include their names and addresses, identify the bridge, and give

reasons for concurrence with, opposition to, or any recommended changes in, the proposal. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Thirteenth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal.

Drafting Information

The drafters of this notice are: John E. Mikesell, project officer, and Lieutenant Deborah K. Schram, project attorney.

Discussion of Proposed Regulations

On June 8, 1989, at the request of the City of Seattle, the Coast Guard published a temporary rule (54 FR 24555). The Commander, Thirteenth Coast Guard District, also published information concerning the change in Public Notice 89-N-04, dated June 14, 1989. Interested parties were given until September 8, 1989 to submit comments. The temporary change served as a trial period to evaluate the effects of requested changes to drawbridge operating regulations for the Lake Washington Ship Canal, 33 CFR 117.1051. We received a total of seven comments concerning the change: four from boaters, two from concerned citizens, and one from a federal governmental agency. The boaters objected to the change, the concerned citizens were in favor of the change, and the governmental agency had no objection to the change. The primary concern of the boaters was the danger of waiting for bridge openings while maneuvering within the Montlake Cut. As the trial period progressed, most boaters either planned their trips to arrive at the scheduled opening time, or waited outside the Montlake Cut until it was time for an opening. Extending the temporary change while the proposed change is being processed should avoid confusion and allow additional time for comment and evaluation.

Economic Assessment and Certification

These temporary regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. Preliminary evaluation of the trial change indicates that the temporary regulation will relieve vehicular traffic congestion in

the Montlake Corridor without causing unnecessary delays to navigation.

Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

LIST OF SUBJECTS in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations as follows:

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

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-01(g); 33 CFR 117.43.

2. Section 117.1051 is amended by revising paragraph (d) introductory text and adding paragraph (e) to read as follows:

**PART 117—DRAWBRIDGE
OPERATION REGULATIONS****§ 117.1051 Lake Washington Ship Canal.**

(d) The draws of the Ballard Bridge, mile 1.1, Fremont Bridge, mile 2.6, and University Bridge, mile 4.3, shall open on signal, except that:

(e) The draw of the Montlake Bridge, mile 5.2, shall open on signal, except that:

(1) The draw need not open for a period of up to 10 minutes after receiving an opening request, if needed to pass accumulated vehicular traffic. However, the draw shall open without delay, when requested by vessels engaged in towing operations.

(2) Monday through Friday, except Federal Holidays, for any vessel or watercraft of less than 1,000 gross tons, unless the vessel has in tow a vessel of 1,000 gross tons or over:

(i) The draw need not open from 7 a.m. to 9 a.m. and 3:30 p.m. to 6 p.m.

(ii) From 12:30 p.m. to 3:30 p.m. and from 6 p.m. to 6:30 p.m., the draw need open only on the hour and half hour. (3) Between the hours of 11 p.m. and 7 a.m. the draw shall open if at least one hour notice is given by telephone, radiotelephone, or otherwise to the drawtender at the Fremont Bridge.

Dated: October 10, 1989.

R. E. Kramek,

Rear Admiral, U.S. Coast Guard Commander,
13th Coast Guard District.

[FR Doc. 89-24249 Filed 10-12-89; 8:45 am]

BILLING CODE 491-014-M

46 CFR Part 67**[CGD 88-031]****RIN 2115-AC99****Documentation of Vessels; Controlling Interest****AGENCY:** Coast Guard, DOT.**ACTION:** Supplemental Notice of proposed rulemaking.

SUMMARY: The Coast Guard published a notice of proposed rulemaking on October 20, 1988 (53 FR 41211), proposing to amend the vessel documentation regulations to implement the American control provisions of the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987 (the "Anti-Reflagging Act"). The rulemaking also proposed to conform controlling interest requirements for partnerships to the Anti-Reflagging Act's requirements for corporations. Based on comments received in response to the notice of proposed rulemaking, and the Coast Guard's own administrative experience, the Coast Guard has determined that a complete revision of the regulations concerning citizenship requirements for vessel documentation is needed. This supplemental notice of proposed rulemaking proposes to revise these citizenship regulations, which set out the standards for determining what foreign participation in the control of vessel owning entities will disqualify those entities from documenting a vessel under U.S. law, or result in the loss of eligibility to obtain a coastwise or fishery license endorsement. The proposed revisions will result in regulations that are more informative and uniform.

DATE: Comments must be received on or before December 12, 1989.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA-2/3600)(CGD 88-031), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593-0001.

Comments will be available for examination or copying at, and may be delivered to, the Marine Safety Council (G-LRA-2), Room 3600, at the above address, between 8 a.m. and 3 p.m., Monday through Friday, except holidays. The telephone number is (202) 267-1477.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Robert Bruce, Vessel Documentation Branch, Merchant Vessel Inspection and Documentation Division, Office of Marine Safety, Security and Environmental Protection, (202) 267-

1492. Normal office hours are between 8:30 a.m. and 5:00 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was published on October 20, 1988 (53 FR 41211), followed by a comment period through November 21, 1988. Seven comments were received and based on those comments, and a thorough review of the regulations explaining citizenship requirements for documentation, the Coast Guard proposes to extensively revise 46 CFR subpart 67.03. The public is invited to participate in this rulemaking by submitting written views, data or arguments. Comments should include the name and address of the person making them, identify this notice (CGD 88-031) and the specific section of the proposal to which each comment applies, and give the reason for each comment. If an acknowledgment is desired, a stamped, self-addressed post card or envelope should be enclosed. The rules as proposed may be changed in light of the comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal.

No public hearing is planned. However, one may be held if written requests for a public hearing are received and it is determined that the opportunity to make oral presentations will be beneficial to the rulemaking process.

Drafting Information

The principal persons involved in drafting this regulation are Lieutenant Commander Robert Bruce, Project Manager, and Lieutenant Commander Don M. Wrye, Project Counsel, Office of Chief Counsel.

Background

Documentation of vessels under federal law is a type of national registration which, among other things, serves to establish a vessel's nationality and qualification to be employed in specified trades. The evidence of nationality is the Certificate of Documentation. One or more endorsements on the Certificate of Documentation serve as evidence of the vessel's qualification to engage in the specified trade. The Coast Guard is the agency which (a) accepts applications for documentation of vessels; (b) determines whether a vessel which is the subject of an application is eligible for documentation generally and eligible for the endorsement or endorsements requested; and (c) issues Certificates of Documentation to eligible vessels.

Eligibility requirements for documentation are set out at 46 U.S.C. 12102, as amended. One of the eligibility requirements for documentation is United States citizenship. For corporations, partnerships, and associations, citizenship requirements include certain American control provisions. For example, the earliest American control provision applied to corporations, partnerships, and associations seeking to document vessels for coastwise trade. The requirement that at least a 75 percent interest in the entity be owned by U.S. citizens, found in 46 U.S.C. App. 802, was made applicable to such corporations, partnerships, and associations by 46 U.S.C. App. 883. Coastwise trade is, more or less, domestic transportation of passengers and merchandise.

Until 1982, this American control requirement had little practical effect on partnerships because unless all of the partners, general or limited, were U.S. citizens the partnership was not eligible to document vessels. This requirement was relaxed by section 10 of the Coast Guard Authorization Act of 1982 which amended 46 U.S.C. 12102(a)(3), permitting partnerships to document vessels if all general partners were U.S. citizens and the controlling interest in the partnership was owned by U.S. citizens. The 75 percent American control requirement for a coastwise license remained, and to this extent the American control requirements for corporations and partnerships were already alike. As a matter of administrative practice, the Coast Guard took the position that, when it was reasonable to do so, the same meaning would be given to "controlling interest" in both the corporate and partnership contexts. On May 17, 1988, a final rule was published revising 46 CFR 67.03-5 to implement the American control requirements for partnerships of 46 U.S.C. 12102(a)(3).

On January 11, 1988, the President signed into law the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987 (Pub. L. 100-239, 101 Stat. 1778 (1988)). Among other things, this law adds a new American control provision for corporations seeking to document fishing vessels. The new requirement is retroactively effective from July 28, 1987, but includes savings provisions exempting many vessels operating, or under contract for purchase, as fishing industry vessels prior to that date. The statute superseded certain regulations in 46 CFR part 67 that were directly in conflict with it and, to carry out the purpose of the statute, the Coast Guard

has been applying the standards in the statute as a matter of administrative practice. All of the changes to documentation regulations mandated by the Anti-Reflagging Act, not relating to controlling interest, have been implemented by prior rulemaking (53 FR 41166, October 20, 1988).

Discussion of Comments

Five comments regarding the NPRM were received during the comment period. Two comments were received after the comment period closed, but have been considered nevertheless. Comments were received from United States Senators, law firms, an industry association, a company with a financial interest in fishing industry vessels and individual attorneys interested in maritime law. One comment expressed general agreement with the Coast Guard's interpretation of the American control provisions and the procedures for enforcing them. Another generally encouraged the implementation of regulations addressing controlling interest requirements for partnerships. Otherwise, the comments were focused more narrowly on the basis for changes to the American control regulations for partnerships, the lack of a regulation implementing the Anti-Reflagging Act's controlling interest savings clause, the Coast Guard's interpretation of the Anti-Reflagging Act's controlling interest savings clause, and the lack of more complete guidance detailing all the factors the Coast Guard may consider in arriving at a determination regarding American control. Six of the comments suggested changes. The changes suggested and the Coast Guard's position concerning each follows.

a. Three comments stated that the proposed regulations should have included regulations implementing the Anti-Reflagging Act's controlling interest savings provisions. A law firm, writing on behalf of clients who are fishing industry companies, expressed the view that the Anti-Reflagging Act created two classes of fishing industry vessels; those subject to the new American control provisions, and those that qualify under the savings clause for exemption from the new requirements—including virtually the entire commercial fishing industry fleet as of July 28, 1987. They stated that regulations implementing the savings provisions are needed because there are so many "grandfathered" vessels and because the absence of implementing regulations implies that the new controlling interest requirements apply to all fishery vessels. The comment suggested language for a regulation implementing the savings clause which closely

followed the statutory language. However, it addressed only corporations. Under the Coast Guard's administrative practice both corporations and partnerships need to be addressed. Finally, the comment agreed with the Coast Guard's position that the savings provisions' protection runs with a qualifying vessel, regardless of ownership.

A company with a financial interest in fishing industry vessels also commented on the lack of an implementing regulations for the controlling interest savings clause. This comment assumed that without an implementing regulation no fishing industry vessel owner could benefit from the savings clause. The comment stated that this constituted an unfair taking of an owner's right to sell its interest in the vessels to whomever it wished and would reduce the potential demand for the vessels, with a corresponding loss in market value.

The third comment, from an association representing the domestic tug and barge industry, stated that the controlling interest savings clause was very extensive and should be addressed by rulemaking. This comment disagreed with the Coast Guard's position that the savings provisions run with a qualifying vessel, regardless of ownership; arguing that "grandfathering" should be lost at the first sale of the vessel to a new owner. In support of its position, this comment cited language in the report of the House Merchant Marine and Fisheries Committee, House Report 100-423, November 5, 1987, at page 17, indicating that the savings clause does not apply once ownership or the vessel changes.

The Coast Guard agrees with the comments that implementing regulations for the controlling interest savings clause should be included in the proposed rules. Therefore, a new § 67.03-15 has been included in this supplemental notice of proposed rulemaking. This new section largely adopts the language suggested by one comment and closely follows the statute. However, language has been added to make the regulation applicable to qualifying vessels whether owned by partnerships or corporations. This is consistent with the Coast Guard's administrative practice of giving the same meaning to controlling interest in both the partnership and corporate contexts, to the extent reasonable. A partnership which wants to document a vessel will still have to meet previously existing American control requirements, including the requirement that no more than 50 percent of the equity of the partnership be owned by non-citizens,

even if its vessel qualifies under the regulation for exemption from the controlling interest requirements for fishing vessels.

Proposed § 67.03-15, no less so than the statute, makes clear it is the vessel that qualifies for protection under the savings clause. Therefore, the exemption from the new American control requirement runs with the vessel, regardless of ownership. As has been previously stated, two of the comments agreed with the Coast Guard's position that the savings clause's protection runs with the vessel and one did not. The Coast Guard has adhered to its position because the language of the statute is clear and unambiguous in this regard; it does not require interpretation.

There is strong support for the position that the literal language of the statute should guide our implementation of the law. When Title 46 was partially codified in 1983—a codification that included Chapter 121 governing the documentation of vessels—the Report of the House Merchant Marine and Fisheries Committee, House Report No. 98-338, August 1, 1983, stated, at page 120, that the Committee intended that "the interpretation of the maritime safety laws as codified and enacted by this bill will be based on the language of the bill itself." Moreover, it stated, "the literal language of the statute should control *** [t]here is no mandate in logic or in case law for reliance on legislative history to reach a result contrary to the plain meaning of the statute, particularly where that plain meaning is in no way unreasonable."

The same rule of construction ought to be applied to statutes, such as the Anti-Reflagging Act, which subsequently amend the "maritime safety laws as codified" in title 46. The continuing validity of this rule of construction is demonstrated by the recent inclusion of almost identical language in House Report No. 100-918, September 15, 1988, dealing with the codification of the Ship Mortgage Act as Chapter 313 of Title 46. Accordingly, it would be incorrect for the Coast Guard to base its regulation—as one comment urged—on the statement in House Report 100-423 that the savings clause's protection should end when a vessel is sold.

The Anti-Reflagging Act also contains savings clauses with respect to its rebuilding requirements, which were the subject of earlier rulemaking. Under those regulations the protection of the rebuilding savings provisions run with the vessel. The rebuilding savings clauses are indistinguishable from the controlling interest savings clause in terms of their applicability to qualifying

vessels, without regard for ownership. Based on their language, there is no reason to interpret these savings provisions in different ways when it comes to determining if sale of a vessel should end its protection. An examination of the legislative history, for purposes of interpreting the rebuilding savings clauses, reveals nothing to support the conclusion that a qualifying vessel should lose its protection if it is sold.

The savings clauses are meant to fully protect the financial interests of vessel owners. As one comment pointed out, these financial interests are not fully protected if the vessel loses fishing privileges when it is sold. The value of a vessel would certainly be less if, for example, as a foreign rebuilt fishing vessel it would permanently lose entitlement to engage in the U.S. fisheries when it was sold. Some financial harm could similarly befall the owner of a vessel that, once sold, could only be operated as a fishing vessel under the new American control requirements.

b. Two comments questioned the authority for revision of the controlling interest requirements for partnerships. They noted that the Anti-Reflagging Act did not specifically address American control requirements for partnerships, and stated that the Anti-Reflagging Act provides no basis for applying its American control requirement for corporations to partnerships. A third comment stated that although the Anti-Reflagging Act did not address partnerships, this should not be viewed as an indication that Congress opposed regulations addressing controlling interest requirements for partnerships based on other authority.

While the notice of proposed rulemaking stated that the Coast Guard would implement a more than 50 percent controlling interest test for partnerships documenting fishing vessels, no implementing language was included. This supplemental notice of proposed rulemaking includes amendments to § 67.03-5 needed to carry out this previously stated intention.

The comments are concurred with only to the extent that they assert the Anti-Reflagging Act does not require a controlling interest test for partnerships. However, there is authority for the proposed amendments to § 67.03-5 revising the American control requirements for partnerships. Authority to issue regulations addressing controlling interest in partnerships is based on section 10 of the Coast Guard Authorization Act of 1982 (Pub. L. 97-136), which amended 46 U.S.C. 12102(a)(3). That provision permits

partnerships to document vessels if "the controlling interest in the partnership is owned by citizens of the United States." The Coast Guard published a final rule, on May 17, 1988, amending § 67.03-5 to give more meaning to the phrase "controlling interest in the partnership." That rulemaking was based solely on our interpretation of 46 U.S.C. 12102(a)(3), as amended in 1982. Work on those regulations commenced long before passage of the Anti-Reflagging Act. Those regulations describe equity and control tests applicable to partnerships seeking documentation with any type of endorsement, including a fishery endorsement. Among those tests is a requirement that at least 50 percent of the equity in the partnership be owned by partners who are U.S. citizens. Those regulations were not based on the Anti-Reflagging Act.

When 46 U.S.C. 12102(a)(3) was amended in 1982, the Coast Guard took the position that, so far as was reasonable, the same meaning would be given to "controlling interest" in both the partnership and corporate contexts. The Anti-Reflagging Act has mandated a more than 50 percent controlling interest test for corporations seeking to document vessels for the fisheries, without addressing partnerships. Since, under current regulations, at least 50 percent of the equity in a partnership must be owned by U.S. citizens for it to document a vessel for any purpose, the Coast Guard's position is that it is reasonable to follow its administrative practice by conforming the regulations for partnerships documenting fishing vessels with the regulations for corporations doing the same; making both meet a more than 50 percent American control test. This less than 1 percent change in the American control requirements for partnerships is a result of the Anti-Reflagging Act only to the extent that its new American control requirement for corporations caused the Coast Guard to consider and propose a conforming change to the existing American control requirements for partnerships, in accordance with past administrative practice.

c. One comment correctly observed that the new paragraph to be added to § 67.17-9 should be paragraph (d), since another paragraph (c) already exists. This correction has been made in this supplemental notice of proposed rulemaking. This comment also suggested that § 67.17-9 should state that fishing privileges are temporarily lost while the vessel's owner fails to meet the citizenship requirements of new § 67.03-9(d), rather than any section of subpart 67.03. Section 67.03-9(d) contains only the stock interest

requirements for qualification as a corporation entitled to document vessels for the fisheries. While it is true that a vessel would lose its entitlement to engage in the fisheries for as long as its owner fails to meet the requirements of § 67.03-9(d), failure to meet any of the citizenship requirements for documenting vessels in the fisheries, wherever found in subpart 67.03, will similarly result in a loss of entitlement. For instance, a partnership with a non-citizen general partner is ineligible to document vessels for any purpose. If such a partnership owned a vessel otherwise eligible for a fishery license, the vessel would suffer a loss of that eligibility until its owner met the citizenship requirements.

Finally, this comment stated that the proposed rule does not fully address all the factors the Coast Guard may consider in making determinations about American control. The comment specifically raised issues about the meaning of "voting shares" and "aggregation" as those terms are used in the Anti-Reflagging Act, and 46 U.S.C. 12102 (b)(1) and (b)(2). Another issue raised was whether the Coast Guard would look beyond the ownership of voting shares and consider the other restrictions on controlling interest in 46 U.S.C. App. 802(b).

For purposes of documenting fishing vessels, 46 U.S.C. 12102(b)(2) leaves no doubt that the Coast Guard must apply the restrictions on controlling interest in 46 U.S.C. App. 802(b), in addition to the requirement that U.S. citizens own a majority of voting shares. However, the prominence of the requirement that a majority of voting shares be owned by U.S. citizens indicates that that is intended to be the primary means of determining American control. Other factors to be considered under 46 U.S.C. App. 802(b) generally do not permit such a straightforward finding that the requirement has been met or not. They usually require case-by-case analysis to resolve the ultimate question of whether an impermissible degree of control over the corporation is being exercised by non-citizens.

The Coast Guard's documentation offices have never had the resources to completely analyze every aspect of the American control issue for every owner seeking to document vessels for coastwise and fisheries trades. In accordance with 46 U.S.C. 12122, an owner who knowingly falsifies or conceals a material fact, or makes a false statement or representation about the documentation of a vessel, makes its vessel subject to forfeiture. Since American control is a material fact

about documentation with a coastwise or fisheries endorsement, an owner who fails to provide information about a disqualifying factor is liable for this severe penalty. Therefore, as a matter of administrative practice the Coast Guard has specifically requested from owners only information about broad ranges of stock ownership; i.e. 100 percent U.S. owned, 75-50 percent U.S. owned, etc. Naturally, if there is reason to suspect that a particular vessel owner is violating the American control provisions the Coast Guard will investigate and require the owner to provide information sufficient to demonstrate that it qualifies to document its vessel with the endorsement obtained or requested.

The Coast Guard's administrative practice in this regard is in keeping with the design of the documentation laws in general. Documents and endorsements are usually issued on the basis of self-certification by the applicant, subject to severe penalties for making false representations or concealing material facts. In view of this policy, it would be an unwarranted burden on the public to require all owners applying for a coastwise or fisheries license to supply detailed information about every fact that might be considered under 46 U.S.C. App. 802(b) in determining if there is American control.

The Coast Guard usually does not make further inquiries about controlling interest without reasonable suspicion of a problem with compliance. Moreover, resolution of American control issues under 46 U.S.C. App. 802(b) often depends upon unique factual circumstances. Therefore, detailed rules addressing specific factual situations would be of limited value to the general public and probably could not improve on the statute itself in terms of informing interested parties of what the law requires in any particular case. Providing more detailed guidance about specific terms such as "voting shares", as the comment suggests, poses the same problems. No regulation could possibly encompass every conceivable application of these terms to the virtually endless variety of situations which present themselves.

Although regulations providing the kind of detailed guidance the comment suggested are impractical, the Coast Guard has determined that a thorough revision of subpart 67.03 is needed to better explain the American control requirements. Accordingly, this supplemental notice of proposed rulemaking includes an extensive revision of subpart 67.03.

A newly proposed § 67.03-2 collects general guidance regarding the stock or

equity interest requirements of subpart 67.03. Section 67.03-2(b) explains the Coast Guard's administrative practice regarding the citizenship requirements for entities which own a stock or equity interest in a vessel owning entity, such as a corporation or partnership, comprised of other entities. This is a longstanding rule of administrative practice, based on the Coast Guard's interpretation of the citizenship requirements of 46 U.S.C. App. 833 and 46 U.S.C. 12102. This rule applies to all stock or equity interest requirements, including the requirement for 75 percent ownership by U.S. citizens to qualify for documenting vessels for coastwise trade, the Anti-Reflagging Act's requirement for more than 50 percent ownership by U.S. citizens to qualify for documenting vessels for fisheries, and the equity interest requirements for documentation of vessels owned by partnerships.

The Coast Guard has not fully developed its interpretation of the "aggregation" requirement included in 46 U.S.C. 12102(b)(1) by the Anti-Reflagging Act, and has not proposed an implementing regulation in this rulemaking. Comments from the public regarding how the aggregation requirement should be interpreted are particularly desired.

Although no implementing regulation is proposed, at this time, the statutory aggregation requirement cannot be ignored. This rulemaking is not intended to preclude the Coast Guard from requiring vessel owners to provide information needed to determine that they are qualified to document their vessels with a fisheries endorsement, if there is reason to suspect that they do not meet the aggregation requirement. However, as with the other American control requirements discussed above, requiring every owner of a fishing vessel to provide information showing that it meets the aggregation requirement would be an unwarranted burden on the public. Where appropriate, the Coast Guard will apply the aggregation requirement, on a case-by-case basis, to determine if a vessel owner is qualified to document vessels with a fisheries endorsement.

The administrative practice reflected in proposed § 67.03-2(b), like the aggregation requirement, is intended to ensure that if a vessel owning entity is owned by other entities there is American control among those entities, and if those entities, in turn, are owned by other entities there is American control among them, and so on. The aggregation requirement is, therefore, likely to be largely duplicative of the requirements of § 67.03-2(b). Unlike

§ 67.03-2(b), however, the aggregation requirement applies only to the documentation of fishing vessels.

Discussion of the Proposed Rule

The authority citation for 46 CFR part 67 is amended to remove 46 U.S.C. App. 927 and 983, and 46 U.S.C. 12121, which were repealed by Public Law 100-710. Those statutes, which authorized regulations relating to documentation, and recording of ship mortgages and maritime liens, were repealed because Congress found them to be redundant with authority contained in 46 U.S.C. 2103 and 49 U.S.C. 322. The authority citation is also amended to add 46 U.S.C. 2103 and 49 U.S.C. 322. Other authorities are unchanged.

Subpart 67.03 is extensively revised. Section 67.01-1 states that only vessels owned by United States citizens can qualify for Certificates of Documentation. That section is unchanged.

Section 67.03-2 is new. It collects general guidance regarding stock or equity interest requirements for citizenship. Current paragraphs (d) and (e) of § 67.03-5, which include some of the same guidance, but apply only to partnerships, are superseded by § 67.03-2. Since the stock or equity interest requirements apply to corporations, as well as partnerships, these provisions are placed in § 67.03-2 as rules of general applicability. Paragraph (a) explained the interests encompassed by the American control requirements. These include title to all classes of stock as a whole, title to voting stock or ownership of equity. Additional factors are described which can cause a corporation or partnership, which otherwise qualifies, to fail to meet stock or equity interest requirements for citizenship.

Paragraph (a) is based on 46 U.S.C. App. 802, which is made applicable to documentation of vessels for coastwise trade by 46 U.S.C. App. 883, and to documentation of vessels for fisheries trade by 46 U.S.C. 12102. The Coast Guard considers the American control requirements to 46 U.S.C. App. 802 and the American control requirements for partnerships in 46 U.S.C. 12102(a)(3) to be provisions which must be construed with reference to each other and, when reasonable, given the same interpretation. Therefore, paragraph (a) also applies to the American control requirements for documentation of vessels, for any purpose, by partnerships.

Paragraph (a)(1) explains the Coast Guard's interpretation of control, as the term is used in § 67.03-2(a) in

connection with non-citizen control of a corporation or partnership. A similar provision, now at § 67.03-5(e), but applicable only to partnerships, is superseded by § 67.03-2(a)(1). Paragraph (a)(1) explains that the Coast Guard does not interpret restrictions on non-citizen control to prohibit all participation in the activities of the corporation or partnership, or prohibit non-citizens from making loans and receiving interest in transactions that do not involve control of the corporation or partnership.

Paragraph (b) explains the Coast Guard's administrative practice in applying American control requirements to a vessel owning entity which is owned, in turn, by other entities which are not individuals. A similar provision, previously proposed as § 67.03-1(b), is superseded by § 67.03-2(b). In keeping with longstanding Coast Guard practice, the American control provisions are interpreted to require American control among all the entities which have an ownership interest in a vessel owning entity. The purpose to be achieved by this rule is basically the same as that which apparently underlies the aggregation requirement of 46 U.S.C. 12102(b)(1). By requiring that each entity contributing to the stock or equity interest requirements of the vessel owning entity be a citizen eligible to document vessels in its own right with the type of license sought, the Coast Guard assures that the vessel owning entity is effectively controlled by entities which meet the applicable standard of American control.

Section 67.03-2(b) achieves its purpose, without being overly restrictive, by taking account of the practical limitations that ownership structures place on entities having a minority interest in the ownership of another entity, such as a vessel owning corporation or partnership. Such a structure generally prevents parties with a minority interest in an entity from exercising any greater control over other participating entities than they exercise within their own entity. Parties which do not have control within their own entity usually have no effective means of exercising control through that entity's ownership of stock or equity in the vessel owning entity. They generally have no effective means of combining with minority interests in other participating entities to enhance their power within the vessel owning entity. Accordingly, if each entity contributing to the stock or equity interest requirements of the vessel owning entity is American controlled, the vessel owning entity will be American

controlled. Minority foreign interests within those American controlled entities will not be able to control the vessel owning entity. Similarly, entities with too small a stock or equity interest in the vessel owning entity to exercise control, even if they are wholly foreign controlled, will not jeopardize American control. The theoretical possibility that minority foreign interest might overcome the limitations of the ownership structure and combine to exercise control, does not justify a more onerous rule because § 67.03-2(b) is applied along with, rather than in place of, the restriction against non-citizen control of § 67.03-2(a).

Section 67.03-3 states the requirements and individual must meet to be a citizen eligible to document vessels. That section is unchanged.

Section 67.03-5 states the requirements a partnership, association or joint venture must meet to be a citizen eligible to document vessels. Paragraphs (b) and (c), dealing with associations and joint ventures, are unchanged. As discussed above, former paragraphs (d) and (e) have been superseded by rules of general applicability in § 67.03-2. Paragraph (a), dealing with partnerships, has been revised. In accordance with 46 U.S.C. 12102(a)(3), paragraph (a) initially requires that all general partners be citizens for the partnership to be eligible to document vessels for any purpose. Based on the same statute, paragraph (a)(1) also requires that at least 50 percent of the equity in the partnership be owned by citizens for the partnership to be eligible to document vessels for any purpose. In accordance with 46 U.S.C. App. 802, which is made applicable here by 46 U.S.C. App. 883, paragraph (a)(2) states that for a partnership to be eligible to document vessels with a coastwise or Great Lakes endorsement, all of the general partners must be citizens and at least 75 percent of the equity in the partnership must be owned by citizens. Paragraph (a)(2) states that for a partnership to be eligible to document vessels with a fisheries endorsement, all of the general partners must be citizens and more than 50 percent of the equity in the partnership must be owned by citizens. As discussed above, the paragraph implements the intention stated in the original notice of proposed rulemaking, to conform the citizenship requirements for partnerships eligible to document vessels with a fishery endorsement to the citizenship requirements for corporations enacted by the Anti-Reflagging Act. This conforming change requires a change of less than one

percent in the equity interest requirement for partnerships eligible to document vessels for fisheries. All of the equity interest requirements in § 67.03-5(a) are subject to the requirements of § 67.03-2. The requirement that all general partners be citizens is not an equity interest requirement, it is a distinct citizenship requirement for documenting vessels.

Section 67.03-9 states the requirements a corporation must meet to be a citizen eligible to document vessels. In accordance with 46 U.S.C. 12102(a)(4), paragraph (a) states the requirements a corporation must meet to be eligible to document vessels for any purpose. It is unchanged except that fisheries endorsements are not covered by paragraph (d) and "recreational license" has been substituted for "pleasure license" to conform to current terminology. Paragraph (a)(1) has been revised to make clear that the requirement is met by incorporation under the laws of a State of the United States and to remove the phrase "including and federal scheme of incorporation", which is redundant. In accordance with 46 U.S.C. App. 802, which is made applicable here by 46 U.S.C. App. 883, paragraph (b) states that for a corporation to be eligible to document vessels with a coastwise or a Great Lakes endorsement, it must meet the requirements of paragraph (a) and at least 75 percent of the stock interest in the corporation must be owned by citizens. This paragraph is unchanged except "citizen" is substituted for "United States citizen" and the parenthetical reference to 46 U.S.C. App. 802 has been removed. In subpart 67.03, "citizen" and "United States citizen" are equivalent terms having the specific meaning given than in § 67.03-1. The reference to 46 U.S.C. App. 802 is no longer necessary because its citizenship requirements have been incorporated into § 67.03-2, and the stock interest requirements of § 67.03-8 are subject to the requirements of § 67.03-2.

Paragraph (c) refers to regulations in 46 CFR part 68 which implement 46 U.S.C. App. 883-1. That statute permits certain corporations that do not otherwise qualify as a citizen eligible to document vessels for coastwise trade to qualify for limited coastwise trading privileges. Paragraph (c) is unchanged.

Proposed paragraph (d) is new. In accordance with 46 U.S.C. 12102(b)(1), paragraph (d) states that for a corporation to be eligible to document vessels with a fisheries endorsement, it must meet the requirements of paragraph (a) and more than 50 percent of the stock interest in the corporation

must be owned by citizens. A similar provision was proposed in the original notice of proposed rulemaking. That provision indicated that more than 50 percent of the voting stock, rather than more than 50 percent of the stock interest as described in § 67.03-2, had to be owned by citizens. The change incorporated in the present rule was made to comply with 46 U.S.C. 12102(b)(2). The requirement that a majority of voting shares must be owned by citizens is still emphasized, but the stock interest requirement in subject to all of the requirements of § 67.03-2.

Paragraph (e) is similar to current paragraph (d). It states that where Maritime Administration approval is required for a corporation to acquire a vessel the Coast Guard will not document the vessel, even though the corporation is otherwise eligible to document the vessel in accordance with paragraph (a), unless the corporation provides evidence of Maritime Administration approval. Paragraph (f) implements an exemption to paragraph (e) for vessels that have been operated exclusively as recreational and fishing industry vessels. The new exemption was added to comply with a recent amendment to 46 U.S.C. App. 808 is Public Law 100-710, November 23, 1988.

Section 67.03-11 states the requirements a governmental entity must meet to be a citizen eligible to document vessels. That section is unchanged.

Section 67.03-13 states the rule that an original form CG-1258, the application for documentation form, establishes a rebuttable presumption of citizenship. That section is unchanged.

Section 67.03-15 is new. It implements the Anti-Reflagging Act's American control savings provisions. As discussed above, this proposed rule has been added because of comments received in response to the original notice of proposed rulemaking. The proposed rule closely follows the statutory language, but since the Coast Guard has conformed the American control requirements for partnerships to the Anti-Reflagging Act's requirements for corporations, language has been added to exempt partnerships from those American control requirements in circumstances where a corporation would similarly be exempt pursuant to the savings provisions. Under the proposed rule, a corporation of partnership that meets citizenship requirements for documenting a vessel for the fisheries, except for the specific stock or equity requirement for fisheries (i.e. more than 50 percent), may nonetheless be eligible to document a vessel for the fisheries if before July 28,

1987, the vessel was documented and operating as a fishing industry vessel in the United States fisheries, or was contracted for purchase for use as a fishing industry vessel in the United States fisheries. Even if this section applies, at least 50 percent of the equity in a partnership must be owned by citizens for it to be eligible to document vessels for any purpose. This rule applies to qualifying vessels without regard to changes in ownership.

Sections 67.17-5(c)(1) and 67.17-7(c)(1) are unchanged except for a conforming change to their references to § 67.03-5, required by the proposed amendments to § 67.03-5.

Section 67.17-9 is amended by adding a new paragraph (d). A similar rule was proposed in the original notice of proposed rulemaking. The proposed rule explains that a vessel temporarily loses its eligibility to engage in the fisheries trade during any period it is owned by an entity that fails to meet citizenship requirements. However, a vessel which qualifies for exemption from the specific stock or equity interest requirements for a fisheries endorsement in accordance with § 67.03-15, will not lose its eligibility for a fisheries endorsement because it is owned by an entity which fails to meet those specific stock or equity requirements, if its owner otherwise qualifies as a citizen.

Section 67.23-9(a)(3) is unchanged except for a conforming change to its references to § 67.03-5, required by the proposed amendments to § 67.03-5.

E.O. 12291 and DOT Regulatory Policies and Procedures

This rulemaking is considered to be non-major under Executive Order 12291 and nonsignificant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this rulemaking has been found to be so minimal that further evaluation is unnecessary. The only significant substantive changes proposed in this rulemaking are changes in American control requirements for vessel documentation mandated by statute.

Federalism

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

Regulatory Flexibility Act

Since the impact of this rulemaking is expected to be minimal, the Coast

Guard certifies that it will not have a significant economic impact on a substantial number of small entities. It is recognized that a substantial number of small entities are involved in the commercial fishing industry and other vessel operations within the ambit of these regulations. There is no significant economic impact, however, because the proposed rulemaking implements the Anti-Reflagging Act's American control savings provisions. The savings provisions protect those who were operating fishing industry vessels under documentation in the United States fisheries, or who made verifiable commitments to purchase vessels for use as fishing industry vessels in the United States fisheries, based on the laws and regulations in existence prior to enactment of the Anti-Reflagging Act.

Paperwork Reduction Act

This rulemaking imposes no new paperwork burden on the public.

Environmental Assessment

The Coast Guard has considered the environmental impact of this rulemaking and concludes that under the categorical exclusion provision in § 2-B-3.1. of Commandant Instruction M16475.1B, the preparation of an Environmental Assessment, and an Environmental Impact Statement, or a finding of No Significant Impact for this rulemaking is not required. This rulemaking involves administrative and procedural regulations which clearly have no environmental impact.

List of Subjects in 46 CFR Part 67

Vessels.

For the reasons set out in the preamble, 46 CFR part 67 is proposed to be amended as follows:

PART 67—DOCUMENTATION OF VESSELS

1. The authority citation for part 67 is amended to read as follows:

Authority: 31 U.S.C. 9701; 42 U.S.C. 9118; 46 U.S.C. 2103; 46 U.S.C. App. 841a, 876, 49 U.S.C. 322; 49 CFR 1.46.

2. Subpart 67.03 is revised to read as follows:

SUBPART 67.03—CITIZENSHIP REQUIREMENTS FOR VESSEL DOCUMENTATION

§ 67.03-1 Requirement for citizen owner.

Certificates of Documentation are available only to vessels which are wholly owned by United States citizens. For purposes of obtaining a Certificate of Documentation, the persons and

entities discussed in §§ 67.03-3 through 67.03-9 of this subpart are citizens.

§ 67.03-2 Stock or equity interest requirements.

(a) The stock or equity interest requirements for citizenship under this subpart encompass: title to all classes of stock as a whole; title to voting stock; and ownership of equity. An otherwise qualifying corporation or partnership may fail to meet stock or equity interest requirements because: stock is subject to trust or fiduciary obligations in favor of non-citizens; non-citizens exercise, directly or indirectly, voting power; or non-citizens, by any means, exercise control over the entity. The applicable stock or equity interest requirement is not met if the amount of stock subject to obligations in favor of non-citizens, non-citizen voting power or non-citizen control exceeds the percentage of the non-citizen interest permitted.

(1) For the purpose of this section, control includes an absolute right to direct corporate or partnership business, to limit the actions of or replace the chief executive officer, a majority of the board of directors or any general partner, to direct the transfer or operations of any vessel owned by the corporation or partnership, or otherwise to exercise authority over the business of the corporation or partnership, but not the right to simply participate in these activities or the right to receive a financial return, i.e., interest or the equivalent of interest, on a loan or other financing obligations.

(b) For purposes of meeting the stock or equity interest requirements for citizenship under this subpart where title to a vessel is held by an entity comprised, in whole or in part, of other entities which are not individuals, each entity contributing to the stock or equity interest qualifications of the entity holding title must be a citizen eligible to document vessels in its own right with the license sought.

§ 67.03-3 Individual.

An individual is a citizen if he is a native-born, naturalized, or derivative citizen of the United States, or otherwise qualifies as a United States citizen.

§ 67.03-5 Partnership, association, or joint venture.

(a) A partnership is a citizen if all its general partners are citizens, and:

(1) For the purpose of obtaining a registry or a recreational license, at least 50 percent of the equity interest in the partnership is owned by citizens;

(2) For the purpose of obtaining a coastwise or Great Lakes license, at

least 75 percent of the equity interest in the partnership is owned by citizens;

(3) For the purpose of obtaining a fishery license, more than 50 percent of the equity interest in the partnership is owned by citizens.

(b) An association is a citizen if each of its members is a citizen.

(c) A joint venture is a citizen if each of its members is a citizen.

§ 67.03-7 Trust.

A trust arrangement fulfills the citizenship requirements if each of its trustees and each of its beneficiaries is a citizen.

§ 67.03-9 Corporation.

(a) A corporation is a citizen for the purposes of obtaining a registry or a recreational license if:

(1) It is incorporated under the laws of the United States or of a State;

(2) Its chief executive officer, by whatever title, is a citizen;

(3) Its chairman of the board of directors is a citizen; and

(4) No more of its directors are non-citizens than a minority of the number necessary to constitute a quorum.

(b) A corporation is a citizen for the purposes of obtaining a coastwise or Great Lakes license endorsement if:

(1) It meets all the requirements of paragraph (a) of this section; and

(2) At least 75 percent of the stock interest in the corporation is owned by citizens.

(c) A corporation which does not meet the requirements of paragraph (b) of this section may qualify for limited coastwise trading privileges by meeting the requirements of subpart 68.01 of this subchapter.

(d) A corporation is a citizen for the purpose of obtaining a fishery license endorsement if:

(1) It meets all the requirements of paragraph (a) of this section; and

(2) More than 50 percent of the stock interest in the corporation including a majority of voting shares in the corporation is owned by citizens.

(e) Although a corporation meets the requirements of paragraph (a) of this section, if a majority of the stock interest in the corporation is not held by U.S. citizens it may not document a vessel, except as permitted by paragraph (f) of this section, which it acquired from a U.S. citizen owner, as defined in 46 U.S.C. App. 802, and which is documented under the laws of the United States, unless it evidences that the Maritime Administration approved that corporation's acquisition of the vessel. (See 46 U.S.C. 802, 808).

(f) A corporation prohibited from documenting a vessel by paragraph (e)

of this section may document a vessel that has been operated only as a fishing vessel, fish processing vessel, fish tender vessel or for recreation.

§ 67.03-11 Governmental entity.

A governmental entity is regarded as a citizen if it is a government of the United States as defined in § 67.01-1 of this part.

§ 67.03-13 Evidence.

An original form CG-1258 established a rebuttable presumption that the applicant is a United States citizen.

§ 67.03-15 Citizenship savings provision for fishing vessels.

A corporation that meets the requirements of paragraph (d)(1) of § 67.03-9 of this subpart but does not meet the requirements of paragraph (d)(2) of that section, or a partnership that meets the requirements of paragraph (a)(1) of § 67.03-5 of this subpart but does not meet the requirements of paragraph (a)(3) of that section, may nonetheless be eligible to obtain a fishery license endorsement for a vessel if, prior to July 28, 1987, the vessel:

(a) Was documented under chapter 121 of title 46, U.S.C., and operating as a fishing, fish processing, or fish tender vessel in the navigable waters or the Exclusive Economic Zone of the United States, as defined by 46 U.S.C. 2101(10a); or

(b) Was contracted for purchase for use as a fishing, fish tender or fish processing vessel in the navigable waters or the Exclusive Economic Zone of the United States, as defined by 46 U.S.C. 2101(10a), if the purchase is shown by the contractor similarly reliable evidence to have been made for the purpose of using the vessel in the fisheries.

3. Section 67.17-5 is amended by revising paragraph (c)(1) to read as follows:

§ 67.17-5 Coastwise license.

* * * *

(c) * * *

(1) It is thereafter sold in whole or in part to an owner that is not a citizen as defined in §§ 67.03-3; 67.03-5 (a)(1), (b), (c); 67.03-7; 67.03-9(a); or 67.03-11 of this part;

* * * *

4. Section 67.17-7 is amended by revising paragraph (e)(1) to read as follows:

§ 67.17-7 Great Lakes license.

* * * *

(c) * * *

(1) It is thereafter sold in whole or in part to an owner that is not a citizen as

defined in §§ 67.03-3; 67.03-5 (a)(1), (b), (c); 67.03-7; 67.03-9(a); or 67.03-11 of this part;

* * *

5. Section 67.17-9 is amended by adding a new paragraph (d) to read as follows:

§ 67.17-9 Fishery license.

* * *

(d) A vessel otherwise eligible for a fishery license endorsement under paragraph (b) of this section loses that eligibility during any period in which it is owned by any entity which does not meet the citizenship requirements of

subpart 67.03 of this part, except that a vessel eligible for a fishery license endorsement in accordance with § 67.03-15 of this part does not lose its eligibility for a fishery license endorsement during any period it is owned by an entity that fails to meet the stock or equity interest requirements of §§ 67.03-5(a)(3) or 67.03-9(d)(2) of this part but otherwise qualifies as a citizen.

6. Section 67.23-9 is amended by revising paragraph (a)(3) to read as follows:

§ 67.23-9 Requirement for deletion.

(a) * * *

(3) Any owner of the vessel ceases to be a citizen within the meaning of §§ 67.03-3; 67.03-5 (a)(1), (b), (c); 67.03-7; 67.03-9(a); or 67.03-11 of this part;

* * *

Dated: September 28, 1989.

J. D. Sipes,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security and Environmental Protection.

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Notices

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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

Forms Under Review by Office of Management and Budget

October 6, 1989.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Public Law 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Revision

• Farmers Home Administration
7 CFR 1980-E Business and Industrial Loan Program
FmHA 449-2, -4, -22; 1980-68, -70, -71, -73

Recordkeeping; On occasion; Quarterly
State or local governments; Businesses or other for-profit; Small businesses or organizations; 18,222 responses; 73,567 hours; not applicable under 3504(h)

Jack Holston (202) 382-9736

• Agricultural Marketing Service

Dried Prunes Produced in California-Marketing Order No. 993

None

Recordkeeping; On occasion; Monthly; Annually;

Businesses or other for-profit; 36,012 responses; 6,173 hours; not applicable under 3504(h)

Virginia M. Olson (202) 475-3930

Extension

• Federal Crop Insurance Corporation
Standard Reinsurance Agreement

None

On occasion; Weekly; Monthly; Annually

Businesses or other for-profit; 1,480 responses; 15,600 hours; not applicable under 3504(h)

Thomas Riley (202) 475-4405

• Agricultural Marketing Service
7 CFR Part 55, Regulations for Voluntary Inspection of Egg Products and Grading

None

On occasion; Weekly; Monthly; Daily
Businesses or other for-profit; Small businesses or organizations; 4,798 responses; 810 hours; not applicable under 3504(h)

Merlin L. Nichols, Jr. (202) 447-3506
• National Agricultural Statistics Service

Stock Reports

None

Quarterly; On occasion
Farms; Businesses or other for-profit;

54,530 responses; 16,315 hours; not applicable under 3504(h)

Larry Gambrell (202) 447-7737

New Collection

• Office of Public Affairs
Survey of Broadcasters (Radio & TV)
On occasion; Annually
Individuals or households; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 1,000 responses; 167 hours; not applicable under 3504(h)

Marci Hilt (202) 447-6445

Larry K. Roberson,
Acting Departmental Clearance Officer.
[FR Doc. 89-24150 Filed 10-12-89; 8:45 am]
BILLING CODE 3410-01-M

Forest Service

Gillibrand Mining Plan of Operation

AGENCY: Forest Service, USDA.

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

SUMMARY: The Forest Service will prepare an environmental impact statement for a proposal to develop a mining operation for the extraction of anorthosite ore in the Soladad Canyon area of the Tujunga Ranger District, Angeles National Forest, Los Angeles County, California. The agency invites written comments and suggestions on the scope of the analysis. In addition, the agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the scope of the analysis must be received by January 15, 1990.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to George A. Roby, Forest Supervisor, Angeles National Forest, 701 N. Santa Anita Avenue, Arcadia, CA 91006.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and environmental impact statement to Mr. Charles K. McDonald, Environmental Coordinator, at the above address or phone (818) 574-5257, FTS 799-0257.

SUPPLEMENTARY INFORMATION: The Angeles National Forest Land and Resources Management Plan, Final Environmental Impact Statement and Record of Decision have been issued. These documents discuss the proposed project in a general manner. This EIS will concentrate on site specific activity areas. In preparing the environmental impact statement, the Forest Service will identify and consider a range of alternatives for methods of extracting the ore, access routes, and mill site locations.

George A. Roby, Forest Supervisor, Angeles National Forest, Arcadia, California, is the responsible official.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies, the proponent and other individuals or

organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft environmental impact statement (DEIS). The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

The Forest Supervisor will hold the following public scoping meeting:

Date: November 13, 1989

Time: 7 pm-10 pm

Location: Church of the Canyons, 28050 Sand Canyon Rd., Canyon Country, CA 91350

The draft environmental impact statement (EIS) is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by August 10, 1990. At that time EPA will publish a notice of availability of the DEIS in the Federal Register.

The comment period on the draft environmental impact statement will be 90 days from the date the Environmental Protection Agency's notice of availability appears in the Federal Register. It is very important that those interested in the mining operation participate at that time. To be the most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act of 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement.

Wisconsin Heritages, Inc. v. Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that

substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement. The final EIS is scheduled to be completed by November 10, 1990. In the final EIS, the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the EIS, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR 217.

Dated: October 3, 1989.

George A. Roby,

Forest Supervisor.

[FR Doc. 89-24168 Filed 10-12-89; 8:45 am]

BILLING CODE 3410-11-M

Oil and Gas Leasing; Little Missouri National Grasslands; Custer National Forest; McKenzie, Billings, Golden Valley and Dunn Counties, ND

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The USDA, Forest Service, as lead agency, and the USDI, Bureau of Land Management will cooperatively participate in the preparation of an environmental impact statement (EIS) to disclose the environmental effects of oil and gas leasing and reasonably foreseeable actions resulting from subsequent exploration and development, as well as interconnected actions on a portion of the Little Missouri National Grasslands, involving the McKenzie Ranger District and a portion of the Medora Ranger District of the Custer National Forest.

The Custer National Forest Management Plan and Record of Decision made the decision on which lands on the Forest are available for oil and gas leasing. This EIS will disclose the site specific analysis conducted to make the decision of whether or not to consent or "not object" to leasing at this time and if the decision is to lease, with what stipulations, consistent with the Federal Offshore Oil and Gas Leasing Reform Act of 1987. This analysis will be tiered to the Forest Plan and

associated EIS, and will not reconsider the decisions made in the Forest Plan Record of Decision.

DATE: Comments concerning the scoping to identify issues should be received in writing by January 1, 1990.

ADDRESSES: Written comments concerning the analysis should be sent to Curtis W. Bates, Forest Supervisor, Custer National Forest, P.O. Box 2556, Billings, Montana 59103.

FOR FURTHER INFORMATION CONTACT: Norman B. Smyers, Minerals Staff Officer, Custer National Forest, Phone (406) 657-6361.

SUPPLEMENTARY INFORMATION: This analysis will address oil and gas leasing and the site specific application of lease stipulations on a portion of the Little Missouri National Grasslands on Forest System lands from approximately Township 139 North to the northern boundary of the McKenzie Ranger District which extends to Lake Sakakawea. This area is interspersed with private and state ownership of both surface and mineral estates and involves approximately 675,000 acres of Forest System lands.

The area to be included in this analysis is located in the central portion of the Williston Basin, and oil and gas has been produced from the area since the early 1950's. Currently there are approximately 61 producing oil fields within the area.

The environmental impact statement (EIS) will address the environmental effects of leasing in the various management areas defined in the Custer National Forest Land and Resource Management Plan that was approved June 19, 1987. The scope of the EIS will be confined to those issues of oil and gas leasing and will not address the land allocations that were made in the Forest Plan.

The decision to be made is whether or not to issue oil and gas leases, and if so, what stipulations are necessary to protect other resource values. The Bureau of Land Management is responsible for the actual issuance of these leases, but the Forest Service, as the surface management agency must consent to the issuance of a lease on Acquired lands under the Mineral Leasing Act of 1947, or not object to leasing of Public Domain lands under the Federal Onshore Oil and Gas Leasing Reform Act of 1987. This consent or no objection can be conditioned by requiring certain stipulations to be attached to the leases.

The decision to be made based on this analysis will not include decisions related to possible future site specific

proposals for exploration or development of the oil and gas resources. When such a proposal is submitted that involves surface disturbance, a separate analysis will be conducted and disclosed in an appropriate NEPA document.

This analysis will address oil and gas leasing in the following Management Areas as described in the Custer Forest Plan:

Management area	Resource emphasis
B	Range/Minerals/Wildlife.
C	Wildlife (Key habitats).
D	Wildlife.
E	Minerals.
F	Developed Recreation.
J	Low Development (roadless).
K	Cultural and Scenic.
L	Research Natural Areas.
M	Riparian.
N	Woody Draws.

Federal, state, and local agencies, potential developers, and other individuals or organizations who may be interested in or affected by the decision are invited to participate in the scoping process. Input to identify the issues to be addressed in the conducting of this analysis will be gathered from the public through mailing of scoping information to all known interested publics. Similar information will be distributed through the local media. No public meetings are scheduled at this time.

Based on comments made by the public on past proposals or actions the following list of preliminary issues to be addressed has been identified. This list will be verified, expanded or modified based on public scoping for this proposal.

1. The effects of leasing and subsequent actions on wildlife habitat.
2. The effects of leasing and subsequent actions on woody draws and riparian areas.
3. The effect of leasing and subsequent actions on the roadless resource.
4. The effect on the scenic values of the area.

Alternatives to be considered in this analysis will depend on the comments received during scoping, but the following have been identified as preliminary alternatives: (1) No Action (no leasing at this time), (2) Issue leases with the stipulations identified as standards and guidelines in the Custer Forest Plan, and (3) Issue leases with standard lease terms (no additional stipulations).

In addition to the Bureau of Land Management as a cooperating agency, the North Dakota Geological Survey will

cooperate in the development of this analysis by providing geological and historical information related to oil and gas development and potential.

The draft environmental impact statement is scheduled for release to the public for comment on or about September 30, 1990 and the final statement being filed by April 1, 1991. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the Federal Register. 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 draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the 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 draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement 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 final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement 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 the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the 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 1503.8 in addressing these points).

The responsible officials for this EIS and these decisions are John W. Mumma, Regional Forester, USDA Forest Service, 200 East Broadway, P.O. Box 7669, Missoula, Montana 59807; and Marvin LeNoue, State Director, Bureau

of Land Management, Montana State Office, 222 North 32nd Street, P.O. Box 36800, Billings, MT 59107-6800.

Dated: October 3, 1989

Bob Castaneda,

Deputy Forest Supervisor.

[FR Doc. 89-24212 Filed 10-12-89; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Giga Control, Inc.; Order

In the matter of: Giga Control, Inc., 2336 B Walsh Avenue, Santa Clara, California 95051, Respondent.

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Department), having notified Giga Control, Inc. (hereinafter referred to as Giga) of its intention to initiate an administrative proceeding against it pursuant to the Export Administration Regulations (currently codified at 15 C.F.R. parts 768-799) (the Regulations),¹ issued pursuant to the Export Administration Act of 1979, as amended 50 U.S.C.A. app. sections 2401-2420 (Supp. 1989) (the Act), by issuing a charging letter alleging that Giga violated the provisions of section 787.3(b) of the Export Administration Regulations by conspiring with Wide Trade Foundation, Ltd., National Electronics, Thomas Lee (also known as Yuk Sang Lee), Paul Wu (also known as Po Yip Wu), and others to bring about acts that constituted violations of the Act and the Regulations. The purpose of this conspiracy was to export U.S.-origin oscilloscopes, computers, electronic equipment and other commodities from the United States to Hong Kong, without obtaining from the Department of the validated export licenses required by § 772.1(b) of the Regulations;

The Department and Giga have entered into a Consent Agreement whereby the Department and Giga have agreed that this matter will be settled by Giga's paying to the Department a civil penalty in the amount of \$35,000, and a denial of all of Giga's U.S. export privileges for 10 years; and

The terms of the Consent Agreement having been approved by me;

¹ Effective October 1, 1988, the Regulations were redesignated as parts 768-799 of title 15 of the Code of Federal Regulations. 53 FR 37751 (September 28, 1988). The transfer merely changed the first number of each part from "3" to "7". Until such time as the Code of Federal Regulations is republished, the Regulations can be found at 15 CFR parts 368-399 (1988).

Therefore, it is ordered:

First, a civil penalty in the amount of \$35,000 is assessed against Giga. Giga shall pay the civil penalty to the Department in the manner specified in the attached instructions within 30 days of the entry of this Order.

Second, that Giga Control, Inc., whose last known address was 2336 B Walsh Avenue, Santa Clara, California 95051 (hereinafter referred to as Giga), and all its successors, assignees, officers, partners, representatives, agents and employees, is denied, for a period of 10 years from the date of this Order, all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving the export of U.S.-origin commodities or technical data from the United States or abroad.

A. All outstanding individual validated export licenses in which Giga appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Giga's privileges of participating, in any manner or capacity, in any special licenses, procedure including, but not limited to, distribution licenses, are hereby revoked.

B. Without limiting the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include, but is not limited to, participation: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of any commodities or technical data, in whole or in part, exported or to be exported from the United States and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

C. After notice and opportunity for comment, such denial may be made applicable to any person, firm, corporation, or business organization with which Giga is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or

other connection in the conduct of trade or related services.

D. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with Giga or any related person, or whereby Giga or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported, in whole or in part, or to be exported by, to, or for Giga or any related person denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States. These prohibitions apply only to those commodities and technical data which are subject to the Act and the Regulations.

Third, that the proposed Charging Letter, the Consent Agreement and this order shall be made available to the public.

This Order is effective immediately will be published in the *Federal Register*.

Dated October 4, 1989.

Quincy M. Krosby,

Assistant Secretary for Export Enforcement.

[FR Doc. 89-24169 Filed 10-12-89; 8:45 am]

BILLING CODE 3510-DT-M

Hardware Subcommittee of the Computer Systems Technical Advisory Committee; Open Meeting

A meeting of the Hardware Subcommittee of the Computer Systems Technical Advisory Committee will be held November 1, 1989, 8:30 a.m., at the Oregon Advanced Computer Institute (OACIS), 19500 NW. Gibbs Drive, Building E-3, Beaverton, Oregon. The committee was formed to study computer hardware with the goal of making recommendations to the Department of Commerce relating to the

appropriate parameters for controlling exports for reasons of national security.

Agenda

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Status on array processor foreign availability study.
4. Workstation working group report.
5. LAN Proposal Review.
6. Discussion of AT decontrol definitional issues.

The meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that the materials be forwarded two weeks prior to the meeting date to the following address: Lee Ann Carpenter, Technical Support Staff, OTPA-BXA, Room 4069A, U.S. Department of Commerce, 14th & Pennsylvania Avenue NW., Washington, DC 20230.

For further information or copies of the minutes, contact Lee Ann Carpenter at (202) 377-2583.

Dated: October 6, 1989.

Betty Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology & Policy Analysis.

[FR Doc. 89-24200 Filed 10-12-89; 8:45 am]

BILLING CODE 3510-DT-M

Software Subcommittee of the Computer Systems Technical Advisory Committee; Open Meeting

A meeting of the Software Subcommittee of the Computer Systems Technical Advisory Committee will be held November 1, 1989, 10:00 a.m., at the Oregon Advanced Computing Institute (OACIS), 19500 NW. Gibbs Drive, Building E-3, Beaverton, Oregon. The Subcommittee was formed with the goal of making recommendations to the Department of Commerce relating to the appropriate parameters for controlling exports for reasons of national security.

Agenda

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Status items.
4. Recommendations on treatment of finite element analysis software.
5. Initial work on CCL 1566 for 1990 List Review.

The meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that the materials be forwarded two weeks prior to the meeting date to the following address: Lee Ann Carpenter, Technical Support Staff, OTPA/BXA, Room 4069A, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

For further information or copies of the minutes, contact Lee Ann Carpenter at (202) 377-2583.

Dated: October 6, 1989.

Betty Ferrell,

*Director, Technical Advisory Committee Unit,
Office of Technology & Policy Analysis.*

[FR Doc. 89-24201 Filed 10-12-89; 8:45 am]

BILLING CODE 3510-DT-M

Supercomputer Subcommittee of the Computer Systems Technical Advisory Committee; Open Meeting

A meeting of the Supercomputer Subcommittee of the Computer Systems Technical Advisory Committee will be held November 1, 1989, 1:00 p.m., at the Oregon Advanced Computing Institute (OACIS), 19500 NW. Gibbs Drive, Building E-3, Beaverton, Oregon. The Supercomputer Subcommittee was formed with the goal of making recommendations to the Department on licensing issues with respect to supercomputers.

Agenda

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Review of revised definition proposal and preparation of comments.

The entire meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that the materials be forwarded two weeks prior to the meeting date to the following address: Lee Ann Carpenter, Technical Support Staff, OTPA/BXA, Room 4069A, U.S. Department of Commerce, 14th &

Pennsylvania Avenue NW., Washington, DC 20230.

For further information or copies of the minutes, call Lee Ann Carpenter at 202/377-2583.

Dated: October 6, 1989.

Betty Anne Ferrell,

*Director, Technical Advisory Committee Unit,
Office of Technology & Policy Analysis.*

[FR Doc. 89-24202 Filed 10-12-89; 8:45 am]

BILLING CODE 3510-DT-M

Licensing Procedures & Regulations Subcommittee of the Computer Systems Technical Advisory Committee; Open Meeting

A meeting of the Licensing Procedures and Regulations Subcommittee of the Computer Systems Technical Advisory Committee will be held November 1, 1989, 2:30 p.m., at the Oregon Advanced Computing Institute (OACIS), 19500 NW. Gibbs Drive, Building E-3, Beaverton, Oregon. The Committee was formed to review the procedural aspects of export licensing and recommend areas where improvement can be made.

Agenda

1. Opening remarks by the Chairwoman.
2. Presentation of papers or comments by the public.
3. Review of Computer Systems Technical Advisory Committee response to action items

The meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that the materials be forwarded two weeks prior to the meeting date to the following address: Lee Ann Carpenter, Technical Support Staff, OTPA/BXA, Room 4069A, U.S. Department of Commerce, 14th & Pennsylvania Avenue NW., Washington, DC 20230.

For further information or copies of the minutes, call Lee Ann Carpenter at (202) 377-2583.

Dated: October 6, 1989.

Betty Ferrell,

*Director, Technical Advisory Committee Unit,
Office of Technology & Policy Analysis.*

[FR Doc. 89-24203 Filed 10-12-89; 8:45 am]

BILLING CODE 3510-DT-M

Computer Systems Technical Advisory Committee; Open Meeting

A meeting of the Computer Systems Technical Advisory Committee will be held November 1, 1989, 4:00 p.m., at the Oregon Advanced Computing Institute (OACIS), 19500 NW. Gibbs Drive, Building E-3, Beaverton, Oregon. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to computer systems or technology.

Agenda

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Scheduling of future meetings.
4. Miscellaneous items (other meeting reports and status items).

The meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be presented at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that the materials be forwarded two weeks prior to the meeting date to the following address: Lee Ann Carpenter, Technical Support Staff, OTPA/BXA, Room 4069A, U.S. Department of Commerce, 14th and Pennsylvania Avenue NW., Washington, DC 20230.

For further information or copies of the minutes, contact Lee Ann Carpenter at (202) 377-2583.

Computer Export Forum

On November 2, 1989, 9:00 a.m.-12:30 p.m., the Computer Systems Technical Advisory Committee will present a public forum on computer export issues for 1990. The forum will be held at the Oregon Advanced Computing Institute (OACIS), 19500 NW. Gibbs Drive, Building E-3, Beaverton, Oregon. Time for questions and discussion will be made available during the forum.

Speakers

1. Recent Changes to CCL 1565
Joe Young, Engineer, Computer Systems Technical Center, Office of Technology and Policy Analysis, Bureau of Export Administration, U.S. Department of Commerce
2. 6031P Final Form
Ed McClain, Branch Chief, Computer Systems, Individual Validated Licensing Division, Office of Export

Licensing, Bureau of Export Administration, U.S. Department of Commerce

3. Emerging Technology Issues

Joe Pumphrey, Engineer, Office of the Undersecretary of Defense (Acquisitions), Industrial and International Programs, International Technology and Trade, U.S. Department of Defense

4. Renewal of the Export Administration Regulations

Roundtable with senior Congressional staff (to be announced)

5. 1990 List Review

Roundtable (Participants to be announced)

Dated: October 6, 1989.

Betty Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology and Policy Analysis.

[FR Doc. 89-24204 Filed 10-12-89; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[A-475-084]

Spun Acrylic Yarn From Italy; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On April 25, 1989, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on spun acrylic yarn from Italy. The review covers five manufacturers/exporters of this merchandise to the United States and the period April 1, 1986 through March 31, 1987.

We gave interested parties an opportunity to comment on the preliminary results. At the request of the petitioner and two respondents, we held a hearing on June 8, 1989. We received comments from the petitioner and three respondents. Based on the comments received, we have changed the final results for two respondents from those presented in the preliminary results of review.

EFFECTIVE DATE: October 13, 1989.

FOR FURTHER INFORMATION CONTACT:

Linda L. Pasden or Robert J. Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On April 25, 1989, the Department of Commerce ("the Department") published in the *Federal Register* (54 FR 17803) the preliminary results of its administrative review of the antidumping duty order on spun acrylic yarn from Italy (45 FR 23684, April 8, 1980). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Tariff Act").

Scope of the Review

Imports covered by this review are shipments of worsted spun acrylic plied yarn for machine knitting, excluding four-ply craft yarn and certain brushed yarns. During the review period, such merchandise was classifiable under items 310.5015 and 310.5049 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under the Harmonized Tariff Schedule ("HTS") item 5509.3200. The HTS item number(s) are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers five manufacturers/exporters of spun acrylic yarn from Italy and the period April 1, 1986 through March 31, 1987. Only three manufacturers/exporters with shipments during the period responded adequately to our requests for information. Turriddo Torracchi did not respond to our questionnaire. Mister Joe's response to the Department's questionnaire was inadequate because it provided self-selected home market sales and did not provide any adjustments to U.S. or home market sales. Therefore, the Department used the best information available for these two firms, which was the rate published in the antidumping duty order (45 FR 23684, April 8, 1980). While the petitioner had requested that the Department conduct a review of an additional firm, that firm had no shipments during the period, and we have no evidence that it is a manufacturer or exporter of the subject merchandise.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. At the request of the petitioner, the American Yarn Spinners Association, Inc., and two respondents, International Fibre Industries Ltd. ("IFI") and Gruppo Bertrand (a.k.a. Fantasia), we held a hearing on June 8, 1989. We received comments from the petitioner and three respondents.

Analysis of Comments

Comment 1: The petitioner argues that the Department erred in basing the foreign market value ("FMV") calculations for some of IFI's United States sales on sales to the United Kingdom ("UK") because these sales are not of such or similar merchandise. Petitioner contends that the type C yarn exported to the UK is substantially different from the type A and B yarns exported to the United States. First, the type C yarn is fundamentally different "in component material". That is, the type A and B yarns IFI exported to the United States are both double-ply, 24 count, high bulk yarns. By contrast, the type C yarn sold in the UK is a single-ply, 40-count yarn that is not bulked at all. Therefore, the type C yarn is so fundamentally different from the type A and B yarns that type C yarn is not even in the class or kind of yarn covered by the antidumping order.

Second, the type C yarn is used in very different applications. Type C yarn results in a much lighter knit that is used for the assembly of "cut-to-sew" fabric parts for slacks and dresses, as opposed to "knit-to-shape" sweater parts for which the type A and B yarns are used.

Further, the type D yarn exported to the UK cannot be described reasonably as "such or similar" to the type A and B yarns exported to the United States. Although type D yarn, like type A and B yarns, is a double-ply, high bulk yarn, type D yarn is a 34 count yarn that is much finer than the 24 count type A and B yarns sold to the United States. Unlike the type A yarn, the type D yarn is dyed, rather than raw white, and is put up on skeins rather than cones.

Because of these physical differences, type D yarn has markedly different uses than type A and B yarns. That is, type A and B are typically used for knitting sweaters, whereas type D yarn is used to produce finer knit fabrics.

Therefore, petitioner concludes that the Department should not make any third country comparisons using IFI's sales to the UK. Instead, the Department should use IFI's sales of the comparable type A and A-1 yarns to Spain for any third country comparisons, and should use constructed value calculations when no Spanish sales contemporaneous to the United States sales are available.

IFI contends that petitioner's arguments concerning yarn type comparisons or the "third country market" issue are untimely. Further, IFI argues the yarn types exported to the UK are such or similar merchandise as defined by law. This is supported by the fact that all yarn types are made with

100 percent acrylic fiber. Thus, they are all "like" each other in component material.

The component material for both fixed and high bulk yarns is 100 percent acrylic fiber. The fact that type C and type E yarns are single-ply while type A, B, and D are double-ply has nothing to do with component material, but rather is the result of the way in which the component material is spun into yarn. Nor does fixed versus high bulk distinguish the yarns in terms of component material, because such distinctions are attributable to the way in which the component material is processed by the spinner.

IFI further argues that the yarns are "like" one another in the purpose for which they are used. All are worsted spun acrylic yarns used for knitting. While different types may result in knitted products of differing weights or textures, this does not affect the use made of the merchandise, i.e., the yarn. In addition, types C and D yarns are such or similar merchandise, in the same general class or kind as type A and B exported to the United States, because all are spun acrylic yarns and all are used for knitting.

Department's Position: For the final results of review, the Department has used constructed value as the basis of comparison where we determined that the cost differences for type C and D yarns sold to the UK were of such a magnitude as to preclude a reasonable comparison. As the Department stated in the Final Determination of Sales at Less Than Fair Value; Certain Internal Combustion, Industrial Forklift Trucks from Japan:

[I]t is the Department's practice to disregard home market sales as the basis for foreign market value when the difference in merchandise adjustments claimed are of such a magnitude as to lead us to question whether the home market sales reported can serve as an appropriate measure of foreign market value. There are two basic reasons for this practice: (1) in determining whether U.S. sales are being made at less than fair value, we do not want the difference in merchandise adjustment either to falsely create dumping margins or to mask them; and (2) large difference in merchandise adjustments may indicate that the home market sale is not similar to the U.S. sale, thus, warranting a new comparison (53 FR 12552, 12567, April 15, 1988).

Because of the magnitude of the cost differences between the yarns sold in the U.K. (type C and D) and yarns sold in the United States (A & B), we have concluded that the yarns sold in the U.K. are not such or similar merchandise under section 771(16) of the Tariff Act.

Petitioner timely submitted its legal arguments on comparison of

merchandise in its pre-hearing brief. However, as we stated above, we used constructed value as the basis of comparison where there were significant cost differences.

Comment 2: The petitioner argues that the Department should revise the calculations of IFT's selling, general and administrative ("SG&A") expenses for the constructed value calculations to use the 10 percent statutory minimum rather than IFT's actual allocated SG&A expenses, because the actual allocated expenses are slightly lower than the statutory minimum.

IFI argues that the petitioner's methodology is incorrect because it would result in an overstatement of general expenses. Further, IFI argues that the Department overstated SG&A expenses by computing the expense on a weighted-average basis. Instead, it should be calculated on a contract-by-contract basis.

Department's Position: Section 773(e)(B)(i) of the Tariff Act states that the amount for general expenses shall not be less than 10 percent of the cost of the materials and fabrication. Calculated SG&A was less than 10 percent. Consequently, for these final results we have used the statutory minimum.

IFT's argument that the Department overstated SG&A expenses by computing the expense on a weighted-average basis is moot. Even if we had computed SG&A using IFT's method, we would have applied the statutory minimum.

Comment 3: The petitioner argues that the Department should not have used the U.S. interest rates to calculate IFT's imputed credit expenses for third country sales. The Department should have used the applicable "prime" rate prevailing in the Eurodollar market, the London Interbank Offer Rate, instead of the U.S. prime rates.

IFI contends that the Department is correct in using its U.S. interest rates rather than an imputed interest rate in the credit expense calculations because this rate reflects its actual cost of borrowing.

Department's Position: Consistent with current Departmental practice, when computing imputed credit costs, we conclude that it is more reasonable to use IFT's actual short-term borrowing experience rather than a theoretical rate as suggested by petitioner.

Comment 4: The petitioner contends that the Department should impute an inventory carrying cost in the constructed value calculations for IFI and Gruppo Bertrand. The imputed interest expense should be calculated on the value of the inventory from the date

of production to the date of sale (see All-Terrain Vehicles from Japan, 54 FR 4864, January 31, 1989).

IFI argues that it is inappropriate to impute inventory carrying charges as was done in All-Terrain Vehicles from Japan because that determination involved ESP sales. IFT's sales are purchase price sales.

Gruppo Bertrand contends that adding imputed inventory carrying costs might be appropriate where such an addition would raise a respondent's actual SG&A expenses above the statutory 10 percent minimum, or where its SG&A expenses are already higher than the 10 percent level. In Gruppo Bertrand's case, however, the SG&A expenses are below 10 percent, and the statutory 10 percent used in the CV calculation can be presumed to include any additional hypothetical costs.

Department's Position: In All-Terrain Vehicles from Japan, an amount representing inventory carrying cost was included in general expenses. However, in this case, we have not made such an adjustment to constructed value because for both IFI and Gruppo Bertrand inventory carrying expenses are accounted for in the SG&A as part of the indirect selling expenses.

Comment 5: The petitioner argues that the Department should verify IFT's and Gruppo Bertrand's response before the final determination in this administrative review.

IFI contends that the Department effectively has verified its cost of production ("COP") because IFI has supplied detailed and complete data with supporting documentation. It further contends that this review performed by the Department was more thorough than the normal on-site verification because the Department examined all of the cost of production documentation for all contracts.

Gruppo Bertrand also requests that we verify prior to the final results of our review.

Department's Position: Neither the petitioner nor the respondent Gruppo Bertrand made a timely request for verification under section 776(a) of the Tariff Act. These requests were received after publication of the notice of preliminary results of administrative review. In section 751 reviews the Department generally conducts verification prior to publishing the preliminary results. We do this so that parties to the proceeding will have access to all information on which our determinations are based in order that they may make meaningful comments on our preliminary results. In this case, the

parties have not shown "good cause" for departing from our general practice.

Comment 6: IFI argues that the Department made a computational error in the calculation of COP for contract S-00820-06 which resulted in an incorrect cost adjustment for differences in merchandise. Ultimately, this computational error created dumping margins on deliveries under this contract.

Department's Position: We agree and have corrected the computational error.

Comment 7: IFI claims that its third country sales generally were made in lira. However, nine of the deliveries under contract S-00822-06 were invoiced on a split basis, partly in dollars and partly in lira. In calculating FMV for this contract, the Department did not include the dollar portion of the invoicing on these nine deliveries and, therefore, the data input error should be corrected for the final results of the review.

Department's Position: Although IFI is correct, this issue is moot because contract S-00822-06 was not used in our calculation of FMV.

Comment 8: IFI argues that the Department's conclusion that no dates of sale were provided for Sample A sold to Spain and Sample B sold to the United States, thus warranting the use of best information available ("BIA"), is incorrect. Sample A was filled with yarn produced under a contract for another order. If date of sale must be based on written documentation, then the Department should use October 14, 1986, the date of the invoice to the customer as the sale date.

Sample B was a resale of a yarn sample purchased by IFI. The Department incorrectly used the date of the invoice from the yarn producer to IFI as the date of sale.

Department's Position: We disagree. The Department requested copies of the documents associated with all of IFI's sales contracts covered by the review. IFI failed to substantiate that the reported dates of sale for Sample A and Sample B were correct. Consequently, we used the date of the purchase order for the fiber as best information available.

Comment 9: IFI argues that the amount for profit should be calculated on the basis of the company-wide profit of IFI's yarn sales.

Department's Position: We disagree that the overall company average profit should be used in the CV calculation. For the preliminary results, we used the United States profit by yarn type. However, we now believe that using the U.S. profit in the CV calculation would not permit correct comparison for

dumping purposes insofar as U.S. profit would be compared with U.S. profit. Therefore, we have for the final results, recalculated profit based on third country sales to the UK because we are using such UK sales as the basis for our FMV determinations where such determinations are based upon prices. See Strontium Nitrate from Italy; Final Determination of Sales at Less Than Fair Value, 46 FR 25496 (May 7, 1981). We found that the profit sales to the UK was less than the statutory minimum; therefore, we used the statutory minimum of eight percent.

Comment 10: Gruppo Bertrand argues that the Department erred in using CV as the basis for foreign market value. The Department's determination that its sales in the home market and in France were at prices below its COP is entirely attributable to the use of BIA for SG&A expenses. Had the Department used the SG&A data supplied by Gruppo Bertrand, most of the sales in both markets would have been found to be above cost.

Further, Gruppo Bertrand argues that the Department's use of BIA for SG&A is based on unsupported assumptions and misunderstandings as to the nature of the data supplied. The Department's assumption that Gruppo Bertrand split manufacturing costs between manufacturing and operating is incorrect. As Gruppo Bertrand explained in its March 13, 1989 letter, it "independently" determined the overall cost of operating the acrylic yarn activity of the company. The figure arrived at was found to represent 50 percent of the total manufacturing costs of the company.

The petitioner argues that the Department correctly used the BIA for Gruppo Bertrand's SG&A expenses because Gruppo Bertrand has not addressed the Department's concern that its method of determining these expenses failed to include all such properly allocable expenses.

Department's Position: The Department used CV as FMV because we determined that Gruppo Bertrand had no sales in its home market or to France at or above the COP. The calculation for the COP consisted of the cost of materials, labor, and factory overhead as provided by Gruppo Bertrand. For the SG&A expenses, used in both the CV and COP calculations, we used BIA which was the statutory minimum of 10 percent.

In reviewing Gruppo Bertrand's allocation of the SG&A expense, we determined that the allocation was not supported, nor fully explained. That is, in support of its reported SG&A expense, Gruppo Bertrand only stated

that it " * * * first took the overall cost of operating the acrylic yarn activity of the company. This turned out to be 50 percent of the total turnover (manufacturing costs) of the company * * *". And as Gruppo Bertrand stated above, "it independently" determined the overall cost of operating the acrylic yarn activity of the company.

Nowhere in any of Gruppo Bertrand's responses did it provide specific data concerning the first allocation in its calculation of SG&A. That is, Gruppo Bertrand never provided values for the first allocation and it never explained the origin of the values that were used. As a result, we determined that Gruppo Bertrand's calculation of SG&A was inadequate.

Comment 11: Gruppo Bertrand argues that before resorting to CV, the Department must determine that sales made at less than COP have been made over an extended period of time, in substantial quantities, and at prices which do not permit recovery of all costs within a reasonable period of time in the normal course of trade. Even with the use of a 10 percent BIA for SG&A, the margins by which its sales in Italy and France were below the calculated COP were extremely low. Under these circumstances, it is not unreasonable to assume that the prices at which Gruppo Bertrand sold in its home market and to France are such that costs will eventually be recovered. Furthermore, in the letter dated February 17, 1989, data was provided to show that its sales in Italy and France during the review period were at prices which permit recovery of all costs within a reasonable period in the normal course of trade.

The petitioner argues that the Department properly disregarded these sales as inadequate, since they were all below cost and were not shown to be at prices that would permit the recovery of all costs within a reasonable period of time in the normal course of business.

Department's Position: Gruppo Bertrand's initial questionnaire response showed that the costs for the differences in merchandise adjustments were greater than some of the unit prices in the home market, which caused us to conclude that there were sales below cost. We then asked Gruppo Bertrand to demonstrate whether or not its prices would permit recovery of all costs within a reasonable period in the normal course of trade. Gruppo Bertrand's response dated February 17, 1989, simply stated: " * * * As to your inquiry or (sic) capitalization of new equipment or buildings, etc. during the period * * * Fantasia responds that there were no such purchases in that period * * *". No

other explanations or information were provided concerning recovery of costs which might lead us to conclude that costs could be recouped. Because of Gruppo Bertrand's failure to provide us with information indicating that costs could be recouped, we determined that Gruppo Bertrand's costs could not be recouped within a reasonable period in the normal course of trade.

Consequently, we determined that there were no sales in the home market or to France that were sold at or above its COP. Absent sufficient sales in either market to be used as a basis for FMV, we used CV.

Comment 12: Gruppo Bertrand argues that before resorting to CV, the Department must find that the above-cost sales that remain are inadequate as a basis for the determination of foreign market value.

Department's Position: We determined that no sales were made above cost. (See our position on Comment 11.)

Comment 13: Gruppo Bertrand argues that the Department misidentified Exhibit 9 to its original response because the response inadvertently included a reference to Exhibit 9 (a worksheet for type 2/27/22 yarn and is titled "Cost of Product Bought in Italy (2/27/22)" and provides two columns of COP data: The left column is cost data for the yarn dyed and wound on cones, the right column shows cost data for this yarn if not dyed and not wound on cones) at the end of the paragraph discussing duty drawback. As a result, the Department used the wrong COP to compute the constructed value for raw white on hanks yarn sold to the United States because the Department did not realize that the right column on Exhibit 9 provides separate cost data for this yarn type. This was an inadvertent error that would have been clarified had there been a verification in this review.

Department's Position: Although the Department did not misidentify Exhibit 9, which is described in the response as a worksheet showing the difference in the COP on some of the merchandise sold to the United States, we have recalculated the constructed value based on the clarification made by Gruppo Bertrand. We do not however, that the purpose of verification is not to correct a response but rather to test its accuracy and completeness.

Comment 14: Gruppo Bertrand argues that the Department's determination not to adjust United States price by the amount of the duty drawback is the result of the Department's misunderstanding of Exhibit 9. Because of the misunderstanding, the

Department should allow the addition to U.S. price.

Department's Position: We did not make this adjustment to U.S. price because Gruppo Bertrand did not provide us with the information to enable us to make this adjustment. Gruppo Bertrand did not specify which sales were entitled to the duty drawback.

Comment 15: Gruppo Bertrand argues that the Department's determination not to allow a circumstance of sale adjustment, on the basis that the currency hedging proceeds are not directly related to its U.S. sales, is directly at odds with the decision in Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany (54 FR 18992, May 3, 1989). This adjustment should be allowed for the final results.

The petitioner argues that Gruppo Bertrand failed to demonstrate that the currency gains were directly related to its United States sales during the period.

Department's Position: In Antifriction Bearings we state that we made a circumstance of sale adjustment to reflect hedging profits or losses accurately, where these profits or losses were properly documented and were demonstrated to be directly tied to sales during the period of investigation. Gruppo Bertrand has not documented that this claimed adjustment is directly related to its sales to the United States. Gruppo Bertrand (Cofisa) purchased lira with borrowed U.S. dollars on September 18, 1985, in anticipation of a decline in the value of the dollar vis-a-vis the lira. In the response Gruppo Bertrand identified certain sales with purchase dates from 6 months to 1 year after the date of the currency gain. We conclude that this is mere financial speculation which was not directly tied to the sales identified in the response. Consequently, we have not allowed the adjustment.

Comment 16: Mr. Joe argues that the merchandise sold to the United States during the period of review is outside the scope of the antidumping duty order because the yarn is 50 percent natural fibre with very low levels of synthetic fibre. Therefore, its shipments should be excluded.

Department's Position: Mr. Joe provided an incomplete response to the Department's questionnaire. As a result, we used BIA. Mr. Joe had provided information concerning the fibre content of the yarn for the June 8, 1989 hearing. We have rejected this information as untimely because it was submitted after the preliminary determination. (See *Rhone Poulenc, Inc. v. United States*, 13

CIT____, Slip Op. 89-38 (March 23, 1989); (Final Determination of Sales at Less Than Fair Value in Antifriction Bearings (Other than Tapered Roller Bearings) and Parts thereof from Japan (54 FR 19034, May 3, 1989).)

Final Results of the Review

As a result of our review of the comments received and the correction of certain clerical errors, we have determined that the following margins exist for the period April 1, 1986 through March 31, 1987.

Manufacturer/Exporter	Margin (percent)
Manifattura Emmepe S.p.A. Gruppo Bertrand (a.k.a. Fantasia, Cofisa, and Sabrefil).....	14.06
Lanificio DiNervesa Della Battaglia S.p.A./International Fibre Industries, Ltd.....	0.80
Turridio Torracchi.....	48.05
Mister Joe.....	48.05

We are not covering Enichem Fibre S.p.A. (a.k.a. Ancifibre S.p.A.) in this review because this firm is not known to be a manufacturer or exporter of the subject merchandise. If the firm should begin to export the subject merchandise, we will treat it as a new exporter.

The Department shall instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions for each exporter directly to the Customs Service. Individual differences between United States price and foreign market value may vary from the percentage stated above.

Further, as provided by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required. For shipments from the remaining known manufacturers and exporters not covered by this review, the cash deposit will continue to be at the latest rate applicable for each of those firms (47 FR 5280, February 4, 1982; 48 FR 37682, August 19, 1983; and, 50 FR 35849, September 4, 1985).

For any future entries of this merchandise from a new exporter, not covered in this administrative review, whose first shipments occurred after March 31, 1987, and who is unrelated to any reviewed firm, a cash deposit of 14.06 percent shall be required. These deposit requirements are effective for all shipments of Italian spun acrylic yarn entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until the publication of

the final results of the next administrative review.

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 Commerce Department's regulations published in the Federal Register on March 28, 1989 (54 FR 12742) (to be codified at 19 CFR 353.22).

Dated: October 5, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-24107 Filed 10-12-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-559-804]

Postponement of Preliminary Countervailing Duty Determination: Certain Computer Aided Software Engineering Products From Singapore

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: Based upon the request of petitioner, Visible Systems Corporation, the Department of Commerce (the Department) is postponing its preliminary determination in the countervailing duty investigation of certain computer aided software engineering (CASE) products from Singapore. The preliminary determination will be made on or before January 8, 1990.

EFFECTIVE DATE: October 13, 1989.

FOR FURTHER INFORMATION CONTACT: Ross Cotjanle or Carole Showers, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th & Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-3534 or 377-3217.

SUPPLEMENTARY INFORMATION: On August 29, 1989, the Department initiated a countervailing duty investigation of CASE software from Singapore. In our notice of initiation we stated that we would issue our preliminary determination on or before November 2, 1989 (54 FR 37013, September 6, 1989).

On October 4, 1989, the petitioner filed a request that the preliminary determination in this investigation be postponed for 65 days.

Section 703(c)(1)(A) of the Tariff Act of 1930, as amended (the Act), provides that the preliminary determination in a countervailing duty investigation may be postponed where the petitioner has made a timely request for such a

postponement. Pursuant to this provision, and the timely request by petitioner in this investigation, the Department is postponing its preliminary determination until no later than January 8, 1990.

This notice is published pursuant to section 703(c)(2) of the Act.

Dated: October 6, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-24106 Filed 10-12-89; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council; Rescheduling of Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The public meetings of the Caribbean Fishery Management Council, and the Council's Administrative Committee, on September 26-28, 1989, in Lajas, Puerto Rico, previously published at 54 FR 36849, were cancelled due to Hurricane Hugo.

The public meetings have been rescheduled for October 23-25, 1989, at the same location at the Hotel Villa Parguera, La Parguera, Lajas, Puerto Rico. On October 24 the Caribbean Council will begin its 67th meeting at 9 a.m., and recess at 5 p.m. On October 25 the Council will reconvene at 9 a.m., and adjourn at noon. The Council's Administrative Committee will meet on October 23 from 2 p.m., to approximately 5 p.m.

The purpose of the meetings is to discuss, among other Council matters, issues pertaining to Amendment #1 of the Shallow-water Reef Fish Fishery Management Plan (FMP), and the draft Queen Conch FMP. The public meetings will be conducted in English; however, simultaneous English/Spanish translations of the proceedings also will be conducted. 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.

Dated: October 6, 1989.

David S. Crestin,

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

[FR Doc. 89-24093 Filed 10-12-89; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1989; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1989 commodities to be produced and a service to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: November 13, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On June 9, August 11 and 18, 1989, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (54 FR 24733, 33051 and 34213) of proposed additions to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018).

After consideration of the material presented to it concerning capability of qualified workshops to produce the commodities and provide the service at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6. I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

- The actions will not result in any additional reporting, recordkeeping or other compliance requirements.
- The actions will not have a serious economic impact on any contractors for the commodities and service listed.
- The actions will result in authorizing small entities to produce the commodities and provide the service procured by the Government.

Accordingly, the following commodities and service are hereby added to Procurement List 1989:

Commodities

Case, Revolver
1095-00-491-8487
Shampoo, Medicated
6508-00-116-1362
6508-00-116-1367

Service

Administrative Services
Department of Transportation
Library and Distribution Services
400 7th Street SW
Washington, DC

Beverly L. Milkman,
Executive Director.

[FR Doc. 89-24226 Filed 10-12-89; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1989; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1989 commodities to be produced by workshops for the blind or other severely handicapped.

Comments Must be Received on or Before: November 13, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018):

Marker, Tube Type

7520-01-159-1585

7520-00-460-7598

7520-01-166-0682

Beverly L. Milkman,
Executive Director.

[FR Doc. 89-24282 Filed 10-12-89; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE**Office of the Secretary****Defense Science Board Task Force on Follow-on Forces Attack (FOFA)**

ACTION: Cancellation of meeting.

SUMMARY: The meeting notice for the Defense Science Board Task Force on Follow-on Forces Attack (FOFA) scheduled for September 14, 1989 as published in the *Federal Register* (Vol. 54, No. 172, Page 37146, Thursday, September 7, 1989, FR Doc 89-20941) has been cancelled.

Dated: October 10, 1989.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense

[FR Doc. 89-24215 Filed 10-12-89; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Follow on Forces Attack (FOFA)

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Follow on Forces Attack (FOFA) will meet in closed session on November 6, 1989 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will continue to review, in detail, classified material associated with conventional military capabilities in NATO to include special targeting requirements.

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

Dated: October 10, 1989.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-24216 Filed 10-12-89; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket Nos. CP89-2194-000, et al.]

United Gas Pipe Line Co., et al.; Natural Gas Certificate Filings

October 3, 1989.

Take notice that the following filings have been made with the Commission:

1. United Gas Pipe Line Co.

[Docket No. CP89-2194-000]

Take notice that on September 28, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-2194-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of OXY USA, Inc. (Oxy), a producer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United requests authorization to transport, on an interruptible basis, up to a maximum of 20,600 MMBtu of natural gas per day for Oxy from a receipt point located in South Marsh Island Block 155, Offshore Louisiana to a delivery point also located in South Marsh Island Block 155, Offshore Louisiana. United anticipates transporting an annual volume of 7,519,000 MMBtu.

United states that the transportation of natural gas for Oxy commenced August 1, 1989, as reported in Docket No. ST89-4607-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to United in Docket No. CP88-6-000.

Comment date: November 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Great Lakes Gas Transmission Co.

[Docket No. CP89-2198-000]

Take notice that on September 29, 1989, Great Lakes Gas Transmission Company (Great Lakes), 2100 Buhl Building, Detroit, Michigan 48226, filed in Docket No. CP89-2198-000 an application pursuant to section 7(c) of the Natural Gas Act for a blanket certificate of public convenience and necessity authorizing "open access", self-implementing transportation of natural gas for others, and pre-granted authorization to abandon such self-implementing transportation services, in

accordance with the provisions of § 284.221(d) of the Commission Regulations, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Great Lakes seeks authorization to offer open access transportation services to firm and interruptible shippers in accordance with the provisions of its proposed new Rate Schedules FT and IT. Great Lakes states that these open access services would be offered on a nondiscriminatory basis as required and defined by § 284.8 and 284.9 of the Commission's Regulations, and would be subject to the operation provisions reflected in Great Lakes' proposed General Terms and Conditions as set forth in the application as *pro forma* tariff sheets. It is asserted that after the issuance of the blanket certificate by the Commission, Great Lakes intends to file the open access tariff under section 4 of the Natural Gas Act, and the rates to be charged for new firm and interruptible transportation services under Great Lakes' general rate proceeding. Great Lakes states that it would comply with the conditions in § 284.221(c) of the Commission's Regulations.

Great Lakes requests pregranted abandonment authorizing the suspension and/or termination of transportation services authorized under the service agreements, which are subject to Rate Schedules FT and IT, under their terms and conditions, and in accordance with other applicable provisions of Great Lakes' *pro forma* tariff.

Great Lakes asserts that it is not proposing to offer its remaining sales customers the option, under § 284.10 of the Commission's Regulations, to convert a portion of their sales entitlements to an equal amount of firm transportation service. Great Lakes alleges that for more than four years, its sales customers have negotiated pricing arrangements directly with Great Lakes' sole supplier, TransCanada Pipelines Limited (TransCanada). Great Lakes states that the Commission has determined that these resale customers should be treated as direct purchasers from TransCanada and that Great Lakes is a conduit with regard to their purchasers. It is alleged that the Commission has determined that Great Lakes is, in substance a transporter. Great Lakes asserts that it has unbundled all but two of its sales customers, ANR Pipeline Company and Natural Gas Pipeline Company of America. Great Lakes contends that it

would cease its limited merchant function in the near future.

Great Lakes is proposing that shippers using Rate Schedules FT and IT provide gas for Transporter's use, in addition to shippers' scheduled daily deliveries. It is asserted that this provision reflects the concept embodied in Great Lakes' current PGA provisions, which were first approved by the Commission in 1980. Great Lakes would determine the percentage of Transporter's use gas to be provided by the shippers in accordance with the methodology stated in section 4.3 of Rate Schedules FT and IT. Quarterly changes to these percentages, if any, would be communicated to Great Lakes' customers by means of an electronic bulletin board, which would be activated concurrently with the implementation of Great Lakes' open access program.

Comment date: October 18, 1989, in accordance with Standard Paragraph F at the end of the notice.

Northern Natural Gas Co., Division of Enron Corp.

[Docket No. CP89-2182-000]

Take notice that on September 27, 1989, Northern Natural Gas Company, Division of Enron Corporation (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-2182-000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport gas on behalf of Apache Corporation (Apache), a producer of natural gas, under Northern's blanket certificate issued in Docket No. CP86-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern proposes to transport on a firm basis up to 20,000 MMBtu of natural gas equivalent per day on behalf of Apache pursuant to a transportation agreement dated August 24, 1989, between Northern and Apache. Northern would receive the gas at an existing receipt point in Oklahoma and redeliver equivalent volumes, less fuel used, at existing delivery points in Texas.

Northern further states that the estimated average daily and annual quantities would be 15,000 MMBtu and 7,300,000 MMBtu, respectively. Service under § 284.223(a) commenced on August 24, 1989, as reported in Docket No. ST89-4748-000, it is stated.

Comment date: November 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Paiute Pipeline Co.

[Docket No. CP89-2176-000]

Take notice that on September 27, 1989, Paiute Pipeline Company (Paiute), P.O. Box 941897, Las Vegas, Nevada 89193-4197, filed in Docket No. CP89-2176-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for R.R. Donnelley & Sons Company (Donnelley), an end-user, under its blanket certificate issued in Docket No. CP87-309-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Paiute states that pursuant to a transportation, agreement dated November 14, 1988, under its Rate Schedule IT-1, it would transport up to 400 MMBtu per day of natural gas for Donnelley from the point of receipt at the interconnection between the facilities of Paiute and Northwest Pipeline Corporation at the Idaho-Nevada border. Paiute further states that it would transport and redeliver the natural gas to Sierra Pacific Power Company, a local distribution company, for the account of Donnelley at the Sierra Pacific City Gate No. 1 delivery point located in Washoe County, Nevada. Paiute indicates that it would transport approximately 1 MMBtu on an average day and approximately 365 MMBtu on an annual basis for Donnelley.

Paiute advises that it commenced the transportation of natural gas for Donnelley on August 6, 1989, as reported in Docket No. ST89-4557-000, for a 120-day period pursuant to section 284-223(a) of the Commission's Regulations (18 CFR 284.223(a)).

Comment date: November 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Transcontinental Gas Pipe Line Corp.

[Docket No. CP89-2177-000]

Take notice that on September 27, 1989, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP89-2177-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide transportation service for Energy Marketing Company (Shipper) under the blanket certificate issued in Docket No. CP88-328-000, pursuant to

section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Transco states that it proposes to transport up to 50,000 dekatherms (dt) per day equivalent of natural gas for Shipper. Transco states that it would transport the gas from receipt points located offshore and onshore Louisiana, onshore and offshore Texas; Alabama, Georgia, Pennsylvania, and in New Jersey and would deliver the gas at a delivery point in onshore Louisiana.

Transco advises that service under § 284.223(a) commenced August 8, 1989, as reported in Docket No. ST89-4731. Transco further advises that it would transport 50,000 dt on an average day and 18,250,000 dt annually.

Comment date: November 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. United Gas Pipe Line Co.

[Docket No. CP89-2155-000]

Take notice that on September 22, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-2155-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Seagull Marketing Services, Inc., a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to transport on an interruptible basis up to 515,000 MMBtu equivalent of natural gas on a peak and average day, and 187,975,000 MMBtu equivalent on an annual basis. It is explained that the transportation service commenced August 9, 1989, as reported in Docket No. ST89-4424.

Comment date: November 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Williston Basin Interstate Pipeline Co.

[Docket No. CP89-2185-000]

Take notice that on September 27, 1989, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed in Docket No. CP89-2185-000 a request pursuant to § 157.205 of the Commission's Regulations (18 CFR 157.205) for permission and approval to abandon four sales taps and appurtenant facilities in South Dakota under Williston Basin's blanket certificate issued in Docket Nos. CP82-487-000, *et*

al., pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Williston Basin proposes to abandon the sales taps and appurtenant facilities, which are located in Pennington County, South Dakota, because they are no longer used by Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., (Montana-Dakota) to serve end-use customers. It is stated that Montana-Dakota has consolidated its metering facilities. It is asserted that the taps will be abandoned in place. It is further asserted that no customers would lose service as a result of the abandonment.

Comment date: November 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. Northern Natural Gas Co., Division of Enron

[Docket No. CP89-2170-000]

Take notice that on September 26, 1989, Northern Natural Gas Company, Division of Enron Corporation (Northern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP89-2170-000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations (18 CFR 157.205) for authorization to operate and maintain an existing delivery point and appurtenant facilities or a jurisdictional sales facility to accommodate natural gas deliveries to Clausen Koch Corporation and a residential trailer park in Haskell County, Kansas to be served by Peoples Natural Gas Company (Peoples) under the blanket certificate issued in Docket No. CP82-401-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to request authority for sales service to an existing delivery point for Peoples. The volumes delivered to the delivery point will be served from existing firm entitlement of the Argus, Rural Sales Tap.

Comment date: November 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. Williston Basin Interstate Pipeline Co.

[Docket No. CP89-2184-000]

Take notice that on September 27, 1989, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed a request with the Commission in Docket No. CP89-2184-000, pursuant to § 157.205 of the

Commission's Regulations under the Natural Gas Act (NGA), for permission and approval to abandon two Montana sales taps under its blanket certificate authorization issued in Docket No. CP82-487-000, *et al.*, pursuant to section 7 of the NGA, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Williston Basin proposes to abandon sales taps and appurtenant facilities on its transmission system in Dawson County and Rosebud County, Montana. Williston Basin states that its customer, Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., no longer requires service via these sales taps. Williston Basin also proposes to abandon these sales taps on its existing transmission right-of-way.

Comment date: November 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. United Gas Pipe Line Co.

[Docket No. CP89-2199-000]

Take notice that on September 29, 1989, United Gas Pipe Line Company (United) P.O. Box 1478, Houston, Texas 77251, filed in Docket No. CP89-2199-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to transport natural gas on an interruptible basis for Air Products and Chemicals, Inc. (Air Products). United explains that service commenced July 21, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-4425-000. United explains that the peak day quantity would be 36,050 MMBtu, the average daily quantity would be 36,050 MMBtu, and that the annual quantity would be 13,158,250 MMBtu. United explains that it would receive natural gas for Air Products account at receipt points in the States of Louisiana, Texas, Mississippi and Alabama, and Offshore Louisiana and redeliver the gas at points in the States of Florida and Louisiana.

Comment date: November 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make protest with reference to said filing should on or before the comment

date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24108 Filed 10-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-251-000]

**Alabama-Tennessee Natural Gas Co.;
Proposed Changes in FERC Gas Tariff**

October 5, 1989.

Take notice that Alabama-Tennessee Natural Gas Company ("Alabama-Tennessee"), on September 29, 1989, tendered for filing proposed changes in its FERC Gas Tariff, First Revised Volume No. 1. The proposed effective date for these tariff sheets is November 1, 1989. The proposed changes would increase revenues from jurisdictional sales and service by \$3,528,817 based on the 12-month period ending May 31, 1989, as adjusted for known and measurable changes and would permit Alabama-Tennessee to revise the computation of its purchased gas cost adjustment from a unit-of-purchase method to a unit-of-sale method.

In addition, Alabama-Tennessee has tendered for filing FT and IT Rate Schedules, new Forms of Service Agreements, and revisions to its General Terms and Conditions in its FERC Gas Tariff, First Revised Volume No. 1. Alabama-Tennessee states that these Rate Schedules and other changes to its FERC Gas Tariff would enable it to implement open access transportation service under part 284 of the Commission's Rules and Regulations. As part of the implementation of open access on its system, Alabama-Tennessee states that it has also made certain changes to its G and SG Rate Schedules and with the Form of Service Agreement thereunder. The changes are subject to approval of an application for blanket certificate for part 284 transportation which was filed concurrently.

Copies of the filing were served upon the company's jurisdictional customers and interested public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 285.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available

for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 89-24109 Filed 10-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-2-20-000]

**Algonquin Gas Transmission Co.;
Proposed Change in FERC Gas Tariff**

October 5, 1989.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on September 29, 1989, tendered for filing, to its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Proposed To Be Effective September 1, 1989

Substitute Thirty-first Revised Sheet No. 204

Proposed To Be Effective October 1, 1989

Substitute Thirty-sixth Revised Sheet No. 203

Thirty-second Revised Sheet No. 204
Substitute Twenty-ninth Revised Sheet No. 205

Twenty-second Revised Sheet No. 211
Eighteenth Revised Sheet No. 214

Algonquin states that it is filing Substitute Thirty-first Revised Sheet No. 204 and Thirty-second Revised Sheet No. 204 to concurrently track rate changes made by National Fuel Gas Supply Corporation ("National") in the service underlying Algonquin's Rate Schedule F-3. The effect of National's change in rates being tracked in Substitute Thirty-first Revised Sheet No. 204 is to reduce the commodity rate by 9.22 cents per MMBtu to be effective for the month of September, 1989. The effect of National's changes in rates being tracked in Thirty-second Revised Sheet No. 204 is to decrease the demand charge by 8.0 cents per MMBtu while increasing the commodity charge by 91.33 cents per MMBtu from the September, 1989 rates.

Algonquin states that it is filing the remaining tariff sheets to flow-through the incorporation of the Commission's Fiscal Year 1989 Annual Charge Adjustment Surcharge by its other pipeline suppliers and transporters, (Texas Eastern Transmission Corporation, CNG Transmission Corporation, and Transcontinental Gas Pipe Line Corporation) into the services underlying Algonquin's Rate Schedules F-2, F-3, F-4, STB and SS-III.

Algonquin states that the effect of the flow through of the FY 1989 ACA Surcharge represents: (i) under Rate Schedule F-2, a 0.03 cent per MMBtu reduction in the commodity rate, (ii) under Rate Schedule F-3, a 0.02 cent per MMBtu reduction in Transco's ACA Surcharge, (iii) under Rate Schedule F-4, a 0.01 cent per MMBtu reduction in the commodity rate, (iv) under Rate Schedule STB, a 0.02 cent per MMBtu reduction in the withdrawal rate and (v) under Rate Schedule SS-III, a 0.02 cent per MMBtu reduction in both the firm and non-firm withdrawal rates.

Algonquin notes that a copy of this filing was served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 13, 1989.

Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 89-24120 Filed 10-12-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TQ90-1-48-000]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

October 5, 1989.

Take notice that ANR Pipeline Company ("ANR"), on September 29, 1989, tendered for filing as part of its F.E.R.C. Gas Tariff, Original Volume No. 1, the following tariff sheet to be effective November 1, 1989.

Substitute Original Sheet No. 19

ANR states that the purpose of the instant filing is to implement ANR's quarterly PGA rate adjustment pursuant to section 15 of the General Terms and Conditions of ANR's Tariff.

Substitute Original Sheet No. 19 reflects a 16.52¢ per dekatherm ("dth") increase in the gas cost component of the commodity rate of ANR's CD-1/MC-1 Rate Schedules, from rates in effect on

October 1, 1989. The tariff sheet contains a monthly demand rate of \$10.095, applicable to the DC-1/MC-1 Rate Schedules. The instant filing further reflects an increase in ANR's one-part rate applicable to Rate Schedule SGS-1 of 20.40¢ per dth.

This filing incorporates ANR's implementation of a one-part demand rate design and a change in the method by which it measures BTU content from a saturated basis to a dry basis, pursuant to provisions of ANR's rate proceeding at Docket No. RP89-161-000. In addition, ANR has utilized from the same rate proceeding the as filed, fixed transmission cost of service as a basis to allocate its Canadian gas costs to the appropriate, demand and commodity, Modified Fixed Variable ("MFV") components. ANR has also restated its volumetric buyout buydown surcharges, relating to Docket Nos. RP89-127 and RP89-193, *et al.*, to reflect the throughput quantities underlying ANR's general rate filing at Docket No. RP89-161-000. The Commission's Order in Docket No. RP89-161-000, dated May 31, 1989, Accepted and Suspended ANR's rates until November 1, 1989, Subject to Refund and Conditions.

ANR states that copies of the filing were served upon all of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 89-24116 Filed 10-12-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP89-253-000]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

October 5, 1989.

Take notice that Carnegie Natural Gas

Company ("Carnegie"), on September 29, 1989, tendered for filing proposed Second Revised Volume No. 1 to its FERC Gas Tariff. Carnegie states that this filing should not affect the rate levels or revenues applicable to Carnegie's services, and that its currently effective rates are not changed by this filing. Carnegie requests that Second Revised Volume No. 1 become effective on November 1, 1989.

Carnegie states that the filing is designed primarily to reorganize and restructure Volume No. 1 of its FERC Gas Tariff in light of numerous and significant changes affecting Carnegie over the past few years. In addition to reorganizing the tariff, and proposing corrections and clarifications to terms and provisions in the existing volume, Carnegie proposes the addition of: (i) An imbalance provision to section 5.2 of its FTS and ITS Rate Schedules; (ii) UGI Corporation to Carnegie's list of curtailment priorities; (iii) a delivery nominations/delivery sequencing provision; and (iv) a gas inventory charge mechanism designed to flowthrough any gas inventory charges incurred by Carnegie from Texas Eastern Transmission Corporation.

Carnegie submits that the substantive additions to its tariff are necessitated by the Commission's open access policies, and similar provisions in effect on the Texas Eastern Transmission Corporation system, which currently is Carnegie's sole pipeline supplier. Carnegie states that the proposed substantive additions are based on related provisions in Texas Eastern's tariff.

Copies of the filing were served upon the company's jurisdictional customers and state regulatory commissions in Pennsylvania and West Virginia.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 89-24113 Filed 10-12-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP-249-000]

**Columbia Gulf Transmission Co.;
Proposed Changes in FERC Gas Tariff**

October 5, 1989.

Take notice that on September 29, 1989, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing proposed changes in its FERC Gas Tariff, Original Volume No. 1 and Original Volume 2, with a proposed effective date of November 1, 1989; however, Columbia Gulf requests that the rates be suspended for the full statutory period so that they become effective on April 1, 1990.

Columbia Gulf states that the purpose of the filing is to provide for the level of rates and charges required to cover its costs. When compared to the pending settlement rates filed with the Stipulation and Agreement on June 29, 1989 (Stipulation), at Docket No. RP86-167 *et al.* the proposed change in rates shows an annual revenue increase of approximately \$12.1 million. Columbia Gulf reserves the right to withdraw or amend the filing in the event the Stipulation does not become effective.

Columbia Gulf states that the proposed rates reflect the cost functionalization, cost classification, cost allocation and rate design agreed to in the pending settlement, and a projected level of transportation volumes and revenues.

Also included are tariff sheets reflecting the decreases in Columbia Gulf's offshore depreciation rate from six percent to four and one-half percent.

Columbia Gulf also proposes certain changes to the tariff provisions governing open-access transportation services which it states will improve the efficiency with which it renders such service.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 13, 1989. Protests will be considered by the Commission in

determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia Gulf's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-24117 Filed 10-12-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP89-250-000]

**Columbia Gas Transmission Corp.;
Proposed Changes in FERC Gas Tariff**

October 5, 1989.

Take notice that on September 29, 1989, Columbia Gas Transmission Corporation (Columbia) tendered for filing proposed changes in its FERC Gas Tariff, Original Volume Nos. 1 and 2 (identified in appendix A hereto), with a proposed effective date of November 1, 1989. Columbia requests that the Commission suspend the rates and tariff sheets for the full statutory period so that they become effective on April 1, 1990.

Columbia states that the purpose of the filing is to propose a general rate increase under section 4(e) of the Natural Gas Act so as to provide for the level of rates and charges required to recover its costs, and to reflect the new services and levels of service contemplated by the Stipulation and Agreement filed on June 29, 1989, with the Offer of Settlement in Docket No. RP86-168-000, *et al.* (Stipulation). When compared to the settlement rates proposed to become effective on November 1, 1989, pursuant to the Stipulation, Columbia states that the proposed rates reflect an annual revenue increase of approximately \$36 million, after certain adjustments to reflect costs temporarily absorbed by Columbia under the terms of the Stipulation. Columbia states that it reserves the right to withdraw or amend the filing in the event the Stipulation is not implemented in accordance with its terms.

Columbia states that the instant filing reflects the following primary changes:

(1) Revised non-gas sales, transportation and storage service rates based upon a cost of service for the twelve months ended May 31, 1989, adjusted for known and measurable changes anticipated to occur on or before February 28, 1990;

(2) Use of the cost classification, cost allocation and rate design methodology

established in the Stipulation, and no change in the cost functionalization utilized in Docket No. RP86-168, in accordance with Article I, Section F of the Stipulation;

(3) Implementation of a Transportation Cost Recovery Adjustment Mechanism to adjust rates at such time as Columbia's Account No. 858 costs change, in compliance with Article III, Section G of the Stipulation;

(4) The reflection of a representative level of revenue attributable to discounted transportation;

(5) Adjustments to test year PGA rates and tariff revisions as necessary to implement changes as follows:

(a) A change in the PGA from a two-part demand to a one-part demand structure;

(b) A switch from a 12-month to a 3-month demand PGA;

(c) Elimination of storage costs from PGA demand rates;

(d) Elimination of Account No. 858 reservation charges from the PGA;

(e) A projected level of demand gas costs from pipeline suppliers to take into account the effect of restructured pipeline supplier contracts;

(f) Elimination of Columbia LNG Corporation billings to Columbia effective January 1, 1990;

(g) An amendment to the assessment test to bring it into compliance with Commission orders;

(h) Elimination of the segregation between demand and commodity costs in Account No. 191 effective April 1, 1990, for purposes of developing its Account No. 191 surcharge; and

(6) Revised tariff provisions governing open-access transportation services in order to improve the efficiency with which Columbia provides such service.

Copies of the filing were served upon Columbia's wholesale customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to

become a party must file a motion to intervene. Copies of Columbia's filings are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-24110 Filed 10-12-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP89-244-000]

East Tennessee Natural Gas Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

October 5, 1989.

Take notice that on September 27, 1989, East Tennessee Natural Gas Company (East Tennessee) filed the following tariff sheets to its FERC Gas Tariff, to be effective November 1, 1989:

Fifty-third Revised Sheet No. 4
Eighth Revised Sheet No. 119
Seventh Revised Sheet No. 120
Thirteenth Revised Sheet No. 122
Fifth Revised Sheet No. 122A
Third Revised Sheet No. 278

East Tennessee states that this filing is being made to reduce the rate charges under its AOS Rate Schedule and to revise the Index of Annual Entitlements.

East Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected stated regulatory Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene: *Provided, however,* That any person who had previously filed a motion to intervene in this proceeding is not required to file a further motion. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-2411 Filed 10-12-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TQ90-1-34-000]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

October 5, 1989.

Take notice that on September 29, 1989, Florida Gas Transmission Company (FGT) tendered for filing the following tariff sheets to its FERC gas Tariff, to be effective November 1, 1989.

FERC Gas Tariff, First Revised Volume No. 1

Eleventh Revised 37th Revised Sheet No. 8

FERC Gas Tariff, Original Volume No. 2

Tenth Revised 59th Revised Sheet No. 128

The above-referenced tariff sheets are being filed in accordance with § 154.308 of the Commission's Regulations and pursuant to section 15 (Purchased Gas Adjustment Clause) of FGT's FERC Gas Tariff, First Revised Volume No. 1 to reflect an increase in FGT's jurisdictional rates due to an increase in its average cost of gas purchased from that reflected in its Quarterly PGA filing, Docket No. TQ89-4-34-000 effective August 1, 1989.

FGT states that the effect of the purchased gas cost increase being filed represents an increase of 1.574 cents/therm for Rate Schedules G and I and .44 cents/Mcf for Rate Schedule T-3 as measured against FGT's Quarterly PGA filing in Docket No. TQ89-4-34-000 effective August 1, 1989.

FGT states that a copy of its filing has been served on all customers receiving gas under its FERC Gas Tariff, First Revised Volume No. 1, Original Volume No. 2 and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 89-24118 Filed 10-12-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA90-1-53-000]

K N Energy, Inc.; Proposed Changes in FERC Gas Tariff

October 5, 1989

Take notice that K N Energy, Inc. ("K N") on October 3, 1989, tendered for filing proposed changes in its FERC Gas Tariff to adjust the rates charged to its jurisdictional customers pursuant to the Purchased Gas Adjustment provision (section 19) of the General Terms and Conditions of K N's FERC Gas Tariff, Original Volume No. 1-B to reflect changes in the Current Adjustment and the Surcharge Rate Adjustment. The proposed changes would increase the commodity rate under each of K N Energy's jurisdictional rate schedules, exclusive of IOR-1 and IOR-2, by 10.29¢ per Mcf, of which 4.20¢ per Mcf represents the increase in the Current Adjustment and 6.09¢ per Mcf represents the increase in the Surcharge Rate Adjustment. Rates under Rate Schedules IOR-1 and IOR-2 are proposed to increase by 10.69¢ per Mcf and 10.27¢ per Mcf, respectively. K N states that the filing reflects revision to its tariff rates reflecting "as-billed" costs and that the result is a decrease in the demand rate applicable to some rate schedules and an increase in the demand rates for other rate schedules. The proposed effective date for the rate changes is December 1, 1989.

Copies of the filing were served upon K N's jurisdictional customers, and interested public bodies.

Any person desiring to be heard or to make any protest with reference to this filing should, on or before October 26, 1989, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a petition to intervene or a protest in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-24119 Filed 10-12-89; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory
Commission

[Docket No. RP89-248-000]

Mississippi River Transmission Corp.;
Proposed Changes in FERC Gas Tariff

October 5, 1989.

Take notice that on September 29, 1989, Mississippi River Transmission Corporation (MRT) filed pursuant to section 4 of the Natural Gas Act (NGA) and the regulations of the Federal Energy Regulatory Commission (Commission) thereunder changes in its FERC Gas Tariff which are proposed to become effective November 1 and December 1, 1989, as more fully described in its rate increase application which is on file and available for public inspection.

MRT notes that this filing constitutes its first general NGA section 4 rate filing since the issuance of the Commission's Orders on pipeline rate design policy in Docket Nos. PL89-2-000, *et al.* and the issuance of a blanket open access transportation certificate to MRT. Consequently, MRT states that the purpose of the filing is not only to permit its recovery of various increases in its cost of service, but also to modify MRT's rates and charges consistent with the goals and objectives expressed in the Commission's policy statement, and better adapt the MRT system to its new mode of operation as an open access transporter.

In addition to revised jurisdictional sales rates, the filing proposes new transportation rates pursuant to part 284 of the Commission's Regulations which will supersede the initial rates approved in Docket No. CP89-1121-000. MRT states that principal factors necessitating the filing of its proposed rate increase include increases in costs resulting from the installation of new facilities, an increase in rate of return, general increases in various administrative and other expenses, and the need to recover costs associated with a remediation program concerning polychlorinated biphenyls (PCBs).

Copies of the filing have been served upon MRT's jurisdictional customers, and the State Commissions of Arkansas, Illinois and Missouri.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with § 385.211

and 385.214 of the Commission's Rules of Practice and Procedure: 18 CFR 385.211 and 385.214 (1986). All such motions or protests should be filed on or before October 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Mississippi's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-24121 Filed 10-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-247-000]

Mississippi River Transmission Corp.;
Proposed Change in FERC Gas Tariff

October 5, 1989.

Take notice that on September 29, 1989, Mississippi River Transmission Corporation ("MRT") tendered for filing the tariff sheets listed in appendix A to its FERC Gas Tariff. A November 1, 1989 effective date is proposed.

MRT states that the primary purpose of the instant filing is to restate and reflect MRT's jurisdictional sales rates on a thermal basis, instead of on their present volumetric basis, by changing the unit of measurement for such rates from an "Mcf" to an "MMBtu" basis. MRT states that while this unit of measurement change will require a translation of MRT's present volumetrically stated sales rates, Contract Demands, and Index of Rate Design Sales ("D-2 Entitlements") to thermally equivalent quantities, the change will not affect either MRT's customers' existing levels of service, the amounts paid by such customers for such services, or the total amount of revenue collected by MRT for such services. MRT states that the instant tariff filing will result in neither an enlargement nor an abandonment of service and is being submitted pursuant to § 154.63(a)(1) of the Commission's Regulations as a "Change Other Than In Rate Level."

MRT states that conversion of its sales tariffs to an MMBtu basis will provide a uniform means for billing and measurement of both sales and transportation services on MRT's system. MRT notes that on September 18, 1989 the FERC issued an order in Docket No. CP89-1121 granting MRT an

open access blanket transportation certificate, and approving open access tariff provisions reflecting an MMBtu unit of measurement as contemplated by the Commission's open access regulations. MRT claims that while it historically has relied on Btu measurements taken at its Meramec Measuring Station for customer billings, the more recent installation of sophisticated measuring equipment throughout its system will allow a more accurate reading of MMBtu's being delivered to each customer.

MRT states that in accordance with the September 18, 1989 order in Docket No. CP89-1121-000, it also filed on September 29, 1989 proposed tariff changes pursuant to section 4 of the Natural Gas Act. MRT claims that because several tariff sheets included in the instant filing will be the same as those contained in the section 4 filing, it is important that the instant filing be processed expeditiously to avoid conflict with § 154.66 of the Commission's Regulations. MRT requests that in the event that the instant tariff filing has not been approved and placed into effect prior to any suspension period concerning MRT's section 4 rate change filing, that the Commission waive § 154.66 of its Regulations to the extent necessary to allow the instant filing to be processed and approved during the suspension period of the section 4 filing.

MRT states that a copy of this filing has been served on all of MRT's jurisdictional sale for resale customers, and the State Commissions of Arkansas, Missouri, and Illinois.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois Cashell,
Secretary.

[FR Doc. 89-24122 Filed 10-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TC89-11-000 et al.]

Mississippi River Transmission Corp., et al; Tariff Sheet Filings

October 5, 1989.

Take notice that the following pipelines¹ have filed revised tariff sheets to become effective November 1, 1989, pursuant to § 281.204(b)(2) of the Commission's Regulations, which requires interstate pipelines to update their respective index of entitlements annually to reflect changes in priority 2 entitlements (Essential Agricultural Users).

Pipeline and docket No.	
(1) Mississippi River Transmission Corporation, TC89-11-000; Filed: September 15, 1989.	Fourteenth Revised Sheet No. 75. Twelfth Revised Sheet No. 76. Fifteenth Revised Sheet No. 78. Thirteenth Revised Sheet No. 79, of FERC Gas. Tariff, Second Revised, Volume No. 1.
(2) Arkla Energy Resources—a division of Arkla, Inc., TC89-9-000; Filed: September 15, 1989.	Eleventh Revised Sheet No. 3E, to FERC Gas. Tariff, First Revised, Volume No. 1.
(3) South Georgia Natural Gas Company, TC89-12-000; Filed: September 15, 1989.	Ninth Revised Sheet No. 44. Tenth Revised Sheet No. 45. Seventh Revised Sheet No. 46. Eighth Revised Sheet No. 47, of FERC Gas. Tariff, First Revised, Volume No. 1.
(4) Southern Natural Gas Company, TC89-13-000; Filed: September 15, 1989.	Fourteenth Revised Sheet No. 61. Fifth Revised Sheet No. 61A. Thirteenth Revised Sheet No. 62. Fifth Revised Sheet No. 62A. Sixteenth Revised Sheet No. 63. Eighth Revised Sheet No. 63. Fifteenth Revised Sheet No. 64. Seventh Revised Sheet No. 64A. Fourteenth Revised Sheet No. 65. Ninth Revised Sheet No. 65A. Sixteenth Revised Sheet No. 66. Tenth Revised Sheet No. 66A. Seventeenth Revised Sheet No. 67. Ninth Revised Sheet No. 67A. Seventh Revised Sheet No. 68. Fifth Revised Sheet No. 68A.

Pipeline and docket No.	
	Ninth Revised Sheet No. 69. Fourth Revised Sheet No. 69A. Ninth Revised Sheet No. 70. Fourth Revised Sheet No. 70A. Sixteenth Revised Sheet No. 71. Eighth Revised Sheet No. 71A. Thirteenth Revised Sheet No. 72. Fifth Revised Sheet No. 72A. Twelfth Revised Sheet No. 73. Fifth Revised Sheet No. 73A. Fifteenth Revised Sheet No. 74. Eighth Revised Sheet No. 74A. Fourteenth Revised Sheet No. 75. Seventh Revised Sheet No. 75A. Fourteenth Revised Sheet No. 76. Ninth Revised Sheet No. 76A. Seventeenth Revised Sheet No. 77. Tenth Revised Sheet No. 77A. Seventeenth Revised Sheet No. 78. Ninth Revised Sheet No. 78A. Seventh Revised Sheet No. 79. Fifth Revised Sheet No. 79A. Ninth Revised Sheet No. 80. Fourth Revised Sheet No. 80A. Ninth Revised Sheet No. 81. Fourth Revised Sheet No. 81A. Sixteenth Revised Sheet No. 82. Eighth Revised Sheet No. 82A.

Any person desiring to be heard or to make any protest with reference to said tariff sheet filings should on or before October 16, 1989, filed with the Federal Energy Regulatory Commission, Washington DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to

intervene in accordance with the Commission's Rules.

Lois Cashell,
Secretary.

Appendix

Mississippi River Transmission Corporation,
9900 Clayton Road, St. Louis, Missouri
63124
Arkla Energy Resources, P.O. Box 21734,
Shreveport, Louisiana 71151
South Georgia Natural Gas Company, P.O.
Box 2563, Birmingham AL 35202 2563
Southern Natural Gas Company, P.O. Box
2563, Birmingham AL 35202 2563
[FR Doc. 89-24126 Filed 10-12-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TM90-2-55-000]

Questar Pipeline Co.; Proposed Changes in FERC Gas Tariff

October 5, 1989.

Take notice that on September 29, 1989, Questar Pipeline Company (Questar Pipeline) tendered for filing the following tariff sheets to revise First Revised Volume No. 1 of its FERC Gas Tariff to be effective as noted:

August 1, 1989

First Revised Substitute Twenty-Second Revised Sheet No. 12
First Revised Sheet No. 17-D

September 1, 1989

Substitute Twenty-Third Revised Sheet No. 12

October 1, 1989

Substitute Twenty-Fourth Revised Sheet No. 12

Questar Pipeline states that these tariff sheets are being filed to reflect the revised take-or-pay buyout-buydown costs assigned and billed to it by Northwest Pipeline Corporation (Northwest) pursuant to Northwest's filing in Docket No. RP89-219-000 and Docket No. TM90-1-37-000. Questar Pipeline states that its Utah pipeline supplier charge will be revised from \$88,513 to \$87,299 for August and September 1989. Effective October 1, 1989, the pipeline supplier charge will be revised to \$174,260. The Wyoming Pipeline Supplier Charge will be revised from \$5,314 to \$5,241 for August and September 1989; and effective October 1, 1989, it will be revised to \$10,462.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or

¹ Addresses of the pipelines are listed in the Appendix hereto.

protests should be filed on or before October 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24123 Filed 10-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-255-000]

**Texas Eastern Transmission Corp.;
Proposed Changes in FERC Gas Tariff**

October 5, 1989.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on September 29, 1989 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Second Revised Sheet No. 468

Second Revised Sheet No. 613

Second Revised Sheet No. 625

Third Revised Sheet No. 677

Texas Eastern states that the purpose of this filing is to (1) revise the definition of GSI Credits as contained in Texas Eastern's Gas Supply Inventory Reservation Charge and (2) delete the phrase "Seller and Buyer further agree that Seller may at its sole discretion terminate this Agreement at any time if Seller also terminates like service for others on a non-discriminatory basis which is consistent with applicable regulatory law and regulations" from Texas Eastern's Rate Schedule FT-1 Form of Service Agreement.

Texas Eastern states that as approved by the Commission by its September 29, 1988 order in Docket Nos. RP85-177 and CP88-136, a Gas Supply Inventory Reservation Charge is included in the service agreements underlying Rate Schedules CD-1 and CD-2 and in the General Terms and Conditions of Texas Eastern's FERC Gas Tariff applicable to Rate Schedules DCQ and GS. As currently structured, customers purchasing below their nominations can utilize accumulated GSI credits to reduce or avoid paying a Gas Supply Inventory Reservation Charge during any given month. As a result of the current definition of the term "GSI Credits", the impact of a customer purchasing below its monthly inventory determinants in a particular month affects each month thereafter until

rectified in an annual reconciliation at the end of a contract year.

Texas Eastern states that by this instant filing, Texas Eastern is proposing a new definition of GSI Credits which is more beneficial, from a customer viewpoint, than the currently effective definition. In particular, Texas Eastern proposes the following changes:

(1) Section 28.2(d) of Texas Eastern's General Terms and Conditions on Sheet No. 468 shall be revised to read as follows:

The term "GSI Credits" shall mean for any month the sum of (1) the quantity of gas purchased in said month pursuant to Rate Schedules DCQ or GS, applicable, plus (2) the quantity of gas purchased in prior months in the Contract Year under Rate Scheduled DCQ or GS as applicable in excess of the aggregate Monthly Inventory Determinants under Rate Schedules DCQ or GS as applicable for said prior months, if any, in the Contract year.

(2) Article IV(A)(d) of the Form of Service Agreement of Rate Schedule CD-2 on Sheet No. 613 shall be revised to read as follows:

The term "GSI Credits" shall mean for any month the sum of (1) the quantity of gas purchased in said month pursuant to this Agreement, plus (2) the quantity of gas purchased in prior months in the Contract Year pursuant to this Agreement and Rate Schedule DCQ in excess of the aggregate Monthly Inventory Determinants for said prior months, if any, in the Contract Year.

(3) Article IV(A)(d) of the Form of Service Agreement of Rate Schedule CD-2 on Sheet No. 625 shall be revised to read as follows:

The term "GSI Credits" shall mean for any month the sum of (1) the quantity of gas purchased in said month pursuant to this Agreement, plus (2) the quantity of gas purchased in prior months in the Contract Year pursuant to this Agreement and Rate Schedule GS in excess of the aggregate Monthly Inventory Determinants for said prior months, if any, in the Contract Year.

Texas Eastern states that these foregoing changes have been discussed with Texas Eastern's sales customers. Texas Eastern believes these changes are supported by its customers.

Texas Eastern states that in conjunction, therewith, Texas Eastern is also modifying its Rate Schedule FT-1 Form of Service Agreement to reflect Texas Eastern's acceptance of an open-access blanket transportation certificate under Order No. 500. In particular, Article II of the Form of Service Agreement for Rate Schedule FT-1 on Sheet No. 677 is proposed to be revised to delete the following phrase:

Seller and Buyer further agree that Seller may at its sole discretion terminate this Agreement at any time if Seller also terminates like service for others on a non-

discriminatory basis which is consistent with applicable regulatory law and regulations.

Texas Eastern has also discussed this change with its Rate Schedule FT-1 customers and believes this change is also supported by the customers.

The proposed effective date of the above tariff sheets is November 1, 1989.

Copies of the filing were served on Texas Eastern's Jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24114 Filed 10-12-89; 8:45 am]

BILLING CODE 6717-01-M

**Federal Energy Regulatory
Commission**

[Docket No. TQ90-1-18-000]

**Texas Gas Transmission Corp.;
Proposed Changes in FERC Gas Tariff**

October 5, 1989.

Take notice that Texas Gas Transmission Corporation (Texas Gas), on September 29, 1989, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Twentieth Revised Sheet No. 10

Twentieth Revised Sheet No. 10A

Texas Gas states that these tariff sheets reflect changes in purchased gas costs pursuant to the Quarterly Rate Adjustment provision of the Purchased Gas Adjustment clause of its FERC Gas Tariff and are proposed to be effective November 1, 1989. Texas Gas further states that the proposed tariff sheets reflect a commodity rate increase of \$.1929 per MMBtu, a D-1 demand rate increase of \$.02 per MMBtu, and a D-2 demand rate increase of \$.0009 per MMBtu from the rates set forth in the quarterly PGA filed June 30, 1988 (Docket No. TQ89-3-18). The instant filing reflects a \$.3840 per MMBtu

commodity rate increase from the proposed rates effective October 1, 1989 (Docket No. TF90-1-18). Copies of the filing were served upon Texas Gas's jurisdictional customers and interested state commissions. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 89-24124 Filed 10-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TO90-1-29-000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes

October 5, 1989.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on October 3, 1989 the following tariff sheets to its FERC Gas Tariff Second Revised Volume No. 1. Such tariff sheets and proposed to be effective November 1, 1989.

Sixty-Second Revised Sheet No. 12
Fifty-Ninth Revised Sheet No. 15
Sixteenth Revised Sheet No. 15-A

Transco states that the proposed tariff sheets reflect no change in sales rate compared to the sales rates reflected in Transco's supplemental compliance filing of September 19, 1989 in docket No. RP82-55. The instant PGA filing reflects an average cost of gas of 250.77¢ per dt for the quarterly period November 1, 1989 through January 31, 1990.

Transco further states that it has filed the necessary schedules in order to comply with § 154.305 and FERC Form 542. Transco has also filed a 9-track magnetic tape as required by FERC Form 542.

Transco states that copies of the instant filing are being mailed to its jurisdictional customers and interested State Commissions. In accordance with provisions of § 154.16 of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at Transco's

main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 89-24125 Filed 10-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-254-000]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

October 5, 1989.

Take notice that Transwestern Pipeline Company ("Transwestern") on September 29, 1989, tendered for filing, as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

70th Revised Sheet No. 5
38th Revised Sheet No. 6
3rd Revised Sheet No. 24
5th Revised Sheet No. 25
2nd Revised Sheet No. 25A
2nd Revised Sheet No. 28
5th Revised Sheet No. 29
1st Revised Sheet No. 29B
5th Revised Sheet No. 30
4th Revised Sheet No. 31
6th Revised Sheet No. 32
3rd Revised Sheet No. 32A
1st Revised Sheet No. 32B
4th Revised Sheet No. 33
4th Revised Sheet No. 128
1st Revised Sheet No. 140

Transwestern states that these tariff sheets are filed to revise Rate Schedules FTS-2, ITS-1, and TP-1 to permit Transwestern to recover fuel costs through its transportation commodity rates, rather than on an "in kind" basis or as a percentage of the gas costs underlying sales rates. In addition, Transwestern seeks to increase, through the transportation commodity rates proposed herein, the 4% transmission fuel component for deliveries West of Roswell, New Mexico to 6.46%, and the

2.2% transmission fuel component for deliveries East of Roswell, New Mexico to 3.55%, to account for actual fuel use, actual company use gas, and actual lost and unaccounted for gas.

Transwestern, herein respectfully requests that the Commission grant any and all waivers of its rules, regulations, and orders as may be necessary so as to permit the above-listed tariff sheets to become effective on November 1, 1989.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-24115 Filed 10-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-160-003]

Trunkline Gas Co.; Compliance Filing

October 5, 1989.

Take notice that on September 29, 1989, Trunkline Gas Company (Trunkline) tendered for filing the revised tariff sheets as listed on the appendices A and B, attached to the filing.

Trunkline states that by order issued May 31, 1989, in the above-captioned proceeding, Trunkline Gas Company (Trunkline) is authorized to place into effect, as of November 1, 1989, certain tariff sheets referenced in appendix A to that order.

Trunkline further states that the revised tariff sheets listed on the attached appendices A and B to be effective November 1, 1989, also reflect (1) the regularly scheduled Annual PGA filing to be effective September 1, 1989, in Docket No. TA89-1-30-000; and (2) the Annual Charge Adjustment (ACA) filing to be effective October 1, 1989, in Docket No. TM90-2-30-000.

Trunkline states that these primary tariff sheets reflect, among other things, the classification of Trunkline LNG Minimum Bill costs to the demand

component of sales rates. This is done in light of the recent decision of the United States Court of Appeals for the District of Columbia Circuit in *Trunkline Gas Company v. FERC* (Case No. 88-1437, July 25, 1989). In the event the Commission declines to observe that decision, Trunkline requests that the Alternate Second Substitute Sixty-Ninth Revised Sheet No. 3-A of Trunkline's filing be substituted for Second Substitute Sixty-Ninth Revised Sheet No. 3-A. The alternate tariff sheet reflects the classification of the Trunkline LNG Minimum Bill costs to the commodity component. Such action shall be without prejudice to Trunkline's right to surcharge, direct bill or to otherwise collect deficiencies in these costs.

Trunkline further states that the filing of these revised tariff sheets which satisfies the requirements of the Commission's Orders dated May 31, 1989, in this proceeding is without prejudice to Trunkline's rights on rehearing or in any judicial review proceeding or its position in this proceeding.

Copies of this letter and enclosures are being served on all jurisdictional customers, interested state commissions and all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such protests should be filed on or before October 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-24112 Filed 10-12-89; 8:45 am]
BILLING CODE 6717-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders Issued the Week of July 24 through July 28, 1989

During the week of July 24 through July 28, 1989, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of

Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Adrian Supply Company, 7/26/89, KFA-0304

The Adrian Supply Company filed an Appeal from the partial denial by the Albuquerque Operations Office of a request that it had filed pursuant to the Freedom of Information Act. Adrian had sought the abstract of bids received in a procurement action. The DOE found that the Albuquerque Operations Office had correctly withheld portions of the abstract pursuant to Exemption 4 of the FOIA, because the release of the material could cause the submitting firms a competitive disadvantage by allowing their competitors to predict their likely pricing behavior in future procurements. The DOE rejected Adrian's contention that a provision of the Federal Acquisition Regulations, which required that abstracts of bids be made public, mandated the release of the abstract in this case. The DOE noted that the present procurement involved a subcontract between a DOE contractor and a third party to which the Federal Acquisition Regulations do not apply. Accordingly, this claim was rejected, and the Appeal was denied.

The Albuquerque Journal, 7/25/89, KFA-0303

The DOE issued a Decision and Order denying a Freedom of Information Act (FOIA) Appeal filed by The Albuquerque Journal. The DOE determined that the document requested by The Albuquerque Journal, a report entitled "Profile of Espionage Penetration," was properly withheld from disclosure under the "high 2" standard of Exemption 2, i.e., the document is primarily internal and disclosure would significantly risk circumvention of agency regulations of statutes.

Supplemental Order

Texaco, Inc., 7/25/89, KFX-0066

The DOE issued a Decision and Order implementing procedures for the distribution of the \$1.078 billion crude oil portion of the total funds to be received as a result of a consent order executed between the DOE and Texaco, Inc. (Texaco). The DOE determined that the funds should be distributed in accordance with the Department's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges. Accordingly, 80 percent of the funds are currently available for

distribution, and 80 percent of all future payments from Texaco are to be divided equally between the States and the Federal government. Twenty percent of the funds are to be reserved for direct restitution to injured parties submitting claims to the Office of Hearings and Appeals under 10 CFR Part 205, Subpart V. The specific information to be included in the applications for refunds, which must be submitted by October 31, 1989, is included in the Decision. However, applications need not be filed by firms that have previously filed refund claims in the Crude Oil Subpart V Refund Proceeding.

Refund Applications

Atlantic Richfield Company/Argentieri Fuels, et al., 7/27/89, RF304-2759, et al.

The DOE issued a Decision and Order concerning forty-two Applications for Refund filed in the Atlantic Richfield Company (ARCO) Special Refund Proceeding. All of the applicants documented the volume of their ARCO purchases and were either end-users or resellers/retailers requesting refunds of \$5,000 or less. Therefore, each applicant was presumed injured. The refunds granted in this Decision totaled \$81,342, including \$19,326 in accrued interest.

Atlantic Richfield Company/Aspen Oil Company, et al., 7/24/89, RF304-2980, et al.

The DOE issued a Decision and Order concerning 66 Applications for Refund filed by 62 claimant from a consent order fund made available by the Atlantic Richfield Company. As end-users or resellers and retailers applying for small claims refunds, these applicants were presumed to have been injured. Accordingly, the DOE concluded that they should receive refunds totalling \$105,658, representing \$80,547 in principal and \$25,111 in accrued interest.

Atlantic Richfield Company/Payless Drug Northwest, et al., 7/26/89, RF304-6300, et al.

The DOE issued a Decision and Order concerning 58 Applications for Refund filed by 54 claimants from a consent order fund made available by the Atlantic Richfield Company. As end-users or resellers and retailers applying for small claims refunds, these applicants were presumed to have been injured. Accordingly, the DOE concluded that they should receive funds totalling \$68,166, representing \$51,964 in principal and \$16,202 in accrued interest.

Dewey Clark, 7/24/89, RA272-10

The DOE issued a Supplemental Order to Dewey Clark, modifying the determination in *L. W. Honey Farm, 19 DOE ¶* _____, Case No. RF272-64800 (July 11, 1989). Specifically, the DOE modified the amount of the refund previously granted to Dewey Clark to the proper figure of \$238.

Farmers Cooperative Oil & Supply, 7/26/89, RC272-57

The DOE issued a Supplemental Order rescinding the refund granted to Farmers Cooperative Oil and Supply in *Wayne Sinclair, 19 DOE*

¶ _____, Case No. RF272-67600 (July 10, 1989). The amount of the refund rescinded was \$13.

Exxon Corporation/Glenn Wilcher, 7/28/89, RF307-4535

The DOE issued a Decision and Order concerning an Application for Refund filed in the Exxon Corporation Special Refund Proceeding. The applicant, a reseller, purchased petroleum products directly and indirectly from Exxon during the consent period. The applicant disagreed with the gallonage information recorded on his printout sheet and submitted alternative gallonage figures, which he requests that the OHA accept in lieu of Exxon's figures. The OHA agreed to accept the applicant's figures because the former were obtained from the applicant's actual records from the consent order period. The applicant also submitted monthly figures for a period in which he was an indirect purchaser and which was not listed on his printout sheet. Because the applicant demonstrated that his indirect purchases originated with Exxon, and because the DOE had made no determination as to whether the intermediate supplier absorbed the alleged overcharges, the applicant was eligible for a full volumetric refund for the indirect purchases. The DOE determined that the applicant should receive a refund equal to his full allocable share. The refund granted in this decision was \$516 (\$427 principal plus \$89 interest).

Exxon Corporation/Murphy's Exxon, et al., 7/26/89, RF307-812, et al.

The DOE issued a Decision and Order concerning 20 Applications for Refund filed in the Exxon Corporation Special Refund Proceeding. Each of the applicants purchased directly from Exxon and was either an end-user or a reseller whose allocable share is less than \$5,000. The DOE determined that each applicant is eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is \$22,265, including \$3,701 in accrued interest.

Exxon Corporation/Robert J. Capuzziello, et al., 7/24/89, RF307-1234, et al.

The DOE issued a Decision and Order concerning 16 Applications for Refund filed in the Exxon Corporation Special Refund Proceeding. Each of the Applicants purchased directly from Exxon and was a retailer of Exxon products whose allocable share is less than \$5,000. The DOE determined that each applicant is eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is \$13,358, including \$2,303 in accrued interest.

Exxon Corp./Tunnel Plaza East Exxon, Inc., Tunnel Plaza East, Inc., 7/28/89, RF307-5422, RF307-4866

The Department of Energy issued a Decision and Order concerning two Applications for Refund filed in the Exxon Corporation Special Refund Proceeding on behalf of a retail service station that had changed its name during the Exxon consent order period. The firm's allocable share, based upon its documented total purchase volume from Exxon, exceeded \$5,000. However, rather than document injury, the firm elected to receive a medium range presumption refund or a small claims refund of \$5,000, whichever was larger. The applicant was granted a small claims refund of \$6,142, including \$1,042 in accrued interest.

Gulf Oil Corporation/Curtis Gulf Station, et al., 7/28/89, RF300-8863, et al.

The DOE issued a Decision and Order concerning 15 Applications for Refund submitted in the Gulf Oil Corporation Special Refund Proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including accrued interest, is \$37,313.

Gulf Oil Corporation/Darlington Propane Gas Company, Darlington Propane Gas Company, 7/28/89, RF300-1934, RF300-10829

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation Special Refund Proceeding. One was submitted by the current owner of Darlington Propane Gas Company (RF300-1934), while the second was filed by the widow of the individual that owned Darlington Propane Gas during the consent order period (RF300-10829). The OHA determined that the widow of the owner during the consent order period was the proper recipient of any refund granted on the basis of the purchases of Gulf products made by Darlington Propane Gas during the

consent order period. Accordingly, the OHA denied Case No. RF300-1934 and approved Case No. RF300-10829 under the small claims presumption of injury. The total refund granted in this Decision, including accrued interest, is \$1,527.

Gulf Oil Corporation/Dempsey P. Albritton, 7/24/89, RF300-5323

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation Special Refund Proceeding by Dempsey P. Albritton, a consignee and reseller of Gulf refined products. Albritton's allocable share as a reseller is less than \$5,000, and its total principal refund is less than \$5,000. Therefore, it was not required to provide a detailed demonstration that it absorbed Gulf's alleged overcharges. The refund granted to Albritton in this Decision is \$1,108.

Gulf Oil Corporation/Flame-Rite Gas, Inc., Flame-Rite Gas, Inc., 7/28/89, RF300-33, RF300-7798

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation Special Refund Proceeding. One was submitted by the current owner of Flame-Rite Gas, Inc. (RF300-7798), while the second was submitted by the owner of Flame-Rite Gas, Inc. during the consent order period (RF300-33). The OHA determined that the current owner of Flame-Rite's stock was the proper applicant for a refund based upon Flame-Rite's purchases from Gulf during the consent order period. The total refund granted in this Decision, including accrued interest, is \$6,641.

Gulf Oil Corporation/Grider & Pearl Auto Service, et al., 7/28/89, RF300-6148, et al.

The DOE issued a Decision and Order concerning 11 Applications for Refund submitted in the Gulf Oil Corporation Special Refund Proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including accrued interest, is \$33,439.

Gulf Oil Corporation/Holiday Inn Gulf, 7/24/89, RF300-5317

The DOE issued a Decision and Order concerning an application for Refund submitted in the Gulf Oil Corporation Special Refund Proceeding by Holiday Inn Gulf, a consignee and reseller of Gulf refined products. Holiday Inn Gulf's allocable share as a reseller is less than \$5,000, and its total principal refund is less than \$5,000. Therefore, it was not required to provide a detailed demonstration that it absorbed Gulf's

alleged overcharges. The refund granted to Holiday Inn Gulf in this Decision, including accrued interest, is \$4,664.

Gulf Oil Corporation/John S. Causey Dist., Inc., 7/2/89, RF300-5327

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation Special Refund Proceeding by John S. Causey Dist., Inc., a consignee and reseller of Gulf refined products. Causey's allocable share as a reseller is less than \$5,000, and its total principal refund is less than \$5,000. Therefore, it was not required to provide a detailed demonstration that it absorbed Gulf's alleged overcharges. The refund granted to Causey in this Decision, including accrued interest, is \$5,913.

Gulf Oil Corporation/Lou's Gulf Service, 7/26/89, RF300-7270

The DOE issued a Decision and Order concerning an Application for Refund submitted on behalf of Lou's Gulf Service in the Gulf Oil Corporation Special Refund Proceeding by Federal Refunds, Inc. (FRI). FRI was unable to demonstrate that Lou's purchased Gulf products during the consent order period. Accordingly, the Application was denied.

Gulf Oil Corporation/Paul Jay Haight & Co., Inc., 7/24/89, RF300-4985

The DOE issued a Decision and Order concerning an Application for Refund submitted by an indirect purchaser in the Gulf Oil Corporation Special Refund Proceeding. Because the indirect purchaser's supplier has not filed an Application in this proceeding, the indirect purchaser's Application was approved under the same procedure as direct purchasers using a presumption of injury. The total refund granted in this Decision, which includes both principal and interest, is \$5,219.

Gulf Oil Corporation/Reit Fuel Oil Company, Point Bay Fuel, Inc., F.C. Haab Company, Inc., 7/27/89, RF300-8431, RF300-8432, RF300-10622

The DOE issued a Decision and Order concerning three Applications for Refund submitted in the Gulf Oil Corporation Special Refund Proceeding by Reit Fuel Oil Company, Point Bay Fuel, Inc., and F.C. Haab Company, Inc. Because the firms are under common ownership, they are treated as a single firm. In addition, because the firm's full allocable refund exceeded \$5,000, the claim was approved under the 40 percent presumption of injury. The refund granted in this Decision, including accrued interest, is \$38,582.

Gulf Oil Corporation/Rupp Oil Company, Inc., Frankenmuth Oil Company, Frankenmuth Oil Company, 7/26/89, RF300-4101, RF300-4172, RF300-4267

The DOE issued a Decision and Order concerning three Applications for Refund submitted in the Gulf Oil Corporation Special Refund Proceeding by Rupp Oil Company, Inc. (Rupp), Frankenmuth Oil Company (Frankenmuth), and Frankenmuth Oil Company (Frankenmuth). One of the Frankenmuth claims was filed by Harold Abraham who owned the firm from 1973 through February 1975. The second was filed by Rupp who owned Frankenmuth during the remainder of the consent order period. The two owners were granted separate refunds for Gulf products purchased by Frankenmuth during the respective periods of ownership. Rupp also filed a claim based upon products purchased from Gulf for its own account. Because Rupp commonly owned and operated the two firms during the consent order period, the Rupp claims were considered to be from a single firm for purposes of calculating Rupp's claims in the Gulf proceeding. Because their collective total maximum refund exceeded \$5,000 and no demonstration of injury was made, the Rupp applications were approved under the 40 percent presumption of injury. Mr. Abraham's application was approved under the small claims presumption of injury. The sum of the refunds granted in this Decision, including accrued interest, is \$8,643.

Gulf Oil Corporation/T.C. Rowan, et al., 7/24/89, RF300-6179, et al.

The DOE issued a Decision and Order concerning 10 Applications for Refund submitted in the Gulf Oil Corporation Special Refund Proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including accrued interest, is \$115,159.

Gulf Oil Corporation/W.C. Cullipher & Son, et al., 7/27/89, RF300-6499, et al.

The DOE issued a Decision and Order concerning seven Applications for Refund submitted by applicants in the Gulf Oil Corporation Special Refund Proceeding. Two of the applicants were resellers of Gulf products, one applicant was a consignee, and four applicants were claiming purchases as both a reseller and consignee. The DOE approved all of the applications by utilizing the appropriate presumption of injury. One of the applicants that claimed gallons purchased as a

consignee as well as gallons purchased as a reseller was seeking a refund larger than \$5,000. The DOE held that the applicant was unable to simultaneously elect both the claims presumption of injury and the 10 percent presumption of injury for consignees but rather would have its refund calculated by utilizing either the \$5,000 small claims presumption, or the sum of the 40% presumption (for gallons purchased as a retailer) and the 10% consignee presumption, depending on which formula produced the largest refund. In this instance, the applicant received a larger refund by utilizing the \$5,000 small claims presumption. The sum of the refunds granted in this Decision is \$20,717.

Hyman Litsky, 7/28/89, RC272-58

The DOE issued a Supplemental Order concerning an application for Refund filed by Hyman Litsky (Case No. RF272-48118) in the Subpart V Crude Oil Refund Proceeding. A supplemental refund check issued to Mr. Litsky was returned unclaimed. The OHA was unable to contact Mr. Litsky. Accordingly, the OHA rescinded the refund.

Manson-Osberg-Ghemm Osberg Construction Company, 7/27/89, RF272-75483, RF272-75484

The DOE issued a Decision and Order concerning Applications for Refund filed by two end-users of refined petroleum products in the Crude Oil Subpart V Refund Proceeding. Both applicants submitted material documenting the volume of their purchases of motor gasoline, middle distillates, motor oil, and grease during the crude oil price control period. The total refund approved in this Decision is \$1,495.

Morse Bros., Inc., 7/28/89, RF272-31817, RD272-31817

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to Morse Bros., Inc. (Morse), a construction company principally involved in asphalt production and road construction/paving. In reaching its determination, the DOE rejected the Objections to the applicant's claim submitted by a group of States and denied the States' Motion for Discovery. The DOE held that industry-wide data, with no particular reference to the applicant, is insufficient to rebut the presumption of injury for end-users. The DOE also stated that the mere contention that an industry had the ability to pass through overcharges is not convincing evidence that a particular claimant was likely, in fact, to have pass through overcharges.

Accordingly, Morse was granted a refund of \$40,021.

*Northeast Petroleum Industries, Inc./
Best Petroleum Co., Inc., 7/27/89,
RF264-09*

The DOE issued a Decision and Order concerning an Application for Refund filed by a retailer of motor gasoline covered by a Consent Order that the DOE entered into with Northeast Petroleum Industries, Inc. The applicant submitted information documenting the volume of its purchases of Northeast motor gasoline and elected to limit its claim to \$5,000. The total refund approved in this Decision is \$8,938, including \$3,938 in accrued interests.

ONEOK, Inc., 7/28/89, RF272-18967

The Office of Hearings and Appeals granted an Application for Refund filed by ONEOK, Inc., a utility, in the Crude Oil Subpart V Refund Proceeding. The DOE determined the ONEOK as an end-user applying for refunds on behalf of its members and customers, and the firm certified that it will pass through the entirety of any refund to its members and customers. The total volume for which refunds were approved in this Decision was 11,127,990 gallons, and the sum of the refund granted was \$8,902.

*Shell Oil Company/Totten Pond Shell
Station, et al., 7/24/89, RF315-1701,
et al.*

The DOE issued a Decision and Order granting 157 Applications for Refund filed in the Shell Oil Company Special Refund Proceeding. Each of the Applicants purchased directly from Shell and was either an end-user or a reseller of Shell products whose allocable share was less than \$5,000. Accordingly, each applicant was granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Shell escrow account. The sum of the refunds granted in the Decision was

\$123,958, including \$17,773 of accrued interest.

*Standard Oil Co. (Indiana)/Wisconsin
Standard Oil Co. (Indiana)/
Wisconsin National Helium Corp./
Wisconsin Vickers Energy
Corporation/Wisconsin, 7/28/89,
RM21-154, et al.*

The DOE issued a Decision and Order granting a Motion for Modification filed by the State of Wisconsin in four refund proceedings: Standard Oil Co. (Indiana) (Amoco I); Standard Oil Co. (Indiana); National Helium Corp; and Vickers Energy Corp. refund proceedings. In *National Helium Corp./Wisconsin*, 15 DOE ¶ 85,324 (1987), the OHA approved a program to provide rebates to rental property owners to make energy efficiency improvements to their buildings. The original program directed the rebate to the participant's bank to reduce the principal amount of a loan taken out for this purpose. Wisconsin wished to modify the program so that the rebate would go directly to the rental property owner. OHA determined that the modified program was restitutionary in nature and approved the modification.

*Sterling Drug, Inc., Wood County
Electric Cooperative, Inc., 7/24/89,
RF272-3392, RF272-3404*

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to two claimants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. One applicant, Sterling Drug, Inc., used its petroleum products for various commercial activities and documented its purchases through contemporaneous purchase records and an estimate based on fuel consumption records. Wood County Electric Cooperative, Inc. (Wood County), the second applicant, documented its claim through contemporaneous purchase

records. As an end-user, each applicant was entitled to receive a refund of its full volumetric share. Wood County was required to pass its refund through to its members. The total refund granted in this Decision is \$14,645.

*Total Petroleum, Inc./Farmers
Petroleum Cooperative, Inc., 7/28/
89, RF310-252*

The DOE issued a Decision and Order concerning an Application for refund filed by Farmers Petroleum Cooperative, Inc. (FPC) in the Total Petroleum, Inc. Special Refund Proceeding. In the Decision, the DOE found that as an agricultural cooperative, FPC need not make a demonstration of injury with respect to the portion of its claim that is based upon volumes purchased from Total and resold to FPC's member-patrons. The DOE also found that FPC was entitled to a medium range presumption of injury refund for purchases from Total made for resale to the general public. The DOE granted FPC a refund of \$314,168 (\$264,517 principal and \$49,651 interest).

*Western Farmers Electric Cooperative,
et al., 7/28/89, RF272-14143, et al.*

The Office of Hearings and Appeals granted five Applications for Refund filed by five utilities under the Crude Oil Subpart V Refund Proceeding. The DOE determined that each was an end-user applying for refunds on behalf of their members and customers. Each applicant was required to certify that it will pass through to its members and customers the entire refund amount. The total volume for which refunds were approved in this Decision was 96,769,337 gallons, and the sum of the refunds granted was \$77,416.

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decisions and Orders.

Name	Case No.	Date	No. of Applicants	Total Refund
City of Villisca, et al.....	RF272-72466	7/27/89	78	\$10,376
Mrs. Frank J. Overlaur, et al.....	RF272-66600	7/27/89	153	\$16,977

Dismissals

The following submissions were dismissed:

Name	Case No.
A.T. Liner Exxon Station.....	RF307-985
Anderson Motor Sales.....	RF307-9747
Buck's Exxon.....	RF307-9740
Earnheart's Interstate Exxon.....	RF307-155
F.C. Haab Company.....	RF300-10514

Name	Case No.
Frank's Grocery.....	RF309-1260
Kavanaugh & Van Fleet, Inc.....	RF300-687
Leggett & Platt, Inc.....	RF272-75514
Liner Exxon.....	RF307-983
Liner Exxon Station.....	RF307-988
Matt's Auto Service, Inc.....	RF309-1343
Matthews Exxon Service Station.....	RF307-9982
Mayfair Fuel Oil Company.....	RF304-8326
Meenan Oil Co., Inc.....	RF300-8022
Noodle Store.....	RF307-987

Name	Case No.
Ray's Arco 59.....	RF304-9297
Ray's Spur Go Shop.....	RF309-1356
Seymour Kleiman.....	KFA-0306
Tandem Oil Company.....	RF304-7444
Trade, Inc./Marachowsky's A.M. Oil Co.....	RF309-450
Wadsworth Oil Company, Inc.....	RF309-1282

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: October 2, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 89-24244 Filed 10-12-89; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Loveland Area Projects; Rate Order

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Initial Firm Electric Service Rate for the Loveland Area Projects: Pick-Sloan Missouri Basin Program-Western Division and Fryingpan-Arkansas Project.

SUMMARY: Notice is given of a Rate Order No. WAPA-40 by the Deputy Secretary of the Department of Energy for placing the initial rate for new service for the Loveland Area Projects (LAP) into effect in accordance with 10 CFR 903.21(b) on an interim basis beginning on the first day of the October 1989 billing period, for firm power marketed by the Western Area Power Administration (Western), Loveland Area Office (LAO).

The final Post-1989 General Power Marketing and Allocation Criteria; Pick-Sloan Missouri Basin Program-Western Division (Criteria) was published in the *Federal Register* on January 31, 1986 (51 FR 4012). The Criteria contractually integrated the resources of the Pick-Sloan Missouri Basin Program-Western Division (P-SMBP-WD) and Fryingpan-Arkansas Project (Fry-Ark), both commonly referred to as the LAP, and called for the establishment of a blended rate for LAP power.

To establish the LAP rate, Western's LAO developed the revenue requirements for the LAP from the fiscal year (FY) 1987 power repayment studies (PRS) for both the Pick-Sloan Missouri Basin Program (P-SMBP) and Fry-Ark. The proposed initial LAP rate schedule in Rate Order No. WAPA-40 will yield adequate revenue to meet the P-SMBP-WD revenue requirement and satisfy the

cost-recovery criteria for the Fry-Ark. The proposed initial blended rate for firm power is \$1.84 per kilowatt-month (kW-month) and 7.15 mills per kilowatthour (kWh).

FOR FURTHER INFORMATION CONTACT:

Mr. Stephen A. Fausett, Area Manager, Loveland Area Office, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539, Telephone: (303) 490-7201;

Mr. Robert C. Fullerton, Director, Division of Marketing and Rates, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401, Telephone: (303) 231-1545;

Mr. Ronald K. Greenhalgh, Assistant Administrator for Washington Liaison, Western Area Power Administration, Room 8G-061, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Telephone: (202) 586-5581.

SUPPLEMENTARY INFORMATION: By Delegation Order No. 0204-108, effective December 14, 1983 (48 FR 55664), as amended May 30, 1986 (51 FR 19744), the Secretary of Energy delegated the authority to develop long-term power and transmission rates to the Administrator of Western; the authority to confirm, approve, and place such rates in effect on an interim basis to the Under Secretary of the Department of Energy; and the authority to confirm, approve, and place in effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). On September 20, 1989, the Secretary issued a notice SEN-10A-89, which has the effect of amending Delegation Order No. 0204-108 by transferring authority to place rates into effect on an interim basis from the Under Secretary of the Department of Energy to the Deputy Secretary of the Department of Energy. Existing Department of Energy procedures for public participation in power and transmission rate adjustments (10 CFR 903) became effective on September 18, 1985 (50 FR 37835).

The firm electric service rate for the LAP was established pursuant to the Department of Energy Organization Act, 42 U.S.C. 7101, *et seq.*, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485(c); and the Flood Control Act of 1944, 58 Stat. 887; and other acts specifically applicable to the project system involved.

The FY 1987 PRS for P-SMBP and the FY 1987 PRS for Fry-Ark indicate that

the existing rates do not yield sufficient revenues to satisfy the cost-recovery criteria through the study periods. The proposed P-SMBP-Eastern Division rate schedules, which are in Rate Order No. WAPA-35 along with the P-SMBP-WD revenue requirement, will yield adequate revenue to satisfy the cost-recovery criteria for the P-SMBP (Rate Order WAPA-35 has been previously forwarded to the FERC for approval). Rate Order WAPA-40 includes the revenue requirement for the P-SMBP-WD that was discussed in WAPA-35 and will also satisfy the cost-recovery criteria for the Fry-Ark.

The January 1989 Customer Brochure explaining the background for the LAP and for the rate design concept for a \$2.26 per Kw-month and 5.5 mills per kWh rate was distributed to all LAP customers and other interested parties. Public information and public comment forums were held in accordance with procedures for public participation in general rate adjustments (10 CFR part 903). Following review and consideration of public comments received during the consultation and comment period, Western developed this rate order to respond to the comments and redesigned the power rate. Western has concluded that an initial rate of \$1.84 per kW-month and 7.15 mills per kWh as developed in Rate Order No. WAPA-40 will meet the cost-recovery criteria for the P-SMBP and the Fry-Ark.

Therefore, Rate Order No. WAPA-40 confirming and approving the initial LAP firm electric service rate on an interim basis is hereby issued, and the new rate schedule will be promptly submitted to FERC for confirmation on a final basis.

Issued at Washington, DC, September 28, 1989.

W. Henson Moore,
Deputy Secretary.

Order Confirming, Approving, and Placing in Effect on an Interim Basis the Loveland Area Projects Initial Firm Electric Service Rates

[Rate Order No. WAPA-40]

September 28, 1989.

Pursuant to section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. 7101, *et seq.*, the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation (Reclamation), under the Reclamation Act of 1902, 43 U.S.C. 372, *et seq.*, as amended and supplemented by subsequent enactments, and

particularly by section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c), and acts specifically applicable to the Pick-Sloan Missouri Basin Program (P-SMBP) and the Fryingpan-Arkansas Project (Fry-Ark), were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204-108, effective December 14, 1983 (48 FR 55664), as amended May 30, 1986 (51 FR 19744), the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates to the Administrator of the Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates in effect on an interim basis to the Under Secretary of the Department of Energy; and (3) the authority to confirm, approve, and place in effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). On August 3, 1989, the Secretary of Energy issued a notice, SEN-10-89, which has the effect of amending Delegation Order No. 0204-108 by transferring authority to place rates into effect on an interim basis from the Under Secretary of the Department of Energy to the Deputy Secretary of the Department of Energy. This rate order is issued pursuant to such delegations to the Administrator and the Deputy Secretary, and the procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions for the Alaska Power Administration, Southeastern Power Administration, Southwestern Power Administration, and Western at 10 CFR Part 903, published at 50 FR 37835 on September 18, 1985, with corrections published at 50 FR 48075, November 21, 1985.

Effective Date

The initial rates for new service will become effective in accordance with 10 CFR 903.21(b) on the first day of the October 1989 billing period and will remain in effect until superseded.

Description of Rates

The final Post-1989 General Power Marketing and Allocation Criteria; Pick-Sloan Missouri Basin Program-Western Division (Criteria) was published in the Federal Register on January 31, 1986 (51 FR 4012). The Criteria operationally and contractually integrated the resources of the P-SMBP-Western Division (P-SMBP-WD) and Fry-Ark, both commonly referred to as the Loveland Area Projects (LAP), and called for the establishment of a blended rate for LAP power. Because of the blended rate, P-SMBP-WD rate schedules were not submitted under Rate Order No. WAPA-35 and the Fry-Ark rate schedule was not developed.

The fiscal year (FY) 1987 P-SMBP power repayment study (PRS) reflects the pre-1989 marketing criteria, along with an increase in the average annual generation for the P-SMBP-WD sales. The pre-1989 marketing included firm-power sales and peaking-capacity sales, which are combined into a single firm electric service for the post-1989 period. The P-SMBP-WD revenue requirement for the firm-power sales and the peaking capacity sales is as follows:

Present Revenue Requirement	
$\$0.00854 \times 2,035,841,000$	= \$17,386,082
Proposed Increase from Rate Order WAPA-35: $\$0.00088 \times 2,035,841,000$	= 1,791,540
Proposed Firm Revenue Requirement	\$19,177,622
Peaking Capacity Revenue $\$1.65 \times 12 \times 72,000$ kilowatts (kW)	= 1,425,600
Total Proposed P-SMBP-WD Revenue Requirement	20,603,222

The FY 1987 Fry-Ark PRS showed that the present capacity rate of \$3.75 per kilowatt-month (kW-month) is not sufficient to meet the repayment criteria, and that the revenue requirement from capacity sales must increase by \$242,000

annually. The total Fry-Ark revenue requirement is as follows:

Present Revenue Requirement	
$\$3.75 \times 12 \text{ months} \times 200,000 \text{ kW}$	= \$9,000,000
Proposed Increase	242,000
Total Proposed Fry-Ark Revenue Requirement	9,242,000

To establish the LAP rate, Western developed the revenue requirements for LAP from the FY 1987 PRS for both the P-SMBP and Fry-Ark, as shown above. The revenue requirements from both projects were combined to develop the LAP revenue requirements of \$29,845,222. To meet the LAP revenue requirements, the rates for firm capacity and energy of \$2.26 per kW-month and 5.5 mills per kilowatthour (kWh) were developed and published in the "January 1989, Customer Brochure, Loveland Area Projects." This brochure explains the background for the LAP and how the rate design concept was developed. The brochure was distributed to all LAP customers and other interested parties. Subsequently, in response to customer comments, Western developed the firm capacity and energy rates of \$1.84 per kW-month and 7.15 mills per kWh for LAP firm electric service.

The proposed initial LAP rate schedule for new service is to become effective in accordance with 10 CFR 903.21(b) on an interim basis on the first day of the October 1989 billing period.

Statement of Revenue and Related Costs

This initial rate schedule would produce average annual power revenues of \$29,845,222 for LAP. This is necessary to satisfy the cost-recovery criteria as set forth in DOE Order No. RA 6120.2. A breakdown of costs by class of service is not available. The following table provides revenue data for firm-power, peaking, and firm-capacity sales through the proposed rate-schedule period. As prepared, the FY 1987 PRS for both P-SMBP and Fry-Ark reflect the pre-1989 marketing program for all future years.

Year	Western Division Firm Sales	Western Division Peaking Sales	Fry-Ark Firm Capacity Sales	Total Lap
1988	\$17,386,082	\$0	\$8,208,000	\$25,594,082
1989	17,386,082	0	9,000,000	26,386,082
1990	19,177,622	1,425,600	9,242,000	29,845,222
1991	19,177,622	1,425,600	9,242,000	29,845,222
1992	19,177,622	1,425,600	9,242,000	29,845,222
1993	19,177,622	1,425,600	9,242,000	29,845,222
1994	19,177,622	1,425,600	9,242,000	29,845,222

The data shown above reflects estimates used in the FY 1987 PRSs for this proposed initial rate-approval

period. It should be noted that each PRS contains only one variable. The single variable for the P-SMBP PRS is the

composite rate in mills per kWh for future firm power (capacity and energy) sales. In the Fry-Ark PRS, the capacity

rate in dollars per kW-year is the single variable. The PRS adjusts the single variable until sufficient revenues are generated to meet the cost-recovery requirement. The actual rate design to yield these revenues is determined after the PRSs are completed.

Chronological Discussion and Explanation of Rate Development Process and Supporting Documents

Proceedings on the proposed initial rate were initiated on November 18, 1988, when a letter was mailed announcing a December 8, 1988, informal customer meeting. At this meeting, Western explained the philosophy used in the development of the rate design. On December 29, 1988, the formal comment and consultation period began with the publication in the *Federal Register* of the Loveland Area Projects; Pick-Sloan Missouri Basin Program-Western Division and Fryingpan-Arkansas Project; Proposed Initial Blended Rate (53 FR 52781), which officially announced the initial rate and the procedures for public participation. On January 3, 1989, the customer brochure was mailed to each of the firm power customers, along with a copy of the rate procedures. A public information forum was held on January 31, 1989, in Northglenn, Colorado. The public comment forum was also held in Northglenn on March 7, 1989. The comment and consultation period ended on April 11, 1989. During this period interested parties made comments to Western concerning the proposed initial rate.

Project History

P-SMBP

The initial stages of the Missouri River Basin Project were authorized by section 9 of the Flood Control Act of December 22, 1944 (58 Stat. 877, Pub. L. 534, 78th Congress, 2nd session), thereby approving the general comprehensive plan set forth in Senate Document 191 and House Document 475, as revised and coordinated by Senate Document 247, 78th Congress. The comprehensive plan has been funded through numerous appropriation acts with the intention of providing multipurpose development of the water resources in the Missouri River Basin. The Missouri River Basin Project, later renamed Pick-Sloan Missouri Basin Program, encompasses a plan of flood control, navigation improvement, irrigation, municipal and industrial water development, and hydroelectric production for the Missouri River and its tributaries in Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, and

Wyoming. The Colorado-Big Thompson, Kendrick, and Shoshone Projects were administratively combined with the P-SMBP in 1954, followed by the North Platte Project in 1959.

These projects are known as the Integrated Projects of the P-SMBP. The Riverton Project was also combined with the P-SMBP in 1954 and then reauthorized as a unit of the P-SMBP in 1970.

The planning, development, and operation of the P-SMBP are carried out by Reclamation, the Corps of Engineers (Corps), and Western. All functions of the P-SMBP are maximized within the water resource with some functions assisting other functions with repayment of costs beyond the ability of the beneficiaries to repay. An innovative feature of the P-SMBP is its basin-wide (rather than individual units, divisions, or projects) financial management mandate, which affected the scope of financial assistance to irrigation and established that repayment of all features be based on ultimate development of the P-SMBP. The success of the P-SMBP can be attributed to sound financial management, wherein power rates and costs have been monitored and adjusted to meet repayment obligations.

There are two large power systems in the P-SMBP. The Eastern Division, administered by Western's Billings Area Office (BAO), markets power in western Iowa and Minnesota, eastern Montana and Nebraska, North Dakota, and South Dakota. The Western Division, administered by Western's Loveland Area Office (LAO), markets power in northeastern Colorado, northern and western Kansas, western Nebraska, and eastern Wyoming.

Fry-Ark

The Fry-Ark is a transmountain diversion development in southeastern Colorado, authorized by the Fryingpan-Arkansas Projects Acts [Pub. L. 87-590, 76 Stat. 399 (August 16, 1962), and Pub. L. 93-493, 88 Stat. 1486 (October 27, 1974)].

Studies by Reclamation on a transmountain diversion project began in 1936. Intensive investigation started in 1941, which resulted in a potential planning report in 1947 and 1948. This was followed by a special report in 1949 and official recommendations in 1951. In 1953, a revised planning report under the project name Fry-Ark led to congressional authorization of the project in 1962.

Construction began on Ruedi Dam and Reservoir in 1964. Initial project water for irrigation and municipal and industrial use was available in

September 1975. Contracts for commercial sale of power became effective in October 1982.

Power Repayment Study

General History

The PRS for P-SMBP is prepared annually by Western's BAO with the cooperation of Reclamation and the Corps. Basic river basin hydrology, water depletions, power generation, project-development data, and cost information are among the many items Reclamation and the Corps contribute to the studies. For the Fry-Ark, Western's LAO prepares the PRS in cooperation with Reclamation.

All PRSs are prepared in accordance with authorizing legislation and DOE Order No. RA 6120.2 on Power Marketing Administration Financial Reporting. The PRSs array historic income, expenses, and investment to be repaid from power revenues, along with estimates for future years. They also portray the annual repayment of production and transmission costs of the power system, as well as nonpower costs assigned to power for repayment, through the application of revenues over the repayment period of the project. The PRSs show, among other items, estimated revenues and expenses, the estimated amount of Federal investment which will be repaid, and the total estimated amount of Federal investment remaining to be repaid over the repayment period or service life. The PRSs do not deal with rate design.

General Description of PRS

The PRSs are conducted to assure that projected revenues will balance projected expenses and investment repayment. There are currently eight different groups of revenue in the P-SMBP PRS. The revenue groups are Irrigation Pumping, Firm Commercial, Western Division Project Use, Eastern Division Peaking Energy, Eastern Division Peaking-Winter, Eastern Division Peaking-Summer, Western Division Peaking, and Other Revenue. Other revenue, such as that from Rocky Mountain Generation Cooperative, Inc., is shared by P-SMBP and Fry-Ark and is based upon the ratio of the individual project capacity to the total marketable capacity in the Criteria. Other revenue that is project specific is only credited to that project. For example, the transmission revenue received for the transmission of energy over the P-SMBP-WD transmission system is credited to the P-SMBP. Operations and maintenance (O&M) expenses and interest expenses are found in each PRS,

and are only debited to that specific project that has incurred the expenses. Purchase-power expense is currently only debited to the P-SMBP PRSs; however, in FY 1990 purchase-power expense will be debited to each project on the capacity ratio described above because of the integrated nature of the marketed resource. Most of the transmission expense goes to the P-SMBP-WD; however, any transmission expense related to operational use of the Mt. Elbert pumped-storage powerplant will be debited to Fry-Ark. Repayment of replacement and project-investment impact the revenues in both PRSs, while the P-SMBP PRS also has to consider the repayment of irrigation costs.

Basis for Rate Development as Published in the Customer Brochure

The revenue requirements that are needed for the repayment of the total power obligations for the two projects are as follows:

P-SMBP-WD Revenue Requirement	\$20,603,222
Fry-Ark Revenue Requirement	9,242,000
Total Revenue Requirement.....	29,845,222

The proposed rate development as published in the customer brochure tied the historical revenue collection to the component of the resources marketed under the Criteria. As described in the brochure, the P-SMBP-WD maintained the historical split to yield approximately 40 percent of P-SMBP-WD firm revenue requirements from the capacity component, and approximately 60 percent of the P-SMBP-WD firm revenue requirements from the energy component. The current P-SMBP-WD excess capacity (XCAP) sales revenue and the Fry-Ark revenue requirement were to be returned under the capacity component. This rate design concept resulted in a rate structure, which would

return the necessary revenue requirements to both the P-SMBP-WD and the Fry-Ark. The following table portrays these concepts numerically.

	Capacity	Energy	Total
P-SMBP-WD	\$7,671,049	\$11,506,573	\$19,177,622
P-SMBP-WD-XCAP	1,425,600	1,425,600	
Fry-Ark	9,242,000	0	9,242,000
Total	18,338,649	11,506,573	29,845,222

The capacity component of the proposed rate schedule was based upon monthly billing on the seasonal contract rate of delivery. The energy component was based upon the annual marketable energy as identified in the Criteria.

Capacity:

$$\frac{\$18,388,649}{(716.5 \text{ MW} + 638.5 \text{ MW}) (6) (1,000)} = \$2.26/\text{kW-month}$$

Energy:

$$\frac{\$11,506,573}{2,087,841 \text{ MWh}} = 5.5 \text{ mills/kWh}$$

The proposed rate as published in the customer brochure was \$2.26 per kW-month and 5.5 mills per kWh. However, Western later developed revised rates for firm capacity and energy of \$1.84 per kW-month and 7.15 mills per kWh, as a result of comments received during the public involvement process.

Discussion of Comments

Most of the written comments received revolved around two major themes. They are P-SMBP-WD peaking sales and a traditional capacity and energy-rate split in the LAP rate design. Comments were also received about the treatment of Fry-Ark energy and P-SMBP O&M expenses. The remaining comments dealt with marketing and reallocation procedures, which were earlier addressed during the public process that lead to adoption of the final post-1989 marketing criteria.

Comments

The P-SMBP excess capacity process ceases to exist in the post-1989 marketing period, but the projected revenues from the sale of the P-SMBP

excess capacity were incorrectly included in the PRS for the P-SMBP beyond September 30, 1989.

Response

The FY 1987 PRS reflects the actual (through 1987) and projected (1988 and beyond) revenues and expenses that are based on pre-1989 marketing criteria. This is to establish the basis for future PRSs, which will use the Criteria. In future PRSs, the P-SMBP-WD total revenue requirements will be used in the development of the LAP rates rather than in the development of specific P-SMBP-WD rates.

The P-SMBP-WD peaking sales do cease to exist after October 1989; however, neither the resource nor the revenue requirement associated with the resource ceases to exist. The revenue requirements of the P-SMBP-WD peaking sales are being combined with the P-SMBP-WD firm electric service and the Fry-Ark revenue requirements in the LAP rate design. The marketable resource in the Criteria will be reflected in the FY 1988 and future P-SMBP PRSs; P-SMBP-WD peaking sales will no longer be shown. Therefore, the inclusion of the revenue associated with current excess capacity sales in the future revenue requirement is appropriate.

In the PRS projections, the P-SMBP resources (both the Eastern and

Western Divisions) have shown a split between firm electric service and peaking service since the mid 1950's. The peaking sales were shown as nonfirm sales until the FY 1980 PRS. Beginning with the FY 1980 PRS, the P-SMBP-WD peaking sales were considered firm excess capacity sales. However, actual revenues from peaking sales for the P-SMBP-WD have historically been recorded with the firm sales revenues; therefore, there is no historical record of P-SMBP-WD peaking sales in the PRSs.

Since the pre-1989 P-SMBP-WD resources (firm power and peaking capacity) were marketed separately, and because of the number of years that peaking-sales revenues have been included in the PRSs, Western does not believe that it is appropriate to drop the peaking-sales revenue as a Western Division responsibility. Additionally, the change in marketing criteria from pre-1989 (separable marketable resources) to post-1989 (single marketable resource) should not financially impact the P-SMBP-Eastern Division customers. If Western's LAO dropped the peaking-revenue requirement as suggested, Western's BAO would be required to increase P-SMBP-Eastern Division rates to recover the revenue which historically has been recovered from the P-SMBP-WD customers.

Comment

The LAP rate should be designed to yield approximately 50 percent of the revenue requirement from the capacity charge and 50 percent from the energy charge to be consistent with Western's rate designs for the Boulder Canyon Project (BCP) and the Colorado River Storage Project (CRSP).

Response

Several comments were received on this issue. The majority of the letters received desired a 50-percent return of revenue from each of the capacity and energy components. The bases for their comments were the rate design decisions for the sale of power from the BCP (51 FR 43124) and the CRSP rate design. In light of these comments and

upon review of the BCP ruling and the CRSP rate design, Western proposes the following rate, which is based upon a 50/50 percentage capacity and energy split. That is, the proposed LAP rates for firm capacity and energy are \$1.84 per kW-month and 7.15 mills per kWh. The LAP rates are developed by the following calculation:

Capacity:

$$\frac{(\$29,845,222) (0.5)}{(716.5 \text{ MW} + 638.5 \text{ MW}) (6 \text{ months}) (1,000)} = \$1.84/\text{kW-month}$$

Energy:

$$\frac{(\$29,845,222) (0.5)}{2,087,841 \text{ MWh}} = 7.15 \text{ mills/kWh}$$

Comment

The Fry-Ark energy should not be included in the P-SMBP PRS.

Response

The LAP marketable energy is approximately 2,088 gigawatthours (GWh). The P-SMBP-WD share, 2,036 GWh, is included in the FY 1987 P-SMBP PRS. The Fry-Ark share, 52 GWh, is not included in the FY 1987 P-SMBP-PRS nor is Fry-Ark energy included in the Fry-Ark PRS because the pre-1989 marketing and the revenue requirement is based upon capacity only as the energy delivered must be returned by the contractor. Therefore, the exclusion of Fry-Ark energy in the PRSs will not impact the revenue requirements. However, as shown above, the total LAP energy of 2,088 GWh and the annual revenue requirements from both projects are used in the development of the proposed rate design, and Fry-Ark energy is allocated after 1989. Future Fry-Ark PRSs will include the 52 GWh of generation, which is available from average flow-through water.

Comment

Concern was expressed regarding the treatment of O&M expenses as given.

Response

The characterization of the budget year and 4 outyears of budget projections as a given in the PRS is misleading. The budget year is the 1 year that has been approved by Congress. The 4 outyears have varying degrees of flexibility, prior to those years becoming finalized. The O&M expenses of the Corps and Reclamation

are not approved by Western. However, the outyear estimates provided by these agencies are evaluated for reasonableness. Because of customer interest concerning the matter of budgeting and projecting O&M expenses, we expect that there will be additional discussions and explanations from these agencies concerning the items in their respective O&M budgets that are used in future PRSs.

The remaining comments received dealt with marketing and reallocation procedures, topics which were earlier addressed during the public process leading to the adoption of the final post-1989 marketing criteria.

Environmental Evaluation

In compliance with the National Environmental Policy Act of 1969 (NEPA), Council on Environmental Quality Regulations (40 CFR parts 1500-1508), and DOE Guidelines published in the *Federal Register* on December 15, 1987 (52 FR 47662), Western conducted an environmental evaluation of this proposed rate adjustment.

The proposed rate is an initial rate formulated under the new Post-1989 General Power Marketing Criteria and Allocation Criteria (Criteria) for the Loveland Area Office. The Criteria were the subject of an environmental assessment (EA) prepared by Western in 1985, for which DOE issued a finding of no significant impact on June 11, 1985 (DOE/EA-0266). Under the proposed rate, the 29 existing customers which were selected for analysis would, on the average, experience a composite rate decrease of about 0.3 mill per kWh. Section D of the DOE guidelines cited above states that rate increases which do not exceed the rate of inflation in the period since the last rate increase normally do not require the preparation of an EA or an environmental impact statement (EIS).

Since the proposed rate action was generally addressed in a previous EA,

and results in an average rate decrease, Western determined that neither an EA or an EIS was required.

Availability of Information

All studies, comments, letters, memorandums, and other documents, made or kept by Western for the purpose of developing the power rate, will be available for inspection at the Loveland Area Office, Western Area Power Administration, 5555 East Crossroads, Boulevard, Loveland, Colorado.

Submission to FERC

The rate herein confirmed, approved, and placed in effect on an interim basis, together with supporting documents, will be submitted to the FERC for confirmation and approval on a final basis.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective the first day of the October 1989 billing period, Rate Schedule L-F1. This rate shall remain in effect on an interim basis pending the FERC confirmation and approval of it or a substitute rate on a final basis, or until it is superseded.

Issued at Washington, DC, September 28, 1989.

W. Henson Moore,
Deputy Secretary.

[Rate Schedule L-F1 (Supersedes Rate Schedules FA-C1, P-S, WD-F2 and P-S WD-FP2)]

Loveland Area Projects—Schedule of Rates for Firm Electric Service

Effective

The first day of the October 1989 billing period.

Available

To the customers within the marketing area served by the Loveland Area Office.

Applicable

To wholesale power customers for general power service supplied through each meter at each point of delivery.

Character and Conditions of Service

Alternating current, 60 hertz, three-phase, delivered and metered at the voltages and points established by contract.

Monthly Rate

Capacity Charge: \$1.84 per kilowatt of contract rate of delivery for firm electric service as defined by the firm electric service contract.

Energy Charge

7.15 mills per kWh for all energy delivered as firm electric service as provided in the firm electric service contract.

Billing For Unauthorized Overruns

For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual firm power and/or energy obligations, such overrun shall be billed at 10 times the above rate.

Adjustments

For Transformer Losses: If delivery is made at transmission voltage, but metered on the low-voltage side of the substation, the meter readings will be increased to compensate for transformer losses as provided for in the contract.

For Power Factor: None. The customer will normally be required to maintain a power factor at the point of delivery of between 95-percent lagging and 95-percent leading.

[FR Doc. 89-24245 Filed 10-12-89; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3671-1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared September 25, 1989 through September 29, 1989 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments

can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 7, 1989 (54 FR 15006).

Draft EISs

ERP No. D-AFS-J61071-UT, Rating E02, Seven Peaks All Season Ski Resort, Development and Management, Special Use Permit, Provo Peak Basin Area, Uinta National Forest, Utah County, UT.

Summary

EPA has environmental objections to the project's potential to exacerbate existing carbon monoxide and particulate matter (PM10) air quality problems in the Utah County airshed and questions the dependability of drinking water supplies. Additionally, the draft EIS contains insufficient information on potential impacts to wetlands, wildlife, and air quality.

ERP No. D-AFS-L61183-WA, Rating EC2, White Pass Ski Area Expansion, Special Use Permit, Wenatchee and Gifford Pinchot National Forests, Lewis and Yakima Counties, WA.

Summary

EPA's environmental concerns are based on potential air quality effects and the effects from induced growth and cumulative activities. Additional information and clarification are needed on air quality, water quality, wildlife, mitigation, cumulative and secondary growth effects.

ERP No. D1-AFS-L65099-ID, Rating EC2, Cuddy Mountain Roadless Area Timber Sale and Road Construction, Payette National Forest Land and Resource Management Plan, Implementation, Washington and Adam Counties, ID.

Summary

EPA has environmental concerns on the effects of sediment generated by road construction and timber harvest on fishery beneficial uses. Additional information is needed on the magnitude of fishery impairment and water quality and fishery monitoring.

ERP No. DS-BLM-J01038-MT, Rating LO, Powder River I Regional Federal Coal Tracts, Leasing, Assessment of Economic, Social and Cultural Impacts on the Northern Cheyenne and Crow Indian Tribes, Yellowstone, Big Horn and Rosebud Counties, MT.

Summary

EPA has no objections to the information presented in the draft supplemental EIS. The document could

be improved by clearly identifying the preferred action.

Final EISs

ERP No. F-AFS-E65037-00, Appalachian Mountains National Forests Vegetation Management Plan, Implementation, AL, GA, KY, NC, SC, TN, VA and WV.

Summary

EPA remains concerned about the proposal increase in herbicides use over current levels and urges frequent monitoring of soils, water, and biological systems to determine the impacts of herbicide use.

ERP No. F-AFS-G60006-NM, Cemetery Tract Land Exchange for Westgate Tract or Trail Canyon Tract or Both Tracts, Implementation, Santa Fe National Forest, Los Alamos and Sandoval Counties, NM.

Summary

EPA has no objections to the proposed action as described.

ERP No. F-COE-K32045-HI, Kahului Harbor Light Draft Navigation Improvement, Implementation, Island of Maui, Hawaiian Archipelago, HI.

Summary

Review of the final EIS was not deemed necessary.

ERP No. F-FAA-J51008-CO, New Denver Airport Development, Construction and Operation Plan for Replacement of the Stapleton International Airport, Approval and Funding, Denver County, CO.

Summary

EPA expressed concern that in order to ensure that the new airport remain in conformance with the SIP that the City of Denver needs to continue to investigate and plan for techniques that would reduce potential pollution emissions.

ERP No. F-FHW-D40232-MD, MD-100 Extension, US 29 to I-95, Funding and 404 Permit, Howard County, MD.

Summary

EPA reiterated earlier comments concerning this project and recommended that where avoidance of wetlands is not feasible, impacts should be minimized or appropriate mitigation measures should be applied.

ERP No. F-FHW-E40710-NC, East Charlotte Outer Loop Construction, US 74/Independence Boulevard near NC-3180 to I-85 near the US 29 Connector, Funding and 404 Permit, Mecklenburg County, NC.

Summary

EPA expressed concerns over loss of wetland areas are encouraged further investigation of ways to minimize impacts. EPA also requested that all possible measures be taken to reduce noise impacts. (Note: The above summary is a correction—published FR 10-6-89)

ERP No. F-FHW-L40159-AK, Glenn Highway Improvement, Village of Eklutna to Parks Highway, Funding and Section 404/10 Permit, Municipality of Anchorage, Matanuska-Susitna Borough, AK.

Summary

EPA continues to have environmental concerns about the preferred alternative identified in this document. Although the mitigation discussion in the final EIS has been improved, EPA remains concerned about potential adverse effects to Spring Creek and adjacent wetlands.

ERP No. FS-SCS-J31020-CO, McElmo Creek Unit, Salinity Control Study, Onfarm Irrigation Improvements, Additional Water Delivery and Management Improvements, Funding and Implementation, Montezuma County, CO.

Summary

EPA has environmental concerns with several aspects of the final supplemental EIS. These include: 1) HEP models need to be finalized before the ROD is issued, 2) the choice of indicator species used in determining wildlife values, 3) the Monitoring and Evaluation System and the Wetlands Evaluation System should be submitted to the EPA for review, and 4) EPA does not accept SCS wetland type exchange valuation proposal.

ERP No. F-SFW-E39034-00, Reelfoot Lake Water Level Management Plan, Implementation, Fulton County, KY and Lake and Obion Counties, TN.

Summary

EPA feels the success of the Water Level Management Plan is dependent on control of non-point source pollutant loading from the watershed. Aggressive pursuit of the watershed area non-point source pollution mitigation proposals are necessary.

Dated: October 6, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89-24254 Filed 10-12-89; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3670-9]

Environmental Impact Statements; Availability

Responsible agency: Office of Federal Activities, General Information (202) 382-5076 or (202) 382-5073.

Availability of Environmental Impact Statements Filed October 2, 1989 Through October 6, 1989 Pursuant to 40 CFR 1506.9.

EIS No. 890270, Draft, BLM, CO, UT, Craig District Wilderness Study Areas (WSAs) Wilderness Recommendations, Designation or Nondesignation, Oil Spring Mtn, Windy Gulch, Black Mtn, Willow Creek, Skull Creek, Bull Canyon, Troublesome/Platte River Contiguous WSAs, White River/Kremmling Resource Areas, Jackson, Moffat, and Rio Blanco Counties, Co and Uintah County, UT, Due: January 12, 1990, Contact: Greg Goodenow (303) 824-8261.

EIS No. 890271, Final, FHW, WA, I-90 Improvements, Four Lakes to the Idaho State Line, Funding and 404 Permit, Spokane County, WA, Due: November 13, 1989, Contact: B.F. Morehead (206) 753-2120.

EIS No. 890272, Draft, FHW, AL, Finley-East Lake Boulevard Extension, 26th Street North to Carson Road, Funding and 404 Permit, City of Birmingham, Jefferson County, AL, Due: December 11, 1989, Contact: Joe D. Wilkerson (205) 832-7370.

EIS No. 890273, Draft, FAA, MI, Detroit Metropolitan Wayne County Airport, Construction and Extension, Airport Layout Plan, Approval and Funding Wayne County, MI, Due: November 27, 1989, Contact: Ernest Gubry (313) 484-4040.

EIS No. 890274, Final, FHW, CA, CA-71 Improvements, Holt Avenue Interchange near CA-10 to CA-91, Right-of-Way Acquisition, Funding and 404 Permit, Los Angeles, San Bernardino, and Riverside Counties, CA, Due: November 13, 1989, Contact: Susan Klekar (916) 551-1307.

EIS No. 890275, Draft, NOAA, MD, Chesapeake Bay National Estuarine Research Reserve Management Plan, Otter Point Creek and Jug Bay Designation Site, Implementation, Harford, Prince Georges, Anne Arundel and Somerset Counties, MD, Due: November 27, 1989, Contact: Joseph Uravitch (301) 974-3041.

EIS No. 890276, Draft, SFW, CA, Stephen's Kangaroo Rats Incidental Take, Permit, Cities of Riverside, Moreno Valley, Lake El Sinore Hermet and Perris, Riverside County, CA, Due: December 12, 1989, Contact: Jackie Campbell (503) 231-6150.

Amended Notices

EIS No. 890267, Draft, FHW, PR, PR-3 Relocation, between the Municipalities of Fajardo, and Humacao, Funding, PR, Due: November 20, 1989, Contact: Juan O. Cruz (809) 766-5600. Published FR 10-6-89 - Incorrect phone number.

Dated: October 10, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89-24253 Filed 10-12-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL: 3671-2]

Workshop on Methods for Studies of Male Reproductive Effects of Toxicants

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: This notice announces a scientific workshop, co-sponsored by the Environmental Protection Agency (EPA) for analysis and review of issues relating to studies of male reproductive effects in humans. The meeting will be held at the Ramada Seminary Plaza, Alexandria, Virginia.

DATES: The workshop will begin on Wednesday, October 18, at 8:30 a.m. and end on Friday, October 20 at approximately 1:00 p.m. Members of the public may attend as observers.

FOR FURTHER INFORMATION CONTACT: Sherry G. Selevan, Ph.D., U.S. Environmental Protection Agency, RD-689, 401 M. St., SW., Washington, DC, 20460, telephone: (202) 382-2604, for information about the workshop and to apply as an observer. Space is limited.

SUPPLEMENTARY INFORMATION: EPA is assembling a panel of scientifically qualified persons to consider issues relating to the study of reproductive effects of toxicants in human males. Workshop panelists will address technical issues related to study design, laboratory analyses, and statistical techniques. This information will be used to improve study design and interpretation of data for risk assessment.

Dated: October 6, 1989.

Erich W. Bretthauer,

Acting Assistant Administrator for Research and Development.

[FR Doc. 89-24241 Filed 10-12-89; 8:45 am]

BILLING CODE 6560-50-M

[OPP-30000/57A; FRL-3659-4]

2,4-D, 2,4-DB, 2,4-DP; Status of Consideration for Special Review**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice; status of consideration for a special review.

SUMMARY: This Notice reports the status of EPA's consideration for Special Review of 2,4-D, 2,4-DB, and 2,4-DP based on carcinogenicity. EPA issued a proposed decision not to initiate a Special Review of these pesticides in the *Federal Register* on March 23, 1988. Since that time, EPA has become aware of two epidemiologic studies, due to be released within the next 7 months, that could significantly contribute to EPA's decision regarding the carcinogenicity of 2,4-D. This Notice announces the intent of EPA to defer a final determination on the initiation of a Special Review until after these studies have been evaluated. EPA has concluded that available information indicates continued registration of 2,4-D, 2,4-DB and 2,4-DP does not pose an unacceptable risk during the time it will take EPA to receive and evaluate the new studies.

FOR FURTHER INFORMATION CONTACT:
By Mail:

Jill Bloom, Special Review Branch,
Special Review and Registration
Division (H7508C), Office of Pesticide
Programs, U.S. Environmental
Protection Agency, 401 M St., SW.,
Washington, DC 20460.

Office Location and Telephone
Number:

Room 1006, CM No. 2, 1921 Jefferson
Davis Highway, Arlington, VA 22202,
(703) 557-1787.

SUPPLEMENTARY INFORMATION:**I. Introduction**

This Notice provides a status report on EPA's consideration of 2,4-D, 2,4-DB, and 2,4-DP for Special Review, and describes the method EPA intends to use in reaching a final determination on whether or not to initiate a Special Review based on carcinogenicity. In summary, EPA has evaluated data from currently available epidemiologic and laboratory studies, and concluded that two new epidemiologic studies, which will be available by March 1990, should be considered along with existing epidemiologic, toxicologic, and other supporting data before making a determination on whether or not to initiate a Special Review of 2,4-D, 2,4-DB and 2,4-DP.

A. Regulatory Background

The common name for the herbicide 2,4-dichlorophenoxyacetic acid is 2,4-D. The herbicides 2-(2,4-dichlorophenoxy) butyric acid (2,4-DB) and 2-(2,4-dichlorophenoxy) propionic acid (2,4-DP) are structural analogs of 2,4-D. There are over 1000 registered pesticide products that contain one or more of these three phenoxy acids, or a salt, ester or amine derivative of the acids. The active ingredient 2,4-D acid was one of the first pesticides to be registered in the United States, and is a commonly used herbicide for controlling broadleaf weed. The majority of 2,4-D (and its derivatives) is used to control weeds in wheat, field corn, grain sorghum, sugarcane, rice, barley, rangeland, and pasture land. It is also used for residential and aquatic weed control, in forest management, and as a growth regulator on crops including citrus, filberts and potatoes. The acid and derivatives of 2,4-DB are used primarily to control broadleaf weeds in alfalfa, soybeans and peanuts. The major uses of 2,4-DP, and its amines and esters, are for weed control in turf, on non-bearing citrus, on rights-of-way, and in forestry.

In August 1980, EPA required the registrants of 2,4-D to perform a number of toxicology studies, including oncogenicity testing in the rat and mouse, pursuant to section 3(c)(2)(B) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). All of these data have been received and reviewed by EPA.

In addition to these required studies, EPA also reviewed a number of epidemiologic studies on the phenoxy herbicides (a group which includes 2,4-D, 2,4-DB, 2,4-DP, silvex, 2,4,5-T and MCPA). One of these was a study conducted by the National Cancer Institute (NCI) and the University of Kansas, published in 1986 (*Journal of the American Medical Association*, Vol. 256, No. 9, pp. 1141-1147). This study reported an association between the use of the phenoxy herbicides, including 2,4-D, and non-Hodgkin's lymphoma (NHL), a type of cancer which originates in the lymph system.

Based on the epidemiologic evidence, EPA issued a preliminary notification of Special Review to the registrants of 2,4-D on September 22, 1986. Preliminary notifications of Special Review were issued to the registrants of 2,4-DB and 2,4-DP on December 3, 1986, because EPA believed their structural similarity to 2,4-D warranted a simultaneous review. Since that time, EPA has decided to regulate the three chemicals individually based on information specific to each, because of their

different data requirements and use patterns. However, because the initial Special Review concern was for all three active ingredients, EPA will continue this simultaneous evaluation of whether or not to initiate a Special Review.

B. Legal Background

A pesticide product may be sold or distributed in the United States only if it is registered or exempt from registration under FIFRA as amended (7 U.S.C. 136 et seq.). Before a product can be registered it must be shown that it can be used without "unreasonable adverse effects on the environment" (FIFRA section 3(c)(5)), that is, without causing "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of the pesticide" (FIFRA section 2 (bb)). The burden of proving that a pesticide meets this standard for registration is, at all times, on the proponent of initial or continued registration. If at any time EPA determines that a pesticide no longer meets this standard for registration, the Administrator may cancel this registration under section 6 of FIFRA.

The Special Review process is a mechanism by which EPA collects information on the risks and benefits associated with the uses of pesticides to determine whether any use causes unreasonable adverse effects to human health or the environment. Prior to initiating a Special Review, pursuant to 40 CFR 154.21, EPA must notify affected registrants and applicants of its concerns and give them an opportunity to dispute the validity of EPA's conclusions or to present information in response to the notification. EPA then reassesses its preliminary decision in light of these comments. If EPA preliminarily decides not to initiate a Special Review, notice of this proposed decision must be published for public comment in the *Federal Register*. After reviewing any comments received, EPA's final decision regarding the initiation of a Special Review must be published in the *Federal Register* with a Statement of reasons.

A Special Review is initiated if a pesticide meets or exceeds the risk criteria set out in the regulations at 40 CFR part 154.7. Through the Special Review process, EPA (1) announces and describes EPA's risk concerns regarding pesticide use based on certain risk criteria; (2) establishes a public docket; (3) proposes a regulatory action; (4) solicits comments from the public on the proposed decision and issues

concerning the Special Review; (5) responds to significant comments from the Secretary of Agriculture and the SAP; and (6) makes a final regulatory decision based on a balancing of risks and benefits associated with a pesticide's use.

In the case of 2,4-D, after the preliminary notifications were issued to the registrants, risk concerns were evaluated in depth and determined not to meet or exceed criteria for initiating a Special Review. EPA published a proposed decision not to initiate a Special Review based on the opinion of scientists in EPA's Office of Pesticide Programs (OPP), toxicology and epidemiology experts, and the FIFRA Scientific Advisory Panel (SAP) that existing epidemiologic and laboratory data were inadequate or insufficient to assess the carcinogenic potential of 2,4-D. The proposed decision was published in the *Federal Register* on March 23, 1988 (53 FR 9590), and a docket was established for the receipt of comments on the proposal. EPA has decided not to make its final decision before examining the forthcoming epidemiologic information, and believes it appropriate to inform concerned parties of this development, given the widespread use of these pesticides.

II. Data to Be Used in the Weight-of-Evidence Evaluation of Carcinogenicity for 2,4-D

A. Epidemiologic Evidence

A preliminary notification of Special Review was issued to the registrants of 2,4-D, 2,4-DB, and 2,4-DP in 1986 largely because of EPA concerns regarding carcinogenicity raised by the findings of a population-based, case-control epidemiologic study of pesticide use in Kansas. The study was based on telephone interviews with individuals diagnosed with any of three cancer types (or their next-of-kin). The interviewers attempted to corroborate information obtained about farming practices and pesticide usage with records of local suppliers of pesticides. The study found an association between herbicide use and non-Hodgkin's lymphoma (NHL), with frequent users of phenoxy herbicides having up to eight times the risk of developing NHL as that of the control population. The study was reviewed by EPA and consultant epidemiologists and found to be well-designed and executed. However, after an in-depth evaluation, EPA concluded the study did not provide sufficient evidence of a link between 2,4-D and NHL to pursue regulatory action at that time.

Other epidemiologic studies that relate to the phenoxy herbicides as a group, but do not provide specific information regarding 2,4-D, are available. EPA has decided that further evaluation of epidemiologic evidence is needed to form a consensus of opinion about the association between 2,4-D and cancer.

B. Laboratory Evidence

In response to the requirement of data under FIFRA section 3(c)(2)(B) in 1980, the Industry Task Force on 2,4-D Research Data (ITF) sponsored subchronic and oncogenicity testing in the rat and mouse. In the subchronic tests, male and female rats were fed 0, 1, 5, 15, 45, 60, 100, or 150 mg/kg/day; and male and female mice were fed 0, 5, 15, 45 or 90 mg/kg of the 2,4-D acid each day for 13 weeks. Doses for the oncogenicity tests were selected by the ITF based mainly on the results of the subchronic tests. These results were interpreted by the ITF as showing kidney pathology to a degree that indicated the Maximum Tolerated Dose (MTD) for the chronic study would be reached at 45 mg/kg/day for both sexes of both species. The MTD, usually the highest dose in an oncogenicity study, is defined in the Office of Science and Technology Policy guidance for Federal carcinogenic risk assessment (50 FR 10372) as the dose "which, when given for the duration of the chronic study, is just high enough to elicit signs of minimal toxicity without significantly altering the animal's lifespan due to effects other than carcinogenicity".

In the oncogenicity studies, 97.5 percent pure 2,4-D acid was fed to both sexes of rat at 0, 1, 5, 15, or 45 mg/kg/day and both sexes of mouse at 0, 1, 15, or 45 mg/kg/day for a period of 24 months. The results of these studies were submitted to EPA in 1986. Although there appeared to be a slight, treatment-related increase in the incidence of astrocytomas (brain tumors) in the male rat, two different statistical evaluations found no strong statistical evidence of oncogenicity in the rat. There were no oncogenic effects attributable to the test material in the female rat, or either sex of the mouse.

In 1985, pathologists from the National Institutes of Health's National Toxicology Program (NTP) reviewed an undetermined number of kidney tissue slides from the subchronic studies used to determine proper dose levels for the chronic studies. The scientists concluded that the kidney lesions observed in the preliminary tests were minimal in severity, indicating that the MTD had not been reached even at the highest level tested in the subchronic

studies. In addition to viewing the slides, the NTP personnel were shown interim data from the ongoing chronic tests by representatives of the ITF. The NTP concluded from this presentation that there was even less kidney pathology seen at 45 mg/kg after 52 weeks in the chronic studies than after 13 weeks in the subchronic studies. EPA, after receipt of the final reports from the rat and mouse studies, agreed with the determinations of the NTP and concluded that the MTD was not achieved for either species in the chronic testing, based on observation of kidney effects.

Subsequent to the publication of the *Federal Register* notice announcing the proposed decision not to initiate a Special Review of 2,4-D, EPA received a comment from the ITF stating that a complete review of the kidney lesion slides from all the toxicity studies had not been performed. NTP scientists did not conduct a complete evaluation when they viewed the slides in 1985, having had access only to some of the slides from the subchronic studies. This situation has been remedied by a complete review of slides from the subchronic and chronic studies of both species by an independent pathology laboratory. A consulting pathologist for EPA reviewed the final reports from the private laboratory and found the kidney lesions described in those reports "not biologically important" with respect to the animals' consumption of 2,4-D. The rat kidney slides showed lesions that were "consistent with those found in aging rats". In addition, biochemical data from the tests were reviewed by the consulting pathologist and an EPA toxicologist. These data also do not indicate adverse effects from the ingestion of the 2,4-D acid by the test animals.

EPA has concluded that the insufficiency of the rodent studies for oncogenicity necessitates their repetition. Consequently, EPA has required, under the authority of FIFRA section 3(c)(2)(B), new rat and mouse oncogenicity studies which comply with EPA testing guidelines and the accepted definition of MTD. The registrants are allowed 50 months from the date of receipt of the letter requiring these studies to submit the required data. These studies will be reviewed upon their receipt, as part of the continuous evaluation of new data that EPA maintains for all registered pesticides, and will be used to support new regulatory action if such action is indicated.

C. Forthcoming Data

EPA is awaiting the release of two epidemiologic studies to be considered in EPA's comprehensive weight-of-evidence evaluation for carcinogenicity of 2,4-D. The two are NCI case-control studies of the relationship between the use of agricultural chemicals, including 2,4-D, and cancer. The first study, from eastern Nebraska, has been completed, but the results will not be released to EPA until the end of 1989. Statistical analysis of the second study, from Iowa and Minnesota, is in progress, with release anticipated in March 1990. Other epidemiologic studies which may provide some information about 2,4-D are being performed or are planned by NCI.

III. Conclusion

EPA has determined that the analysis of two forthcoming epidemiologic studies will allow EPA to better evaluate the weight of evidence for the carcinogenic potential of 2,4-D. EPA plans to have a panel of independent experts from outside EPA conduct a formal review of all epidemiologic, toxicologic, genotoxic, and supporting data relating to carcinogenicity of 2,4-D after the receipt of the two studies. This evaluation will include analysis of the Kansas study which prompted EPA consideration for a Special Review in 1986, and data from other relevant epidemiologic studies that have become available since that time. The conclusions of the panel will be used by EPA in its determination of whether a Special Review of 2,4-D, 2,4-DB and 2,4-DP is necessary. If the epidemiologic studies are received on schedule, the panel could convene in the Spring of 1990. An EPA decision on whether or not to initiate a Special Review of 2,4-D, 2,4-DB and 2,4-DP could be finalized by Fall 1990. EPA has recently required repeat rodent oncogenicity testing. However, waiting for data from these studies would delay this determination on whether to initiate a Special Review of 2,4-D, 2,4-DB and 2,4-DP beyond reasonable limits. These or any future studies which yield relevant information will be considered appropriately in supporting a Special Review if one is initiated, or in making a new determination on whether to initiate a Special Review. In making the determination to defer its decision on initiation of a Special Review, EPA has concluded that continued registration of 2,4-D, 2,4-DB and 2,4-DP does not pose an unacceptable risk during the time it

will take to receive the new studies and make a comprehensive evaluation.

IV. The Public Docket

EPA has established a public docket for the 2,4-D, 2,4-DB, and 2,4-DP pre-Special Review materials. The public docket includes this Notice, the previous **Federal Register** notice announcing the proposal not to initiate a Special Review, the public comments received in response to the proposed decision, and other communications pertinent to EPA's decision on a Special Review of these chemicals. The docket is available for public inspection in Rm. 236, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA, between 8 a.m. and 4 p.m., Monday through Friday, except legal holidays.

Dated: October 3, 1989.

Linda J. Fisher,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 89-24213 Filed 10-12-89; 8:45 am]

BILLING CODE 6560-JD-M

[OPTS-44539; FRL 3658-2]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on diethylene glycol butyl ether (CAS No. 112-34-5), submitted pursuant to a final test rule under the Toxic Substances Control Act (TSCA). Test data was also received on 4-nitroaniline (CAS No. 100-01-6), 2-nitroaniline (CAS No. 88-74-4) and methyl tert-butyl ether (MTBE) (CAS No. 1634-04-4) submitted pursuant to a consent order under TSCA. Publication of this notice is in compliance with section 4(d) of TSCA.

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

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received. Under 40 CFR 790.60, all TSCA section 4 consent orders must contain a statement that results of testing conducted pursuant to these testing

consent orders will be announced to the public in accordance with section 4(d).

I. Test Data Submissions

Test data for diethylene glycol butyl ether was submitted by Chemical Manufacturers Association on behalf of the Dow Chemical Company pursuant to a test rule at 40 CFR 799.1560. It was received by EPA on September 18, 1989. The submission describes: (1) An acute study of potential effects of diethylene glycol butyl ether on behavior in rats; and (2) a 3-month study of the potential effects of diethylene glycol butyl ether on behavior and neuromorphology in rats. Neurotoxicity/behavioral effects testing is required by this test rule.

Test data for 4-nitroaniline and 2-nitroaniline were submitted by Synthetic Organic Chemical Manufacturers Association, Inc., on behalf of Monsanto Company, pursuant to a consent order at 40 CFR 799.5000. The studies were received by EPA on September 20, 1989. Both submissions describe in vivo bone marrow cytogenetics: micronucleus assay. Micronucleus testing is required by this consent order.

Test data for MTBE was submitted by Synthetic Organic Chemical Manufacturers Association, Inc., on behalf of the sponsoring companies or record pursuant to a consent order at 40 CFR 799.5000. The study was received by EPA on September 27, 1989. The submission describes: (1) A MTBE repeated (13 week) vapor inhalation study in rats with neurotoxicity evaluation; and (2) a MTBE single exposure vapor inhalation neurotoxicity study in rats. Inhalation toxicity and neurotoxicity testing are required by this consent order.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of these submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS-44539). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm NE-G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: October 4, 1989.

Charles M. Auer,

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

[FR Doc. 89-24214 Filed 10-12-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[FCC 89-234]

FCC Votes to Hold En Banc Hearing on AM Improvement Issues

September 29, 1989.

For more than a decade, AM radio has experienced a steady decline in its aggregate share of the nation's listening audience, in part due to decisions dating from the 1950's which fostered the development of a high-fidelity, FM broadcast service. Comparable AM improvements, however, were not undertaken. AM radio, nevertheless, traditionally has played an important role in ensuring service to the communities which comprise the United States, and a strengthened AM radio service could make a significant contribution to the national welfare. Most importantly, it would broaden listener choices. It would also increase advertiser options and competition in radio and associated markets, thereby enhancing the responsiveness and vigor of those markets. A significant portion of a national resource, the radio spectrum, moreover, has been allocated to AM, and it is important that maximum public dividends be secured from that resource allocation decision.

The Commission believes that the public interest in AM improvement and the future of the service will be served by our convening a special *En Banc* hearing on November 16, 1989. The purpose of this hearing would be to review the situation concerning the service, examine its prospects for improvement and ensure that the Commission, the broadcast industry and the public are of similar mind concerning the key issues related to AM improvement and the most appropriate means of their resolution.

General matters to be considered at the *En Banc* hearing would include, but not be limited to, the following:

1. AM improvement and the future of AM radio;
2. Uses of the AM expanded band (1605 kHz-1705 kHz);
3. AM technical improvements and station assignment policies;
4. AM stereophonic transmission and its impact on AM technical criteria and assignment policies;

5. The importance of receiver quality to the future of the AM service.

We encourage participants to incorporate in their remarks cost/benefit analyses, as well as specific examples and suggestions. We specifically invite commenters to evaluate the Commission's ongoing AM improvement efforts in terms of their cost-effectiveness and to identify any AM improvement options the Commission may have overlooked.

The Commission has recently initiated an array of proceedings aimed at strengthening and improving AM radio service to the American people. These include MM Docket No. 88-376, Amendment of the Commission's Rules to improve the quality of the AM Broadcast Service by reducing adjacent channel interference and by eliminating restrictions pertaining to the protected daytime contour, MM Docket No. 88-508, Improved Methods for calculating skywave field strength in the AM Broadcast Band, MM Docket No. 88-509, Nighttime operation for Class II-S and Class III-S AM radio broadcast stations, MM Docket No. 88-510, Improved methods for calculating groundwave field strength in the AM Broadcast Band, MM Docket No. 88-511, Review of the methods for calculating nighttime protection for stations in the AM Broadcast Service, and MM Docket No. 89-46, Policies to encourage interference reduction between AM Broadcast Stations. All of these proceedings have been derived from the initial Notice of Inquiry in MM Docket No. 87-267, which addressed various matters pertaining to technical improvements in the AM broadcast service. Additionally, the Commission has under consideration comments and reply comments in General Docket No. 84-467, which concerns expanding the upper limit of the AM band from 1605 khz to 1705 khz. Additional proceedings may be initiated in the future, dealing with such topics as review of protected contours and protection ratios for the AM broadcast service, reclassification of AM stations, possible restrictions on permissible modifications of Class I stations, changes in the permissible power levels of AM stations and regulations pertaining to use of advanced AM station antenna technology.

Comments filed in the ongoing proceedings generally affirm the desirability of the various proposals and encourage us that an orderly transition can and should be made to a technically improved AM service. However, representatives of the broadcast industry have expressed some legitimate concern about whether the anticipated outcome of some of the individual

proceedings will have the intended beneficial effect. The Commission has also received a letter from the National Association of Broadcasters Radio Board of Directors asking us to convene a special meeting at which critical AM-related issues can be discussed.

It appears appropriate to address these several distinct aspects of the overall AM improvement process and to pose these pertinent questions which may elicit responses that are beneficial to our formulation of sound approaches to improving the AM broadcast service. By taking this approach, we believe that the Commission will be able to move forward, both rapidly and coherently, in an effort to improve AM broadcasting.

In addition, we would note that our system of AM broadcast assignments is based on both technical criteria and assignment policies. The technical criteria are, or should be, objective and accurate, reflecting our current knowledge of scientific principles and developments in telecommunications systems. The assignment policies are essentially judgmental; they are intended to permit coverage areas to be large enough so that stations may fulfill their functions and yet small enough so that an adequate number of assignments can be made. We recognize that an effort to update the technical criteria may, depending on circumstances, lead to an unanticipated result. Rather than disregard refinements of a technical nature, we would prefer to prevent any untoward outcome by modifying our policies. Furthermore, we urge the parties to address the individual AM proceedings as components of our overall AM inquiry and not as isolated matters.

The Commission solicits comments on these and any other matters relevant to AM improvement. Comments of a general or policy nature may be submitted in writing or by oral testimony at the *En Banc* hearing. Highly detailed comments, particularly those of a technical nature, would be more properly submitted in writing. We do not encourage submissions that duplicate the existing record. Rather, we wish to focus primarily on the above questions and on specific interdependency aspects in order to clarify our ultimate objectives in AM improvement.

Information submitted at the *En Banc* hearing, whether presented orally or in writing, will be included as a matter of public record in the MM Docket No. 87-267 proceeding, which is captioned Review of the technical assignment criteria for the AM Broadcast Service. Comments will also be accepted on all

of the pending AM improvement proceedings listed in this Public Notice. Such written comments may be filed either in MM Docket No. 87-267 or in the particular docketed proceeding to which they relate. At the *En Banc* hearing, the Commission will set a date by which reply comments must be filed.

The specific format of the *En Banc* hearing, the selection of representative witnesses from among those expressing an interest in participating and the arrangement of such other administrative matters as may be necessary will be addressed in future Public Notices.

For further information on this matter contact William Hassinger at (202) 632-6460.

News Media contact: Rosemary Kimball at (202) 632-5050.

Action by the Commission September 29, 1989, by Public Notice (FCC 89-284). Commissioners Sikes (Chairman), Quello, Dennis, Marshall and Barrett.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-24205 Filed 10-12-89; 8:45 am]

BILLING CODE 6712-01-M

En Banc Hearing on AM Improvement

October 5, 1989.

The Federal Communications Commission announced on September 29, 1989, that it will convene a special *En Banc* hearing on the matter of the AM Broadcast Service. The hearing, scheduled for Thursday, November 16, 1989, is intended to review the situation concerning the service and examine its prospects for improvement.

Parties wishing to make oral presentations should submit written requests by close-of-business, Monday, October 16, 1989 to the Mass Media Bureau, 1919 M Street, NW., Room 314, Washington, DC 20554, Attention: William Hassinger. Such requests should clearly identify the speaker, the organization represented (if any), experience and training relevant to AM broadcasting, and the particular topic or topics to be discussed. Depending on the number of requests if may be necessary to limit the number of presenters. If so, we will endeavor to select them so as to obtain a broad and informed viewpoint.

All interested parties may submit written comments. An original and 9 copies of comments and draft testimony should be submitted by November 6, 1989 to: Office of the Secretary Federal Communications Commission, Room 222, 1919 M Street, NW., Washington, DC 20554, Ref: MM Docket No. 87-267.

This hearing will be open to the public. The precise format and speaker schedule will be specified in a Public Notice to be released on or about October 20, 1989. For further information please contact William Hassinger at (202) 632-6460. The contact for media coverage is Maureen Peratiano or Sally Lawrence at 632-5050.

Federal Communications Commission

Donna R. Searcy,

Secretary.

[FR Doc. 89-24206 Filed 10-12-89; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Item Submitted on OMB Review

The Federal Maritime Commission hereby gives notice that the following has been submitted to OMB for review pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et seq.). Requests for information, including copies of the collection of information and supporting documentation, may be obtained from John Robert Ewers, Director, Bureau of Administration, Federal Maritime Commission, 1100 L Street, NW., Room 12211, Washington, DC 20573, telephone number (202) 523-5866. Comments may be submitted to the agency and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Federal Maritime Commission, within 15 days after the date of the *Federal Register* in which this notice appears.

Summary of Item Submitted for OMB Review; 46 CFR Part 581—Service Contracts

(Definition of a Shipper and Availability of Mixed Commodity Rates—Docket 89-20)

FMC requests clearance of an amendment to 46 CFR part 581 which would (1) amend the definition of "shipper" to clarify the scope of the term, and (2) require that mixed commodity rates be made available only to a "shipper," as proposed, and to "shippers' associations" as presently defined in the Commission rules. A shipper using a mixed commodity rate would be required to furnish the ocean common carrier a listing of commodities. If the shipper is a non-vessel-operating common carrier (NVOCC), it would also have to indicate its FMC tariff number on the ocean carrier's bill of lading and on any service contracts to which it is a party. The Commission estimates the filing burden to implement the proposed

rule's provisions to be 2700 hours. There will be no additional cost to the Federal Government for this amendment. Estimated cost to respondents for this amendment is \$13,500.

Joseph C. Polking,

Secretary.

[FR Doc. 89-24218 Filed 10-12-89; 8:45 am]

BILLING CODE 6730-01-M

Philadelphia Port Corporation Terminal Agreement et al.

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 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 § 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.: 224-200233-005.

Title: Philadelphia Port corporation Terminal Agreement.

Parties:

Philadelphia Port Corporation (PPC)
Holt Cargo Systems, Inc. (Holt)

Synopsis: The Agreement amends the basic agreement to provide for the lease of Berth 6, including all buildings, fixtures and structures located thereon, to Holt. It also provides for an additional annual guarantee in the amount of \$300,000.

Agreement No.: 224-200294.

Title: Georgia Ports Authority Terminal Agreement.

Parties:

Georgia Ports Authority (GPA)
Mitsui O.S.K. Lines, Ltd.
Nippon Yusen Kaisha
Nippon Liner System, Ltd.

Synopsis: The agreement provides that GPA performs certain terminal services for the carrier parties at a consolidated rate based upon an agreed upon unit rate per container. The Agreement's term is for three years.

By Order of the Federal Maritime Commission.

Dated: October 6, 1989.

Joseph C. Polking,
Secretary.

[FR Doc. 89-24095 Filed 10-12-89; 8:45 am]

BILLING CODE 6730-01-M

Settlement of the Port of Greater New York and New Jersey Assessment Agreement; Filing and Effective Date of Agreement

The Federal Maritime Commission hereby gives notice, that on October 3, 1989, the following agreement was filed with the Commission pursuant to section 5, Shipping Act of 1984, and was deemed effective that date, to the extent it constitutes an assessment agreement as described in paragraph (d) of section 5, Shipping Act of 1984.

Agreement No.: 224-000086-003.

Title: Settlement of the Port of Greater New York and New Jersey Assessment Agreement.

Parties:

New York Shipping Association, Inc.
International Longshoremen's
Association AFL-CIO

Synopsis: The Agreement extends through November 30, 1990, the prior Port of New York Agreement with certain modifications.

By Order of the Federal Maritime Commission.

Dated: October 6, 1989.

Joseph C. Polking,
Secretary.

[FR Doc. 89-24094 Filed 10-12-89; 8:45 am]

BILLING CODE 6730-01-M

Transpacific Westbound Rate Agreement Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the *Federal Register* in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-010689-037.

Title: Transpacific Westbound Rate Agreement.

Parties:

American President Lines, Ltd.
Hanjin Container Lines, Ltd.
Hyundai Merchant Marine Co., Ltd.
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Liner System
Nippon Yusen Kaisha, Ltd.
Sea-Land Service, Inc.
Orient Overseas Container Line, Inc.

Synopsis: The proposed amendment eliminates the "rate initiative" procedures of the agreement and makes other administrative changes in regard to the elimination of the "rate initiative" procedures. The amendment also modifies Article 14 to allow other members the opportunity to meet existing grandfathered service contracts.

Agreement No.: 202-010776-049.

Title: Asia North America Eastbound Rate Agreement.

Parties:

American President Lines, Ltd.
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Liner System
Nippon Yusen Kaisha, Ltd.
Sea-Land Service, Inc.

Synopsis: The proposed amendment would permit a party to the Agreement to disclose its own position on a matter or the status of a matter before the Agreement only to the extent that such matter either had been made public by the Agreement or had been previously known to the shipper or consignee by virtue of its having requested that the matter be considered by the Agreement.

Agreement No.: 202-011102-07

Title: U.S Atlantic & Gulf/Western Mediterranean Rate Agreement.

Parties:

Costa Container Line
Farrell Lines, Inc.
Nedlloyd Lines (Nedlloyd Lijnen B.V.)
Sea-Land Service, Inc.
P & O Containers (TFL) Ltd.
Compania Trasatlantica Espanola, S.A.
Evergreen Marine Corporation (Taiwan) Ltd.
Italia di Navigazione, S.p.A.
Lykes Lines (Lukes Bros. Steamship Co., Ltd.)
Zim Israel Navigation Company, Ltd.
Compagnie Generale Maritime

Synopsis: The proposed modification would clarify existing agreement authority by specifying that two or more of the members may agree to

and implement proposals concerning independent action initiated by another member or members.

Agreement No.: 212-011234-002.

Title: U.S.A./South Europe Pool Agreement.

Parties:

Compania Trasatlantica Espanola, S.A.
Costa Container Line
Evergreen Marine Corporation (Taiwan) Ltd.
"Italia" di Navigazione, S.p.A.
Lykes Lines (Lukes Bros. Steamship Co., Ltd.)
Nedlloyd Lines (Nedlloyd Lijnen B.V.)
Sea-Land Service, Inc.
P & O Containers (TFL) Ltd.
Zim Israel Navigation Company, Ltd.

Synopsis: The proposed amendment would exclude noncontainerized shipments of iron and steel articles moving in lots of over 1,500 tons per call from the definition of pool cargo and would provide that the revenues from such shipments are not subject to the Pool Agreement.

Agreement No.: 217-011252.

Title: Topgallant Lines, Inc. and Sea-Land Service, Inc. Space Charter Agreement.

Parties:

Topgallant Lines, Inc.
Sea-Land Service, Inc.

Synopsis: Agreement No. 217-011252 proposes to establish a space charter arrangement between Topgallant Lines, Inc., and Sea-Land Service, Inc., in the U.S. Atlantic/Europe trades. The parties have requested a shortened review period.

By order of the Federal Maritime Commission.

Dated: October 6, 1989.

Joseph C. Polking,
Secretary.

[FR Doc. 89-24135 Filed 10-12-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL TRADE COMMISSION

[Dkt. 6486]

Goodyear Tire & Rubber Co., et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Set aside order.

SUMMARY: The Federal Trade Commission has set aside a 1961 consent order as to the Atlantic Refining Co. ("Arco"), thus removing all

requirements and prohibitions, because Arco has shown that significant changes of law make it unlikely that the practices prohibited by the order would be found unlawful were the original case brought today.

DATES: Consent order issued March 9, 1961. Set aside order issued June 2, 1989.

FOR FURTHER INFORMATION CONTACT: Elliot Feinberg, FTC/S-2115, Washington, DC 20580 (202) 326-2687.

SUPPLEMENTARY INFORMATION: In the matter of Goodyear Tire & Rubber Co., et al. The prohibited trade practices and/or corrective actions, as codified, as set forth at 26 FR 4886, are deleted.

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

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

In the Matter of Goodyear Tire & Rubber Co. a corporation, and Atlantic Refining Co. a corporation.

Order Reopening and Setting Aside Final Order

Issued on March 9, 1961.

On February 3, 1989, the Atlantic Richfield Company ("Arco") filed a request to reopen and set aside the Final Order that was entered in the proceeding on March 9, 1961, or in the alternative to modify the order. The request was filed pursuant to section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b) and § 2.51 of the Federal Trade Commission Procedures and Rules of Practice, 16 CFR 2.51.

Arco seeks to have set aside or modified the order issued in Docket No. 6486 which prohibits the Atlantic Refining Company ("Atlantic") from entering into certain kinds of contracts with the Goodyear Tire and Rubber Company ("Goodyear") and other of its suppliers. Arco was formed as a result of the merger of Atlantic with other oil companies. Arco is the successor to Atlantic and bound by the terms of the order in Docket No. 6486.

Arco asserts that, since the adjudication of this order, there have been changes of fact and of law that warrant reopening the order and setting it aside, in whole or in part, and that the public interest requires termination or modification of the order. Arco's central contention is that it ought to be allowed to negotiate with suppliers of tires, batteries and other automotive accessories ("TBA") concerning the terms of sale of those items to Arco franchisees that sell Arco petroleum products. Arco asserts that it could negotiate for its franchisees cooperative advertising and other promotional

activities that are sponsored by TBA manufacturers. Obtaining such promotional benefits would eliminate a restriction that Arco alleges unnecessarily places Arco and its petroleum franchisees at an unwarranted disadvantage.

The Commission has considered Arco's request and has concluded that Arco has made a showing that warrants setting aside the entire order in Docket No. 6486. Significant changes of law since the order was entered warrant setting aside the order.

Background

On March 9, 1961, the Commission held that the TBA sales commission agreement between Atlantic and Goodyear and another between Atlantic and the Firestone Tire and Rubber Company ("Firestone") constituted unfair methods of competition and violated section 5 of the Federal Trade Commission Act, 58 F.T.C. 309. The Court of Appeals and the United States Supreme Court upheld the Commission's decision and order. 331 F.2d 394 (7th Cir. 1964), 381 U.S. 357 (1965).

Prior to 1951, Atlantic had acquired TBA products and resold them to its petroleum franchisees. In 1951, it switched to a system under which Atlantic selected manufacturers of TBA to supply its franchisees. Atlantic entered into "best efforts" contracts with Goodyear and Firestone. Under these contracts Atlantic agreed that it would exert its best efforts to promote Goodyear products to all of its franchisees within a designated geographic area and Firestone products within another area. In return those companies agreed to limit TBA sales to Atlantic franchisees within the designated areas and to pay Atlantic a commission on all their sales to the franchisees. Under the sales commission plan, designated Goodyear and Firestone wholesalers were allocated geographical regions. In each region, one wholesaler was to be the sole source of TBA supplies to each Atlantic franchisee.

The Commission's decision stated this arrangement was unlawful because it "presents a classic example of the use of economic power in one market (here, gasoline distribution) to destroy competition in another market (TBA distribution)." 58 F.T.C. at 367. The Commission found that Atlantic had "sufficient economic power" to reduce competition that would have existed from suppliers of other TBA products. *Id.* at 364.

Atlantic was found to have successfully implemented its sales commission program through the use of

threats and coercion. *Id.* at 347. The decision stated that Atlantic threatened, explicitly and implicitly, to cancel franchises of gas stations that did not buy the TBA products that Atlantic recommended. *Id.* at 343-47. The gas station franchise agreements were subject to annual review and could be cancelled by Atlantic on a number of subjective grounds. *Id.* at 356.

The Hearing Examiner found that sales of TBA were vital to service station owners. TBA provided both the product for the full services expected by customers and additional revenues that made the stations profitable. 58 F.T.C. at 313.

The Commission entered an order that prohibits Atlantic from promoting or coordinating the sale of TBA products from any TBA vendor other than itself to Atlantic franchisees. In summary, the six paragraphs forbid Atlantic from:

1. Entering into agreements with Goodyear or other TBA suppliers in connection with sales by those suppliers to Atlantic franchisees.
2. Accepting anything of value for promoting the sale of any vendor's TBA products.
3. Using contracts, economic incentives and other means to encourage its franchisees to acquire any vendor's TBA products other than Atlantic's.
4. Monitoring the sale of any vendor's TBA products other than its own.
5. Intimidating or coercing its franchisees to acquire TBA products.
6. Preventing or attempting to prevent its franchisees from buying the TBA products of their choice.

The Hearing Examiner's proposed order, in effect, would have imposed only the restrictions of paragraphs 5 and 6. The Commission appears to have added paragraphs 1-4 because it believed the sales commission plans could persist "even without the use of overt coercive tactics or of written or oral tying agreements, and this power is a fact existing independently of the particular method of distributing or sponsoring TBA used by Atlantic." 58 F.T.C. at 364-5.

Standard for Reopening a Final Order of the Commission

Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. § 45(b), provides that the Commission shall reopen an order to consider whether it should be modified if the respondent "makes a satisfactory showing that changed conditions of law or fact" so

require.¹ A satisfactory showing sufficient to require reopening is made when a request to reopen identifies significant changes in circumstances and shows that the changes eliminate the need for the order or make continued application of the order inequitable or harmful to competition. *Louisiana Pacific Corp.*, Docket No. C-2956, Letter to John C. Hart (June 5, 1986) at 4. See, S. Rep. No. 96th Cong., 2d Sess. 9 (1979) (significant changes or changes causing unfair disadvantage); see *Phillips Petroleum Co.*, Docket No. C-1088, 78 F.T.C. 1573, 1575 (1971) (modification not required for changes reasonably foreseeable at time of consent negotiations); *Pay Less Drugstores Northwest, Inc.*, Docket No. C-3039, Letter to H.B. Hummelt (Jan. 22, 1982) (changed conditions must be unforeseeable, create severe competitive hardship and eliminate dangers order sought to remedy) (unpublished); see also *United States v. Swift & Co.*, 286 U.S. 106, 119 (1932) ("clear showing" of changes that have eliminated reasons for order or such that the order causes unanticipated hardship).

The language of Section 5(b) plainly anticipates that the burden is on the requester to make "a satisfactory showing" of changed conditions to obtain reopening of the order. See also *Gautreaux v. Pierce*, 535 F. Sup. 423, 426 (N.D. Ill. 1982) (requester must show "exceptional circumstances, new, changed or unforeseen at the time the decree was entered"). The legislative history also makes clear that the requester has the burden of showing, by means other than conclusory statements, why an order should be modified.² If the Commission

determines that the requester has made the necessary showing, the Commission must reopen the order to determine whether modification is required and, if so, the nature and extent of the modification. The Commission is not required to reopen the order, however, if the requester fails to meet its burden of making the satisfactory showing of changed conditions required by the statute. The requester's burden is not a light one in view of the public interest in repose and the finality of Commission orders. See *Federated Department Stores, Inc. v. Moitie*, 425 U.S. 394 (1981) (strong public interest considerations support repose and finality); *Bowman Transportation, Inc. v. Arkansas-Best Freight System, Inc.*, 419 U.S. 281, 296 (1974) ("sound basis for * * * [not reopening] except in the most extraordinary circumstances"); *RSR Corp. v. FTC*, 656 F.2d 718; 721-22 (D.C. Cir. 1981) (applying *Bowman Transportation* standard to FTC order).

Changed Conditions of Law Warrant Reopening the Order

Arco has requested that the Commission set aside the order because of changed conditions of fact and law or, absent changed conditions, because of the public interest. For the reasons described below, changes of law warrant reopening the order against Atlantic. Having reopened and set aside the order on the basis of changes of law, the Commission does not reach the issue of whether the changes of fact or public interest considerations warrant reopening.

In finding a violation, the Commission considered Atlantic's sales commission plan to be in the nature of a tying restriction and that it had unlawful vertical restraint aspects. Arco asserts that in 1961 the Commission did not consider fundamental issues necessary under current legal standards to find that the sales commission plan would be unlawful. Arco also asserts that practices prohibited by the order are now unlikely to be unlawful. These assertions are of the types that warrant reopening an order and considering appropriate modifications.

1. The Tying Rationale

The Commission's decision was, to a large extent, based on the similarity of this case to a tying restriction where the sale of one product is conditioned on the agreement to buy another. While the opinion did not classify the matter as a tying case, that appears to be because the Atlantic franchise was not explicitly conditioned on the purchase of Goodyear or Firestone products.

Nevertheless, the mode of analysis and source of precedent was that of tying cases. 58 F.T.C. at 363-4. The opinion stated, for example, this is "a classic example of the use of economic power in one market (here, gasoline distribution) to destroy competition in another market (TBA distribution)." *Id.* at 367.

Arco points out that the tying concept used by the Commission in this case relies on the Supreme Court's approach to tying in *Northern Pacific Railway Co. v. United States*, 356 U.S. 1 (1958) and related decisions. That line of cases bases illegality on the finding of a tie and the foreclosure of a substantial volume of commerce. Those cases do not require and the Commission did not find that Atlantic had market power in the tying product (franchises for gas stations).

The approach of *Northern Pacific* to unlawful tying was ended in 1977 by the Supreme Court's decision in *United States Steel Corp. v. Fortner Enterprises*, 429 U.S. 610 (1977). In that case, the Court determined that a precondition to finding unlawful tying was establishing that the seller had market power in the tying product (i.e., franchises). It required a finding that the seller have the power to raise price above a competitive level or impose other burdensome terms that could not be imposed in a competitive market. See also, *Jefferson Parish Hospital District No. 2 v. Hyde*, 466 U.S. 2 (1984).

Despite language in the Commission's opinion about Atlantic's power in the gasoline market, the Commission made no inquiry into the question of whether it had the power to raise price above a competitive level. And, in view of the fact that Atlantic had a market share of less than 7 percent of its gasoline market, it seems unlikely that there would have been a basis for such a finding if the inquiry had been made. The Commission's discussion of economic power concerned Atlantic's total assets and the disparity of wealth between Atlantic and its franchisees. 58 F.T.C. at 356, 364.

For purposes of reopening the order, the important point is that the Commission made no inquiry concerning the market power of Atlantic and that today such an inquiry would be mandatory. In addition, Arco has shown that under current law a finding of unlawful restraints is unlikely. *Fortner* and subsequent cases established criteria that changed the law of tying in ways that are central to the determination of this case. Accordingly, there has been a change of law that warrants reopening this order.

¹ Section 5(b) provides, in part: "[T]he Commission shall reopen any such order to consider whether such order (including any affirmative relief provision contained in such order) should be altered, modified, or set aside, in whole or in part, if the person, partnership, or corporation involved files a request with the Commission which makes a satisfactory showing that changed conditions of law or fact require such order to be altered, modified, or set aside, in whole or in part."

The 1980 amendment to section 5(b) did not change the standard for order reopening and modification, but "codified existing Commission procedures by requiring the Commission to reopen an order if the specified showing is made," S. Rep. No. 96-500, 96th Cong., 2d Sess. 9-10 (1979), and added the requirement that the Commission act on petitions to reopen within 120 days of filing.

² The legislative history of amended section 5(b), S. Rep. No. 96-500, 96th Cong., 2d Sess. 9-10 (1979), states: "Unmeritorious, time-consuming and dilatory requests are not to be condoned. A mere facial demonstration of changed facts or circumstances is not sufficient * * *. The Commission, to reemphasize, may properly decline to reopen an order if a request is merely conclusory or otherwise fails to set forth specific facts demonstrating in detail the nature of the changed conditions require the requested modification of the order."

2. The Vertical Restraints Rationale

Although the Commission relied on *Northern Pacific*, 356 U.S. 1, and used a tying rationale for its decision, it did not explicitly characterize the case as an unlawful tie-in. Indeed, the Supreme Court, in affirming, suggests the Commission found something other, perhaps more, than an unlawful tie. 381 U.S. 357, 369-70 (1965). If the Commission's finding was not that the sale commission plan was an unlawful tie, the plan was, nevertheless, held to be a *per se* unlawful vertical restraint of some other type. Since the Supreme Court's decision in *Continental T.V., Inc. v. GTE Sylvania, Inc.*, 433 U.S. 36 (1977), it has been clear that non-price vertical restraints generally are to be evaluated under a rule of reason standard. That standard requires consideration of whether interbrand competition may be enhanced by efficiencies resulting from vertical restraints. But as the Supreme Court noted in reviewing this case, the Commission refused to consider "evidence of economic justification" or to analyze "the competitive effect of the sales commission plan, examining the entire market in tires, batteries and accessories." 381 U.S. 357 at 371 (1965). Thus, to the extent the Commission's decision rests on an analysis of non-price vertical restraints, it appears that this change of law also warrants reopening the order.

The Order Will be Set Aside

An order is not automatically set aside on the grounds that the law has changed, even if, as here, the Commission refused to consider issues that later become mandatory. Having satisfied itself on a record of adequate proof under then prevailing standards, the Commission does not have to reprove its case to maintain a final order. The order will remain in force unless the requester can show that there is no basis in current law on which such a case could be brought and either that there is no need for the order or that the current effect of the order is detrimental to competition.

In this request, Arco has satisfied this standard for modification. Arco has presented persuasive evidence that Atlantic probably lacked the "economic power" (as that term has been understood since *Fortner*, 429 U.S. 610) to effect an unlawful tie. Arco has also shown that there is no need for the order by presenting evidence that gas stations as a group, and Arco in particular, probably have too small a market share

to produce substantial competitive effects on TBA distribution.³

Furthermore, there is some danger that paragraphs 5 and 6, the core provisions of this order, might have anticompetitive effects by deterring efficient conduct if they remained in force. They prohibit the use of coercion or intimidation as means of marketing TBA products, and preventing franchisees from buying or displaying TBA products of their choice. The coercive use of economic power certainly can be illegal, but the disparity of bargaining power that the Commission identified in this case does not imply coercion. Under today's legal standards, even if Arco wished to require its franchisees to carry certain other branded products as a condition of obtaining or maintaining its franchise, the requirement would not constitute coercion and would be legal under a rule of reason in the absence of proof that it injured consumers. In view of these considerations, it appears that continuing the order in this case is unwarranted.

Accordingly, *it is ordered*, That this matter be reopened and that the Commission's order in Docket No. 6486 issued on March 9, 1961, be set aside as to Atlantic Refining Co. as of the date of this Order.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 89-24197 Filed 10-12-89; 8:45 am]

BILLING CODE 6750-01-M

[Docket 8560]

Ronby Corp., et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: This order modifies the Commission's order issued on March 12, 1964 (29 FR 4083), with Fred Astaire Dance Studios Corp., the corporate predecessor to the Ronby Corp., by providing students with absolute cancellation and refund rights.

DATES: Order issued March 12, 1964. Modifying Order issued April 27, 1989.

FOR FURTHER INFORMATION CONTACT: Wallace Witkowski or George O'Brien, FTC/S-4631, Washington, DC 20580. (202) 326-3015 or 326-2972.

³ Gas stations nationwide sold 3 percent of replacement batteries and 6 percent of replacement tires in 1987. Request at 19.

SUPPLEMENTARY INFORMATION: In the Matter of Ronby Corporation. The prohibited trade practices and/or corrective actions, as set forth at 29 FR 4083, remains unchanged.

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

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

Order Modifying Order to Cease and Desist

The Commission on January 26, 1989, issued its order to show cause why this proceeding should not be reopened and its order of March 12, 1964 ("the Commission order of 1964"), modified.

Ronby Corporation, Chester F. Casanave and Charles L. Casanave having consented to the reopening of this proceeding, to being added as parties respondent thereunder and to the modification of the Commission order of 1964, as set forth in the show cause order, and the Commission having placed the show cause order on the public record for thirty (30) days and no comments having been filed by interested persons.

Now, therefore, it is hereby ordered, That the Commission order of 1964 be, and it hereby is, modified, as follows:

(1) By inserting a Roman numeral one (I) before the *It is ordered* preamble of the 1964 order;

(2) By substituting revised language in the *It is ordered* preamble of the 1964 order, as provided below;

(3) By substituting revised language in numbered paragraphs 1., 4., 5., 7. and 9. of the newly designated Part I of the order, as provided below;

(4) By deleting paragraphs 3. and 8. thereof;

(5) By renumber paragraphs 4., 5., 6., 7. and 9. thereof as paragraphs 3., 4., 5., 6. and 7., respectively; and

(6) By adding new Parts II, III, IV, V, VI and VII, as provided below.

It is further ordered, That Ronby Corporation, a corporation, Chester F. Casanave and Charles L. Casanave be, and they hereby are, joined as respondents in this matter.

It is further ordered, That this matter be styled as the Matter of Ronby Corporation, et al.

Order

I

It is ordered, That respondents Ronby Corporation, a corporation, and Chester F. Casanave and Charles L. Casanave, individually, and as officers of said corporation, thier successors and

assigns, and their officers, agents, representatives, and employees, directly or through any area franchisor, franchisee, or licensee, or any corporate or other device, in connection with the solicitation, advertising or sale of any dance instruction or dance instruction service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that a course of dancing instruction or a specified number of dancing lessons, or a dance instruction service or any other service or thing of value, will be furnished, unless the period or periods of bona fide dancing instruction or other service or thing of value is in fact furnished as represented;

2. Refusing to honor the terms and provisions of any offer or promise;

3. Requesting any student or prospective student to sign an uncompleted contract or agreement, or misrepresenting to any student or prospective student what is or will be due or payable;

4. Using in any single day "relay salesmanship," that is consecutive sales talks or efforts of more than one representative, with or without the employment of hidden listening devices, to induce the purchase of dancing instruction;

5. Representing in any manner that a dancing instructor job is obtainable at a studio where the purpose of such a representation is to induce an applicant to purchase a course of instruction, or misrepresenting what such an instructor will be paid;

6. Falsely assuring or representing to any student or prospective student that a given course of dancing instruction will enable him or her to achieve a given standard of dancing proficiency;

7. Using any technique or practice similar to those set out in paragraphs 3 through 6 thereof to mislead, coerce, or induce by other unfair or deceptive means the purchase of dance instruction or dance instruction service.

II

It is further ordered, That respondents Ronby Corporation, a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any area franchisor, franchisee, or licensee, or any corporate or other device, in connection with the solicitation, advertising or sale of any dance instruction or dance instruction service in commerce, as "commerce" is defined in the Federal Trade Commission Act, to forthwith cease and desist from:

1. Failing to disclose, clearly and conspicuously, in each dance instruction contract or dance instruction service contract, the following statement:

Definitions

For purposes of this contract the following definitions apply:

"Total contract price" shall mean the total cash price paid or to be paid by the student or prospective student for the dance instruction or dance instruction service which is the subject of the contract or written agreement.

"Notice of cancellation" shall be deemed to have been provided by a student or prospective student by mailing or delivering to the studio a written notification cancelling the contract or written agreement.

"Reasonable and fair service fee" shall mean no more than 10% of the total contract price for contracts of up to \$1,000. For contracts over \$1,000, "reasonable and fair service fee" shall mean no more than \$100 plus an amount equal to 5% of the contract price over \$1,000. "Reasonable and fair service fee" shall not exceed \$250 in total.

"Dance instruction service" shall mean any service or a thing of value, including a contest or a competition, other than dance instruction, sold, organized, sponsored or promoted by any dance studio, or by its employee or agent, including any person or organization associated or affiliated with the franchise operation, franchisee, employee or agent.

Student Cancellation and Refund Right

You, the student, have the right to cancel this contract at any time by a notice in writing mailed or delivered to the studio. If the studio refuses or fails to give you the refund, or the studio closes, you should mail a copy of the cancellation notice to the area franchisor whose full name and address are

and to Ronby Corporation, the national licensor of the trade name Fred Astaire Dance Studios, at 11945 Southwest 140th Terrace, Miami, Florida 33186. No special format or notarization is necessary.

This contract is invalid if the full name and address of the area franchisor are not provided.

If this agreement is cancelled within three business days, the studio will refund within not more than (30) days all payments made under the agreement.

After three business days, the studio will only charge you for the dance instruction and dance instruction service received under the agreement, or prearranged but not attended before the day you cancel, plus a reasonable and fair service fee, as defined above, and refund the balance in three (3) equal monthly installments, within not more than ninety (90) days.

Provided, however, That a departure from this exact language to afford a greater right to a student than any right under this order, or to correctly provide the name and address of the national licensor or its equivalent, shall not be

deemed a violation of this requirement of the order.

2.a. Entering into a contract or other written agreement for any dance instruction or dance instruction service unless the contract or other written agreement contains the definitions, terms, and conditions recited in paragraph 1., above, in the exact language mandated by said paragraph and unless the contract or written agreement discloses clearly and conspicuously the rate charged per lesson for each type of dance instruction selected and the length of each lesson;

b. Failing to refund a student or prospective student who cancels any contract or written agreement within three business days from the date on which the contract or written agreement was executed all payments made by the student or prospective student. Such refunds shall be provided, and any evidence of indebtedness canceled and returned, within 30 days after receiving notice of cancellation.

c. Receiving, demanding, or retaining more than a pro rata portion of the total contract price plus a reasonable and fair service fee where a student or prospective student cancels any contract or written agreement after three business days from the date on which the contract or written agreement was executed and within the term of the said contract or written agreement; and failing to refund the balance in three (3) equal monthly installments, within not more than ninety (90) days after receiving notice of cancellation, or failing to cancel that portion of the student's or prospective student's indebtedness that exceeds the amount due;

The pro rata portion shall be calculated in the following manner:

(1) For the time period preceding notice of cancellation, total the number of hours or lessons of dance instruction that were received, or prearranged but not attended, by the student pursuant to the contract written agreement,

(2) Divide this number by the total number of hours or lessons of dance instruction which are the subject of the contract or written agreement,

(3) Apply the resulting percentage against the total contract price.

(4) For contracts combining a course of dance instruction with dance instruction services, separate prices for the dance instruction and the dance instruction service portions must be designated and the pro rata portion of the total contract price shall be the sum of the separate pro rata obligations for the dance instruction portion and the dance instruction service portion;

Provided, however, That this modified order does not create any private right of action against Ronby Corporation, Chester F. Casanave or Charles L. Casanave, by any student under any student contract.

d. Misrepresenting in any manner to any student or prospective student any of the provisions of this consent order.

3. Failing to subject any promissory note, instrument or evidence of indebtedness, given by a student pursuant to any contract for dance instruction or dance instruction services, to the students' cancellation and refund rights provided in paragraph 2. above, in such a manner that such student rights are legally binding on any third person who may acquire any right under any such note, instrument or evidence of indebtedness.

4. Attempting to obtain or obtaining from a student a waiver of the student's cancellation or refund right.

5. Failing to discontinue dealing with or terminate the use or engagement of any area franchisor who (1) continues, after notice, to engage in a course of conduct of acts or practices prohibited by this modified order, or (2) fails to discontinue dealing with or terminate the use or engagement of any franchisee or licensee who continues, after notice, to engage in a course of conduct of acts or practices prohibited by this modified order;

Provided, however, That Ronby Corporation and area franchisors may effect such termination in accordance with applicable law.

6. Failing to implement, within one hundred twenty (120) days from the date of service of this order, a program of surveillance adequate to reveal whether the business operation of each license or area franchisor conforms to the requirements of the modified order, and failing to maintain records of such surveillance program which shall be made available for inspection and copying to the Commission, upon reasonable notice and at reasonable times.

7.a. Failing to deliver a copy of this modified order to each present and future area franchisor and franchisee, with directions that each such person promulgate and enforce the terms of the modified order in the operations of each studio, including the sales efforts of any independent contractor engaged by the studio for the selling of dance instruction or dance instruction service;

b. Failing to obtain from each person described in subsection 7.a. above, a signed statement setting forth his or her intention to conform his or her business practices to the requirements of this modified order;

c. Failing to notify the Commission of the name and address of any person from whom respondent is unable to obtain such a signed statement; and

d. Failing to keep each such agreement for a period of five (5) years after the termination of any such relationship; and failing to transmit to the Commission or its designated staff complete and legible copies of the same within fourteen (14) business days of receiving a request for copies thereof;

III

It is further ordered, that respondents Ronby Corporation, Chester F. Casanave and Charles L. Casanave, shall report the discontinuance of their present business or their affiliation with any other business offering any dance instruction or service, such notice to include a description of respondent's new business or employment; and should either Chester F. Casanave or Charles L. Casanave create or become affiliated in any way with any corporation, partnership or other venture or business offering any dance instruction or service, such a corporation, partnership, venture or business shall be bound by the provisions of this modified order.

IV

It is further ordered, that respondent Ronby Corporation shall notify the Commission at least thirty (30) days prior to any proposed or contemplated reorganization, dissolution, assignment or sale, resulting in the emergence of a successor corporation, the creating or dissolution of a subsidiary or any other change in the corporate structure of such corporate respondent that may affect compliance obligations arising out of this order.

V

It is further ordered, that respondents Chester F. Casanave and Charles L. Casanave each shall be relieved from any further obligation under Parts I and III of this order upon completely ceasing his involvement with any dance instruction, or dance instruction service, including licensing or franchising of the same, until such time as he resumes such activity in the future.

VI

It is further ordered, that respondents Ronby Corporation, Chester F. Casanave and Charles L. Casanave, within one hundred twenty (120) days after the date of service upon each of them of this order, shall file with the Commission a report in writing, setting forth in detail the manner and form in

which they have complied with this order.

VII

It is further ordered, that respondent Ronby Corporation shall file or cause to be filed one (1) year after the date of service of this order a further detailed report on measures undertaken to protect the prepaid moneys of students.

By direction of the Commission, Commissioner Strenio dissenting.

Donald S. Clark,

Secretary.

[FR Doc. 24198 Filed 10-12-89; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR-12]

Request for Comments on Hazardous Substances Nominated for Toxicological Evaluation

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Request for Comments.

SUMMARY: On July 11, 1989, the Hazardous Waste Information Evaluation Subcommittee (HWIES) of the PHS Committee to Coordinate Environmental Health and Related Programs met to review six hazardous substances for possible toxicology studies by the National Toxicology Program (NTP) under funding from ATSDR. These six hazardous substances have been tested for toxicity, by the NTP, under prechronic conditions and are being considered for placement on a list for possible long-term testing. With this notice, ATSDR solicits public comments on the six hazardous substances listed herein.

DATE AND ADDRESS: Written comments bearing docket control number ATSDR-12 should be submitted by January 11, 1990 to: Dr. Barry L. Johnson, Assistant Administrator, Agency for Toxic Substances and Disease Registry, and Chairman, Hazardous Waste Information Evaluation Subcommittee, 1600 Clifton Road, NE., E-28, Atlanta, Georgia 30333. (404) 639-0700.

All written comments on this notice will be available for public inspection at ATSDR, Building 37, Executive Park Drive, NE., Atlanta, Georgia, from 8:00

a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: Section 104(i)(5)(A) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA or Superfund) (42 U.S.C. 9601 et seq.), requires ATSDR to conduct health assessments of sites on or proposed for inclusion on, the National Priorities List established by the Environmental Protection Agency (EPA). ATSDR's health assessments involve the evaluation of environmental contamination and of toxicological, demographic, and human health data in order to characterize public health implications of individual hazardous waste sites. Where gaps in toxicological information exist, ATSDR sponsors studies at the NTP to address the gaps. ATSDR seeks advice and recommendations from HWIES on which hazardous substances should be studied and the types of studies to be performed by NTP. Hazardous substances are nominated to HWIES by agencies with statutory responsibilities under CERCLA. Each substance is reviewed by HWIES and recommendations are provided to ATSDR concerning the need for toxicological testing.

Nominated hazardous substances are published with request for comments in the **Federal Register** to encourage public participation in the HWIES evaluation process. Through this process, HWIES can make better informed decisions whether to select, defer, or reject hazardous substances for toxicology study. Comments and secondary data submitted in response to this request are reviewed and summarized by HWIES and forwarded to ATSDR and NTP for further evaluation.

On July 11, 1989, HWIES evaluated six chemicals nominated by EPA for toxicology studies. The following table lists the chemicals and their Chemical Abstract Service (CAS) registry numbers.

Chemical	CAS No.
1,2-Dichloroethane	107-06-2
n-Hexane	110-54-3
Acetone	67-64-1
Hexachloro-1,3-butadiene.....	87-68-3
Pentachlorobenzene	608-93-5
1,2,4,5-Tetrachlorobenzene	95-94-3

Interested parties are requested to submit pertinent information and data. The following types of data and information are of particular relevance:

(1) Mode of production, current production levels, and environmental exposure potential;

(2) Uses and resulting exposure levels, where known;

(3) Completed, ongoing and/or planned toxicological testing in the private sector including detailed experimental protocols and results in the case of completed studies; and

(4) Results of toxicological studies of structurally related compounds.

Dated: October 5, 1989.

Walter R. Dowdle,

Acting Administrator, Agency for Toxic Substances and Disease Registry

[FR Doc. 89-24196 Filed 10-12-89; 8:45 am]

BILLING CODE 4160-70-M

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Committee Meetings in November

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, HHS.

ACTION: Notice of meetings.

SUMMARY: This notice sets forth the schedule and proposed agendas of the forthcoming meetings of the agency's advisory committees in the month of November 1989.

The National Advisory Mental Health Council, NIMH, will discuss policy issues and will include current administrative, legislative, and program developments. Attendance by the public will be limited to space available.

The initial review groups will be performing review of applications for Federal assistance and the Board of Scientific Counselors will review and evaluate intramural projects and individual staff scientists. Therefore, portions of the meetings will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552(b)(6) and 5 U.S.C. app. 2 10(d).

Notice of these meetings is required under the Federal Advisory Committee Act, Public Law 92-436.

Committee Name: Services Research Subcommittee of the Epidemiologic and Services Research Review Committee, NIMH

Date and Time: November 1-3: 9:00 a.m.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814

Status of Meeting: Open—November 1 9:00-10:00 a.m. Closed—Otherwise

Contact: Gloria Yockelson, Room 9C-14, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-1367

Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National

Institute of Mental Health for support of research and research training activities as they relate to mental health epidemiology, mental health service systems research, and evaluation of clinical mental health services, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Neuroscience and Behavior Subcommittee of the Alcohol Biomedical Research Review Committee, NIAAA

Date and Time: November 4-6: 9:00 a.m.

Place: Sheraton Phoenix, 111 North Central Avenue, Phoenix, AZ 85001

Status of Meeting: Open—November 4: 9:00-10:00 a.m. Closed—Otherwise

Contact: Samir Zakhari, Room 16C-26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 433-6106

Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Committee Name: Psychosocial and Biobehavioral Treatments

Subcommittee of the Treatment Development and Assessment Research Review Committee, NIMH

Date and Time: November 6-7: 9:00 a.m.

Place: Governors House Holiday Inn, 1615 Rhode Island Avenue, Washington, DC 20036

Status of Meeting: Open—November 6: 9:00-10:00 a.m. Closed—Otherwise

Contact: Frances Smith, Room 9C-02, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 433-4868

Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and/or research training activities in the fields of treatment development and assessment and makes recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Epidemiology Research Subcommittee of the Epidemiologic and Services Research Review Committee, NIMH

Date and Time: November 6-8: 9:00 a.m.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814

Status of Meeting: Open—November 6: 9:00-10:00 a.m. Closed—Otherwise

Contact: Gloria Yockelson, Room 9C-14, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-1367

Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities as they relate to mental health epidemiology, mental health service systems research, and evaluation of clinical mental health services, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Biobehavioral/Clinical Subcommittee of the Drug Abuse AIDS Research Review Committee, NIDA

Date and Time: November 14-16: 9:00 a.m.

Place: Holiday Inn Crowne Plaza, Rockville Room, 1750 Rockville Pike, Rockville, MD 20852

Status of Meeting: Open-November 14: 9:00-9:30 a.m. Closed-Otherwise

Contact: Iris W. O'Brien, Room 10-42, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-2620

Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities, and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Committee Name: Sociobehavioral Research Subcommittee of the Drug Abuse AIDS Research Review Committee, NIDA

Date and Time: November 14-16: 9:00 a.m.

Place: Holiday Inn Crowne Plaza, Halpine Room, 1750 Rockville Pike, Rockville, MD 20852

Status of Meeting: Open-November 14: 9:00-9:30 a.m. Closed-Otherwise

Contact: H. Noble Jones, Room 10-42, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-2620

Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities, and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Committee Name: Board of Scientific Counselors, NIMH

Date and Time: November 16-18: 9:00 a.m.

Place: Building 36, Room 1B-07, National Institutes of Health, Bethesda, MD and NIMH Neuroscience Center at St. Elizabeths, Room 536, Washington, DC

Status of Meeting: Open-November 16: 8:30-9:00 a.m. Closed-Otherwise

Contact: Steven M. Paul, Building 10, Room 4N-224, National Institute of Mental Health, Bethesda, MD 20892, (301) 496-3501

Purpose: The Board of Scientific Counselors provides expert advice to the Acting Director of Intramural Research and the Director, NIMH, on the mental health intramural research program through periodic visits to the laboratories for assessment of the research in progress and evaluation of productivity and performance of staff scientists.

Committee Name: National Advisory Mental Health Council, NIMH

Date and Time: November 30 and December 1: 9:00 a.m.

Place: Building 31C, NIH Campus; Conference Room #10, 9000 Rockville Pike, Bethesda, MD 20892

Status of Meeting: Open

Contact: Eleanor C. Friedenberg, Room 9-105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-3367

Purpose: The National Advisory Mental Health Council advises the Secretary of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute of Mental Health regarding policies and programs of the Department in the field of mental health. The Council reviews applications for grants-in-aid relating to research and training in the field of mental health and makes recommendations to the Secretary with respect to approval of applications for, and amount of, these grants.

Substantive information, summaries of the meetings, and rosters of committee members may be obtained as follows: Ms. Diana Widner, NIAAA Committee Management Officer, Room 16C-20, (301) 443-4375; Ms. Camilla Holland, NIDA Committee Management Officer Room 10-42, (301) 443-2620; Ms. Joanna Kieffer, NIMH Committee Management Officer, Room 9-105, (301) 443-4333. The mailing address for the above parties is: Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Dated: October 6, 1989.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 89-24097 Filed 10-12-89; 8:45 am]

BILLING CODE 4160-20-M

Centers for Disease Control

Mine Health Research Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control (CDC) announced the following National Institute for Occupational Safety and Health (NIOSH) committee meeting:

Name: Mine Health Research Advisory Committee (MHRAC)

Time and Date: 8:30 a.m.-4:30 p.m., November 2, 1989, 8:30 a.m.-12 noon, November 3, 1989.

Place: Appalachian Laboratory for Occupational Safety and Health, Conference Room 138, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505.

Status: Open to the public, limited only by the space available.

Purpose: The Committee is charged with advising the Secretary of Health and Human Services on matters involving or relating to mine health research, including grants and contracts for such research.

Agenda: Agenda items for the meeting will include announcements; consideration of minutes of the previous meeting and future meeting dates; NIOSH respirator programs; NIOSH respiratory disease program; National Occupational Health Survey of Mining; NIOSH policy update; review of the 1990 mining program; and National Traumatic Occupational Facility and mining. Agenda items are subject to change as priorities dictate.

Contact person: Melvin L. Myers, Executive Secretary, MHRAC, NIOSH, CDC, Bldg. 1, Room 3069, D-37, 1600 Clifton Road, NE., Atlanta, Georgia 30333. Telephone: Commercial: (404) 639-2376, FTS: 236-2376.

The meeting is open to the public for observation and participation. Anyone wishing to make an oral presentation should notify the contact person listed above as soon as possible before the meeting. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the presentation. Oral presentations will be scheduled at the discretion of the Chairperson and as time permits. Anyone wishing to have a question answered by a scheduled speaker during the meeting should submit the question in writing, along with his or her name and affiliation, through the Executive Secretary to the Chairperson. At the discretion of the Chairperson and as time permits,

appropriate questions will be asked of the speakers.

A roster of members and other relevant information regarding the meeting may be obtained from the contact person listed above.

Dated: October 6, 1989.

Glenda S. Cowart,

Director, Office of Program Support, Centers for Disease Control.

Robert L. Foster,

Assistant Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 89-24159 Filed 10-12-89; 8:45 am]

BILLING CODE 4110-19-M

National Institute for Occupational Safety and Health; Methods for Assessing Reproductive Potential in Females; Meeting

The following meeting will be convened by the National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC):

Name: Methods for Assessing Reproductive Potential in Females
Time and date: 10:00 a.m.-4:00 p.m.—October 17, 1989

Place: Robert A. Taft Laboratories, Room B-32, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Status: Open to the public, limited only by the space available.

Purpose: To convene an expert review panel to evaluate results obtained from a NIOSH developmental study entitled, Methods for Assessing Reproductive Potential in Females, and develop recommendations for future research.

Contact person: James S. Kesner, Ph.D., NIOSH, CDC, 4676 Columbia Parkway, (C23), Cincinnati, Ohio 45226, Telephone: Commercial: (513) 533-8208, FTS: 684-8208.

Dated: October 6, 1989.

Glenda S. Cowart,

Director, Office of Program Support, Centers for Disease Control.

Robert L. Foster,

Assistant Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 89-24158 Filed 10-12-89; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

[Docket No. 89P-0391]

Canned Tuna Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Starkist Seafood Co. to market test canned smoke-flavored tuna products. The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the food.

EFFECTIVE DATE: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than January 11, 1990.

FOR FURTHER INFORMATION CONTACT: James F. Lin, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0122.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of food deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Starkist Seafood Co., 180 East Ocean Blvd., Long Beach, CA 90802.

The permit covers limited interstate marketing tests of three tuna products (solid white tuna in spring water, chunk light tuna in spring water, and chunk light tuna in vegetable oil) that deviate from the standard of identity for canned tuna (21 CFR 161.190) in that the products contain added natural smoke flavor in an amount not in excess of 0.5 percent of the weight of the food. The test products meet all requirements of §161.190 with the exception of this deviation.

The permit provides for the temporary marketing of 300,000 cases of the products containing 48 6-ounce cans each.

The test products will be manufactured at the Starkist production facilities located in Mayaguez, Puerto Rico, and Pago Pago, Tutuila, American Samoa, and distributed in cities throughout the United States.

The principal display panel of the label includes "Hickory smoke flavor" as part of the product name ("Hickory smoke flavor chunk light tuna in vegetable oil," "Hickory smoke flavor solid white tuna in spring water," "Hickory smoke flavor chunk light tuna in spring water"), and each of the ingredients used in the food is stated on the label as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the food is introduced or

caused to be introduced into interstate commerce, but not later than January 11, 1990.

Dated: October 4, 1989.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-24199 Filed 10-12-89; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Final Funding Priority for Grants for Predoctoral Training in Family Medicine

The Health Resources and Service Administration announces the final funding priority for Grants for Predoctoral Training in Family Medicine for Fiscal Year 1990 authorized under section 786(a), title VII, of the Public Health Service Act, as amended by the Health Professions Reauthorization Act of 1988, Public Law 100-607, title VI.

Section 786(a) of the Public Health Service Act authorizes the award of grants to assist in meeting the cost of planning, developing and operating or participating in approved predoctoral training programs in the field of family medicine. Grants may include support for the program only or support for both the program and the trainees.

The Administrator's budget request for Fiscal Year 1990 does not include funding for this program. Applicants should be advised that this program announcement is a contingency action being taken to ensure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the programs as well as provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

To receive support, programs must meet the requirements of regulations as set forth in 42 CFR part 57, subpart Q. Eligible applicants are accredited public or nonprofit private schools of medicine or osteopathic medicine.

Review Criteria

The review of applications will take into consideration the following criteria:

1. The potential effectiveness of the proposed project in carrying out the training purposes of section 786(a) of the Act;

2. The degree to which the proposed project adequately provides for the project requirements;

3. The administrative and management ability of the applicant to carry out the proposed project in a cost-effective manner; and

4. The potential of the project to continue on a self-sustaining basis after the period of grant support.

In determining the order of funding of approved applications, a funding priority will be given to:

Projects in which substantial training experience is in a PHS 332 health manpower shortage area and/or PHS 329 migrant health center, PHS 330 community health center of PHS 781 funded Area Health Education Center or State designated clinic/center serving an underserved population.

An additional funding priority was published in the Federal Register of June 12, 1989 (FR 54 24954) for public comment. No comments were received during the 30 day comment period.

The funding priority as proposed will be retained as follows:

Funding Priority for Fiscal Year 1990

An additional funding priority will be given to:

Projects which satisfactorily demonstrate enrollment of underrepresented minorities in proportion to or greater than their percentage in the general population or can document an increase in the number of underrepresented minorities (i.e., Black, Hispanic and American Indian/Alaskan Native minority trainees).

Special Consideration

Special consideration will be given to applicants that demonstrate to the satisfaction of the Secretary a

commitment to family medicine in their medical education training programs.

This program is listed at 13.986 in the *Catalog of Federal Domestic Assistance*. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: October 6, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89-24211 Filed 10-12-89; 8:45 am]

BILLING CODE 4160-15-M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, September 22, 1989. (Call PHS Reports Clearance Officer on 202-245-2100 for copies of package.)

1. Application for Exemption from Pre-emption of Medical Device Requirements—0910-0129—A State or local government must apply for exemption from pre-emption if it wishes to enforce any medical device requirement that is different from, or in addition to, a Federal requirement. The information in the application will be

used to determine whether the requirement meets the criteria for exemption. Respondents: State or local governments; Number of Respondents: 3; Number of Responses per Respondent: 1; Average Burden per Response: 100 hours; Estimated Annual Burden: 300 hours.

2. National Heart, Lung, and Blood Institute Vietnam Era Twin Study—NEW—This questionnaire will provide data to enhance an existing data base for studies on genetic and environmental aspects of cardiovascular and other diseases. The Vietnam Era Twin Registry is a racially-mixed population of over 7,000 male monozygotic and dizygotic twin pairs who served in the U.S. military during the Vietnam era. Eleven thousand individuals for whom current addresses are available will be surveyed. Respondents: Individuals or households; Number of Respondents: 10,000; Number of responses per Respondent 1; Average Burden per Response: 0.5 hours; Estimated Annual Burden: 5,000 hours.

3. Health Professions Student Loan (HPSL) and Nursing Student Loan (NSL) Programs Promissory Notes—0915-0074—The reporting requirements provide the school with the legal documentation of loans awarded from HPSL and NSL funds, and provide the student with the legally binding terms of the loan. The promissory notes reflect the revised deferment provisions and interest rates chargeable to borrowers specified by PL 100-607. Respondents: Individuals or households, non-profit institutions.

	No. of respondents	No. of hrs. per response	No. of responses per respondent
HPSL notification.....	300	.017 hr.....	81.6
NSL Notification	550	.017 hr.....	36.3

Total Annual Burden: 741 Hours
OMB Desk Officer: Shannah Koss-McCallum

Written comments and recommendations for the proposed information collections should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management

Branch, New Executive Office Building,
Room 3208, Washington, DC 20503.

Dated: October 6, 1989.

Phyllis M. Zucker,

Acting Deputy Assistant Secretary for Health
(Planning and Evaluation).

[FR Doc. 89-24160 Filed 10-12-89; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-89-1917; FR-2606]

Underutilized and Unutilized Federal Buildings and Real Property Determined by HUD To Be Suitable for Use for Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: October 13, 1989.

ADDRESS: For further information, contact James Forsberg, Room 7228, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 755-6300; TDD number for the hearing- and speech-impaired (202) 426-0015. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 Court Order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD is publishing this Notice to identify Federal buildings and real property that HUD has determined are suitable for use for facilities to assist the homeless. The properties were identified from information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property.

The Order requires HUD to take certain steps to implement section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), which sets out a process by which unutilized or underutilized Federal properties may be made available to the homeless. Under section 501(a), HUD is to collect information from Federal landholding agencies about such properties and then to determine, under criteria developed in consultation with the Department of Health and Human Services (HHS) and the Administrator of General Services (GSA), which of those properties are suitable for facilities to assist the homeless. The Order requires HUD to publish, on a weekly basis, a Notice in

the Federal Register identifying the properties determined as suitable.

The properties identified in this Notice may ultimately be available for use by the homeless, but they are first subject to review by the landholding agencies pursuant to the court's Memorandum of December 14, 1988 and section 501(b) of the McKinney Act. Section 501(b) requires HUD to notify each Federal agency with respect to any property of such agency that has been identified as suitable. Within 30 days from receipt of such notice from HUD, the agency must transmit to HUD: (1) Its intention to declare the property excess to the agency's need or to make the property available on an interim basis for use as facilities to assist the homeless; or (2) a statement of the reasons that the property cannot be declared excess or made available on an interim basis for use as facilities to assist the homeless.

First, if the landholding agency decides that the property cannot be declared excess or made available to the homeless for use on an interim basis the property will no longer be available.

Second, if the landholding agency declares the property excess to the agency's need, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law and the December 12, 1988 Order and December 14, 1988 Memorandum, subject to screening for other Federal use.

Finally, in lieu of declaring any particular property as excess, the landholding agency may decide to make the property available to the homeless for use on an interim basis.

Homeless assistance providers interested in any property identified as suitable in this Notice should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, Room 17A-10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit such written expressions of interest within 30 days from the date of this Notice. For complete details concerning the timing and processing of applications, the reader is encouraged to refer to HUD's Federal Register Notice on June 23, 1989 (54 FR 26421), as corrected on July 3, 1989 (54 FR 27975).

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address),

providers should contact the appropriate landholding agencies at the following addresses: GSA: James Folliard, Federal Property Resources Services, GSA, 18th and F Streets, NW., Washington, DC 20405 (202) 535-7067; U.S. Navy: Andrea Wohfeld, Code 20 YAW, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332 (202) 325-7342. (These are not toll-free numbers.)

Dated: October 5, 1989.

Stephen A. Glaude,

Deputy Assistant Secretary for Program Management.

Suitable Building (by State)

(Number of Properties [])

Arkansas

Hot Springs National Park [4], see location below, Hot Springs, AR.

Landholding Agency: GSA

Location: 120 Sleepy Valley Road, 115

Daley Drive, 309 Terryland Drive,

303 Terryland Drive (GSA # 7-I-AR-415-T (excess)).

Comment: From 429 to 1475 sq ft/off-site use only.

Colorado

Naval Reserve Center [2], 801 Prospect Drive, Colorado Springs, CO.

Landholding Agency: GSA

Location: GSA # 7-N-CO-599 (excess).

Comment: 20,580/1055 sq. ft./Land City Owned/Other Information Incomplete.

Pennsylvania

Marine Corps Reserve Center [1], RR2, Box 569B, New Castle, PA.

Landholding Agency: Navy

Location:

Comment: 17541 sq. ft. on 1.61 Acres, Possible Asbestos.

[FR Doc. 89-24279 Filed 10-12-89; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-930-0-4410-13]

Notice of Intent, Pacific Ocean Rocks and Islands, Plan Analysis, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent—planning analysis for the California Islands Wildlife Sanctuary.

SUMMARY: Pursuant to 43 CFR 1601.0-3 and 40 CFR 1501.7, notice is hereby given that the California State Office, Bureau of Land Management will prepare a planning analysis for the California Islands Wildlife Sanctuary.

The analysis will consider Areas of Critical Environmental Concern designation for certain rocks and islands which are within the three mile limit, above mean high tide, and were withdrawn for a wildlife Sanctuary by Public Land Order 6369 on April 11, 1983.

The Public Land Order of 1983 withdrew the subject rocks, pinnacles and reefs off the coast of California from Oregon to the Mexican Border from surface entry, mining, and mineral leasing and from settlement, sale, location, or entry under the general land laws to protect the islands for the establishment of the California Islands Wildlife Sanctuary. Present management is the responsibility of the California Department of Fish and Game pursuant to a Memorandum of Understanding between the Bureau and the Department signed in May, 1983. The withdrawal is for a period of 50 years and encompasses an estimated 1,000 acres, more or less.

The main issue involved is an additional Bureau designation (ACEC) to focus attention on the wildlife resource. Planning criteria for this analysis consists of the need for any decision to be in conformance with the existing Public Land Order and withdrawal for a Wildlife Sanctuary. Two alternatives will be addressed (1) No action or present management and (2) present management with an ACEC designation. The interdisciplinary team, which will complete the analysis, will consist of specialists in wildlife biology, recreation, and land use planning.

DATES: The preparation of the environmental assessment will be completed by December, 1989, and the amendment, including public and State Governor's review is scheduled for completion in February, 1990.

PUBLIC PARTICIPATION: Opportunities for public input and comment will be announced through the media, a mailing list, and personal contacts. Comments on this notice will be entertained for 30 days after date of publication.

FOR FURTHER INFORMATION CONTACT: Robert A. Barney, Land Use Planner, Bureau of Land Management, 2800 Cottage Way, Room E-2841, Sacramento, California 95825. Telephone (916) 978-4722.

Dated: October 6, 1989.

Richard F. Johnson,
Acting State Director.

[FR Doc. 89-24170 Filed 10-12-89; 8:45 am]

BILLING CODE 4310-40-M

[WY-030-00-4320-12]

Rawlins District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting of the Rawlins District Grazing Advisory Board.

SUMMARY: Notice is hereby given of a meeting of the Rawlins District Grazing Advisory Board. The meeting will be held in accordance with the Taylor Grazing Act of 1934, the Federal Land Policy and Management Act of 1976, the Public Rangelands Improvement Act of 1978, and the Executive Order 12548 of February 14, 1986.

DATE/TIME: November 16, 1989; 10:00 a.m.

ADDRESS: Bel Air Inn, 23rd and Spruce Street, Rawlins, Wyoming.

FOR FURTHER INFORMATION CONTACT: John Spehar, District Range Conservationist, or Grant Petersen, Public Affairs Specialist, Rawlins District, Bureau of Land Management, P.O. Box 670, Rawlins, WY 82301, (307) 324-7171.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include:

1. Review of FY 89 range improvements, range improvement checklist.
2. Discussion of FY 90 range improvements.
3. Muddy Creek riparian demonstration area presentation.
4. Rangeland program summary update.

Dated: October 6, 1989.

Richard Bastin,
District Manager.

[FR Doc. 89-24171 Filed 10-12-89; 8:45 am]

BILLING CODE 4310-22-M

[WY-010-00-4830-12]

Worland District Advisory Council; Meeting

AGENCY: Bureau of Land Management (BLM).

ACTION: Meeting of the Worland District (Wyoming) Advisory Council.

SUMMARY: This notice provides the schedule and agenda of a meeting of the Worland District Advisory Council.

DATE: Wednesday, October 25, 1989, 9:00 a.m. until 4:00 p.m.

ADDRESS: The meeting will be held at the Bureau of Land Management's Worland District Office, 101 South 23rd Street, Worland, Wyoming.

FOR FURTHER INFORMATION CONTACT: David Stout, Bureau of Land Management, P.O. Box 119, Worland, Wyoming 82401, telephone (307) 347-9871.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include:

1. Opening remarks, introductions;
2. Review of minutes from the last meeting;
3. Review of the proposal by the BLM to acquire the Girl Scout National Center West;
4. Initial scoping of major issues for consideration in the Grass Creek Resource Management Plan;
5. Briefing on the status of oil and gas exploration activities in the upper Owl Creek drainages of Hot Springs County;
6. Briefing on the status of the Cody Resource Management Plan;
7. Briefing on the status of wilderness study reports and wilderness environmental impact statements in the Worland District;
8. Briefing on the Altamont natural gas transmission pipeline proposal;
9. Statements from the public, if any.

The meeting will be open to the public. Interested persons may make oral statements to the Council during the public comment period or may submit written statements for the Council's consideration. Anyone wishing to make an oral statement must notify the Worland District Manager in writing by October 20, 1989.

Dated: October 29, 1989.

Darrell C. Barnes,
District Manager.

[FR Doc. 89-24172 Filed 10-12-89; 8:45 am]

BILLING CODE 4310-22-M

[WY-920-09-4111-15; WYW96667]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

October 5, 1989.

Pursuant to the provisions of Public Law 97-451, 96, Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW96667 for lands in Sweetwater County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of \$5 per acre, or fraction thereof, per year and 16 2/3 percent, respectively.

The lessee has paid the required \$500 administrative fee and \$125 to reimburse the Department for the cost of this Federal Register notice.

The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW96667 effective June 1, 1989, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Doris M. Miller,

Acting Supervisory Land Law Examiner.

[FR Doc. 89-24173 Filed 10-12-89; 8:45 am]

BILLING CODE 4310-22-M

[MT-930-09-4214-11; MTM 17093]

Proposed Continuation of Public Land Order 5062 and Opening of Land; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management, Department of the Interior proposes that the withdrawal of 3,639.24 acres of land for Bear Trap Recreation Area be continued for an additional 20 years. The segregation from public land laws and the mineral leasing laws created by PLO 5062 would be terminated. Approximately 3,470.48 acres would remain segregated from mining, mineral leasing, and operation of the public land laws as part of the Lee Metcalf Wilderness Area.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406-255-2935.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management, Department of the Interior, proposes that the existing land withdrawal made by Public Land Order 5062 be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714. The lands are described as follows:

Principal Meridian

T. 3 S., R. 1 E.,
 Sec. 10, lots 3, 5, 7, and 9;
 Sec. 11, NW $\frac{1}{4}$ NW $\frac{1}{4}$;
 Sec. 15, lots 1 to 10, inclusive, E $\frac{1}{2}$ NW $\frac{1}{4}$;
 SW $\frac{1}{4}$ SW $\frac{1}{4}$, and NW $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 21, lots 3 and 6, E $\frac{1}{2}$ NE $\frac{1}{4}$;
 Sec. 22, lots 1 to 9, inclusive, SW $\frac{1}{4}$ NE $\frac{1}{4}$,
 and E $\frac{1}{2}$ SW $\frac{1}{4}$;
 Sec. 27, lots 1 to 8, inclusive, SW $\frac{1}{4}$ SW $\frac{1}{4}$
 and W $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 32, SE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 33, lots 1 to 4, inclusive, E $\frac{1}{2}$ SW $\frac{1}{4}$,
 SW $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, and NW $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 34, lots 1 to 6, inclusive, NW $\frac{1}{4}$ NE $\frac{1}{4}$,
 NW $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, and SW $\frac{1}{4}$ SW $\frac{1}{4}$.
 T. 4 S., R. 1 E.,

Sec. 4, lots 1 to 8, inclusive, S $\frac{1}{2}$ NE $\frac{1}{4}$,
 NE $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$;

Sec. 5, lots 1, 2, 5, 6, and 7, S $\frac{1}{2}$ NE $\frac{1}{4}$, and
 W $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 8, lots 1 to 8, inclusive, SE $\frac{1}{4}$ NE $\frac{1}{4}$,
 E $\frac{1}{2}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$, and
 SW $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 17, lots 1 and 2, N $\frac{1}{2}$ NE $\frac{1}{4}$, and
 NW $\frac{1}{4}$ NW $\frac{1}{4}$.

The areas described aggregate approximately 3,639.24 acres in Madison County.

The purpose of the withdrawal is to protect the Bear Trap Recreation Area. The withdrawal segregates the lands from appropriation under the public land laws, including the mining laws, and from leasing under the mineral leasing laws. The segregation from public land laws and mineral leasing laws created by PLO 5092 would be terminated. The lands lying within the Lee Metcalf Wilderness Area would remain segregated from mining, mineral leasing, and operation of the public land laws.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation and opening order may present their views in writing to the Chief, Branch of Land Resources at the address listed above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. The final determination on the continuation of the withdrawal will be published in the Federal Register. The existing withdrawal will continue until such final determination is made.

Dated: October 5, 1989.

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 89-24174 Filed 10-12-89; 8:45 am]

BILLING CODE 4310-DN-M

[NV-930-09-4212-13; N-42355]

Issuance of Conveyance Document and Order Providing for Opening of Public Land; Nevada

September 27, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested parties of the consummation of an exchange of land and the opening of the land acquired by the United States to the operation of the public land laws.

EFFECTIVE DATE: November 13, 1989.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, Nevada State Office, Bureau of Land Management, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, 702-328-6326.

SUPPLEMENTARY INFORMATION: The United States issued an exchange document to Tracy Company on September 26, 1989, for the following described lands under section 206 of the Federal Land and Management Act of 1976 (43 U.S.C. 1716):

Mount Diablo Meridian

T. 20 N., R. 22 E., Nevada

Sec. 28, N $\frac{1}{2}$, N $\frac{1}{2}$ S $\frac{1}{2}$;

Sec. 30, E $\frac{1}{2}$ W $\frac{1}{2}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$.

comprising 600 acres of public land in Washoe county.

In the exchange for these lands, the United States acquired the following described lands from the Tracy Company:

Mount Diablo Meridian, Nevada

T. 20 N., R. 21 E.,

Secs. 13, 23, and 25, all;

Sec. 35, N $\frac{1}{2}$ N $\frac{1}{2}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$.

T. 20 N., R. 22 E.,

Sec. 19, all.

comprising 2,762.40 acres of private lands in Washoe county.

The purpose of this exchange was to acquire the non-Federal lands for additional acreage with value for wildlife habitat, increased forage for livestock grazing and possible cultural values. The exchange consolidated areas of public and private lands creating more efficient manageable land areas. The public interest was served through completion of this exchange. The values of the Federal public land and the non-Federal land in the exchange were appraised equally at \$360,000. The minerals on both sides were exchanged. Upon acceptance of title to the lands acquired by the United States, the lands became part of the public lands administered by the Bureau of Land Management. At 10:00 a.m. on November 13, 1989, the lands shall be open to the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable laws. All applications received at or prior to 10:00 a.m. on November 13, 1989, shall be considered as simultaneously filed. Those received thereafter shall be considered in the order of filing. At 10:00

a.m. on November 13, 1989, the land acquired by the United States will be open to location under the United States mining laws and to applications under the mineral leasing laws. Appropriation of any of the land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Edward F. Spang,
State Director, Nevada.

[FR Doc. 89-24152 Filed 10-12-89; 8:45 am]

BILLING CODE 4310-HC-M

[CO-932-00-4212-24; C-47720]

Conveyance of Lands; Reconveyance of Lands; Opening of Reconveyed Lands, Colorado

October 6, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of issuance of land exchange conveyance documents and Opening of reconveyed land.

SUMMARY: This action informs the public and interested State and local officials of the conveyance of 320 acres of public lands out of Federal ownership, the reconveyance of 332.12 acres of land into Federal ownership, and the opening of the 332.12 acres of reconveyed lands to operation of the appropriate public lands laws. This exchange enabled private parties to obtain title of lands that were needed by them for use with contiguous lands they owned, and enabled the United States to obtain title to lands containing high multiple resource values. This action was based on equal value of the properties exchanged and the public interest was well served by this action.

FOR FURTHER INFORMATION CONTACT: Andrew J. Senti, Bureau of Land Management, Colorado State Office 303 236-1752.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the completion of an exchange of land between the United States and a private party.

1. The Bureau of Land Management issued a patent to David R. and Jane E. Hall for the following described land

under section 206 of the Act of October 21, 1976 (43 U.S.C. 1716):

Sixth Principal Meridian, Colorado

T. 16 S., R. 68 W.,
Sec. 5, E $\frac{1}{2}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, and SW $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 6, NE $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 8, E $\frac{1}{2}$ NW $\frac{1}{4}$,
Containing 320.00 acres in Teller County.

2. In exchange for these lands, the United States obtained title to the land listed below.

Sixth Principal Meridian, Colorado

T. 16S., R. 68 W.,
Sec. 7, lots 2, 3, 4, SE $\frac{1}{4}$ NW $\frac{1}{4}$, and NE $\frac{1}{4}$ SE $\frac{1}{4}$;
Containing 172.12 acres in Teller County.
Sec. 20 E $\frac{1}{2}$ NE $\frac{1}{4}$, and NE $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 21, NW $\frac{1}{4}$ SW $\frac{1}{4}$,
Containing 160.00 acres in Fremont County.

3. At 10:00 a.m. on November 20, 1989, the land described in paragraph 2, will be opened to operation of the public land laws generally, subject to valid existing rights, the provision of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10:00 a.m. on November 20, 1989, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. At 10:00 a.m. on November 20, 1989, the land described in paragraph 2 will be opened to location and entry under the United States mining laws. Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. section 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for determination in local courts.

Robert S. Schmidt,
Chief, Branch of Realty Programs.
[FR Doc. 89-24175 Filed 10-12-89; 8:45 am]
BILLING CODE 4310-JB-M

Bureau of Land Management Montana

[MT-070-09-4050-91-43H: M46269]

Realty Action; Recreation and Public Purposes (R&PP) Act Conveyance; Lewis and Clark County, MT

AGENCY: Interior, Bureau of Land Management, Butte District.

SUMMARY: This notice amends the original Notice of Realty Action for M46269 published on September 15, 1989 (Vol. 54 No. 178 page 38292). The lands described in that Notice have been under lease to the Montana Department of Fish, Wildlife and Parks since 1980 pursuant to the Recreation and Public Purposes Act for the Black Sandy State Recreation Area. Those lands have now been found suitable for classification for conveyance to the State of Montana under the same Act. In the absence of any adverse comments, the lands will be classified for disposal by Recreation and Public Purposes Act conveyance 60 days from the date of publication of this Notice.

Dated: October 2, 1989.

Orval L. Hadley,
Acting District Manager.
[FR Doc. 89-24176 Filed 10-12-89; 8:45 am]
BILLING CODE 4310-DN-M

[NM-010-10-4212-13/GPO-0001]

Albuquerque District, NM; Realty Action on Proposed Land Exchange in San Juan County, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action On proposed land exchange NM NM 77281.

SUMMARY: This notice is to advise that the following described lands have been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

New Mexico Principal Meridian

T. 29 N., R. 11 W.,
Sec. 27, N $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, 5.0 acres
S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, 5.0 acres
Sec. 34, W $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$, 5.0 acres
comprising 15.0 acres of public land.

In exchange for these lands, the United States will acquire the following described lands from Kenneth W. Larsen:

New Mexico Principal Meridian

T. 31 N., R. 7 W.,
Sec. 29, S $\frac{1}{2}$ WN $\frac{1}{4}$ NE $\frac{1}{4}$, 20.0 acres
N $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, 20.0 acres
T. 32 N., R. 6 W.,
Sec. 20, NW $\frac{1}{4}$ NW $\frac{1}{4}$, 40.0 acres
T. 32 N., R. 7 W.,
Sec. 19, SW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, 2.5 acres
SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, 10.0 acres
Sec. 20, W $\frac{1}{2}$ E $\frac{1}{2}$ SE $\frac{1}{4}$, 40.0 acres
Sec. 29, W $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, 5.0 acres
SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, 2.334 acres
Sec. 31, W $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, 5.0 acres
Sec. 32, E $\frac{1}{2}$ E $\frac{1}{2}$ W $\frac{1}{2}$ NW $\frac{1}{4}$, 18.652 acres
E $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, E $\frac{1}{2}$ W $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$,
18.426 acres
E $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, 27.71 acres

comprising 209.62 acres of private lands. The exchange will only involve the surface estates of the described lands.

The purpose of this exchange is to acquire the non-Federal lands which have high public values for recreation, wildlife habitat and rangeland resources.

Acquisition of these lands is part of the management prescriptions established in the Farmington Resource Management Plan (RMP—1988). This acreage is a portion of the private lands targeted for exchange within the Wildlife/Range/Outdoor Recreation zone. The RMP also adopted other resource specific activity plans that would benefit from the "blocking-up" of public lands within this zone. They include the Pump Mesa and Middle Mesa Allotment Management Plans and the Rosa/Middle Mesa Habitat Management Plan. The public interest will be served by completing the exchange.

The values of the lands to be exchanged are approximately equal; full equalization of values will be achieved by payment to the United States by Kenneth W. Larsen of funds in an amount not to exceed 25 percent of the total value of the lands to be transferred out of Federal ownership.

Lands to be transferred from the United States will be subject to the following reservations, terms and conditions:

1. Reservation of ditches and canals;
2. Reservation of all minerals, together with the right of ingress and egress to prospect for, mine and remove the same under applicable law; and
3. Subject to valid existing rights including any rights-of-way, easements, and leases of record.

Publication of this notice segregates the public lands from the operation of the public land laws, but not from exchange pursuant to Section 206 of the Federal Land Policy and Management Act of 1976, for a period of two years from the date of first publication.

Further information concerning the exchange, including the environmental analysis is available for review at the Bureau of Land Management, Farmington Resource Area, 1235 La Plata Highway, Farmington, NM 87401.

For a period of 45 days from the date of first publication, interested parties may submit comments to Bureau of Land Management, Albuquerque District Manager, 435 Montano Road, NE, Albuquerque, NM 87107

Dated: October 5, 1989.

Patricia E. McLean,

Associate District Manager,

[FR Doc. 89-24177 Filed 10-12-89; 8:45 am]

BILLING CODE 4310-FB-M

[NV-930-09-4212; N-51436]

Corrected and Amended Notice of Realty Action: Exchange of Public Lands, Clark County, Nevada

This notice corrects and amends the Notice of Realty Action issued for the Exchange of Public Lands, Clark County, Nevada, N-51436, published in Volume 54, Number 172, page 37159 of the Federal Register on September 7, 1989. That notice is hereby corrected by modifying the legal descriptions listed below to read as follows:

Mount Diablo Meridian, Nevada

T. 19 S., R. 60 E.

Sec. 5, lot 3, NW $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$;

Sec. 6, lots 1-5, 7-11, S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ E $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$;

Sec. 7, lots 1-4, NE $\frac{1}{4}$, E $\frac{1}{2}$ W $\frac{1}{2}$, W $\frac{1}{2}$ SE $\frac{1}{4}$.

That notice is hereby amended to include the following described public lands:

Mount Diablo Meridian, Nevada

T. 22 S., R. 61 E.

Sec. 23, N $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ N $\frac{1}{2}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 26, N $\frac{1}{2}$ N $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ S $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 34, S $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ N $\frac{1}{2}$ N $\frac{1}{2}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ N $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$.

containing 862.5 acres.

The new total acreage of the public land involved, including the correction and amendment, is approximately 3141.81 acres.

These additional lands shall be segregated to the same extent, manner and degree and specified in the original publication. In addition, the name of the proponent has been changed from Metroplex Properties to Olympic Management Inc. or their nominee. All other conditions set forth in the original notice remain unchanged.

For a period of forty-five days, interested parties may submit comments to the District Manager, Las Vegas District Office, 4765 Vegas Drive, Las Vegas, Nevada 89126.

Dated: October 5, 1989.

Ben Collins,

District Manager, Las Vegas District, Nevada.

[FR Doc. 89-24207 Filed 10-12-89; 8:45 am]

BILLING CODE 4310-HC-M

[AZ-942-00-4730-12]

Arizona State Office; Filing of Plats of Survey

1. The plats of survey of the following described lands were officially filed in the Arizona State Office, P.O. Box 16563, Phoenix, Arizona, 85011 on the dates indicated:

A supplemental plat showing amended lottings of previously segregated mining claims in sections 5, 18, 19 and 30, Township 10 North, Range 3 East, Gila and Salt River Meridian, Arizona, was accepted September 6, 1989, and was officially filed September 7, 1989.

A plat representing a dependent resurvey of a portion of the Fourth Standard Parallel North (south boundary) and a portion of the subdivisional lines; and metes-and-bounds surveys in section 21 and 27, Township 17 North, Range 21 West, Gila and Salt River Meridian, Arizona, was accepted August 7, 1989, and was officially filed August 8, 1989.

A supplemental plat showing amended lottings for lots 1 and 5 in section 21 and lot 6 in section 27, Township 17 North, Range 21 West, Gila and Salt River Meridian, Arizona, was accepted August 29, 1989, and was officially filed August 30, 1989.

These plats were prepared at the request of the Bureau of Land Management, Lands Operations.

2. These plats will immediately become the basic record for describing the land for all authorized purposes. These plats have been placed in the

open files and are available to the public for information only.

3. All inquiries relating to these lands should be sent to the Arizona State Office, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011.

James P. Kelley,

Chief, Branch of Cadastral Survey.

[FR Doc. 89-24178 Filed 10-12-89; 8:45 am]

BILLING CODE 4310-32-M

[ES-940-00-4520-13; ES-041464, Group 184]

Florida; Filing of Plat of Dependent Resurvey and Subdivision of Sections 20, 21, 26, 28, 29, 30, 31 and 32

October 4, 1989.

1. The plat, in nine sheets, of the dependent resurvey of a portion of the south and west boundaries, a portion of the subdivisional lines, the reestablishment of a portion of the adjusted original meander lines, and the survey of the subdivision of sections 20, 21, 26, 28, 29, 30, 31 and 32, West of the St. Johns River, and the metes-and-bounds survey of certain parcels in sections 26, 28 and 30, Township 12 South, Range 26 East, Tallahassee, Florida, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on November 20, 1989.

2. The survey was made at the request of the U.S. Forest Service.

3. All inquiries or protests concerning the technical aspects of the dependent resurvey must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., November 20, 1989.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of \$4.00 per copy.

Corwyn J. Rodine,

Acting Deputy State Director for Cadastral Survey.

[FR Doc. 89-24210 Filed 10-12-89; 8:45 am]

BILLING CODE 4310-GJ-M

[AZ-930-09-4214-11; A-12997]

Proposed Modification and Continuation of Withdrawal; AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to modify and continue for 20 years a portion of Secretarial Order (SO) of October 26, 1906, as subsequently

modified on September 26, 1907. These orders withdrew land in the Kaibab and Coconino National Forests, however; this notice pertains only to the land located within the Kaibab National Forest. Another notice will be published for the land located within the Coconino National Forest.

The land was withdrawn for Ranger Station and administrative site purposes. It continues to be utilized for such purposes with the exception of 30 acres located in T. 22 N., R. 2 E., sections 31 and 32. This land has been transferred to private ownership via forest exchange. It is anticipated that there will be no additional changes in land use. The Forest Service proposes that the land withdrawn for the Spring Valley Ranger Station and the Camp Clover Administrative Site be continued and segregated from operation of the mining laws only.

DATE: Comments to this notice should be received on or before January 11, 1989.

ADDRESS: Comments should be addressed to the Arizona State Director, BLM, P.O. Box 16563, Phoenix, Arizona 85011.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, (602) 241-5531.

SUPPLEMENTARY INFORMATION: The Forest Service proposes that SO of October 26, 1906, as modified, withdrawing the land from appropriation and use of all kinds under the public land laws for an indefinite period of time be modified and continued for 20 years as it pertains to 110 acres of the Spring Valley Ranger Station and 190 acres of the Camp Clover Administrative Site. Both sites contain improvements valued at \$8,000 and \$116,000 respectively. The order will be terminated on 30 acres of the Camp Clover Administrative Site. Actions are taken pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714:

Gila and Salt River Meridian

Continue

T. 23 N., R. 4 E.,	
Sec. 22, E $\frac{1}{2}$ SW $\frac{1}{4}$	
Sec. 27, N $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$	110 acres
T. 22 N., R. 2 E.,	
Sec. 31, E $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$	
Sec. 32, S $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$	190 acres
Terminate	
T. 22 N., R. 2 E.,	
Sec. 31, W $\frac{1}{2}$ W $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$	10 acres
Sec. 32, S $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$	20 acres

The areas described contain 300 acres, on which the withdrawal will be

continued and 30 acres on which it will be terminated, all located in Coconino County.

The purpose of the withdrawal is for the administration and protection of two administrative sites. The continued portion of the orders will now be closed to operations of the mining laws only. Terminating the withdrawal on the subject 30 acres is simply for record clearing purposes as the land has already been transferred into private ownership via forest exchange.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with this proposed action may present their views in writing to this office.

The authorized officer of the Bureau of Land Management will undertake such investigation as is necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be modified and continued and, if so, for how long. Notice of the final determination will be published in the *Federal Register*. The existing withdrawal will continue until such final determination is made.

Beaumont C. McClure,

DSD, Lands and Renewable Resources.

[FR Doc. 89-24179 Filed 10-12-89; 8:45 am]

BILLING CODE 4310-32-M

[AZ-930-09-4214-11; A-12973]

Proposed Modification and Continuation of Withdrawal; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to modify and continue for 20 years Secretarial Order of October 23, 1907, which withdrew 120.00 acres in the Coconino National Forest for use as the Moqui Administrative Site.

The site was renamed in 1915 to the Blue Ridge Administrative Site. In 1963 the Blue Ridge Campground was constructed on the site and use as an administrative site discontinued. The Forest Service proposes to continue the withdrawal for campground purposes for 20 years, it does not anticipate any additional changes in land use. The land will remain closed to operation of the mining laws only.

DATE: Comments to the notice should be received by January 11, 1989.

ADDRESS: Comments should be addressed to the Arizona State Director, BLM, P.O. Box 16563, Phoenix, Arizona 85011.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, (602) 241-5509.

SUPPLEMENTARY INFORMATION: The Forest Service proposes that Secretarial Order dated October 23, 1907, withdrawing the land from all forms of use for an indefinite period of time, be modified and continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, insofar as it affects the following described lands in the State of Arizona. Additionally it is proposed the authorized land use change from an administrative site to use for campground purposes.

Gila and Salt River Meridian

T. 14 N., R. 11 E.,
Sec. 21, N $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$.

The area described contains 120.00 acres in Coconino County.

The purpose of the withdrawal is to protect a 10 unit campground valued at \$15,000 from prospecting and disturbance caused by mining operations. For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with this proposed action may present their views in writing to this office.

The authorized officer of the BLM will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources.

A report will be prepared for consideration to determine whether or not the withdrawal will be modified and continued and, if so, for how long. Notice of a final determination will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Beaumont C. McClure,
Deputy State Director, Lands and Renewable Resources.

[FR Doc. 89-24180 Filed 10-12-89; 8:45 am]
BILLING CODE 4310-32-M

[CA-060-43-7122-08-DO63; CACA 23486]

Proposed Withdrawal and Opportunity for Public Meeting; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Army, Los Angeles District, Corps of Engineers, has filed an application to withdraw approximately 265,700 acres of public lands to expand the Army's National Training Center at Fort Irwin. This notice closes the lands for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

DATE: Comments and requests for a meeting should be received on or before January 11, 1989.

ADDRESS: Comments and meeting requests should be sent to the California State Director, BLM, 2800 Cottage Way, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, BLM California State Office, 916-978-4820.

SUPPLEMENTARY INFORMATION: On August 19, 1988, the U.S. Department of the Army filed an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

Mount Diablo Meridian

T. 31 S., R. 46 E.,
Sec. 1, lots 1 and 2 of NE $\frac{1}{4}$, and SE $\frac{1}{4}$;
Sec. 2, lots 1 and 2 of NE $\frac{1}{4}$;
Sec. 3, W $\frac{1}{2}$ lot 1 of NW $\frac{1}{4}$ and W $\frac{1}{2}$ lot 2 of NW $\frac{1}{4}$;
Sec. 4;
Sec. 5, lot 1 of NE $\frac{1}{4}$, lot 2 of NE $\frac{1}{4}$, lot 1 of NW $\frac{1}{4}$, lot 2 of NW $\frac{1}{4}$, and SW $\frac{1}{4}$;
Sec. 8;
Sec. 9, S $\frac{1}{2}$;
Sec. 10, SE $\frac{1}{4}$;
Sec. 11;
Sec. 12, N $\frac{1}{2}$ and SW $\frac{1}{4}$;
Sec. 13, NW $\frac{1}{4}$ and SE $\frac{1}{4}$;
Sec. 14, N $\frac{1}{2}$ and S $\frac{1}{2}$ SE $\frac{1}{4}$;
Secs. 15 and 17;
Sec. 20, W $\frac{1}{2}$ E $\frac{1}{2}$;
Sec. 21, NE $\frac{1}{4}$;
Sec. 22, NE $\frac{1}{4}$ SW $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$;
Sec. 23, SW $\frac{1}{4}$;
Sec. 25, N $\frac{1}{2}$ and N $\frac{1}{2}$ S $\frac{1}{2}$;
Sec. 26, NE $\frac{1}{4}$ and S $\frac{1}{2}$;
Sec. 27, NE $\frac{1}{4}$ and N $\frac{1}{2}$ SE $\frac{1}{4}$;
Sec. 28, S $\frac{1}{2}$;
Sec. 29, N $\frac{1}{2}$;
Secs. 32 and 34.

T. 32 S., R. 46 E.,
Secs. 2, 4, 8, 10, 12, 14, 20, and 22, secs. 24 to 28, inclusive, and secs. 32 to 35, inclusive.

T. 31 S., R. 47 E.,
Sec. 3;
Sec. 4, lots 1 to 4, inclusive, S $\frac{1}{2}$ N $\frac{1}{2}$, and SE $\frac{1}{4}$;
Sec. 5, lots 1 to 4, inclusive, S $\frac{1}{2}$ N $\frac{1}{2}$, and N $\frac{1}{2}$ S $\frac{1}{2}$;
Sec. 6, lots 1 to 5, inclusive, SE $\frac{1}{4}$ NW $\frac{1}{4}$, and S $\frac{1}{2}$ NE $\frac{1}{4}$;
Sec. 7, SE $\frac{1}{4}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$;
Sec. 8, NW $\frac{1}{4}$ and S $\frac{1}{2}$;
Sec. 9, NE $\frac{1}{4}$ and S $\frac{1}{2}$;

Sec. 10, secs. 15 to 22, inclusive, secs. 27 to 30, inclusive, and secs. 32 and 34.

T. 32 S., R. 47 E.,
Sec. 3, lot 7 and SE $\frac{1}{4}$ NW $\frac{1}{4}$;
Sec. 4, 6, and 8;
Sec. 9, SW $\frac{1}{4}$ SW $\frac{1}{4}$;
Sec. 10;
Sec. 15, lots 3 and 4, and SW $\frac{1}{4}$;
Secs. 18, 20, 21, 22, 27, and 28;
Sec. 29, N $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$, and NW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$;
Secs. 30, 31, and 32;
Sec. 33, SE $\frac{1}{4}$;
Sec. 34;

San Bernardino Meridian

T. 11 N., R. 1 E.,
Secs. 2, 3, 4, 6, 7, 8, 10, 11, 12, 14, 15, 22, 23, and 24;
T. 12 N., R. 1 E.,
Sec. 1, lots 1 to 4, inclusive, S $\frac{1}{2}$ N $\frac{1}{2}$, and SE $\frac{1}{4}$;
Secs. 2, 4, 6, 8, 10, and 12;
Sec. 13, NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, and S $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$;
Secs. 14, 18, 19, 20, and 22;
Sec. 23, lot 2;
Secs. 24, 26, 27, and 28;
Sec. 29, SW $\frac{1}{4}$;
Secs. 30, 31, 32, 34, and 35.

T. 13 N., R. 1 E.,
Sec. 1;
Sec. 2, excluding patented land;
Sec. 3, excluding patented land;
Secs. 4 to 9, inclusive;
Sec. 10, excluding patented land;
Sec. 11, excluding patented land;
Secs. 12 to 15, inclusive;
Secs. 17 to 30, inclusive, partly unsurveyed;
Sec. 32;
Sec. 33, N $\frac{1}{2}$ and N $\frac{1}{2}$ S $\frac{1}{2}$;
Secs. 34, 35, and 36, partly unsurveyed.

T. 14 N., R. 1 E.,
Sec. 15, secs. 17 to 22, inclusive, and secs. 25 to 35, inclusive.
T. 11 N., R. 2 E.,
Secs. 2, 3, 4, 6, and 7;
Sec. 8, N $\frac{1}{2}$;
Secs. 10, 11, 12, 14, 15, 18, 19, 20, 22, 23, 21, 26, 27, 28, 32, and 34;
Sec. 35, W $\frac{1}{2}$.

T. 12 N., R. 2 E.,
Sec. 6, unsurveyed;
Sec. 7, lots 1, 2, and 3, and W $\frac{1}{2}$ NE $\frac{1}{4}$;
Secs. 9 and 10;
Sec. 13, N $\frac{1}{2}$;
Sec. 14;
Sec. 15, N $\frac{1}{2}$ NE $\frac{1}{4}$;
Secs. 18, 20, 22, 24, and 26;
Sec. 28, N $\frac{1}{2}$ and N $\frac{1}{2}$ S $\frac{1}{2}$;
Sec. 32, SW $\frac{1}{4}$;
Sec. 34.

T. 11 N., R. 3 E.,
Sec. 1, S $\frac{1}{2}$ SW $\frac{1}{4}$, excluding patented land;
Sec. 2, excluding patented land;
Secs. 4, 6, 7, 8, and 10;
Sec. 11, excluding patented land;
Sec. 12, excluding patented land;
Secs. 14, 15, 18, and 19;
Sec. 20, N $\frac{1}{2}$;
Secs. 22, 23, 24, 26, 27, and 28;
Sec. 30, lot 1 of SW $\frac{1}{4}$ and lot 2 of SW $\frac{1}{4}$;
Sec. 31.

T. 12 N., R. 3 E.,

Secs. 20 and 22;
 Sec. 23, N½;
 Secs. 24 and 26;
 Sec. 27, lots 7 and 9, and NW¼SW¼;
 Secs. 28, 30, 32, and 34.
 T. 11 N., R. 4 E.,
 Secs. 2, 4, 6, 8, 10, 12, 14, 18, 19, 20, and 22;
 Sec. 24, N½NE¼NE¼, SW¼NE¼NE¼,
 NW¼NE¼, NW¼SW¼NE¼, N½
 NW¼, SW¼NW¼, N½SE¼NW¼,
 SW¼SE¼NW¼, and NW¼NW¼SW¼;
 Sec. 27, N½NE¼NE¼, SW¼NE¼NE¼,
 NW¼NE¼, NW¼SW¼NE¼, N½
 NW¼, SW¼NW¼, N½SE¼NW¼, and
 SW¼SE¼NW¼;
 Sec. 28, N½, N½SW¼, SW¼SW¼, N½
 SE¼SW¼, NW¼SE¼, and
 N½NE¼ SE¼;
 Sec. 30
 T. 12 N., R. 4 E.,
 Sec. 19, lots 1 to 5, inclusive, SE¼NW¼,
 S½NE¼, and SE¼;
 Secs. 20 to 24, inclusive, partly unsurveyed;
 Sec. 25, N½ and SE¼;
 Sec. 26;
 Sec. 27, lots 1 and 2, W½NE¼, and NW¼;
 Secs. 28, 30, 32, and 34.
 T. 11 N., R. 5 E.,
 Sec. 2, lot 2 of NW¼ and W½ lot 1 of
 NW¼;
 Secs. 4, 6, and 8;
 Sec. 10, N½NW¼NW¼ and SW¼NW¼
 NW¼;
 Sec. 18, lot 1 of NW¼, lot 2 of NW¼, lot 1
 of SW¼, lot 2 of SW¼, NE¼, NW¼
 SE¼, NW¼SW¼SE¼, N½NE¼SE¼,
 and SW¼NE¼SE¼.
 T. 12 N., R. 5 E.,
 Sec. 1 to 4, inclusive, secs. 9 to 15,
 inclusive, sec. 17, secs. 19 to 30, inclusive,
 and secs. 32 and 34;
 Sec. 35, N½.
 T. 13 N., R. 5 E.,
 Secs. 13, 24, 25, 26, 34, and 35.
 T. 12 N., R. 6 E.,
 Secs. 5 to 8, inclusive, and secs. 18 and 20;
 Sec. 30, lot 1 of NW¼, lot 2 of NW¼, lot 1
 of SW¼, lot 2 of SW¼, NE¼, N½SE¼,
 and N½SW¼SE¼.
 T. 13 N., R. 6 E.,
 Sec. 1 to 5, inclusive, secs. 7 to 15,
 inclusive, secs. 17 to 24, inclusive, and
 secs. 27 to 34, inclusive, partly
 unsurveyed.
 T. 14 N., R. 6 E.,
 Secs. 1, 2, and 11, partly unsurveyed;
 Sec. 12, excluding patented land, partly
 unsurveyed;
 Sec. 13, excluding patented land, partly
 unsurveyed;
 Sec. 14, secs. 23 to 26, inclusive, and secs.
 33, 34, and 35, partly unsurveyed.
 T. 15 N., R. 6 E.,
 Secs. 1 and 2;
 Secs. 11, lots 1, 2, and 3, NE¼NE¼, W½
 NE¼, W½, and W½SE¼;
 Sec. 12, lots 1, 3, 4, 5, and 6, E½, and N½
 NW¼;
 Sec. 13, lots 3, 4, and 5, E½, SW¼SW¼,
 and E½SW¼;
 Sec. 14, lots 1, 2, and 3, W½NE¼, W½,
 W½SE¼, and SE¼SE¼;
 Secs. 23 to 26, inclusive, and sec. 35.
 T. 13 N., R. 7 E.,
 Secs. 5 to 8, inclusive, partly unsurveyed.
 T. 14 N., R. 7 E.,

Secs. 1 to 9, inclusive, secs. 17 to 21,
 inclusive, and secs. 28 to 33, inclusive.
 T. 15 N., R. 7 E.,
 Secs. 1 to 15, inclusive;
 Sec. 17;
 Sec. 18, excluding patented land;
 Sec. 19, excluding patented land;
 Secs. 20 to 35, inclusive.
 T. 11 N., R. 1 W.,
 Secs. 2, 3, 4, 6, 7, 8, 10, 11, and 12.
 T. 12 N., R. 1 W.,
 Secs. 31, 32, 34, and 35.
 T. 11 N., R. 2 W.,
 Secs. 2 and 3;
 Sec. 10, N½, NE¼SW¼, N½SE¼, and N½
 S½SE¼;
 Sec. 11, E½, NW¼, N½SW¼, and N½S½
 SW¼;
 Sec. 12.
 T. 12 N., R. 2 W.,
 Secs. 34 and 35.
 The areas described aggregate
 approximately 265,700 acres in San
 Bernardino County.

For a period of 90 days from the date
 of publication of this notice, all persons
 who wish to submit comments,
 suggestions, or objections in connection
 with the proposed withdrawal may
 present their views in writing to the
 California State Director.

Notice is hereby given that an
 opportunity for a public meeting is
 afforded in connection with the
 proposed withdrawal. All interested
 persons who desire a public meeting for
 the purpose of being heard on the
 proposed withdrawal must submit a
 written request to the California State
 Director within 90 days from the date of
 publication of this notice. Upon
 determination by the authorized officer
 that a public meeting will be held, a
 notice of time and place will be
 published in the *Federal Register* at
 least 30 days before the scheduled date
 of the meeting.

The application will be processed in
 accordance with the regulations set
 forth in 43 CFR 2300.

For a period of 2 years from the date
 of publication of this notice in the
Federal Register, the lands will be
 segregated as specified above unless the
 application is denied or canceled or the
 withdrawal is approved prior to that
 date. The temporary uses which will be
 permitted during this segregative period
 are leases, licenses, permits, rights-of-
 way, cooperative agreements, or
 discretionary land use authorizations.

The temporary segregation of the
 lands in connection with this
 withdrawal application shall not affect
 the administrative jurisdiction over the
 lands, and the segregation shall not
 have the effect of authorizing any use of
 the lands by the Department of the
 Army.

Dated: October 5, 1989.

Nancy J. Alex,
 Chief, Lands Section, Branch of Adjudication
 and Records.
 [FR Doc. 89-24181 Filed 10-12-89; 8:45 am]
 BILLING CODE 4310-40-M

[CA-940-00-4214-10; CACA-24047]

California; Partial Termination of Proposed Withdrawal and Reservation of Land; Correction

In notice document 89-23407
 beginning on page 40915 of the issue of
 October 4, 1989, add the following
 information:

On page 40915 in the first column, line
 42 from the top which reads "California
 95825, (916) 978-4820.", add the
 following paragraphs:

At 10 a.m. on November 14, 1989, the
 lands 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
 10 a.m. on November 14, 1989, shall be
 considered as simultaneously filed at
 that time. Those received thereafter
 shall be considered in the order of filing.

At 10 a.m. on November 14, 1989, the
 lands will be opened to location and
 entry under the United States mining
 laws. Appropriation of any of the lands
 described in this order under the general
 mining laws prior to the date and time of
 restoration is unauthorized. Any such
 attempted appropriation, including
 attempted adverse possession under 30
 U.S.C. sec. 38, shall vest no rights
 against the United States. Acts required
 to establish a location and to initiate a
 right of possession are governed by
 State law where not in conflict with
 Federal law. The Bureau of Land
 Management will not intervene in
 disputes between rival locators over
 possessory rights since Congress has
 provided for such determinations in
 local courts.

Dated: October 4, 1989.

Nancy J. Alex,
 Chief, Lands Section, Branch of Adjudication
 and Records.
 [FR Doc. 89-24182 Filed 10-12-89; 8:45 am]
 BILLING CODE 4310-40-M

[MT-930-09-4214-11; MTM 41514]

Proposed Continuation of Withdrawal; Montana

AGENCY: Bureau of Land Management,
 Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management, Department of the Interior, proposes that the withdrawal of 9,017 acres of land for Reservoir Site Reserve No. 4 continue until such time that the lands are no longer valuable for reservoir purposes. These lands will remain closed to surface entry and nonmetalliferous mining, but have been and will remain open to metalliferous mining and mineral leasing.

EFFECTIVE DATE: Comments should be received on or before January 11, 1990.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406-255-2935.

Pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, the Bureau of Land Management proposes that the existing withdrawal made by Executive Order dated July 12, 1911, be continued until such time that the lands are no longer valuable for reservoir purposes insofar as it affects the following described land:

Principal Meridian

T. 13 S., R. 5 W.,

Sec. 32, S $\frac{1}{2}$;

Sec. 33, W $\frac{1}{2}$ SW $\frac{1}{4}$.

T. 13 S., R. 6 W.,

Sec. 32, lot 1, a portion of lot 3, and that portion of Lima Reservoir lying within the E $\frac{1}{2}$ SW $\frac{1}{4}$ (formerly described as E $\frac{1}{2}$ SW $\frac{1}{4}$), lot 4, NW $\frac{1}{4}$ SE $\frac{1}{4}$, and that portion of Lima Reservoir lying within the W $\frac{1}{2}$ SE $\frac{1}{4}$ (formerly described as W $\frac{1}{2}$ SE $\frac{1}{4}$), lot 5 and that portion of Lima Reservoir lying within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ (formerly described as SE $\frac{1}{4}$ SE $\frac{1}{4}$), and S $\frac{1}{2}$ NW $\frac{1}{4}$;

T. 14 S., R. 4 W.,

Sec. 1, SW $\frac{1}{4}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 2, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, and NW $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 3, N $\frac{1}{2}$ SW $\frac{1}{4}$;

Sec. 5, NW $\frac{1}{4}$ SW $\frac{1}{4}$, and SE $\frac{1}{4}$ SW $\frac{1}{4}$;

Sec. 6, N $\frac{1}{2}$ SE $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 7, lot 1, NE $\frac{1}{4}$ NW $\frac{1}{4}$ (formerly described as N $\frac{1}{2}$ NW $\frac{1}{4}$), lot 2 (formerly described as SW $\frac{1}{4}$ NW $\frac{1}{4}$), lot 3 (formerly described as NW $\frac{1}{4}$ SW $\frac{1}{4}$), NW $\frac{1}{4}$ NE $\frac{1}{4}$, and SE $\frac{1}{4}$ NE $\frac{1}{4}$;

Sec. 8, SW $\frac{1}{4}$ NW $\frac{1}{4}$ and N $\frac{1}{2}$ S $\frac{1}{2}$;

Sec. 9, SW $\frac{1}{4}$;

Sec. 12, N $\frac{1}{2}$ NE $\frac{1}{4}$;

Sec. 17, NE $\frac{1}{4}$ NE $\frac{1}{4}$.

T. 14 S., R. 5 W.,

Sec. 1, lot 2, SW $\frac{1}{4}$ NE $\frac{1}{4}$ (formerly described as W $\frac{1}{2}$ NE $\frac{1}{4}$), lot 3 (formerly described as NE $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$, NW $\frac{1}{4}$, and N $\frac{1}{2}$ SW $\frac{1}{4}$);

Sec. 2, S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, and N $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 3, S $\frac{1}{2}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ SW $\frac{1}{4}$;

Sec. 4, lot 2, SW $\frac{1}{4}$ NE $\frac{1}{4}$ (formerly described as W $\frac{1}{2}$ NE $\frac{1}{4}$), lots 3, 4, S $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ (formerly described as W $\frac{1}{2}$), SE $\frac{1}{4}$ NE $\frac{1}{4}$, and N $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 5, lots 1 to 4, inclusive, S $\frac{1}{2}$ N $\frac{1}{2}$ (formerly described as N $\frac{1}{2}$), N $\frac{1}{2}$ S $\frac{1}{2}$, and S $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 6, lots 1 to 5, inclusive, S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ (formerly described as N $\frac{1}{2}$), lot 6, NE $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ (formerly described as N $\frac{1}{2}$ S $\frac{1}{2}$), and SE $\frac{1}{4}$ SW $\frac{1}{4}$;

Sec. 7, lots 3 and 4, E $\frac{1}{2}$ SW $\frac{1}{4}$, and SE $\frac{1}{4}$;

Sec. 8, NE $\frac{1}{4}$ and S $\frac{1}{2}$ NW $\frac{1}{4}$;

Sec. 9, S $\frac{1}{2}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, and SW $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 10, SW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, and NW $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 11, S $\frac{1}{2}$ NE $\frac{1}{4}$ and SE $\frac{1}{4}$ NW $\frac{1}{4}$;

Sec. 12, NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, and E $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 17, S $\frac{1}{2}$ NW $\frac{1}{4}$;

Sec. 18, lots 1 and 2, NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$ (formerly described as N $\frac{1}{2}$), lots 3 and 4 (formerly described as W $\frac{1}{2}$ SW $\frac{1}{4}$), NE $\frac{1}{4}$ SW $\frac{1}{4}$, and NW $\frac{1}{4}$ SE $\frac{1}{4}$;

T. 14 S., R. 6 W.,

Sec. 1, lots 1 to 4, inclusive, S $\frac{1}{2}$ N $\frac{1}{2}$ (formerly described as N $\frac{1}{2}$), and SW $\frac{1}{4}$;

Sec. 2, S $\frac{1}{2}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, and SE $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 4, SW $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, and S $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 5, lot 1 (formerly described as NE $\frac{1}{4}$ NE $\frac{1}{4}$);

Sec. 9, SW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, and SE $\frac{1}{4}$ SW $\frac{1}{4}$;

Sec. 10, SE $\frac{1}{4}$ NE $\frac{1}{4}$ and N $\frac{1}{2}$ NW $\frac{1}{4}$;

Sec. 11, SW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, and NW $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 12, N $\frac{1}{2}$ N $\frac{1}{2}$;

Sec. 13, NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, and S $\frac{1}{2}$;

Sec. 14, S $\frac{1}{2}$ N $\frac{1}{2}$ and S $\frac{1}{2}$;

Sec. 15, NW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$, and S $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 23, NW $\frac{1}{4}$ NW $\frac{1}{4}$;

Sec. 24, NE $\frac{1}{4}$ NE $\frac{1}{4}$.

The areas described contain 9,017.85 acres in Beaverhead County.

The purpose of the withdrawal is to protect Reservoir Site Reserve No. 4.

The withdrawal segregates the land from operation of the public land laws generally and nonmetalliferous mining, but not from metalliferous mining or the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Land Resources, at the address listed above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. The final determination on the continuation of the withdrawal will be published in the Federal Register.

The existing withdrawal will continue until such final determination is made.

Dated: October 3, 1989.

John A. Kwiatkowski,
Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 89-24183 Filed 10-12-89; 8:45 am]

BILLING CODE 4310-DN-M

[OR-943-00-4214-10; GPO-005; WASH-02428, WASH-03125, OR-22020(WASH), OR-22069(WASH), OR-22070(WASH), OR-22072(WASH), OR-22111(WASH)]

Proposed Continuation of Withdrawals; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes that all or portions of seven separate land withdrawals continue for an additional 20 years and requests that the lands involved remain closed to mining and, where closed, opened to surface entry.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-231-6905.

The Forest Service proposes that the following identified land withdrawals be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The following described lands and projects are involved:

Gifford Pinchot National Forest

1. WASH-02428, Public Land Order No. 3360 dated April 2, 1964. Tower Rock Recreation Area, 7.55 acres. Located in Lewis County, 6 miles southeast of Randle.

T. 11 N., R. 7 E., W.M.,
Sec. 12.

Lower Cispus Recreation Area, 31.85 acres. Located in Lewis County, 7 miles south of Randle.

T. 11 N., R. 7 E., W.M.,
Sec. 18.

Silver Creek Recreation Area, 38.99 acres. Located in Lewis County, 1 mile east of Randle.

T. 12 N., R. 7 E., W.M.,
Sec. 10.

2. OR-22020(WASH), Executive Order No. 5244 dated December 23, 1929. Sunset Falls Administrative Site, 40 acres. Located in Clark County, 19 miles northwest of Stevenson.

T. 4 N., R. 4 E., W.M.,
Sec. 24.

3. OR-22069(WASH), Secretarial Order dated December 13, 1906. Oklahoma Administrative Site, 86.68 acres. Located in

Skamania County, 12 miles north of Stevenson.

T. 4 N., R. 9 E., W.M.,
Sec. 1.

T. 5 N., R. 9 E., W.M.,
Sec. 36.

Little White Salmon Administrative Site, 50 acres. Located in Skamania County, 14 miles northeast of Stevenson.

T. 4 N., R. 9 E., W.M.,
Sec. 35.

Panther Creek Administrative Site, 135.65 acres. Located in Skamania County, 8 miles north of Stevenson.

T. 4 N., R. 7 1/2 E., W.M.,
Sec. 24.

Randle Station (Silver Creek Station), 62.50 acres. Located in Lewis County, 1 mile northeast of Randle.

T. 12 N., R. 7 E., W.M.,
Sec. 9.

Skate Creek Administrative Site. Located in Lewis County, 2 miles north of Packwood.

T. 13 N., R. 9 E., W.M., Secs. 10 and 15.

4. OR-22070(WASH), Secretarial Order dated February 8, 1908. Hemlock Administrative Site, 160 acres. Located in Skamania County, 8 miles north of Stevenson.

T. 4 N., R. 7 E., W.M.,
Sec. 27.

5. OR-22072(WASH), Secretarial Order dated March 6, 1907. Nisqually Administrative Site, 40 acres. Located in Lewis County, 13 miles north of Randle.

T. 14 N., R. 7 E., W.M.,
Sec. 6.

6. OR-22111(WASH), Secretarial Order dated May 13, 1908. Tower Rock Administrative Site, 61.50 acres. Located in Lewis County, 9 miles southeast of Randle.

T. 11 N., R. 8 E., W.M.,
Sec. 17, unsurveyed.

Kaniksu National Forest

7. WASH-03125, Public Land Order No. 2305 dated March 14, 1961. Browns Lake Recreation Area, 45 acres. Located in Pend Oreille County, 19 miles northwest of Newport.

T. 34 N., R. 44 E., W.M.,
Secs. 23 and 24.

The withdrawals currently segregate the lands from operation of the mining laws, but not the mineral leasing laws, and some of the lands are closed to operation of the public land laws generally. The Forest Service requests no changes in the purpose or segregative effect of the withdrawals except that the lands be opened to operation of the public land laws generally where they are presently closed.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions or objections in connection with the proposed withdrawal continuations may present their views in

writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Dated: October 4, 1989.

Catherine H. Crawford,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 89-24184 Filed 10-12-89; 8:45 am]

BILLING CODE 4310-33-M

Fish and Wildlife Service

Availability of a Draft Environmental Impact Statement on the Proposed Issuance of a Permit to Allow Incidental Take of the Endangered Stephens' Kangaroo Rat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that the Draft Environmental Impact Statement on the proposed issuance of a permit to allow incidental take of endangered Stephens' kangaroo rats in Riverside County, California under section 10(a) of the Endangered Species Act is available for public review. Comments and suggestions are requested. The allowed take would be in association with various proposed public and private development projects. Three alternatives are being considered. The proposed action would allow for development to occur on up to 4000 acres of occupied Stephens' kangaroo rat habitat and would be mitigated by the acquisition of up to 4000 acres of occupied habitat on private lands to be placed into public ownership for the management of the species.

DATE: Written comments are requested by December 12, 1989.

ADDRESS: Comments should be addressed to: Peter Stine, U.S. Fish and Wildlife Service, Federal Building, 24000 Avila Road, Laguna Niguel, California 92677.

FOR FURTHER INFORMATION CONTACT: Peter Stine at the above address,

telephone (714) 643-4270 or FTS 8-796-4270. Individuals wishing copies of this EIS for review should immediately contact the above individual. Copies have been sent to all agencies and individuals who participated in the scoping process and to all others who have already requested copies.

SUPPLEMENTARY INFORMATION: On September 30, 1988, the Service issued a final rule which determined that the Stephens' kangaroo rat to be an endangered species (53 FR 38465). This regulation became effective on October 31, 1988. Because of its listing as an endangered species, the Stephens' kangaroo rat is protected by the Act's prohibition against "taking" (16 U.S.C. 1538).

The Service, however, may issue permits to carry out otherwise lawful activities involving take of endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

The County of Riverside and the cities of Riverside, Moreno Valley, Lake Elsinore, Hemet, and Perris have submitted an application to the Service for a permit to incidentally take Stephens' kangaroo rat in association with various proposed public and private projects in the western portion of the County. The area covered by the proposed permit would include the majority of the historical range of the Stephens' kangaroo rat within the County and would allow taking, for a period of two years, resulting from the development of up to 4,000 acres (20 percent) of the 22,000 acres of remaining occupied habitat known for the species.

Under the proposed conservation plan for the incidental take permit, up to 4,000 acres (private lands) of occupied habitat adjacent to lands currently in public ownership would be acquired and managed for the long-term benefit of the species. Comparable acreages of land would be acquired prior to issuance of County or city permits to destroy similar acreages of habitat. The acquisition of the private lands would be funded, in part, from mitigation fees (\$1,950 per acre) collected by the County and cities.

The County or cities would approve the issuance of land development permits, subsequent to California Environmental Quality Act-mandated review of potential impacts to other environmental resources, for otherwise lawful public and private project proponents in specified portions of the

County during the two-year period in which the proposed Federal permit would be in effect.

The underlying purpose or goal of the proposed action is to develop a program designed to ensure the continued existence of the species, while resolving potential conflicts that may arise from otherwise lawful private and public improvement projects.

The underlying need for the proposed action is to allow for otherwise lawful private and public improvement projects compatible with the continued existence of the Stephens' kangaroo rat under limitations and constraints imposed by the Endangered Species Act and other applicable laws.

Three alternatives are under consideration. The proposed action is discussed above. The acquisition of up to 400 acres of private land would be within study areas under consideration for establishment of reserves. All occupied habitat within the study areas would be protected from private development for the duration of the two-year permit. During this two-year period the permit applicants intend to conduct further biological, economic, and land use studies to determine the precise boundaries of a recommended, long-term reserve system. At the conclusion of these studies the permit applicants are considering applying for a long-term permit. A modified study area alternative and the no/action alternative are also discussed.

The primary author of this notice is Jackie Campbell, U.S. Fish and Wildlife Service, 1002 N.E. Holladay Street, Portland, Oregon 97232-4181, (503) 231-6131 or FTS 429-6131.

Dated: October 6, 1989.

William E. Martin,

Acting Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 89-24232 Filed 10-12-89; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Concession Contract Negotiations; Leeks Lodge Marina

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 Rex G. Maughan and Ruth G. Maughan dba Leeks Lodge Marina authorizing it to continue to provide marina, boating, and food facilities and services, for the public at Leeks Lodge in Grand Teton National Park, Wyoming for a period of

five (5) years from January 1, 1990, through December 31, 1994.

EFFECTIVE DATE: November 13, 1989.

ADDRESS: Interested parties should contact the Regional Director, Rocky Mountain Region, 12795 W. Alameda Pkwy, P.O. Box 25287, Denver, CO 80225-0287, for information as to the requirements of the proposed contract.

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. Sec. 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 thirtieth (30th) day following publication of this notice to be considered and evaluated.

Dated: September 25, 1989.

Homer L. Rouse,

Acting Regional Director Rocky Mountain Region.

[FR Doc. 89-24246 Filed 10-12-89; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-292]

Certain Methods of Making Carbonated Candy Products; Commission Decision not To Review an Initial Determination Rejecting as a Matter of Law Respondents Zeta and Confex's Affirmative Defenses Involving Process Patent Legislation

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. 19) issued by the presiding administrative law judge (ALJ). That ID rejected as a matter of law respondents' affirmative defenses asserting that the Process Patent Legislation of the

Omnibus Trade and Competitiveness Act of 1988 excepts an importer who has continuously made substantial sales in the United States prior to January 1, 1988, from exclusion orders issued under section 337 (a)(1)(B) (ii) of the Tariff Act of 1930.

ADDRESSES: Copies of 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: Frances Marshall, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 202-252-1089.

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 17, 1989, complainants General Foods Corporation, Carbonated Candy Ventures, and Pop Rocks, Inc. moved the ALJ for a partial summary determination that the Commission deny, as a matter of law, respondents Zeta Espacial, S.A. and Confex Inc.'s affirmative defenses asserting that even if the Commission were to determine that respondent Zeta does infringe complainants' valid U.S. process patents, section 9006(b) of the Process Patent Legislation, found in the Omnibus Trade and Competitiveness Act of 1988, Public Law 100-418, sections 9001-9007, 102 Stat. 1563 (1988), would except respondents from a Commission exclusion order because they had continuously made substantial sales in the United States prior to January 1, 1988, of carbonated candy made by a process covered by the claims of a U.S. patent. On September 1, 1989, the ALJ issued an ID granting complainants' motion. The ALJ found that the 1988 Process Patent Legislation does not eliminate any preexisting process patent remedy found in section 337. Instead, it affords process patent holders an additional remedy against process patent infringement.

The action of the Commission is not reviewing the subject ID should not be interpreted as holding that the Process Patent Legislation can never be applicable to section 337 investigations.

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 (Aug. 29, 1988)).

By Order of the Commission.

Issued: October 2, 1989.

Kenneth R. Mason,
Secretary.

[FR Doc. 89-24100 Filed 10-12-89 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-301]

Certain Artificial Breast Prostheses; Commission Decision Not to Review an Initial Determination Substituting Respondents

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. 1) issued by the presiding administrative law judge (ALJ) in the above-captioned investigation. The ID amends the complaint and notice of investigation by substituting Coloplast A/S and Coloplast S.A.R.L. (Coloplast) for Prometel S.A.R.L. (Prometel) as respondents.

FOR FURTHER INFORMATION CONTACT: Andrea C. Casson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1105.

SUPPLEMENTARY INFORMATION: The authority for the Commission's disposition of this matter is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337, as amended by section 1342 of the Omnibus Trade and Competitiveness Act of 1988) and in Commission interim rule 210.22(a) (53 FR 33070 (Aug. 29, 1988), to be codified at 19 CFR 210.22(a)).

On September 1, 1989, Coloplast, complainant Amoena Corporation, and the Commission investigative attorney jointly moved the Commission to amend the complaint and notice of investigation to substitute Coloplast for Prometel as respondents. On September 7, 1989, the presiding ALJ issued an ID (Order No. 1) granting the joint motion to substitute Coloplast for Prometel as respondents. No petitions for review or agency or public comments were received. Under Commission interim rule 210.22(a), there is good cause to amend the notice and complaint in order to substitute the real party in interest.

Copies of the ID 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: October 5, 1989.

Kenneth R. Mason,
Secretary.

[FR Doc. 89-24099 Filed 10-12-89; 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: Elsworth Investment Corporation, Post Office Box 49100, Four Bentall Centre, Vancouver, British Columbia, Canada V7X 1H3.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(i) American Maywood Corporation, incorporated in the state of Washington;

(ii) General Hardwood Company, d/b/a/ Hardwoods, Inc., incorporated in the State of Washington;

(iii) Hardwoods, Inc., Alaska, incorporated in the State of Alaska;

(iv) Hardwoods, Inc., California, incorporated in the State of California

(v) Hardwoods, Inc., Colorado, incorporated in the State of Colorado;

(vi) Hardwoods, Inc., Utah, incorporated in the State of Utah;

(vii) Sauder Door Corporation, incorporated in the State of Washington;

(viii) Sauder Exterior Building Products, Inc., incorporated in the State of Washington;

(ix) Sauder Industries Limited, incorporated in the Province of British Columbia;

(x) Sauder Woodcraft Corporation, incorporated in the State of Washington;

(xi) Seattle Gypsum, Inc., incorporated in the State of Washington;

(xii) Siteline Exterior Corporation, incorporated in the State of Washington;

(xiii) Takahashi Industries Limited, incorporated in the Province of British Columbia, Canada;

(xiv) Wellington Investment Corporation, incorporated in the State of Washington;

(xv) Sauder Transport, Inc., incorporated in the State of Washington, the transporting entity.

Noreta R. McGee,

Secretary.

[FR Doc. 89-23936 Filed 10-12-89; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 28905 (Sub-No. 22);
Finance Docket No., 29430 (Sub-No. 20)]

**CSX Corporation—Control—Chessie
Systems Inc. and Seaboard Coast Line
Industries, Inc.; Norfolk Southern
Corporation—Control—Norfolk &
Western Railway Company and
Southern Railway Company**

AGENCY: Interstate Commerce
Commission.

ACTION: Extension of time to file
pleadings and denial of petition for
other relief.

SUMMARY: The Commission is granting the request for oral argument but otherwise denying a petition filed by the Railway Labor Executives Association and, on its own motion, is extending the time for comments in this proceeding.

DATES: Comments from all parties are due by November 13, 1989. Replies to the comments are due by December 4, 1989.

ADDRESSES: Send pleadings referring to Finance Docket No. 28905 (Sub-No. 22) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245 [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: By decision served and published in the *Federal Register* on September 20, 1989, 54 FR 38754, we reopened these proceedings for further comment in light of the recent decision in *Brotherhood of Ry. Carmen v. ICC*, _____ F. 2d, _____ (D.C. Cir. July 25, 1989) (*Carmen*). We explained in detail the issues we believe to be relevant to the court's remand in *Carmen* and encouraged the parties to these proceedings as well as all other interested parties to participate.

On October 2, 1989, the Railway Labor Executives' Association (RLEA) filed a petition contesting the Commission's jurisdiction to take any action in these cases until such time as the court issues its mandate in *Carmen*. In the alternative, RLEA asked the Commission either to grant "full

briefing," oral hearing and oral argument on the issue of the Commission's jurisdiction prior to the mandates being issued or adopt the same procedures for developing the record on the substantive issues. Since the court has now remanded the proceedings to the Commission, the question of our jurisdiction is moot and there is no need to consider the relief RLEA seeks in this regard.

As to RLEA's request that we hold full briefing, oral hearing and oral argument on the substantive issues, we see no need for oral hearing in this matter, as primarily legal issues are involved. They can adequately be handled on a written record. We have decided to hold an oral argument in this proceedings and will announce the date for that argument after the record has closed.

RLEA also stated in its petition that the comment and reply periods were not sufficient for the parties to advise the Commission on the questions raised in this case. It notes that we stated an intent to "to conduct a comprehensive examination of our authority" under the statute and the employee protective conditions we impose. We are persuaded that additional time is warranted to permit the parties to develop more extensive comments. We have thus extended the comment and reply period on our own motion to the dates set forth above.

Decided: October 6, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners André, Lamboley, and Phillips. Commissioner Lamboley, in light of the DC Circuit's remand and its decision in *RLEA v. ICC* (No. 88-1391) (August 29, 1989), would grant and schedule oral hearing and argument.

Noreta R. McGee,

Secretary.

[FR Doc. 89-24240 Filed 10-12-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-290 (Sub-73X)]

Central of Georgia Railroad Co.; Abandonment Exemption in Jefferson County, AL

Applicant has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon its 5.31-mile line of railroad between milepost P-425.78, at Central Junction, and milepost P-431.09, at McCombs, in Jefferson County, AL.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a

State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on November 12, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,¹ formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),² and trail use/rail banking statements under 49 CFR 1152.29 must be filed by October 23, 1989.³ Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by November 2, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Virginia K. Young, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an

¹ A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C. 2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

² See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987).

³ The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

environmental assessment (EA). SEE will issue the EA by October 18, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: October 2, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR 89-23830 Filed 10-12-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Clean Water Act; Microfab, Inc. et al.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States v. Microfab, Inc., et al.* Civil Action No. 87-2362N, has been lodged with the United States District Court for the District of Massachusetts.

This is an action brought against Microfab, Inc. and its parent corporation, Semicon, Inc., for violations of the Clean Water Act as a result of discharges of pollutants in excess of limitations in Microfab, Inc.'s National Pollutant Discharge Elimination System ("NPDES") permit. The consent decree provides that Semicon, Inc. shall pay the United States \$55,000 in settlement of the United States' claims against Semicon, Inc. in that action.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Microfab, Inc., et al.*, D.J. Reference No. 90-5-1-2872.

The proposed Consent Decree may be examined at the office of the United States Attorney, 1107 John W. McCormack Fed. Bldg., USPO & Courthouse, Boston, Massachusetts 02109 and at the Office of Regional Counsel, United States Environmental Protection Agency, Region I, John F.

Kennedy Federal Building, Boston, Massachusetts 02203. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1647 (D), Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

Richard B. Stewart

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-24185 Filed 10-12-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Air Act; Milprint, Inc.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on September 28, 1989, a proposed consent decree in *United States v. Milprint, Inc.*, Civil Action No. 86-C-589, was lodged with the United States District Court for the Eastern District of Wisconsin. The proposed consent decree resolves a judicial enforcement action brought by the United States against Milprint, Inc. for violations of the Clean Air Act (the "Act").

The proposed consent decree provides that Milprint discontinue operation of each printing, extruding and laminating machine at its facility in Milwaukee, Wisconsin. The consent decree also provides that if Milprint installs any printing, extruding or laminating machine at the Milwaukee facility after January 1, 1989, Milprint shall certify to the United States Environmental Protection Agency and the Wisconsin Department of Natural Resources compliance with all federal, state and local laws and regulations applicable to such machines, including achieving, demonstrating, and maintaining compliance with all conditions and requirements of the Clean Air Act and any applicable SIP.

The consent decree further requires Milprint to pay a civil penalty of \$80,000. The decree provides that Milprint is to pay \$40,000 to the United States and \$40,000 to the State of Wisconsin.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC

20530, and should refer to *United States v. Milprint, Inc.*, D.J. 90-5-2-1-890.

The proposed consent decree may be examined at the office of United States Attorney, 330 Federal Building, 517 East Wisconsin Avenue, Milwaukee, Wisconsin and at the office of Regional Counsel, Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois.

Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of \$1.00 (10 cents per page reproduction costs) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-24186 Filed 10-12-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to Clean Air Act; R.E.A.G. et al

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on September 26, 1989 a proposed consent decree in *United States v. R.E.A.G. et al.*, Civil Action No. B-87-24 (TFGD), was lodged with the United States District Court for the District of Connecticut. The proposed consent decree concerns a complaint filed by the United States that alleged violations of section 112 of the Clean Air Act, 42 U.S.C. 7412 and the National Emission Standards for Hazardous Air Pollutants ("NESHAP") for Asbestos, 40 CFR part 61, subpart M during the renovation of the former Beverly Theater in Bridgeport, Connecticut. The complaint alleged that defendant NAACO, Inc. ("NACO"), as well as other defendants R.E.A.G., Cristwood Associates, Inc., and AA Building Wrecking Co., Inc., violated the asbestos NESHAP during the building renovation. The complaint sought injunctive relief to require compliance with the asbestos NESHAP and civil penalties for past violations. The proposed consent decree involves only the claims against defendant NAACO. The decree requires the defendant NAACO to pay a civil penalty of \$17,500 and requires NAACO to take affirmative measures to prevent future violations of the NESHAP for

asbestos. These measures include employee training, designation of certain employees to be responsible for regulatory compliance, inspections of job sites, and assessment of removal projects. The consent decree only resolves the liability of NAACO and does not address the portions of the complaint against the other defendants. A consent decree with defendant AA previously was lodged with the court on August 15, 1989.

The Department of Justice will receive for a period of thirty (30) days from the date of the publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. R.E.A.G. et al.*, D.J. Ref. 90-5-2-1-1076 and specify the NAACO decree.

The proposed consent decree may be examined at the office of the United States Attorney for the District of Connecticut, Room 309, Federal Building and Courthouse, 915 Lafayette Blvd., Bridgeport, CT. 06604 and at the Region I Office of the United States Environmental Protection Agency, John F. Kennedy Federal Building, Boston, MA. 02203-2211. Copies of the consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of \$1.20 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-24187 Filed 10-12-89; 8:45 am]

BILLING CODE 4410-01-M

[AAG/A Order No. 35-89]

Privacy Act of 1974 Systems of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a) and Office of Management and Budget (OMB) Circular No. A-130, the Department has completed a review of its Privacy Act systems of records to identify minor changes that will more

accurately describe these records. As a result, five Department components are republishing systems of records to make minor changes.

The systems notices are reprinted below following a table of contents, and changes to the systems of records have been italicized for public convenience. Included, for example, are editorial revisions which clarify system descriptions, together with changes to the system location, system manager(s) and address, safeguards, and storage sections of the notices. In addition, each of the following organizations is reprinting a revised appendix of system locations: The Executive Office for United States Attorneys (EOUSA), the Federal Bureau of Investigation, and the United States Marshals Service. Finally, pursuant to 44 U.S.C. 2102, the EOUSA is modifying a routine use. The routine use was originally drafted to permit records disclosure to the National Archives and Records Service (NARS), General Services Administration (GSA), during records management inspections. However, the statute renamed NARS as the "National Archives and Records Administration" (NARA), and established it as a separate agency which nonetheless shares its records management inspection responsibilities with GSA. The routine use has been modified to show that NARA and GSA are separate agencies which continue to share access to records during these inspections. Comments on the routine use may be addressed to Patricia E. Neely, Staff Assistant, Facilities and Administrative Services Staff, Justice Management Division, Department of Justice, Room 529, 633 Indiana Avenue, NW., Washington, D.C. 20530. Please submit any comments by November 13, 1989.

Date: October 2, 1989.

Harry H. Flickinger,
Assistant Attorney General for
Administration.

Table of Contents

ANTITRUST DIVISION (ATR):

- JUSTICE/ATR-001, Antitrust Division Expert Witness File
- JUSTICE/ATR-002, Congressional and White House Referral Correspondence Log File

FEDERAL BUREAU OF INVESTIGATION (FBI):

- JUSTICE/FBI-001, National Crime Information Center (NCIC)
- JUSTICE/FBI-002, The FBI Central Records System
- JUSTICE/FBI-999, Appendix of Field Divisions and Legal Attaches for the Federal Bureau of Investigation Field Divisions
- JUSTICE/FBI-006, Electronic Surveillance (ELSUR) Indices

- JUSTICE/FBI-008, Personnel Information Network System (PINS)
- JUSTICE/FBI-009, Identification Division Records System

JUSTICE MANAGEMENT DIVISION (JMD):

- JUSTICE/JMD-001, Background Investigation Check-off Card
- JUSTICE/JMD-005, Grievance Records
- JUSTICE/JMD-018, Delegations of Procurement Authority.

UNITED STATES ATTORNEYS, EXECUTIVE OFFICE FOR (USA):

- JUSTICE/USA-003, Citizen Complaint Files
- JUSTICE/USA-004, Citizen Correspondence Files
- JUSTICE/USA-006, Consumer Complaints
- JUSTICE/USA-008, Freedom of Information Act/Privacy Act Files
- JUSTICE/USA-009, Kline—District of Columbia and Maryland—Stock and Land Fraud Interrelationship Filing System
- JUSTICE/USA-010, Major Crimes Division Investigative Files
- JUSTICE/USA-011, Prosecutor's Management Information System (PROMIS)
- JUSTICE/USA-013, U.S. Attorney, District of Columbia Superior Court Operations, Criminal Files, including but not limited to the following subsystems: (a) Criminal File Folder (USA-S-1), (b) Criminal File Folder (USA-33), (c) Criminal Docket Card (USA-T7), and (d) Index
- JUSTICE/USA-999, Appendix of United States Attorney Office Locations

UNITED STATES MARSHALS SERVICE (USM):

- JUSTICE/USM-001, U.S. Marshals Service Badge and Credentials File
- JUSTICE/USM-002, Internal Inspections System
- JUSTICE/USM-003, U.S. Marshals Service Prisoner Transportation System
- JUSTICE/USM-004, Special Deputy File
- JUSTICE/USM-006, United States Marshals Service Training Files
- JUSTICE/USM-007, Warrant Information System
- JUSTICE/USM-008, Witness Security Files Information System
- JUSTICE/USM-009, U.S. Marshals Service Threat Analysis Information System
- JUSTICE/USM-010, Judicial Facility Security Index System
- JUSTICE/USM-011, Judicial Protection Information System
- JUSTICE/USM-012, U.S. Marshals Service Freedom of Information Act/Privacy Act (FOIA/PA) Files
- JUSTICE/USM-013, U.S. Marshals Service Administrative Proceedings, Claims and Civil Litigation Files
- JUSTICE/USM-999, Appendix to U.S. Marshals Service System of Records; official addresses of United States Marshals

JUSTICE/ATR-001

SYSTEM NAME:

Antitrust Division Expert Witness File.

SYSTEM LOCATION:

U.S. Department of Justice; 10th & Constitution Avenue, NW., Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have served in the capacity of an expert for the Department of Justice in Connection with civil or criminal antitrust litigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains the names of persons used by the Antitrust Division in an expert capacity and also indicates the area of their specialty, the type of service rendered, the fees paid, and the dates on or during which such services were performed.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for the establishment and maintenance of this system exists under 44 U.S.C. 3101 and 28 U.S.C. 522.

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

This system is routinely used by trial attorneys of the Antitrust Division when considering the selection of experts as witnesses for the development or presentation of specific antitrust cases. The system also serves as a reference resource for Division personnel in compiling statistical information or reports regarding the actual or anticipated costs of litigation.

A record maintained in this system, or any facts derived therefrom, may be disseminated in a proceeding before a court or adjudicative body before which the Antitrust Division is authorized to appear, when (1) the Antitrust Division, or any subdivision thereof; or (2) any employee of the Antitrust Division in his or her official capacity; or (3) any employee of the Antitrust Division in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (4) the United States, or any agency or subdivision thereof; or (5) the United States, where the Antitrust Division determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the Antitrust Division to be arguably relevant to the litigation.

RELEASE OF INFORMATION TO THE NEWS MEDIA:

Information permitted to be released to the news medias and the public pursuant to 28 CFR 50.2 may be made available from systems of records

maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

RELEASE OF INFORMATION TO MEMBERS OF CONGRESS:

Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on the individual who is the subject of the record.

RELEASE OF INFORMATION TO THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION:

A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information maintained in this system is contained in documents organized in individual file folders.

RETRIEVABILITY:

Information is retrieved primarily by using the name of the individual called as an expert witness for the Government in antitrust cases brought by the Department.

SAFEGUARDS:

Information contained in the system is unclassified. During working hours access to the system is controlled and monitored by Antitrust Division personnel in the area where the system is maintained; during non-duty hours all doors to that area are locked.

RETENTION AND DISPOSAL:

Indefinite.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Officer, Antitrust Division; U.S. Department of Justice; 10th & Constitution Avenue, NW., Washington, DC 20530.

NOTIFICATION PROCEDURE:

Address inquiries to the Assistant Attorney General; Antitrust Division; U.S. Department of Justice; 10th & Constitution Avenue NW., Washington, DC 20530.

RECORD ACCESS PROCEDURE:

Requests for access to a record from this system shall be in writing and be clearly identified as a "Privacy Access Request". Including in the request should be the name of the person presented as an expert witness for the Government and the name of the case in which such services were rendered. The requester should indicate a return address. Requests will be directed to the System Manager shown above.

CONTESTING RECORD PROCEDURE:

Individuals desiring to contest or amend information maintained in the system should direct their requests to the System Manager and state clearly and concisely when information is being contested, the reasons for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information maintained in this system are those records reflecting the commitment between the individual and the Department of Justice (including matters of compensation etc.) and staff attorneys or other employees directly involved with the individual in the preparation or conduct of the litigation.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/ATR-002

SYSTEM NAME:

Congressional and White House Referral Correspondence Log File.

SYSTEM LOCATIONS:

U.S. Department of Justice; 10th & Constitution Avenue, NW., Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former members of Congress, and citizens whose correspondence is referred by *members of Congress* or Congressional or White House staff.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains an index record to correspondence from members of the Congress and White House staff.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for the establishment and maintenance of this system exist under 44 U.S.C. 3101 and 5 U.S.C. 301.

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

This system is maintained as a record of inquiries or referrals by members or committees of the Congress and by White House staff. Routine use is made of this file by Antitrust Division personnel incident to monitoring the response status of or identifying other material related to such inquiries or referrals.

A record maintained in this system, or any facts derived therefrom, may be disseminated in a proceeding before a court or adjudicative body before which the Antitrust Division is authorized to appear, when (1) the Antitrust Division, or any subdivision thereof; or (2) any employee of the Antitrust Division in his or her official capacity; or (3) any employee of the Antitrust Division in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (4) the United States, or any agency or subdivision thereof; or (5) the United States, where the Antitrust Division determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation and such records are determined by the Antitrust Division to be arguably relevant to the litigation.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined the release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress: Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

Release of information to the National Archives and Records Administration (NARA) and to the General Services Administration (GSA): A record from a system of records may be disclosed as a routine use to NARA and GSA in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Paper documents are stored in *loose-leaf binders and file folders*; abbreviated or summarized information is stored in a *computerized tracking system*.

RETRIEVABILITY:

Inquiry and response documents are retrieved by date or through manual and automated indexes which are accessed by name, subject matter, control number, etc. Summary data on inquiries received prior to March 7, 1983, is retrieved from the manual index cards; as of March 7, 1983, summary data is retrieved from magnetic disks and tapes. Summary data consists of such data elements as Congressional Member or constituent name, subject matter, date of inquiry, date assigned, date of response, etc.

SAFEGUARDS:

Information contained in the system is unclassified. During working hours access to the system is controlled and monitored by Antitrust Division personnel in the area where the system is maintained; during non-duty hours all doors to such area are locked. In addition, only Antitrust Division personnel who have a need for the information contained in the system have the appropriate password for access to the system.

RETENTION AND DISPOSAL:

Indefinite.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Legislative Unit, Antitrust Division, U.S. Department of Justice, 10th & Constitution Avenue, NW., Washington, DC 20530.

NOTIFICATION PROCEDURE:

Address inquiries to the Assistant Attorney General, Antitrust Division, Department of Justice, 10th & Constitution Avenue, NW., Washington, DC 20530.

RECORD ACCESS PROCEDURES:

Requests for access for a record from this system shall be written and clearly identified as "Privacy Access Request". The request should include the name of the member of Congress or White House staff originating a request or referral and the date thereof. Requester should indicate a return address.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the

system should state clearly and concisely what information is being contested, the reasons for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Source of information maintained in the system are those records (e.g., that Congressional or White House correspondence), reflecting inquiries or referrals of citizen correspondence by members of Congress or White House staff.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/FBI 001**SYSTEM NAME:**

National Crime Information Center (NCIC)

SYSTEM LOCATIONS:

Federal Bureau of Investigation: J. Edgar Hoover Bldg., 10th and Pennsylvania Avenue NW., Washington, D.C. 20535.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A. Wanted Persons: 1. Individuals for whom Federal warrants are outstanding. 2. Individuals who have committed or have been identified with an offense which is classified as a felony or serious misdemeanor under the existing penal statutes of the jurisdictions originating the entry and felony or misdemeanor warrant has been issued for the individual with respect to the offense which was the basis of the entry. Probation and parole violators meeting the foregoing criteria.

3. A "Temporary Felony Want" may be entered when a law enforcement agency has need to take prompt action to establish a "want" entry for the apprehension of a person who has committed, or the officer has reasonable grounds to believe has committed, a felony and who may seek refuge by fleeing across jurisdictional boundaries and circumstances preclude the immediate procurement of a felony warrant. A "Temporary Felony Want" shall be specifically identified as such and subject to verification and support by a proper warrant within 48 hours following the initial entry of a temporary want. The agency originating the "Temporary Felony Want" shall be responsible for subsequent verification or re-entry of a permanent want.

4. Juveniles who have been adjudicated delinquent and who have escaped or absconded from custody, even though no arrest warrants were

issued. *Juveniles who have been charged with the commission of a delinquent act that would be a crime if committed by an adult, and who have fled from the state where the act was committed.*

5. Individuals who have committed or have been identified with an offense committed in a foreign country, which would be a felony if committed in the United States, and for whom a warrant of arrest is outstanding and for which act an extradition treaty exists between the United States and that country.

6. Individuals who have committed or have been identified with an offense committed in Canada and for whom a Canada-Wide Warrant has been issued which meets the requirements of the Canada-U.S. Extradition Treaty, 18 U.S.C. 3184.

B. Individuals who have been charged with serious and/or significant offenses.

C. Missing Persons: 1. A person of any age who is missing and who is under proven physical/mental disability or is senile, thereby subjecting himself or others to personal and immediate danger.

2. A person of any age who is missing under circumstances indicating that his disappearance was not voluntary.

3. A person of any age who is missing under circumstances indicating that his physical safety is in danger.

4. A person who is missing and declared unemancipated as defined by the laws of his state of residence and does not meet any of the entry criteria set forth in 1, 2, or 3 above.

D. Individuals designated by the U.S. Secret Service as posing a potential danger to the President and/or other authorized protectees.

E. Unidentified Persons: 1. Any unidentified deceased person. 2. Any person who is living and unable to ascertain his/her identity (e.g. infant, amnesia victim). 3. Any unidentified catastrophe victim. 4. Body parts when a body has been dismembered.

CATEGORIES OF RECORDS IN THE SYSTEM:

A. Stolen Vehicle File: 1. Stolen vehicles. 2. Vehicles wanted in conjunction with felonies or serious misdemeanors. 3. Stolen vehicle parts, including certificates of origin or title.

B. Stolen License Plate File: 1. Stolen or missing license plate.

C. Stolen/Missing Gun File: 1. Stolen or missing guns. 2. Recovered guns, when ownership of which has not been established.

D. Stolen Article File.

E. Wanted Persons File: Described in "CATEGORIES OF INDIVIDUALS"

COVERED BY THE SYSTEM: A. Wanted Persons."

F. Securities File: 1. Serially numbered stolen, embezzled, counterfeited, missing securities.

2. "Securities" for present purposes of this file are currently (e.g., bills, bank notes) and those documents or certificates which generally are considered to be evidence or debt (e.g., bonds, debentures, notes) or ownership of property (e.g., common stock, preferred stock), and documents which represent subscription rights, warrants) and which are of those types trades in the securities exchanges in the United States, except for commodities futures. Also included are warehouse receipts, travelers checks and money orders.

G. Stolen Boat File

H. Computerized Criminal History File: A cooperative federal-State program for the interstate exchange of criminal history record information for the purpose of facilitating the interstate exchange of such information among criminal justice agencies.

I. Missing Person File: Described in "CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM: C. Missing Persons."

J. U.S. Secret Service Protective File: Described in "CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM: D."

K. Identification records regarding persons enrolled in the United States Marshals Service Witness Security Program who have been charged with serious and/or significant offenses: Described in "CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM: B."

L. Foreign Fugitive File: Identification data regarding persons who are fugitives from foreign countries, who are described in "CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM: A. Wanted Persons, 5."

M. Canadian Warrant File: Identification data regarding Canadian wanted persons who are described in "CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM: A. Wanted Persons, 6."

N. Unidentified Person File: Described in "CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM: E. Unidentified Persons."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established and maintained in accordance with 28 U.S.C. 534; Department of Justice Appropriation Act, 1973, Pub. L. 92-544, 86 Stat. 1115, Securities Acts Amendment of 1975 Pub. L. 94-29, 89

Stat. 97; and Exec. Order No. 10450, 3 CFR (1974).

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

Data in NCIC files is exchanged with and for the official use of authorized officials of the Federal Government, the States, cities, penal and other institutions, and certain foreign governments. The data is exchanged through NCIC lines to Federal criminal justice agencies, criminal justice agencies in the 50 States, the District of Columbia, Puerto Rico, U.S. Possessions and U.S. Territories. Additionally, data contained in the various "want files," i.e., the stolen vehicle file, stolen license plate file, stolen missing gun file, stolen article file, wanted person file, securities file and boat file may be accessed by the Royal Canadian Mounted Police. Criminal history data is disseminated to non-criminal justice agencies for use in connection with licensing for local/state employment or other uses, but only where such dissemination is authorized by Federal or state statutes and approved by the Attorney General of the United States.

Data in NCIC files, other than the Computerized Criminal History File, is disseminated to (1) a nongovernmental agency or subunit thereof which allocates a substantial part of its annual budget to the administration of criminal justice, whose regularly employed peace officers have full police powers pursuant to state law and have complied with the minimum employment standards of governmentally employed police officers as specified by state statute; (2) a noncriminal justice governmental department of motor vehicle or driver's license registry established by a statute, which provides vehicles registration and driver record information to criminal justice agencies; (3) a governmental regional dispatch center, established by a state statute, resolution, ordinance or Executive order, which provides communications services to criminal justice agencies; and (4) the national Automobile Theft Bureau, a nongovernmental nonprofit agency which acts as a national clearinghouse for information on stolen vehicles and offers free assistance to law enforcement agencies concerning automobile thefts, identification and recovery of stolen vehicles.

Disclosures of information from this system, as described above, are for the purpose of providing information to authorized agencies to facilitate the apprehension of fugitives, the location of missing persons, the location and/or

return of stolen property, or similar criminal justice objectives.

Information on missing children, missing adults who were reported missing while children, and unidentified living and deceased persons may be disclosed to the National Center for Missing and Exploited Children (NCMEC). The NCMEC is a nongovernmental, nonprofit, federally funded corporation, serving as a national resource and technical assistance clearinghouse focusing on missing and exploited children. Information is disclosed to NCMEC to assist it in its efforts to provide technical assistance and education to parents and local governments regarding the problems of missing and exploited children, and to operate a nationwide missing children hotline to permit members of the public to telephone the Center from anywhere in the United States with information about a missing child.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2, may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress: Information contained in systems of records maintained by the Department of Justice, not otherwise requested to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf whom the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

Release of Information to the National Archives and Records Administration (NARA) and to the General Services Administration (GSA): A record from a system of records may be disclosed as a routine use to NARA and GSA in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information maintained in the NCIC system is stored electronically for use in a computer environment.

RETRIEVABILITY:

On-line access to data in NCIC is achieved by using the following search descriptors 1. Vehicle file:

(a) Vehicle identification number:

(b) License plate number:

(c) NCIC number (unique number assigned by the NCIC computer to each NCIC record). 2. License Plate file: (a) License plate number: (b) NCIC number. 3. Gun file: (a) Serial number of gun: (b) NCIC number. 4. Article File: (a) Serial number of article: (b) NCIC number. 5. Wanted Person File U.S. Secret Service Protective File, Foreign Fugitive File, and Canadian Warrant File: (a) Name and one of the following numerical identifiers, date of birth, FBI Number (number assigned by the Federal Bureau of Investigation to an arrest fingerprint record), Social Security number (It is noted the requirements of the Privacy Act with regard to the solicitation of Social Security numbers have been brought to the attention of the members of the NCIC system). Operator's license number (drivers number). Miscellaneous identifying number (military number or number assigned by Federal, state, or local authorities to an individual's record). Origination agency case number. (b) Vehicle or license plate known to be in the possession of the wanted person. (c) NCIC number (unique number assigned to each NCIC record). 6. Securities File: (a) Type, serial number, denomination of security; (b) Type of security and name of owner of security; (c) Social Security number of owner of security; (d) NCIC number. 7. Boat File: (a) Registration document number; (b) Hull serial number: (c) NCIC number. 8. Computerized Criminal History File: (a) Name, sex, race and date of birth: (b) FBI number: (c) State identification number; (d) Social Security number; (e) Miscellaneous number. 9. Missing Person File: Same as "Wanted Person" File, *plus the age, sex, race, height and weight, eye and hair color, of the missing individual.*

10. Unidentified Person File: *Age, sex, race, height and weight, eye and hair color, of the unidentified individual.*

SAFEGUARDS:

Data stored in the NCIC is documented criminal justice agency information and access to that data is restricted to duly authorized criminal justice agencies. The following security measures are the minimum to be adopted by all criminal justice agencies having access to the NCIC.

Computerized Criminal History File. These measures are designed to prevent unauthorized access to the system data and/or unauthorized use of data obtained from the computerized file.

1. Computer Center: a. The criminal justice agency computer site must have adequate physical security to protect against any unauthorized personnel gaining access to the computer equipment or to any of the stored data. b. Since personnel at these computer centers can have access data stored in the system, they must be screened thoroughly under the authority and supervision of an NCIC control terminal agency. (This authority and supervision may be delegated to responsible criminal justice agency personnel in the case of a satellite computer center being serviced through a stated control terminal agency.) This screening will also apply to non-criminal justice maintenance or technical personnel. c. All visitors to these computer centers must be accompanied by staff personnel at all times. d. Computers having access to the NCIC must have the proper computer instructions written and other built-in controls to prevent criminal history data from being accessible to any terminals other than authorized terminals. e. Computers having access to the NCIC must maintain a record of all transactions against the criminal history filed in the same manner the NCIC computer logs all transactions. The NCIC identifies each specific agency entering or receiving information and maintains a record of those transactions. This transaction record must be monitored and reviewed on a regular basis to detect any possible misuse of criminal history data. f. Each State Control terminal shall build its data system around a central computer, through which each inquiry must pass for screening and verification. The configuration and operation of the center shall provide for the integrity of the data base.

2. Communications: a. Lines/channels being used to transmit criminal history information must be dedicated solely to criminal justice, i.e., there must be no terminals belonging to agencies outside the criminal justice system sharing these lines/channels. b. Physical security of the lines/channels must be protected to guard against clandestine devices being utilized to intercept or inject system traffic.

3. Terminal Devices Having Access to NCIC: a. All agencies having terminals on the system must be required to physically place these terminals in secure locations within the authorized agency. b. The agencies having terminals with access to criminal history must have terminal operators screened and restricted access to the terminal to a minimum number of authorized employees. c. Copies of criminal history data obtained from terminal devices

must be afforded security to prevent any unauthorized access to or use of the data. d. All remote terminals on NCIC Computerized Criminal History will maintain a hard copy of computerized criminal history inquiries with notations of individual making request for record (90 days).

RETENTION AND DISPOSAL:

Unless otherwise removed, records will be retained in files as follows:

1. Vehicle File: a. Unrecovered stolen vehicle records (including snowmobile records) which do not contain vehicle identification numbers (VIN) therein, will be purged from file 90 days after date of entry. Unrecovered stolen vehicle records (including snowmobile records) which contain VIN's will remain in file for the year of entry plus 4. Unrecovered vehicles wanted in conjunction with a felony will remain in file for 90 days after entry. In the event a longer retention period is desired, the vehicle must be reentered. c. Unrecovered stolen VIN plates, certificates of origin or title, and serially numbered stolen vehicles engines or transmissions will remain in file for the year of entry plus 4.

(Job No. NC1-65-82-4, Part E. 13 h.(1))

2. License Plate File: Unrecovered stolen license plates not associated with a vehicle will remain in file for one year after the end of the plate's expiration year as shown in the record.

(Job No. NC1-65-82-4, Part E. 13 h.(2))

3. Gun file: a. Unrecovered weapons will be retained in file for an indefinite period until action is taken by the originating agency to clear the record. b. Weapons entered in file as "recovered" weapons will remain in file for the balance of the year entered plus 2.

(Job No. NC1-65-82-4, Part E. 13 h.(3))

4. Article File: Unrecovered stolen articles will be retained for the balance of the year entered plus one year.

(Job No. NC1-65-82-4, Part E. 13 h.(4))

5. Wanted Person File: Person not located will remain in file indefinitely until action is taken by the originating agency to clear the record (except "Temporary Felony Wants", which will be automatically removed from the file after 48 hours).

(Job No. NC1-65-87-114, Part E. 13 h.(7))

6. Securities File: Unrecovered, stolen, embezzled, counterfeited or missing securities will be retained for the balance of the year entered plus 4, except for travelers checks and money orders, which will be retained for the balance of the year entered plus 2.

(Job No. NC1-65-82-4, Part E. 13h. (5))

7. Boat File: Unrecovered stolen boats will be retained in file for the balance of

the year entered plus 4. *Unrecovered stolen boat records which do not contain a hull serial number will be purged from file 90 days after date of entry.*

(Job No. NC1-65-82-4, Part E. 13h. (6))

8. Missing Persons File: Will remain in the file until the individual is located or, in the case of unemancipated persons, the individual reaches the age of emancipation as defined by law of his state.

(Job No. N 1-65-87-11, Part E. 13h. (8))

9. Computerized Criminal History File: When an individual reaches age of 80. (Job No. NC1-65-76-1)

10. U.S. Secret Service Protective File: Will be retained until names are removed by the U.S. Secret Service.

11. Foreign Fugitive File: Person not located will remain in file indefinitely until action is taken by the originating agency to clear the record.

12. Canadian Warrant File: Person and located will remain in file indefinitely until action is taken by the originating agency to clear the record.

13. Unidentified Person File: Will be retained for the remainder of the year of entry plus 9.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Federal Bureau of Investigation, J. Edgar Hoover F.B.I. Building, 9th and Pennsylvania Avenue NW., Washington, D.C. 20535.

NOTIFICATION PROCEDURES:

Same as the above.

RECORD ACCESS PROCEDURE:

It is noted the Attorney General is exempting this system from the access and contest procedures of the Privacy Act. However, the following alternative procedures are available to requester. The procedures by which an individual may obtain a copy of his computerized Criminal History are as follows:

If an individual has a criminal record supported by fingerprints and that record has been entered in the NCIC CCH File, it is available to that individual for review, upon presentation of appropriate identification and in accordance with applicable State and Federal administrative and statutory regulations.

Appropriate identification includes being fingerprinted for the purpose of insuring that he is the individual that he purports to be. The record on file will then be verified as his through comparison of fingerprints.

Procedure 1. All requests for review must be made by the subject of his record through a law enforcement agency which has access to the NCIC CCH File. That agency within statutory

or regulatory limits can require additional identification to assist in securing a positive identification.

2. If the cooperative law enforcement agency can make an identification with fingerprints previously taken which are on file locally and if the FBI identification number of the individuals's record is available to that agency, it can make an on-line inquiry of NCIC to obtain his record on-line or, if it does not have suitable equipment to obtain an on-line response, obtain the record from Washington, D.C. by mail. The individual will then be afforded the opportunity to see that record.

3. Should the cooperating law enforcement agency not have the individual's fingerprints on file locally, it is necessary for that agency to relate his prints to an existing record by having his identification prints compared with those already on file in the FBI or possibly, in the State's central identification agency.

CONTESTING RECORD PROCEDURES:

The subject of the requested record shall request the appropriate arresting agency, court, or correctional agency to initiate action necessary to correct any stated inaccuracy in his record or provide the information needed to make the record complete.

RECORD SOURCE CATEGORIES:

Information contained in the NCIC system is obtained from local, State, Federal and international criminal justice agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsection (c)(3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G), (H), (e)(8) (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(3). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the *Federal Register*.

JUSTICE/FBI-002

SYSTEM NAME:

The FBI Central Records System.

SYSTEM LOCATION:

a. Federal Bureau of Investigation, J. Edgar Hoover FBI Building, 10th and Pennsylvania Avenue, NW., Washington, DC 20535; b. 57 field divisions (see Appendix); c. 16 Legal Attachés (see Appendix).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Individuals who relate in any manner to official FBI investigations

including, but not limited to *subjects*, suspects, victims, witnesses, and close relatives and associates who are relevant to an investigation.

b. Applicants for and current and former personnel of the FBI and persons related thereto who are considered relevant to an applicant investigation, personnel inquiry, or other personnel matters.

c. Applicants for and appointees to sensitive positions in the United States Government and persons related thereto who are considered relevant to the investigation.

d. Individuals who are the subject of unsolicited information, who offer unsolicited information, request assistance, and make inquiries concerning record material, including general correspondence, and contacts with other agencies, businesses, institutions, clubs; the public and the news media.

e. Individuals associated with administrative operations or services including pertinent functions, contractors and pertinent persons related thereto.

(All manner of information concerning individuals may be acquired in connection with and relating to the varied investigative responsibilities of the FBI which are further described in "CATEGORIES OF RECORDS IN THE SYSTEM." Depending on the nature and scope of the investigation this information may include, among other things, personal habits and conduct, financial information, travel and organizational affiliation of individuals. The information collected is made a matter of record and placed in FBI files.)

CATEGORIES OF RECORDS IN THE SYSTEM:

The FBI Central Records Systems—The FBI utilizes a central records system of maintaining its investigative, personnel, applicant, administrative, and general files. This system consists of one numerical sequence of subject matter files, an alphabetical index to the files, and a supporting abstract system to facilitate processing and accountability of all important mail placed in files. This abstract system is both a textual and an automated capability for locating mail. Files kept in FBI field offices are also structured in the same manner, except they do not utilize an abstract system.

The FBI has 266 classifications used in its basic filing system which pertain primarily to Federal violations over which the FBI has investigative jurisdiction. However, included in the 266 classifications are personnel, applicant, and administrative matters to

facilitate the overall filing scheme. These classifications are as follows (the word "obsolete" following the name of the classification indicates the FBI is no longer initiating investigative cases in these matters, although the material is retained for reference purposes):

1. Training Schools; National Academy Matters; FBI National Academy Applicants. Covers general information concerning the FBI National Academy, including background investigations of individual candidates.

2. Neutrality Matters. Title 18, United States Code, Sections 956 and 958-962; Title 22, United States Code, Sections 1934 and 401.

3. Overthrow or Destruction of the Government. Title 18, United States Code, Section 2385.

4. National Firearms Act; Federal Firearms Act; State Firearms Control Assistance Act; Unlawful Possession or Receipt of Firearms. Title 26, United States Code, Sections 5801-5812; Title 18, United States Code, Sections 921-928; Title 18, United States Code, Sections 1201-1203.

5. Income Tax. Covers violations of Federal income tax laws reported to the FBI. Complaints are forwarded to the Commissioner of the Internal Revenue Service.

6. Interstate Transportation of Strikebreakers. Title 18, United States Code, Section 1231.

7. Kidnapping. Title 18, United States Code, Sections 1201 and 1202.

8. Migratory Bird Act. Title 18, United States Code, Section 43; Title 16, United States Code, Section 703 through 718.

9. Extortion. Title 18, United States Code, Sections 876, 877, 875, and 873.

10. Red Cross Act. Title 18, United States Code, Sections 706 and 917.

11. Tax (Other than Income). This classification covers complaints concerning violations of Internal Revenue law as they apply to other than alcohol, social security and income and profits taxes, which are forwarded to the Internal Revenue Service.

12. Narcotics. This classification covers complaints received by the FBI concerning alleged violations of Federal drug laws. Complaints are forwarded to the headquarters of the Drug Enforcement Administration (DEA), or the nearest district office of DEA.

13. Miscellaneous. Section 125, National Defense Act, Prostitution; Selling Whiskey Within Five Miles Of An Army Camp. 1920 only. Subjects were alleged violators of abuse of U.S. flag, fraudulent enlistment, selling liquor and operating houses of prostitution within restricted bounds of military reservations. Violations of Section 13 of the Selective Service Act (Conscription

Act) were enforced by the Department of Justice as a war emergency measure with the Bureau exercising jurisdiction in the detection and prosecution of cases within the purview of that Section.

14. Sedition. Title 18, United States Code, Sections 2387, 2388, and 2391.

15. Theft from Interest Shipment. Title 18, United States Code, Section 659; Title 18, United States Code, Section 660; Title 18, United States Code, Section 2117.

16. Violations of Federal Injunction (obsolete). Consolidated into Classification 69, "Contempt of Court".

17. Fraud Against the Government—Veterans Administration, Veterans Administration Matters. Title 18, United States Code, Section 287, 289, 290, 371, or 1001; and Title 38, United States Code, Sections 787(a), 787(b), 3405, 3501, and 3502.

18. May Act. Title 18, United States Code, Section 1384.

19. Censorship Matter (obsolete). Pub. L. 354, 77th Congress.

20. Federal Grain Standards Act (obsolete) 1920 only. Subjects were alleged violators of contracts for sale. Shipment of Interstate Commerce, Section 5, U.S. Grain Standards Act.

21. Food and Drugs. This classification covers complaints received concerning alleged violations of the Food, Drug and Cosmetic Act; Tea Act; Import Milk Act; Caustic Poison Act; and Filled Milk Act. These complaints are referred to the Commissioner of the Food and Drug Administration of the field component of that Agency.

22. National Motor Vehicle Traffic Act, 1922-27 (obsolete). Subjects were possible violators of the National Motor Vehicle Theft Act; Automobiles seized by Prohibitions Agents.

23. Prohibition. This classification covers complaints received concerning bootlegging activities and other violations of the alcohol tax laws. Such complaints are referred to the Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, or field representatives of the Agency.

24. Profiteering 1920-42. (obsolete) Subjects are possible violators of the Lever Act—Profiteering in food and clothing or accused company was subject of file. Bureau conducted investigations to ascertain profits.

25. Selective Service Act; Selective Training and Service Act. Title 50, United States Code, Section 462; Title 50, United States Code, Section 459.

26. Interstate Transportation of Stolen Motor Vehicle; Interstate Transportation of Stolen Aircraft. Title 18, United States Code, Sections 2311 (in part), 2312, and 2313.

27. Patent Matter. Title 35, United States Code, Sections 104 and 105.

28. Copyright Matter. Title 17, United States Code, Sections 104 and 105.

29. Bank Fraud and Embezzlement. Title 18, United States Code, Sections 212, 213, 215, 334, 655-657, 1004-1006, 1008, 1009, 1014, and 1306; Title 12, United States Code, Section 1725(g).

30. Interstate Quarantine Law, 1922-25 (obsolete). Subjects alleged violators of Act of February 15, 1893, as amended, regarding interstate travel of persons afflicted with infectious diseases. Cases also involved unlawful transportation of animals, Act of February 2, 1903. Referrals were made to Public Health Service and the Department of Agriculture.

31. White Slave Traffic Act. Title 18, United States Code, Section 2421-2424.

32. Identification (Fingerprint) Matters. This classification covers general information concerning Identification (fingerprint) matters.

33. Uniform Crime Reporting. This classification covers general information concerning the Uniform Crime Reports, a periodic compilation of statistics of criminal violations throughout the United States.

34. Violation of Lacey Act, 1922-43. (obsolete) Unlawful Transportation and shipment of black bass and fur seal skins.

35. Civil Service. This classification covers complaints received by the FBI concerning Civil Service matters which are referred to the Office of Personnel Management in Washington or regional offices of that Agency.

36. Mail Fraud. Title 18, United States Code, Section 13341.

37. False Claims Against the Government. 1921-22. (obsolete) Subjects submitted claims for allotment, vocational training, compensation as veterans under the Sweet Bill. Letters were generally referred elsewhere (Veterans Bureau). Violators apprehended for violation of Article No. 1, War Risk Insurance Act.

38. Application for Pardon to Restore Civil Rights. 1921-35. (obsolete) Subjects allegedly obtained their naturalization papers by fraudulent means. Cases later referred to Immigration and Naturalization Service.

39. Falsely Claiming Citizenship. (obsolete) Title 18, United States Code, Sections 911 and 1015(a)(b).

40. Passport and Visa Matter. Title 18, United States Code, Sections 1451-1549.

41. Explosives (obsolete). Title 50, United States Code, Sections 121 through 144.

42. Deserter; Deserter, Harboring. Title 10, United States Code, Sections 808 and 885.

43. Illegal Wearing of Uniforms; False Advertising or Misuse of Names, Words, Emblems or Insignia; Illegal Manufacturer, Use, Possession, or Sale of Emblems and Insignia; Illegal Manufacture, Possession, or Wearing of Civil Defense Insignia; Miscellaneous, Forging or Using Forged Certificate of Discharge from Military or Naval Service; Miscellaneous, Falsely Making or Forging Naval, Military, or Official Pass; Miscellaneous, Forging or Counterfeiting Seal of Department or Agency of the United States, Misuse of the Great Seal of the United States or of the Seals of the President or the Vice President of the United States; Unauthorized Use of "Johnny Horizon" Symbol; Unauthorized Use of Smokey Bear Symbol. Title 18, United States Code, Sections 702, 703, and 704; Title 18, United States Code, Sections 701, 705, 707, and 710; Title 36, United States Code, Section 182; Title 50, Appendix, United States Code, Section 2284; Title 46, United States Code, Section 249; Title 18, United States Code, Sections 498, 499, 506, 709, 711, 711a, 712, 713, and 714; Title 12, United States Code, Sections 1457 and 1723a; Title 22, United States Code, Section 2518.

44. Civil Rights; Civil Rights, Election Laws, Voting Rights Act, 1965, Title 18, United States Code, Sections 241, 242, and 245; Title 42, United States Code, Section 1973; Title 18, United States Code, Section 243; Title 18, United States Code, Section 244, Civil Rights Act—Federally Protected Activities; Civil Rights Act—Overseas Citizens Voting Rights Act of 1975.

45. Crime on the High Seas (Includes stowaways on boats and aircraft). Title 18, United States Code, Sections 7, 13, 1243, and 2199.

46. Fraud Against the Government; (Includes Department of Health, Education and Welfare; Department of Labor (CETA), and Miscellaneous Government Agencies) Anti-Kickback Statute; Dependent Assistance Act of 1950; False Claims, Civil; Federal-Aid Road Act; Lead and Zinc Act; Public Works and Economic Development Act of 1965; Renegotiation Act, Criminal; Renegotiation Act, Civil; Trade Expansion Act of 1962; Unemployment Compensation Statutes; Economic Opportunity Act. Title 50, United States Code, Section 1211 et seq.; Title 31, United States Code, Section 231; Title 41, United States Code, Section 119; Title 40, United States Code, Section 489.

47. Impersonation. Title 18, United States Code, Section 912, 913, 915, and 916.

48. Postal. Violation (Except Mail Fraud). This classification covers inquiries concerning the Postal Service and complaints pertaining to the theft of mail. Such complaints are either forwarded to the Postmaster General or the nearest Postal Inspector.

49. *Bankruptcy Fraud*. Title 18, United States Code, Sections 151–155.

50. Involuntary Servitude and Slavery. U.S. Constitution, 13th Amendment; Title 18, United States Code, sections 1581–1588, 241, and 242.

51. Jury Panel Investigations. This classification covers jury panel investigations which are requested by the appropriate Assistant Attorney General as authorized by 28 U.S.C. 533 and AG memorandum # 781, dated 11/9/72. These investigations can be conducted only up-on such a request and consist of an indices and arrest check, and only in limited important trials where defendant could have influence over a juror.

52. Theft, Robbery, Embezzlement, Illegal Possession or Destruction of Government Property. Title 18, United States Code, Sections 641, 1024, 1660, 2112, and 2114. Interference With Government Communications, Title 18, U.S.C., Section 1632.

53. Excess Profits On Wool. 1918 (obsolete). Subjects possible violator of Government Control of Wool Clip of 1918.

54. Customs Laws and Smuggling. This classification covers complaints received concerning smuggling and other matters involving importation and entry of merchandise into and the exportation of merchandise from the United States. Complaints are referred to the nearest district office of the U.S. Customs Service or the Commissioner of Customs, Washington, DC.

55. Counterfeiting. This classification covers complaints received concerning alleged violations of counterfeiting of U.S. coins, notes, and other obligations and securities of the Government. These complaints are referred to either the Director, U.S. Secret Service, or the nearest office of that Agency.

56. Election Laws. Title 18, United States Code, Sections 241, 242, 245, and 591–607; Title 42, United States Code, Section 1973; Title 26, United States Code, Sections 9012 and 9042; Title 2, United States Code, Sections 431–437, 439, and 441.

57. War Labor Dispute Act (obsolete). Pub. L. 89–77th Congress.

58. Bribery; Conflict of Interest. Title 18, United States Code, Sections 201–203, 205–211; Pub. L. 89–4 and 89–136.

59. World War Adjusted Compensation Act of 1924–44. (obsolete) Bureau of Investigation was charged with the duty of investigating alleged violations of all sections of the World War Adjusted Compensation Act (Pub. L. 472, 69th Congress (H.R. 10277)) with the exception of Section 704.

60. Anti-Trust. Title 15, United States Code, Sections 1–7, 12–27, and 13.

61. Treason or Misprision of Treason. Title 18, United States Code, Sections 2381, 2382, 2389, 2390, 756, and 757.

62. Administrative Inquiries. Misconduct Investigations of Officers and Employees of the Department of Justice and Federal Judiciary; Census Matters (Title 13, United States Code, Sections 211–214, 221–224, 304, and 305) Domestic Police Cooperation; Eight-Hour-Day Law (Title 40, United States Code, Sections 321, 322, 325a, 326); Fair Credit Reporting Act (Title 15, United States Code, Sections 1681q and 1681r); Federal Cigarette Labeling and Advertising Act (Title 15, United States Code, Section 1333); Federal Judiciary Investigations; Kickback Racket Act (Title 18, United States Code, Section 874); Lands Division Matter, other Violations and/or Matters; Civil Suits—Miscellaneous; Soldiers' and Sailors' Civil Relief Act of 1940 (Title 50, Appendix, United States Code, Sections 510–590); Tariff Act of 1930 (Title 19, United States Code, Section 1304); Unreported Interstate Shipment of Cigarettes (Title 15, United States Code, Sections 375 and 376); Fair Labor Standards Act of 1938 (Wages and Hours Law) (Title 29, United States Code, Sections 201–219); Conspiracy (Title 18, United States Code, Section 371 (formerly Section 88, Title 18, United States Code); effective September 1, 1948).

63. Miscellaneous—Nonsubversive. This classification concerns correspondence from the public which does not relate to matters within FBI jurisdiction.

64. Foreign Miscellaneous. This classification is a control file utilized as a repository for intelligence information of value identified by country. More specific categories are placed in classification 108–113.

65. Espionage. Attorney General Guidelines on Foreign Counterintelligence; Internal Security Act of 1950; Executive Order 11905.

66. Administrative Matters. This classification covers such items as supplies, automobiles, salary matters and vouchers.

67. Personnel Matters. This classification concerns background investigations of applicants for employment with the FBI and folders for current and former employees.

68. Alaskan matters (obsolete). This classification concerns FBI investigations in the Territory of Alaska prior to its becoming a State.

69. Contempt of Court. Title 18, United States Code, Sections 401, 402, 3285, 3691, 3692; Title 10, United States Code, Section 847; and Rule 42, Federal Rules of Criminal Procedure.

70. Crime on Government Reservation. Title 18, United States Code, Sections 7 and 13.

71. Bills of Lading Act, Title 49, United States Code, Section 121.

72. Obstruction of Criminal Investigations; Obstruction of Justice, Obstruction of Court Orders. Title 18, United States Code, Sections 1503 through 1510.

73. Application for Pardon After Completion of Sentence and Application for Executive Clemency. This classification concerns the FBI's background investigation in connection with pardon applications and requests for executive clemency.

74. Perjury. Title 18, United States Code, Sections 1621, 1622, and 1623.

75. Bondsmen and Sureties. Title 18, United States Code, Section 1506.

76. Escaped Federal Prisoner, Escape and Rescue; Probation Violator, Parole Violator; Parole Violator; Mandatory Release Violator. Title 18, United States Code, Sections 751-757, 1072; Title 18, United States Code, Sections 3651-3656; and Title 18, United States Code, Sections 4202-4207, 5037, and 4161-4166.

77. Applicants (Special Inquiry, Departmental and Other Government Agencies, except those having special classifications). This classification covers the background investigations conducted by the FBI in connection with the aforementioned positions.

78. Illegal Use of Government Transportation Requests. Title 18, United States Code, Section 287, 495, 508, 641, 1001 and 1002.

79. Missing Persons. This classification covers the FBI's Identification Division's assistance in the locating of missing persons.

80. Laboratory Research Matters. At FBI Headquarters this classification is used for Laboratory research matters. In field office files this classification covers the FBI's public affairs matters and involves contact by the FBI with the general public, Federal and State agencies, the Armed Forces, corporations, the news media and other outside organizations.

81. Gold Hoarding. 1933-45. (obsolete) Gold Hoarding investigations conducted in accordance with an Act of March 9, 1933 and Executive Order issued August 28, 1933. Bureau instructed by Department to conduct no further investigations in 1935 under the Gold Reserve Act of 1934. Thereafter, all correspondence referred to Secret Service.

82. War Risk Insurance (National Life Insurance (obsolete)). This classification covers investigations conducted by the FBI in connection with civil suits filed under this statute.

83. Court of Claims. This classification covers requests for investigations of cases pending in the Court of Claims from the Assistant Attorney General in charge of the Civil Division of the Department of Justice.

84. Reconstruction Finance Corporation Act (obsolete). Title 15, United States Code, Chapter 14.

85. Home Owner Loan Corporation (obsolete). This classification concerned complaints received by the FBI about alleged violations of the Home Owners Loan Act, which were referred to the Home Owners Loan Corporation. Title 12, United States Code, Section 1464.

86. Fraud Against the Government—Small Business Administration. Title 15, United States Code, Section 645; Title 18, United States Code, Sections 212, 213, 215, 216, 217, 657, 658, 1006, 1011, 1013, 1014, 1906, 1907, and 1909.

87. Interstate Transportation of Stolen Property (Heavy Equipment—Commercialized Theft). Title 18, United States Code, Sections 2311, 2314, 2315 and 2318.

88. Unlawful Flight to Avoid Prosecution, Custody, or Confinement; Unlawful Flight to Avoid Giving Testimony. Title 18, United States Code, Sections 1073 and 1074.

89. Assaulting or Killing a Federal Officer, *Crimes Against Family Members*, Congressional Assassination Statute. Title 18, United States Code, Sections 1111, 1114, 2232.

90. Irregularities in Federal Penal Institutions. Title 18, United States Code, Sections 1791 and 1792.

91. Bank Burglary; Bank Larceny; Bank Robbery. Title 18, United States Code, Section 2113.

92. Racketeer Enterprise Investigations. Title 18, United States Code, Section 3237.

93. Ascertaining Financial Ability. This classification concerns requests by the Department of Justice for the FBI to ascertain a person's ability to pay a claim, fine or judgment obtained against him by the United States Government.

94. Research matters. This classification concerns all general

correspondence of the FBI with private individuals which does not involve any substantive violation of Federal law.

95. Laboratory Cases (Examination of Evidence in Other Than Bureau's Cases). The classification concerns non-FBI cases where a duly constituted State, county or a municipal law enforcement agency in a criminal matter has requested an examination of evidence by the FBI Laboratory.

96. Alien Applicant (obsolete). Title 10, United States Code, Section 310.

97. Foreign Agents Registration Act, Title 18, United States Code, Section 951; Title 22, United States Code, Sections 611-621; Title 50, United States Code, Sections 851-857.

98. Sabotage. Title 18, United States Code, Sections 2151-2156; Title 50, United States Code, Section 797.

99. Plant Survey (obsolete). This classification covers a program wherein the FBI inspected industrial plants for the purpose of making suggestions to the operations of those plants to prevent espionage and sabotage.

100. Domestic Security. This classification covers investigations by the FBI in the domestic security field, e.g., Smith Act violations.

101. Hatch Act (obsolete). Pub. L. 252, 76th Congress.

102. Voorhis Act, Title 18, United States Code, Section 1386.

103. Interstate Transportation of Stolen Livestock, Title 18, United States Code, Section 667, 2311, 2316 and 2317.

104. Servicemen's Dependents Allowance Act of 1942 (obsolete). Pub. L. 625, 77th Congress, Sections 116-119.

105. Foreign Counterintelligence Matters. Attorney General Guidelines on Foreign Counterintelligence. Executive Order 11905.

106. Alien Enemy Control; Escaped Prisoners of War and Internees, 1944-55 (obsolete). Suspects were generally suspected escaped prisoners of war, members of foreign organizations, failed to register under the Alien Registration Act. Cases ordered closed by Attorney General after alien enemies returned to their respective countries upon termination of hostilities.

107. Denaturalization Proceedings (obsolete). This classification covers investigations concerning allegations that an individual fraudulently swore allegiance to the United States or in some other manner illegally obtained citizenship to the U.S., Title 8, United States Code, Section 738.

108. Foreign Travel Control (obsolete). This classification concerns security-type investigations wherein the subject is involved in foreign travel.

109. Foreign Political Matters. This classification is a control file utilized as a repository for intelligence information concerning foreign political matters broken down by country.

110. Foreign Economic Matters. This classification is a control file utilized as a repository for intelligence information concerning foreign economic matters broken down by country.

111. Foreign Social Conditions. This classification is a control file utilized as a repository for intelligence information concerning foreign social conditions broken down by country.

112. Foreign Funds. This classification is a control file utilized as a repository for intelligence information concerning foreign funds broken down by country.

113. Foreign Military and Naval Matters. This classification is a control file utilized as a repository for intelligence information concerning foreign military and naval matters broken down by country.

114. Alien Property Custodian Matter (obsolete). Title 50, United States Code, Sections 1 through 38. This classification covers investigations concerning ownership and control of property subject to claims and litigation under this statute.

115. Bond Default; Bail Jumper. Title 18, United States Code, Sections 3146-3152.

116. Department of Energy Applicant; Department of Energy, Employee. This classification concerns background investigations conducted in connection with employment with the Department of Energy.

117. Department of Energy, Criminal. Title 42, United States Code, Sections 2011-2281; Pub. L. 93-438.

118. Applicant, Intelligence Agency (obsolete). This classification covers applicant background investigations conducted of persons under consideration for employment by the Central Intelligence Group.

119. Federal Regulation of Lobbying Act. Title 2, United States Code, Sections 261-270.

120. Federal Tort Claims Act. Title 28, United States Code, Sections 2671 to 2680. Investigations are conducted pursuant to specific request from the Department of Justice in connection with cases in which the Department of Justice represents agencies sued under the Act.

121. Loyalty of Government Employees (obsolete). Executive Order 9835.

122. Labor Management Relations Act, 1947. Title 29, United States Code, Sections 161, 162, 176-178 and 186.

123. Section Inquiry, State Department, Voice of America (U.S. Information Center) (Pub. L. 402, 80th

Congress) (obsolete). This classification covers loyalty and security investigations on personnel employed by or under consideration for employment for Voice of America.

124. European Recovery Program (International Cooperation Administration), formerly Foreign Operations Administration, Economic Cooperation Administration or E.R.P., European Recovery Programs; A.I.D., Agency for International Development (obsolete). This classification covers security and loyalty investigations of personnel employed by or under consideration for employment with the European Recovery Program, Pub. L. 472, 80th Congress.

125. Railway Labor Act; Railway Labor Act—Employer's Liability Act. Title 45, United States Code, Sections 151-163 and 181-188.

126. National Security Resources Board, Special Inquiry (obsolete). This classification covers loyalty investigations on employees and applicants of the National Security Resources Board.

127. Sensitive Positions in the United States Government, Pub. L. 266 (obsolete). Pub. L. 81st Congress.

128. International Development Program (Foreign Operations Administration) (obsolete). This classification covers background investigations conducted on individuals who are to be assigned to duties under the International Development Program.

129. Evacuation Claims (obsolete). Pub. L. 896, 80th Congress.

130. Special Inquiry, Armed Forces Security Act (obsolete). This classification covers applicant-type investigations conducted for the Armed Forces security agencies.

131. Admiralty Matter. Title 46, United States Code, Sections 741-752 and 781-799.

132. Special Inquiry, Office of Defense Mobilization (obsolete). This classification covers applicant-type investigations of individuals associated with the Office of Defense Mobilization.

133. National Science Foundation Act. Applicant (obsolete). Pub. L. 507, 81st Congress.

134. Foreign Counterintelligence Assets. This classification concerns individuals who provide information to the FBI concerning Foreign Counterintelligence matters.

135. PROSAB (Protection of Strategic Air Command Bases of the U.S. Air Force) (obsolete). This classification covered contacts with individuals with the aim to develop information useful to protect bases of the Strategic Air Command.

136. American Legion Contact (obsolete). This classification covered liaison contacts with American Legion officers.

137. Informants. Other Than Foreign Counterintelligence Assets. This classification concerns individuals who furnish information to the FBI concerning criminal violations on a continuing and confidential basis.

138. Loyalty of Employees of the United Nations and Other Public International Organizations. This classification concerns FBI investigations based on referrals from the Office of Personnel Management wherein a question or allegation has been received regarding the applicant's loyalty to the U.S. Government as described in Executive Order 10422.

139. Interception of Communications (Formerly, Unauthorized Publication or Use of Communications). Title 47, United States Code, Section 605; Title 47, United States Code, Section 501; Title 18, United States Code, Sections 2510-2513.

140. Security of Government Employees; Fraud Against the Government, Executive Order 10450.

141. False Entries in Records of Interstate Carriers. Title 47, United States Code, Section 220; Title 49, United States Code, Section 20.

142. Illegal Use of Railroad Pass. Title 49, United States Code, Section 1.

143. Interstate Transportation of Gambling Devices. Title 15, United States Code, Sections 1171 through 1180.

144. Interstate Transportation of Lottery Tickets. Title 18, United States Code, Section 1301.

145. Interstate Transportation of Obscene Materials. Title 18, United States Code, Sections 1462, 1464 and 1465.

146. Interstate Transportation of Prison-Made Goods. Title 18, United States Code, Sections 1761 and 1762.

147. Fraud Against the Government—Department of Housing and Urban Development, Matters. Title 18, United States Code, Sections 657, 709, 1006, and 1010; Title 12, United States Code, Sections 1709 and 1715.

148. Interstate Transportation of Fireworks. Title 18, United States Code, Section 836.

149. Destruction of Aircraft of Motor Vehicles. Title 18, United States Code, Sections 31-35.

150. Harboring of Federal Fugitives, Statistics (obsolete).

151. (Referral cases received from the Office of Personnel Management under Pub. L. 298). Agency for International Development; Department of Energy; National Aeronautics and Space

Administration; National Science Foundation; Peace Corps; Action; U.S. Arms Control and Disarmament Agency; World Health Organization; International Labor Organization; International Communications Agency. This classification covers referrals from the Office of Personnel Management where an allegation has been received regarding an applicant's loyalty to the U.S. Government. These referrals refer to applicants from peace Corps; Department of Energy, National Aeronautics and Space Administration, Nuclear Regulatory Commission, United States Arms Control and Disarmament Agency and the International Communications Agency.

152. Switchblade Knife Act. Title 15, United States Code, Sections 1241-1244.

153. Automobile Information Disclosure Act. Title 15, United States Code, Sections 1231-1233.

154. Interstate Transportation of Unsafe Refrigerators. Title 15, United States Code, Sections 1211-1214.

155. National Aeronautics and Space Act of 1958. Title 18, United States Code, Section 799.

156. Employee Retirement Income Security Act. Title 29, United States Code, Sections 1021-1029, 1111, 1131, and 1141; Title 18, United States Code, Sections 644, 1027, and 1954.

157. Civil Unrest. This classification concerns FBI responsibility for reporting information on civil disturbances or demonstrations. The FBI's investigative responsibility is based on the Attorney General's Guidelines for Reporting on Civil Disorders and Demonstrations Involving a Federal Interest which became effective April 5, 1976.

158. Labor-Management Reporting and Disclosure Act of 1959 (Security Matter) (obsolete). Pub. L. 86-257, Section 504.

159. Labor-Management Reporting and Disclosure Act of 1959 (Investigative Matter). Title 29, United States Code, Sections 501, 503, 504, 522, and 530.

160. Federal Train Wreck Statute. Title 18, United States Code, Section 1992.

161. Special Inquiries for White House, Congressional Committee and Other Government Agencies. This classification covers investigations requested by the White House, Congressional committees or other Government agencies.

162. Interstate Gambling Activities. This classification covers information acquired concerning the nature and scope of illegal gambling activities in each field office.

163. Foreign Police Cooperation. This classification covers requests by foreign

police for the FBI to render investigative assistance to such agencies.

164. Crime Aboard Aircraft. Title 49, United States Code, Sections 1472 and 1473.

165. Interstate Transmission of Wagering Information. Title 18, United States Code, Section 1064.

166. Interstate Transportation in Aid of Racketeering. Title 18, United States Code, Section 1952.

167. Destruction of Interstate Property. Title 15, United States Code, Sections 1281 and 1282.

168. Interstate Transportation of Wagering Paraphernalia. Title 18, United States Code, Section 1953.

169. Hydraulic Brake Fluid Act (obsolete); 76 Stat. 437, Pub. L. 87-637.

170. Extremist Informants (obsolete). This classification concerns individuals who provided information on a continuing basis on various extremist elements.

171. Motor Vehicle Seat Belt Act (obsolete). Pub. L. 88-201, 80th Congress.

172. Sports Bribery. Title 18, United States Code, Section 224.

173. Public Accommodations. Civil Rights Act of 1964 Public Facilities; Civil Rights Act of 1964 Public Education; Civil Rights Act of 1964 Employment; Civil Rights Act of 1964. Title 42, United States Code, Section 2000; Title 18, United States Code, Section 245.

174. Explosives and Incendiary Devices; Bomb Threats (Formerly, Bombing Matters; Bombing Matters, Threats). Title 18, United States Code, Section 844.

175. Assaulting, Kidnapping or Killing the President (or Vice President) of the United States. Title 18, United States Code, Section 1751.

176. Anti-riot Laws. Title 18, United States Code, Section 245.

177. Discrimination in Housing. Title 42, United States Code, Sections 3601-3619 and 3631.

178. Interstate Obscene or Harrassing Telephone Calls. Title 47, United States Code, Section 223.

179. Extortionate Credit Transactions. Title 18, United States Code, Section 891-896.

180. Desecration of the Flag. Title 18, United States Code, Section 700.

181. Consumer Credit Protection Act. Title 15, United States Code, Section 1611.

182. Illegal Gambling Business; Illegal Gambling Business, Obstruction; Illegal Gambling Business, Forfeiture. Title 18, United States Code, Section 1955; Title 18, United States Code, Section 1511.

183. Racketeer, Influence and Corrupt Organizations. Title 18, United States Code, Sections 1961-1968.

184. Police Killings. This classification concerns investigations conducted by the FBI upon written request from local Chief of Police or duly constituted head of the local agency to actively participate in the investigation of the killing of a police officer. These investigations are based on a Presidential Directive dated June 3, 1971.

185. Protection of Foreign Officials and Officials Guests of the United States. Title 18, United States Code, Sections 112, 970, 1116, 1117 and 1201.

186. Real Estate Settlement Procedures Act of 1974. Title 12, United States Code, Section 2602; Title 12, United States Code, Section 2606, and Title 12, United States Code, Section 2607.

187. Privacy Act of 1974, Criminal. Title 5, United States Code, Section 552a.

188. Crime Resistance. This classification covers FBI efforts to develop new or improved approaches, techniques, systems, equipment and devices to improve and strengthen law enforcement as mandated by the Omnibus Crime Control and Safe Streets Act of 1968.

189. Equal Credit Opportunity Act. Title 15, United States Code, Section 1691.

190. Freedom of Information/Privacy Acts. This classification covers the creation of a correspondence file to preserve and maintain accurate records concerning the handling of requests for records submitted pursuant to the Freedom of Information-Privacy Acts.

191. False Identity Matters. (obsolete) This classification covers the FBI's study and examination of criminal elements' efforts to create false identities.

192. Hobbs Act—Financial Institutions; Commercial Institutions; Armored Carrier. Title 18, United States Code, Section 1951.

193. Hobbs Act—Commercial Institutions (obsolete). Title 18, United States Code, Section 1951; Title 47, United States Code, Section 506.

194. Hobbs Act—Corruption of Public Officials. Title 18, United States Code, Section 1951.

195. Hobbs Act—Labor Related. Title 18, United States Code, Section 1951.

196. Fraud by Wire. Title 18, United States Code, Section 1343.

197. Civil Actions or Claims Against the Government. This classification covers all civil suits involving FBI matters and most administrative claims filed under the Federal Tort Claims Act arising from FBI activities.

198. Crime on Indian Reservations. Title 18, United States Code, Sections 1151, 1152, and 1153.

199. Foreign Counterintelligence—Terrorism. Attorney General Guidelines on Foreign Counterintelligence. Executive Order 11905.

200. Foreign Counterintelligence Matters. Attorney General Guidelines on Foreign Counterintelligence. Executive Order 11905.

201. Foreign Counterintelligence Matters. Attorney General Guidelines on Foreign Counterintelligence. Executive Order 11905.

202. Foreign Counterintelligence Matters. Attorney General Guidelines on Foreign Counterintelligence. Executive Order 11905.

203. Foreign Counterintelligence Matters. Attorney General Guidelines on Foreign Counterintelligence. Executive Order 11905.

204. Federal Revenue Sharing. This classification covers FBI investigations conducted where the Attorney General has been authorized to bring civil action whenever he has reason to believe that a pattern or practice of discrimination in disbursement of funds under the Federal Revenue Sharing status exists.

205. Foreign Corrupt Practices Act of 1977. Title 15, United States Code, Section 78.

206. Fraud Against the Government—Department of Defense, Department of Agriculture, Department of Commerce, Community Services Organization, Department of Transportation. (See classification 46 (*supra*) for a statutory authority for this and the four following classifications.)

207. Fraud Against the Government—Environmental Protection Agency, National Aeronautics and Space Administration, Department of Energy, Department of Transportation.

208. Fraud Against the Government—General Services Administration.

209. Fraud Against the Government—Department of Health, and Human Services (Formerly, Department of Health, Education, and Welfare).

210. Fraud Against the Government—Department of Labor.

211. Ethics in Government Act of 1978, Title VI (Title 28, Sections 591-596).

212. Foreign Counterintelligence—Intelligence Community Support. This is an administrative classification for the FBI's operational and technical support to other Intelligence Community agencies.

213. Fraud Against the Government—Department of Education.

214. Civil Rights of Institutionalized Persons Act (Title 42, United States Code, Section 1997).

215. Foreign Counterintelligence Matters. Attorney General Guidelines on Foreign Counterintelligence. Executive Order 11905.

216. thru 229. Foreign Counterintelligence Matters. (Same authority as 215)

230. thru 240. FBI Training Matters.

241. DEA Applicant Investigations.

242. Automation Matters.

243. Intelligence Identities Protection Act of 1982.

244. Hostage Rescue Team.

245. Drug Investigative task Force.

246. thru 248. Foreign Counterintelligence Matters. (Same authority as 215)

249. Environmental Crimes—Investigations involving toxic or hazardous waste violations.

250. Tampering With Consumer Products (Title 18, U.S. Code, Section 1395)

251. Controlled Substance—Robbery;—Burglary (Title 18, U.S. Code, Section 2118)

252. Violent Crime Apprehension Program (VICAP). Case folders containing records relevant to the VICAP Program, in conjunction with the National Center for the Analysis of Violent Crime Record System at the FBI Academy; Quantico, Virginia.

253. False Identification Crime Control Act of 1982 (Title 18, U.S. Code, Section 1028—Fraud and Related Activity in Connection With Identification Documents, and Section 1738—Mailing Private Identification Documents Without a Disclaimer)

254. Destruction of Energy Facilities (Title 18, U.S. Code, Section 1365) relates to the destruction of property of nonnuclear energy facilities.

255. Counterfeiting of State and Corporate Securities (Title 18, U.S. Code, Section 511) covers counterfeiting and forgery of all forms of what is loosely interpreted as securities.

256. Hostage Taking—Terrorism (Title 18, U.S. Code, Section 1203) prohibits taking of hostage(s) to compel third party to do or refrain from doing any act.

257. Trademark Counterfeiting Act (Title 18, United States Code, Section 2320) covers the international trafficking in goods which bear a counterfeited trademark.

258. Credit Card Fraud Act of 1984 (Title 18, United States Code, Section 1029) covers fraud and related activities in connection with access devices (credit and debit cards).

259. Security Clearance Investigations Program. (Same authority as 215)

260. Industrial Security Program. (Same authority as 215)

261. Security Officer Matters. (Same authority as 215)

262. Overseas Homicide/Attempted Homicide—International Terrorism.

Title 18, United States Code, Section 2331.

263. Office of Professional Responsibility Matters.

264. Computer Fraud and Abuse Act of 1986. Electronic Communications Privacy Act of 1986. Title 18, United States Code, Section 1030; Title 18, United States Code, Section 2701.

265. Acts of Terrorism in the United States—International Terrorist. (Followed by predicate offense from other classification.)

266. Acts of Terrorism in the United States—Domestic Terrorist. (Followed by predicate offense from other classification.)

Records Maintained in FBI Field Divisions—FBI field divisions maintain for limited periods of time investigative, administrative and correspondence records, including files, index cards and related material, some of which are duplicated copies of reports and similar documents forwarded to FBI Headquarters. Most investigative activities conducted by FBI field divisions are reported to FBI Headquarters at one or more stages of the investigation. There are, however, investigative activities wherein no reporting was made to FBI Headquarters, e.g., pending cases not as yet reported and cases which were closed in the field division for any of a number of reasons without reporting to FBI Headquarters.

Duplicate records and records which extract information reported in the main files are also kept in the various divisions of the FBI to assist them in their day-to-day operation. These records are lists of individuals which contain certain biographic data, including physical description and photograph. They may also contain information concerning activities of the individual as reported to FBIHQ by the various field offices. The establishment of these lists is necessitated by the needs of the Division to have immediate access of pertinent information duplicative of data found in the central records without the delay caused by a time-consuming manual search of central indices. The manner of segregating these individuals varies depending on the particular needs of the FBI Division. The information pertaining to individuals who are a part of the list is derivative of information contained in the Central Records System. These duplicative records fall into the following categories:

(1) Listings of individuals used to assist in the location and apprehension of individuals for whom legal process is outstanding (fugitives):

(2) Listings of individuals used in the identification of particular offenders in cases where the FBI has jurisdiction. These listings include various photograph albums and background data concerning persons who have been formerly charged with a particular crime and who may be suspect in similar criminal activities; and photographs of individuals who are unknown but suspected of involvement in a particular criminal activity, for example, bank surveillance photographs;

(3) Listings of individuals as part of an overall criminal intelligence effort by the FBI. This would include photograph albums, lists of individuals known to be involved in criminal activity, including theft from interstate shipment, interstate transportation of stolen property, and individuals in the upper echelon of organized crime.

(4) Listings of individuals in connection with the FBI's mandate to carry out Presidential directives on January 8, 1943, July 24, 1950, December 15, 1953, and February 18, 1976, which designated the FBI to carry out investigative work in matters relating to espionage, sabotage, and foreign counterintelligence. These listings may include photograph albums and other listings containing biographic data regarding individuals. This would include lists of identified and suspected foreign intelligence agents and informants;

(5) Special indices duplicative of the central indices used to access the

Central Records System have been created from time to time in conjunction with the administration and investigation of major cases. This duplication and segregation facilitates access to documents prepared in connection with major cases.

In recent years, as the emphasis on the investigation of white collar crime, organized crime, and hostile foreign intelligence operations has increased, the FBI has been confronted with increasingly complicated cases, which require more intricate information processing capabilities. Since these complicated investigations frequently involve massive volumes of evidence and other investigative information, the FBI uses its computers, when necessary to collate, analyze, and retrieve investigative information in the most accurate and expeditious manner possible. It should be noted that all investigative information, which is placed in computerized form, is actually extracted from the main files and that the duplicative computerized information is only maintained as necessary to support the FBI's investigative activities. Information from these internal computerized subsystems of the "Central Records System" is not accessed by any other agency. All disclosures of computerized information are made in printed form in accordance with the routine uses which are set forth below.

Records also are maintained on a temporary basis relevant to the FBI's

domestic police cooperating program, where assistance in obtaining information is provided to state and local police agencies.

Also, personnel type information, dealing with such matters as attendance and production and accuracy requirements is maintained by some divisions.

(The following chart identifies various listings or indexes maintained by the FBI which have been or are being used by various divisions of the FBI in their day-to-day operations. The chart identifies the list by name, description and use, and where maintained, i.e. FBI Headquarters and/or Field Office. The number in parentheses in the field office column indicates the number of field offices which maintain these indices. The chart indicates, under "status of index," those indexes which are in current use (designated by the word "active") and those which are no longer being used, although maintained (designated by the word "inactive"). There are 27 separate indices which are classified in accordance with existing regulations and are not included in this chart. The following indices are no longer being used by the FBI and are being maintained at FBIHQ pending receipt of authority to destroy: Black Panther Party Photo Index; Black United Front Index; Security Index; and Wounded Knee Album.

Title of index	Description and use	Status of index	Maintained at—	
			Headquarters	Field office
Administrative Index (ADEX).....	Consists of cards with descriptive data on individuals who were subject to investigation in a national emergency because they were believed to constitute a potential or active threat to the internal security of the United States. When ADEX was started in 1971, it was made up of people who were formerly on the Security Index, Reserve Index, and Agitator Index. The index is maintained in two separate locations in FBI Headquarters. ADEX was discontinued in January 1978.	Inactive.....	Yes.....	Yes (29).
Anonymous Letter File.....	Consists of photographs of anonymous communications and extortionate credit transactions, kidnapping, extortion and threatening letters.	Active.....	Yes.....	No.
Associates of DEA Class 1 Narcotics Violators Listing.	Consists of a computer listing of individuals whom DEA has identified as associates of Class 1 Narcotics Violators.	Active.....	Yes.....	Yes (59).
Background Investigation Index—Department of Justice.	Consists of cards on persons who have been the subject of a full field investigation in connection with their consideration for employment in sensitive positions with Department of Justice, such as U.S. Attorney, Federal judges, or a high level Department position.	Active.....	Yes.....	No.

Title of index	Description and use	Status of index	Maintained at—	
			Headquarters	Field office
Background Investigation Index—White House, Other Executive Agencies, and Congress.	Consists of cards on persons who have been the subject of a full field investigation in connection with their consideration for employment in sensitive positions with the White House, Executive agencies (other than the Department of Justice) and the Congress.	Active	Yes	No.
Bank Fraud and Embezzlement Index.	Consists of individuals who have been the subject of "Bank Fraud and Embezzlement" investigation. This file is used as an investigative aid.	Active	No	Yes (1).
Bank Robbery Album	Consists of photos of bank robbers, burglars, and larceny subjects. In some field offices it will also contain pictures obtained from local police departments of known armed robbers and thus potential bank robbers. The index is used to develop investigative leads in bank robbery cases and may also be used to show to witnesses of bank robberies. It is usually filed by race, height, and age. This index is also maintained in one resident agency (a suboffice of a field office).	Active	No	Yes (47).
Bank Robbery Nickname Index	Consists of nicknames used by known bank robbers. The index card on each would contain the real name and method of operation and are filed in alphabetical order.	Active	No	Yes (1).
Bank Robbery Note File	Consists of photographs of notes used in bank robberies in which the suspect has been identified. This index is used to help solve robberies in which the subject has not been identified but a note was left. The role is compared with the index to try to match the sentence structure and handwriting for the purpose of identifying possible suspects.	Active	Yes	No.
Bank Robbery Suspect Index	Consists of a control file or index cards with photos, if available, of bank robbers or burglars. In some field offices these people may be part of the bank robbery album. This index is generally maintained and used in the same manner as the bank robbery album.	Active	No	Yes (33).
Car Ring Case Photo Album	Consists of photos of subjects and suspects involved in a large car theft ring investigation. It is used as an investigative aid.	Active	No	Yes (3).
Car Ring Case Photo Album and Index.	Consists of photos of subjects and suspects involved in a large car theft ring investigation. The card index maintained in addition to the photo album contains the names and addresses appearing on fraudulent title histories for stolen vehicles. Most of these names appearing on these titles are fictitious. But the photo album and card indexes are used as an investigative aid.	Active	No	Yes (1).
Car Ring Case Toll Call Index	Consists of cards with information on persons who subscribe to telephone numbers to which toll calls have been placed by the major subjects of a large car theft ring investigation. It is maintained numerically by telephone number. It is used to facilitate the development of probable cause for a court-approved wiretap.	Active	No	Yes (2).
Car Ring Theft Working Index	Contains cards on individuals involved in car ring theft cases on which the FBI Laboratory is doing examination work.	Active	Yes	No.
Cartage Album	Consists of photos with descriptive data of individuals who have been convicted of theft from interstate shipment or interstate transportation of stolen property where there is a reason to believe they may repeat the offense. It is used in investigating the above violations.	Active	No	Yes (3).
Channelizing Index	Consists of cards with the names and case file numbers of people who are frequently mentioned in information reports. The index is used to facilitate the distributing or channeling of informant reports to appropriate files.	Active	No	Yes (9).

Title of index	Description and use	Status of index	Maintained at—	
			Headquarters	Field office
Check Circular File	Consists of files filed numerically in a control file on fugitives who are notorious fraudulent check passers and who are engaged in a continuing operation of passing checks. The files which include the subject's name, photo, a summary of the subject's method of operation and other identifying data is used to alert other FBI field offices and business establishments which may be the victims of bad checks.	Active	Yes	Yes (43).
Computerized Telephone Number File (CTNF) Intelligence.	Consists of a computer listing of telephone numbers (and subscribers' names and addresses) utilized by subjects and/or certain individuals which come to the FBI's attention during major investigations. During subsequent investigations, telephone numbers, obtained through subpoena, are matched with the telephone numbers on file to determine connections or associations.	Active	Yes	No.
Con Man Index	Consists of computerized names of individuals, along with company affiliation, who travel nationally and internationally while participating in large-dollar-value financial swindles.	Active	Yes	No.
Confidence Game (Flim Flam) Album.	Consists of photos with descriptive information on individuals who have been arrested for confidence games and related activities. It is used as an investigative aid.	Active	No	Yes (4).
Copyright Matters Index	Consists of cards of individuals who are film collectors and film titles. It is used as a reference in the investigation of copyright matters.	Active	No	Yes (1).
Criminal Intelligence Index	Consists of cards with name and file number of individuals who have become the subject of an antitracketeering investigation. The index is used as a quick way to ascertain file numbers and the correct spelling of names. This index is also maintained in one resident agency.	Active	No	Yes (2).
Criminal Informant Index	Consists of cards containing identity and brief background information on all active and inactive informants furnishing information in the criminal area.	Active	Yes	No.
DEA Class 1 Narcotics Violators Listing.	Consists of a computer listing of narcotic violators—persons known to manufacture, supply, or distribute large quantities of illicit drugs—with background data. It is used by the FBI in their role of assisting DEA in disseminating intelligence data concerning illicit drug trafficking. This index is also maintained in two resident agencies.	Active	Yes	Yes (59).
Deserter Index	Contains cards with the names of individuals who are known military deserters. It is used as an investigative aid.	Active	No	Yes (4).
False Identities Index	Contains cards with the names of deceased individuals whose birth certificates have been obtained by other persons for possible false identification uses and in connection with which the FBI laboratory has been requested to perform examinations.	Inactive	Yes	No.
False Identities List	Consists of a listing a names of deceased individuals whose birth certificates have been obtained after the person's death, and thus whose names are possibly being used for false identification purposes. The listing is maintained as part of the FBI's program to find persons using false identities for illegal purposes.	Inactive	No	Yes (31).
False Identity Photo Album	Consists of names and photos of people who have been positively identified as using a false identification. This is used as an investigative aid in the FBI's investigation of false identities.	Inactive	No	Yes (2).
FBI/Inspector General (IG) Case Pointer System (FICPS).	Consists of computerized listing of individual names of organizations which are the subject of active and inactive fraud investigations, along with the name of the agency conducting the investigation. Data is available to IG offices throughout the federal government to prevent duplication of investigative activity.	Active	Yes	No.

Title of index	Description and use	Status of index	Maintained at—	
			Headquarters	Field office
FBI Wanted Persons Index	Consists of cards on persons being sought on the basis of Federal warrants covering violations which fall under the jurisdiction of the FBI. It is used as a ready reference to identify those fugitives.	Active	Yes	No.
Foreign Counterintelligence (FCI).	Consists of cards with identity background data on all active and inactive operational and informational assets in the foreign counterintelligence field. It is used as a reference aid on the FCI Asset program..	Active	Yes	No.
Fraud Against the Government Index.	Consists of individuals who have been the subject of a "fraud against the Government" investigation. It is used as investigative aid..	Active	No	Yes (1).
Fugitive Bank Robbers File	Consists of fliers on bank robbery fugitives filed sequentially in a control file. FBI Headquarters distributes to the field offices fliers on bank robbers in a fugitive status for 15 or more days to facilitate their location.	Active	Yes	Yes (43).
General Security Index.....	Contains cards on all persons that have been the subject of a security classification investigation by the FBI field office. These cards are used for general reference purposes..	Active	No	Yes (1).
Hoodlum License Plate Index	Consists of cards with the license plates numbers and descriptive data on known hoodlums and cars observed in the vicinity of hoodlum homes. It is used for quick identification of such person in the course of investigation. The one index which is not fully retrievable in maintained by a resident agency.	Active	No	Yes (3).
Identification Order Fugitive Flier File.	Consists of fliers numerically in a control file. When immediate leads have been exhausted in fugitive investigations and a crime of considerable public interest has been committed, the fliers are given wide circulation among law enforcement agencies throughout the United States and are posted in post offices. The fliers contain the fugitive's photograph, fingerprints, and description.	Active	Yes	Yes (49).
Informant Index.....	Consists of cards with the name, symbol numbers, and brief background information on the following categories of active and inactive informants, top echelon criminal informants, security informants, criminal information, operational and informational assets, extremist informants (discontinued), plant informant—informants on and about certain military bases (discontinued), and potential criminal informants.	Active	No	Yes (59).
Informants in Other Field Offices, Index of..	Consists of cards with names and/or symbol numbers of informants in other FBI field offices that are in a position to furnish information that would also be included on the index card.	Active	No	Yes (15).
Interstate Transportation of Stolen Aircraft Photo Album.	Consists of photos and descriptive data on individuals who are suspects known to have been involved in interstate transportation of stolen aircraft. It is used as an investigative aid.	Active	No	Yes (1).
IRS Wanted List.....	Consists of one-page fliers from IRS on individuals with background information who are wanted by IRS for tax purposes. It is used in the identification of persons wanted by IRS.	Active	No	Yes (11).
Kidnapping Book.....	Consists of data, filed chronologically, on kidnappings that have occurred since the early fifties. The victims' names and the suspects, if known, would be listed with a brief description of the circumstances surrounding the kidnapping. The file is used as a reference aid in matching up prior methods of operation in unsolved kidnapping cases.	Active	Yes	No.
Known Check Passers Album.....	Consists of photos with descriptive data of persons known to pass stolen, forged, or counterfeit checks. It is used as an investigative aid.	Active	No	Yes (4).

Title of index	Description and use	Status of index	Maintained at—	
			Headquarters	Field office
Known Gambler Index	Consists of cards with names, descriptive data, and sometimes photos of individuals who are known bookmakers and gamblers. The index is used in organized crime and gambling investigations. Subsequent to GAO's review, and at the recommendation of the inspection team at one of the two field offices where the index was not fully retrievable, the index was destroyed and thus is not included in the total.	Active	No	Yes (5).
La Cosa Nostra (LCN) Membership Index.	Contains cards on individuals having been identified as members of the LCN index. The cards contain personal data and pictures. The index is used solely by FBI agents for assistance in investigating organized crime matters.	Active	Yes	Yes (55).
Leased Line Letter Request Index.	Contains cards on individuals and organizations who are or have been the subject of a national security electronic surveillance where a leased line letter was necessary. It is used as an administrative and statistical aid.	Active	Yes	No.
Mail Cover Index	Consists of cards containing a record of all mail covers conducted on individuals and groups since about January 1973. It is used for reference in preparing mail cover requests.	Active	Yes	No.
Military Deserter Index	Consists of cards containing the names of all military deserters where the various military branches have requested FBI assistance in locating. It is used as an administrative aid.	Active	Yes	No.
National Bank Robbery Album	Consists of fliers on bank robbery suspects held sequentially in a control file. When an identifiable bank camera photograph is available and the case has been under investigation for 30 days without identifying the subject, FBIHQ sends a flier to the field offices to help identify the subject.	Active	Yes	Yes (42).
National Fraudulent Check File	Contains photographs of the signatures on stolen and counterfeit checks. It is filed alphabetically but there is a no way of knowing the names are real or fictitious. The index is used to help solve stolen check cases by matching checks obtained in such cases against the index to identify a possible suspect.	Active	Yes	No.
National Security Electronic Surveillance Card File.	Contains cards recording electronic surveillances previously authorized by the Attorney General and previously and currently authorized by the FISC; current and previous assets in the foreign counterintelligence field; and a historical, inactive section which contains cards believed to record nonconsented physical entries in national security cases, previously toll billings, mail covers and leased lines. The inactive section also contains cards reflecting previous Attorney General approvals and denials for warrantless electronic surveillance in the national security cases.	Inactive	Yes	No.
Night Depository Trap index	Contains cards with the names of persons who have been involved in the theft of deposits made in bank night depository boxes. Since these thefts have involved various methods, the FBI uses the index to solve such cases by matching up similar methods to identify possible suspects.	Active	Yes	No.
Organized Crime Photo Album	Consists of photos and background information on individuals involved in organized crime activities. The index is used as a ready reference in identifying organized crime figures within the field offices' jurisdiction.	Active	No	Yes (13).
Photospread Identification Elimination File.	Consists of photos of individuals who have been subjects and suspects in FBI investigations. It also includes photos received from other law enforcement agencies. These pictures can be used to show witnesses of certain crimes.	Active	No	Yes (14).

Title of index	Description and use	Status of index	Maintained at—	
			Headquarters	Field office
Prostitute Photo Album	Consists of photos with background data on prostitutes who have prior local or Federal arrests for prostitution. It is used to identify prostitutes in connection with investigations under the White Slave Traffic Act.	Active	No	Yes (4).
Royal Canadian Mounted Police (RCMP) Wanted Circular File.	Consists of a control file of individuals with background information of persons wanted by the RCMP. It is used to notify the RCMP if an individual is located.	Active	No	Yes (17).
Security Informant Index	Consists of cards containing identity and brief background information on all active and inactive informants furnishing information in the criminal area.	Active	Yes	No.
Security Subjects Control Index	Consists of cards containing the names and case file numbers of individuals who have been subject to security investigations check. It is used as a reference source.	Active	No	Yes (1).
Security Telephone Number Index.	Contains cards with telephone subscriber information subpoenaed from the telephone company in any security investigation. It is maintained numerically by the last three digits in the telephone number. It is used for general reference purposes in security investigations.	Active	No	Yes (1).
Selective Service Violators Index.	Contains cards on individuals being sought on the basis of Federal warrants for violation of the Selective Service Act.	Active	Yes	No.
Sources of Information Index	Consists of cards on individuals and organizations such as banks, motels, local governments that are willing to furnish information to the FBI with sufficient frequency to justify listing for the benefit of all agents. It is maintained to facilitate the use of such sources.	Active	No	Yes (10).
Special Services Index	Contains cards of prominent individuals who are in a position to furnish assistance in connection with FBI investigative responsibility.	Active	No	Yes (28).
Stolen Checks and Fraud by Wire Index.	Consists of cards on individuals involved in check and fraud by wire violations. It is used as an investigative aid.	Active	No	Yes (1).
Stop Notices Index	Consists of cards on names of subjects or property where the field office has placed a stop at another law enforcement agency or private business such as pawn shops in the event information comes to the attention of that agency concerning the subject or property. This is filed numerically by investigative classification. It is used to insure that the agency where the stop is placed is notified when the subject is apprehended or the property is located or recovered.	Active	No	Yes (43).
Surveillance Locator Index	Consists of cards with basic data on individuals and businesses which have come under physical surveillance in the city in which the field office is located. It is used for general reference purposes in antiracketeering investigations.	Active	No	Yes (2).
Telephone Number Index—Gamblers.	Contains information on persons identified usually as a result of a subpoena for the names of subscribers to particular telephone numbers or toll records for a particular phone number of area gamblers and bookmakers. The index cards are filed by the last three digits of the telephone number. The index is used in gambling investigations.	Active	No	Yes (2).
Telephone Subscriber and Toll Records Check Index.	Contains cards with information on persons identified as the result of a formal request or subpoena to the phone company for the identity of subscribers to particular telephone numbers. The index cards are filed by telephone number and would also include identity of the subscriber, billing party's identity, subscriber's address, date of request from the telephone company, and file number.	Active	No	Yes (1).
Thieves, Couriers and Fences Photo Index.	Consists of photos and background information on individuals who are or are suspected of being thieves, couriers, or fences based on their past activity in the area of interstate transportation of stolen property. It is used as an investigative aid.	Active	No	Yes (4).

Title of index	Description and use	Status of index	Maintained at—	
			Headquarters	Field office
Toll Record Request Index.....	Contains cards on individuals and organizations on whom toll records have been obtained in national security related cases and with respect to which FBIHQ had to prepare a request letter. It is used primarily to facilitate the handling of repeat requests on individuals listed.	Active	Yes	No.
Top Burglar Album.....	Consists of photos and background data of known and suspect top burglars involved in the area of interstate transportation of stolen property. It is used as an investigative aid.	Active	No	Yes (4).
Top Echelon Criminal Informer Program (TECIP) Index.	Consists of cards containing identity and brief background information on individuals who are either furnishing high level information in the organized crime area or are under development to furnish such information. The index is used primarily to evaluate, corroborate, and coordinate informant information and to develop prosecutive data against racket figures under Federal, State, and local statutes.	Active	Yes	No.
Top Ten Program File.....	Consists of fliers, filed numerically in a control file, on fugitives considered by the FBI to be 1 of the 10 most wanted. Including a fugitive on the top 10 usually assures a greater national news coverage as well as nationwide circulation of the flier.	Active	Yes	Yes (44).
Top Thief Program Index.....	Consists of cards of individuals who are professional burglars, robbers, or fences dealing in items likely to be passed in interstate commerce or who travel interstate to commit the crime. Usually photographs and background information would also be obtained on the index card. The index is used as an investigative aid.	Active	No	Yes (27).
Truck Hijack Photo Album.....	Contains photos and descriptive data of individuals who are suspected truck hijackers. It is used as an investigative aid and for displaying photos to witnesses and/or victims to identify unknown subjects in hijacking cases.	Active	No	Yes (4).
Truck Thief Suspect Photo Album.	Consists of photos and background data on individuals previously arrested or are currently suspects regarding vehicle theft. The index is used as an investigative aid.	Active	No	Yes (1).
Traveling Criminal Photo Album ..	Consists of photos with identifying data of individuals convicted of various criminal offenses and may be suspects in other offenses. It is used as an investigative aid.	Active	No	Yes (1).
Veterans Administration (VA)/ Federal Housing Administration Matters (FHA) Index.	Consists of cards of individuals who have been subject of an investigation relative to VA and FHA matters. It is used as an investigative aid.	Active	No	Yes (1).
Wanted Fliers File.....	Consists of fliers, filed numerically in a control file, on badly wanted fugitives whose apprehension may be facilitated by a flier. The flier contains the names, photographs, aliases, previous convictions, and a caution notice.	Active	Yes	Yes (46).
Wheelindex.....	Contains the nicknames and the case file numbers of organized crime members. It is used in organized crime investigations.	Active	No	Yes (1).
White House Special Index.....	Contains cards on all potential White House appointees, staff members, guests, and visitors that have been referred to the FBI by the White House security office for a records check to identify any adverse or derogatory information. This index is used to expedite such check in view of the tight timeframe usually required.	Active	Yes	No.
Witness Protection Program Index.	Contains cards on individuals who have been furnished a new identity by the U.S. Justice Department because of their testimony in organized crime trials. It is used primarily to notify the U.S. Marshals Service when information related to the safety of a protected witness comes to the FBI's attention.	Active	Yes	No.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Records Act of 1950, title 44, United States Code, chapter 31, section 3101; and title 36, Code of Federal Regulations, chapter XII, require Federal agencies to insure that adequate and proper records are made and preserved to document the organization, functions, policies, decisions, procedures and transactions and to protect the legal and financial rights of the Federal Government, title 28, United States Code, section 534, delegates authority to the Attorney General to acquire, collect, classify, and preserve identification, criminal identification, crime and other records.

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

Records, both investigative and administrative, are maintained in this system in order to permit the FBI to function efficiently as an authority, responsive component of the Department of Justice. Therefore, information in this system is disclosed to officials and employees of the Department of Justice, and/or all components thereof, who have need of the information in the performance of their official duties.

Personal information from this system may be disclosed as a routine use to any Federal agency where the purpose in making the disclosure is compatible with the law enforcement purpose for which it was collected, e.g., to assist the recipient agency in conducting a lawful criminal or intelligence investigation, to assist the recipient agency in making a determination concerning an individual's suitability for employment and/or trustworthiness for employment and/or trustworthiness for access clearance purposes, or to assist the recipient agency in the performance of any authorized function where access to records in this system is declared by the recipient agency to be relevant to that function.

In addition, personal information may be disclosed from this system to members of the Judicial Branch of the Federal Government in response to a specific request, or at the initiation of the FBI, where disclosure appears relevant to the authorized function of the recipient judicial office or court system. An example would be where an individual is being considered for employment by a Federal judge.

Information in this system may be disclosed as a routine use to any state or local government agency directly engaged in the criminal justice process, e.g., police, prosecution, penal,

probation and parole, and the judiciary, where access is directly related to a law enforcement function of the recipient agency e.g. in connection with a lawful criminal or intelligence investigation, or making a determination concerning an individual's suitability for employment as a state or local law enforcement employee or concerning a victim's compensation under a state statute. Disclosure to a state or local government agency, (a) not directly engaged in the criminal justice process or (b) for a licensing or regulatory function, is considered on an individual basis only under exceptional circumstances, as determined by the FBI.

Information in this system pertaining to the use, abuse or traffic of controlled substances may be disclosed as a routine use to federal, state or local law enforcement agencies and to licensing or regulatory agencies empowered to engage in the institution and prosecution of cases before courts and licensing boards in matters relating to controlled substances, including courts and licensing boards responsible for the licensing or certification of individuals in the fields of pharmacy and medicine.

Information in this system may be disclosed as a routine use in a proceeding before a court or adjudicative body, e.g., the Equal Employment Opportunity Commission and the Merit Systems Protection Board, before which the FBI is authorized to appear, when (a) the FBI or any employee thereof in his or her official capacity, or (b) any employee in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (c) the United States, where the FBI determines it is likely to be affected by the litigation, is a party to litigation or has an interest in litigation and such records are determined by the FBI to be relevant to the litigation.

Information in this system may be disclosed as a routine use to an organization or individual in both the public or private sector if deemed necessary to elicit information or cooperation from the recipient for use by the FBI in the performance of an authorized activity. An example would be where the activities of an individual are disclosed to a member of the public in order to elicit his/her assistance in our apprehension or detection efforts.

Information in this system may be disclosed as a routine use to an organization or individual in both the public or private sector where there is reason to believe the recipient is or could become the target of a particular criminal activity or conspiracy, to the

extent the information is relevant to the protection of life or property.

Information in this system may be disclosed to legitimate agency of a foreign government where the FBI determines that the information is relevant to that agency's responsibilities, and dissemination serves the best interests of the U.S. Government, and where the purpose in making the disclosure is compatible with the purpose for which the information was collected.

Relevant information may be disclosed from this system to the news media and general public where there exists a legitimate public interest, e.g., to assist in the location of Federal fugitives, to provide notification of arrests, and where necessary for protection from imminent threat of life or property. This would include releases of information in accordance with 28 CFR 50.2

A record relating to an actual or potential civil or criminal violation of the copyright statute, Title 17, United States Code, or the trademark statutes, Titles 15 and 17, U.S. Code, may be disseminated to a person injured by such violation to assist him/her in the institution or maintenance of a suit brought under such titles.

The FBI has received inquiries from private citizens and Congressional offices on behalf of constituents seeking assistance in locating individuals such as missing children and heirs to estates. Where the need is acute, and where it appears FBI files may be the only lead in locating the individual, consideration will be given to furnishing relevant information to the requester. Information will be provided only in those instances where there are reasonable grounds to conclude from available information the individual being sought would want the information to be furnished, e.g., an heir to a large estate. Information with regard to missing children will not be provided where they have reached their majority.

RELEASE OF INFORMATION TO MEMBERS OF CONGRESS:

Information contained in this system, the release of which is required by the Freedom of Information-Privacy Acts, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member of staff requests the information in behalf of and at the request of the individual who is the subject of the record.

RELEASE OF INFORMATION TO THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION (NARA) AND THE GENERAL SERVICES ADMINISTRATION (GSA):

A record from a system of records may be disclosed as a routine use to NARA and GSA in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906, to the extent that legislation governing the records permits.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The active main files are maintained in hard copy form and some inactive records are maintained on microfilm. Investigative information which is maintained in computerized form may be stored in memory, on disk storage, on computer tape, or on a computer printed listing.

RETRIEVABILITY:

The FBI General Index must be searched to determine what information, if any, the FBI may have in its files. Index records, or pointers to specific FBI files, are created on all manner of subject matters, but the predominant type record is the name index record. It should be noted the FBI does not index all individuals who furnish information or all names developed during the course of an investigation. Only that information considered pertinent, relevant, or essential for future retrieval, is indexed. In certain major cases, individuals interviewed may be indexed to facilitate the administration of the investigation. The FBI has automated that portion of its index containing the most recent information—15 years for criminal related matters and 30 years for intelligence and other type matters. Automation will not change the "Central Records System"; it will only facilitate more economic and expeditious access to the main files. Searches against the automated records are accomplished on a "batch off-line" basis for certain submitting agencies where the name search requests conform to FBI specified formats and also in an "on-line" mode with the use of video display terminals for other requests. The FBI will not permit any organization, public or private, outside the FBI to have direct access to the FBI indices system. All searches against the indices data base will be performed on site within FBI space by FBI personnel with the assistance of the automated procedures, where feasible. Automation of the various FBI field office indices has been under way for approximately five years; completion is anticipated during FY

1988. This automation initiative has been on a "day-one" basis. This indices system points to specific files within a given field office. Additionally, certain complicated investigative matters may be supported by specialized computer systems or by individual microcomputers. Indices created in these environments are maintained as part of the particular computer system and accessible only through the system or through printed listings of the indices.

The FBI will transfer historical records to the National Archives consistent with 44 U.S.C. 2103. No record of individuals or subject matter will be retained for transferred files; however, a record of the file numbers will be retained to provide full accountability of FBI files and thus preserve the integrity of the filing system.

SAFEGUARDS:

Records are maintained in a restricted area and are accessed only by agency personnel. All FBI employees receive a complete background investigation prior to being hired. All employees are cautioned about divulging confidential information or any information contained in FBI files. Failure to abide by this provision violates Department of Justice regulations and may violate certain statutes providing maximum severe penalties of a ten thousand dollar fine or 10 years imprisonment or both. Employees who resign or retire are also cautioned about divulging information acquired in the jobs. Registered mail is used to transmit routine hard copy records between field offices. Highly classified records are hand carried by Special Agents or personnel of the Armed Forces Courier Service. Highly classified or sensitive privacy information, which is electronically transmitted between field offices, is transmitted in encrypted form to prevent interception and interpretation. Information transmitted in teletype form is placed in the main files of both the receiving and transmitting field offices. Field offices involved in certain complicated investigative matters may be provided with on-line access to the duplicative computerized information which is maintained for them on disk storage in the FBI Computer Center in Washington, D.C., and this computerized data is also transmitted in encrypted form.

RETENTION AND DISPOSAL:

As the result of an extensive review of FBI records conducted by NARA, records evaluated as historical and permanent will be transferred to the National Archives after established

retention periods and administrative needs of the FBI have elapsed. As deemed necessary, certain records may be subject to restricted examination and usage, as provided by 44 U.S.C. Section 2104.

FBI record disposition programs relevant to this System are conducted in accordance with the FBI Records Retention Plan and Disposition Schedule which was approved by the Archivist of the United States and the U.S. District Court, District of Columbia. Investigative, applicant and administrative records which meet the destruction criteria will be destroyed after 20 or 30 years at FBI Headquarters and after 1, 5, 10 or 20 years in FBI Field Offices. Historical records will be transferred to the National Archives after 30 or 50 years, contingent upon investigative and administrative needs. The administrative indices and listings described within this System were appraised separately and disposition authority established. (Job No. NC1-65-82-4 and amendments)

SYSTEM MANAGER(S) AND ADDRESS:

Director, Federal Bureau of Investigation; Washington, DC 20535.

NOTIFICATION PROCEDURE:

Same as above.

RECORD ACCESS PROCEDURES:

A request for access to a record from the system shall be made in writing with the envelope and the letter clearly marked "Privacy Access Request". Include in the request your full name, complete address, date of birth, place of birth, notarized signature, and other identifying data you may wish to furnish to assist in making a proper search of our records. Also include the general subject matter of the document or its file number. The requester will also provide a return address for transmitting the information. Requests for access to information maintained at FBI Headquarters must be addressed to the Director, Federal Bureau of Investigation, Washington, DC 20535. Requests for information maintained at FBI field divisions or Legal Attaches must be made separately and addressed to the specific field division or Legal Attache listed in the appendix to this system notice.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should also direct their request to the Director, Federal Bureau of Investigation, Washington, DC 20535, stating clearly and concisely what information is being contested, the

reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

The FBI, by the very nature and requirement to investigate violations of law within its investigative jurisdiction and its responsibility for the internal security of the United States, collects information from a wide variety of sources. Basically, it is the result of investigative efforts and information furnished by other Government agencies, law enforcement agencies, and the general public, informants, witnesses, and public source material.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3), (d), (e) (1), (2) and (3), (e)(4) (G) and (H), (e)(8) (f), (g), of the Privacy Act pursuant to 5 U.S.C. 552a (j) and (k). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e).

Appendix of Field Divisions and Legal Attaches for the Federal Bureau of Investigation Field Divisions; Justice/FBI-999

5th Floor, 445 Broadway, Albany, NY 12201.

POB 25186, Albuquerque, NM 87125.

POB 100560, Anchorage, AK 99510.

POB 1683, Atlanta, GA 30370.

7142 Ambassador Road, Baltimore, MD 21207.

2121 Building, Birmingham, AL 35203.

John F. Kennedy Federal Office

Building, Boston, MA 02203.

111 West Huron Street, Buffalo, NY 14202.

6010 Kenley Lane, Charlotte, NC 28217.

219 S. Dearborn St., Chicago, IL 60604.

POB 1277, Cincinnati, OH 45201.

1240 E. 9th St., Cleveland, OH 44199.

POB 137, Columbia, SC 29202.

1801 W. Lamar, Dallas, TX 75202.

POB 1229, Denver, CO 80201.

POB 2118, Detroit, MI 48231.

700 E. San Antonio Ave., El Paso, TX 79901.

POB 50184, Honolulu, HI 96850.

POB 61369, Houston, TX 77208.

POB 1186, Indianapolis, IN 46206.

100 W. Capitol St., Jackson, MS 39269.

POB 8928, Jacksonville, FL 32239.

POB 2449, Kansas City, MO 64142.

POB 10368, Knoxville, TN 37919.

POB 16032, Las Vegas, NV 89101.

POB 21470, Little Rock, AR 72221-1470.

11000 Wilshire Blvd., Los Angeles, CA 90024.

POB 2467, Louisville, KY 40201.

167 N. Main St., Memphis, TN 38103.

POB 592418, Miami, FL 33159.

POB 2058, Milwaukee, WI 53201.

392 Federal Building, Minneapolis, MN 55401.

POB 2128, Mobile, AL 36652.

POB 1158, Newark, NJ 07101.

POB 2058, New Haven, CT 06521.

POB 51930, New Orleans, LA 70151.

POB 1425, New York, NY 10008.

POB 3828, Norfolk, VA 23514.

POB 54511, Oklahoma City, OK 73154.

POB 548, Omaha, NE 68101.

600 Arch St., Philadelphia, PA 19106.

201 E. Indianola, Phoenix, AZ 85012.

POB 1315, Pittsburgh, PA 15230.

POB 709, Portland, OR 97207.

POB 12325, Richmond, VA 23241.

POB 13130, Sacramento, CA 95813.

POB 7251, St. Louis, MO 63177.

125 S. State St., Salt Lake City, UT 84138.

POB 1630, San Antonio, TX 78296.

880 Front St., San Diego, CA 92188.

POB 36015, San Francisco, CA 94102.

POB BT, San Juan, PR 00936.

POB 22758, Savannah, GA 31403.

915 2nd Ave., Seattle, WA 98174.

POB 3646, Springfield, IL 62708.

POB 172177, Tampa, FL 33602.

Washington Field Office, Washington, DC 20535.

Federal Bureau of Investigation

Academy, Quantico, VA 22135.

Legal Attaches: (Send c/o the American

Embassy for the Cities indicated):

Bern, Switzerland.

Bogota, Colombia (APO, Miami 34038).

Bonn, Germany (Box 310, APO, New

York, 09080).

Bridgetown, Barbados (Box B, FPO,

Miami 34054).

Brussels, Belgium (APO, New York

09667).

Canberra, Australia (APO San

Francisco 96404-0001).

Hong Kong, B.C.C. (FPO, San Francisco

96659-0002).

London, England (Box 2, FPO, New York

09509).

Manila, Philippines (APO, San

Francisco 96528).

Mexico City, Mexico (POB 3087, Laredo,

TX 78044-3087).

Montevideo, Uruguay (APO, Miami

34035).

Ottawa, Canada.

Panama City, Panama (Box E, APO,

Miami 34002).

Paris, France (APO, New York 09777).

Rome, Italy (APO, New York 09794).

Tokyo, Japan (APO, San Francisco

96503).

JUSTICE

SYSTEM NAME:

Electronic Surveillance (Elsur)

Indices.

SYSTEM LOCATION:

Federal Bureau of Investigation, J.

Edgar Hoover Bldg., 10th and

Pennsylvania Ave., NW., Washington, DC 20535. Those field offices which have sought conducted electronic surveillances also maintain an index. See appendix to System 002.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been the targets of direct electronic surveillance coverage by the FBI in a court order; those whose communications have been monitored/intercepted by an FBI electronic surveillance installation; those who own, lease, or license premises subjected to electronic surveillance coverage sought by the FBI in a court order.

CATEGORIES OF RECORDS IN THE SYSTEM:

The ELSUR Index is comprised of three types of 3 x 5 cards: 1. Principal cards identify, by true name or best known name, all interceptees (targets) identified in an application filed by the FBI in support of an affidavit seeking a court order to conduct an electronic surveillance; 2. Proprietary Interest cards identify entities and/or individuals who own, lease, license or otherwise hold a possessory interest in locations subjected to an electronic surveillance sought by the FBI in a court order; and, 3. Overhear cards identify, by true name or best known name, individuals and/or entities who have been reasonably identified by a first name or initial and a last name as being a party to a communication monitored/intercepted by the FBI.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The ELSUR Index was initiated in October, 1966, at the recommendation of the Department of Justice and relates to electronic surveillances conducted/sought by the FBI since 1/1/60. The authority for the maintenance of these records is Title 5, Section 301, USC, which grants the Attorney General the authority to issue rules and regulations prescribing how Department of Justice information can be employed. Title 18, USC, Section 3504, also sets forth recordkeeping requirements.

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

The Elsur Indices are utilized: (1) To respond to judicial inquiries about possible electronic surveillance coverage of witnesses, defendants, or attorneys involved in Federal court proceedings, and (2) To enable the Government to certify whether a person regarding whom court-order authority is being sought for electronic coverage has

ever been so covered in the past. The actual users of the indices are always employees of the FBI.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress: Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

Release of information to the National Archives and Records Administration (NARA) and the General Services Administration (GSA): Record from a system of records may be disclosed as a routine use to NARA and GSA in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906 to the extent that legislation governing the records permits.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained manually on 3 x 5 cards.

RETRIEVABILITY:

Names/facilities are indexed and filed alphabetically. Telephone numbers and other such serial or identification numbers targeted are indexed and filed numerically. Locations targeted are indexed by address and filed by street name.

SAFEGUARDS:

The index is maintained in a restricted access room at all times. The entrance is equipped with a special locking device and alarm system for off-duty hours when the index is not in use.

RETENTION AND DISPOSAL:

Until advised to the contrary by the Department, the courts or Congress, these indices will be maintained indefinitely. The indices have been declared permanent by NARA. (Job No. NC1-65-82-4, Part E. 2 t.)

SYSTEM MANAGER(S) AND ADDRESS:

Director, Federal Bureau of Investigation, Washington, D.C. 20535.

NOTIFICATION PROCEDURE:

Same as the above.

RECORD ACCESS PROCEDURES:

Inquiry addressed to Director, FBI, Washington, D.C. 20535.

CONTESTING RECORD PROCEDURES:

Same as the above.

RECORD SOURCE CATEGORIES:

Category of Individual.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c) (3) and (4), (d), (e) (1), (2) and (3), (e)(4)(G), and (H), (e) (5) and (8), (f), (g) and (m) of the Privacy Act pursuant to 5 U.S.C. 552a(j). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the Federal Register.

JUSTICE/FBI-008

SYSTEM NAME:

Personnel Information Network System (PINS).

SYSTEM LOCATION:

Federal Bureau of Investigation, J. Edgar Hoover Building, 10th Street and Pennsylvania Avenue, NW., Washington, DC 20535.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Federal Bureau of Investigation employees and former employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains personnel information which includes information set forth on (1) Standard Form 50—Notification of Personnel Action, (2) SF 176—T—Federal Employee Group Life Insurance Plan, (3) FBI form 12-60 in lieu of SF 1126—Notification of Pay Change, (4) SF 2801 and CSC 1084—Application for and additional information in support of retirement, respectively, (5) SF 2809—Federal Employment Health Benefit Plan and (6) various intra-agency forms and memoranda.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established and maintained pursuant to regulations set forth in the Federal Personnel Manual, Title 5, U.S. Code, Section 301 and Title 44, U.S. Code, Section 3101.

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

The PINS is used (1) to prepare the Notification of Personnel Action, copies of which are furnished to the Office of Personnel Management, (2) to prepare Standard Form 52B—Request for Personnel Action, (3) to generate lists of employees which are used internally by authorized personnel for record keeping, planning, and decision making purposes, and (4) as a source for the dissemination of information (A) to federal, state and local agencies and to private organizations pursuant to service record inquiries and (B) pursuant to credit inquiries. In response to proper credit inquiries from credit bureaus and financial institutions, the FBI will verify employment and furnish salary and length of service).

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress: Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

Release of information to the National Archives the Records Administration (NARA) and the General Services Administration (GSA): A record from a system of records may be disclosed as a routine use to NARA and GSA in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information maintained in PINS is stored by disc and magnetic tape.

RETRIEVABILITY:

Information is retrieved (1) on-line through intelligent workstations and terminals by keying the name or Social Security Number of the employee and (2) off-line through data base retrievals.

(It is noted the authority to solicit an employee's Social Security Number is based on Title 26, Code of Federal Regulations, Section 31.6011(b)-2(b).)

SAFEGUARDS:

Areas housing the system and access terminals are located in secure buildings available to authorized FBI personnel and escorted maintenance and repair personnel only. Access terminals are operational only during normal daytime working hours at which time they are constantly attended.

RETENTION AND DISPOSAL:

Electronically stored records for employees and former employees are maintained indefinitely in a vault under the control of a vault supervisor. Pursuant to regulations set forth in the Federal Personnel Manual a copy of the Notification of Personnel Action is made a part of the employees' personnel file.

The automated records are disposable when administrative needs have expired. (Job No. NC1-65-82-4, Part E. 13c. (1)).

SYSTEM MANAGER(S) AND ADDRESS:

Director, Federal Bureau of Investigation, John Edgar Hoover Building, 10th Street and Pennsylvania Avenue, NW., Washington, DC, 20535.

NOTIFICATION PROCEDURE:

Same as the above.

RECORD ACCESS PROCEDURE:

A request for access to a record from this system shall be made in writing, with the envelope and the letter clearly marked "Privacy Access Request." Include in the request the name and return address of the requestor. Access requests will be directed to the Director, Federal Bureau of Investigation.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the Director, FBI stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system are present and former FBI employees and employee personnel files.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/FBI-009

SYSTEM NAME:

Identification Division Records System.

SYSTEM LOCATION:

Federal Bureau of Investigation: J. Edgar Hoover Bldg., 10th and Pennsylvania Avenue NW., Washington, DC 20537-9700.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A. Individuals fingerprinted as a result of arrest or incarceration.

B. Persons fingerprinted as a result of Federal employment applications, military service, alien registration and naturalization purposes and individuals desiring to have their fingerprints placed on record with the FBI for personal identification purposes.

CATEGORIES OF RECORDS IN THE SYSTEM:

A. Criminal fingerprint cards and related criminal justice information submitted by authorized agencies having criminal justice responsibilities.

B. Civil fingerprint cards submitted by Federal agencies and civil fingerprint cards submitted by persons desiring to have their fingerprints placed on record for personal identification purposes.

C. Identification records sometimes referred to as "rap sheets" which are compilations of criminal history information pertaining to individuals who have criminal fingerprint cards maintained in the system.

D. An alphabetical name index pertaining to all individuals whose fingerprints are maintained in the system. The criminal records and the civil records are maintained in separate files and each file has an alphabetical name index related to the data contained therein.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established, maintained and used under authority granted by 28 U.S.C. 534, 15 U.S.C. 78g, 7 U.S.C. 12a, and Pub. L. 92-544 (86 Stat. 1115), and Pub. L. 99-399. The authority is also codified in 28 CFR 0.85 (b) and (j).

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

The FBI operates the Identification Division Records System to perform identification and criminal history record information functions, for Federal, State, local, and foreign criminal justice agencies, and for noncriminal justice agencies, and other entities where authorized by Federal statute, State statute pursuant to Pub. L.

92-544 (86 Stat. 1115), *Presidential* executive order, or regulation of the Attorney General of the United States. In addition, identification assistance is provided in disasters and for other humanitarian purposes.

Release of information to the news media: Guidelines applicable for the release of information to the news media and the public are set forth in 28 CFR 20.33(a)(4), 20.33(c), and 50.2.

Release of information to Members of Congress: Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

Release of information to the National Archives and Records Administration (NARA) and the General Services Administration (GSA): A record from a system of records may be disclosed as a routine use to NARA and GSA in records management and inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in the system is stored manually in file cabinets either in its natural state or on microfilm. In addition, some of the information is stored in computerized data storage devices.

RETRIEVABILITY:

(1) All information in the system is retrievable by technical fingerprint classification and positive identification is effected only by comparison of the unique identifying characteristics appearing in fingerprint impressions submitted for search against the fingerprint cards maintained within the system.

(2) An auxiliary means of retrieval is through alphabetical name indexes which contain names of the individuals, their birth date, other physical descriptors, and the individuals technical fingerprint classification and FBI numbers, if such have been assigned.

SAFEGUARDS:

Information in the system is unclassified. Disclosure of information from the system is made only to authorized recipients upon

authentication and verification of the right to access the system by such persons and agencies. The physical security and maintenance of information within the system is provided by FBI rules, regulations and procedures.

RETENTION AND DISPOSAL:

(1) The Archivist of the United States has approved the destruction of records maintained in the criminal file when the records indicate individuals have reached 80 years of age, and the destruction of records maintained in the civil file when the records indicate individuals have reached 75 years of age. (Job. No. NC1-65-76-1 and NN-171-180)

(2) Fingerprint cards and related arrest data in the system are destroyed seven years following notification of the death of an individual whose records is maintained in the system. (Job No. 351-S190)

(3) Fingerprint cards submitted by State and local criminal justice agencies are *either returned or destroyed* upon the request of the submitting agencies. The return or destruction of a fingerprint card under this procedure results in the deletion from the system of all arrest information related to that fingerprint card.

(4) Fingerprint cards and related arrest data are removed from the Identification Division Records System upon receipt of Federal court orders for expunctions when accompanied by necessary identifying information. Recognizing lack of jurisdiction of local and State courts over an entity of the Federal Government, the Identification Division Records System, as a matter of comity, *either returns or destroys* fingerprint cards and related arrest data to local and State criminal justice agencies upon receipt of orders of expunction directed to such agencies by local and State courts when accompanied by necessary identifying information.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Federal Bureau of Investigation, 10th and Pennsylvania Avenue NW., Washington, DC 20535.

NOTIFICATION PROCEDURE:

Address inquiries to the System Manager.

RECORD ACCESS PROCEDURE:

The Attorney General has exempted the Identification Division Records System from compliance with subsection (d) of the Act. However, pursuant to 28 CFR 16.30-34, and Rules and Regulations promulgated by the Department of Justice on May 20, 1975 at 40 FR 22144 (Section 20.34) for Criminal

Justice Information Systems, an individual is permitted access to his identification record maintained in the Identification Division Records System and procedures are furnished for correcting or challenging alleged deficiencies appearing therein.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

See Categories of Individuals.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3) and (4); (d); (e)(1), (2), (3), (4)(G) and (H), (5) and (8); (f); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the Federal Register.

JUSTICE/JMD-001

SYSTEM NAME:

Background Investigation Check-off Card.

SYSTEM LOCATION:

U.S. Department of Justice, 633 Indiana Avenue, NW., Suite 402, Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All employees of the Offices, Boards, and Divisions except employees in the U.S. Attorneys Offices, and the Executive Office for U.S. Attorneys, for whom the U.S. Office of Personnel Management conducts background investigations.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains an index card for each employee of the Offices, Boards, and Divisions, except those excluded in Categories of Individuals above, on whom a name and fingerprint or background investigation has been initiated.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established and maintained in order to fulfill the requirements of Executive Order 10450.

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

The index cards are used to annotate and monitor the progress of the name and fingerprint checks and the full field character investigations of the employees. The completed cards are used to develop a variety of workload and

timeframe data concerning the initiation and completion of these investigations to ensure that the requirements of Executive Order 10450 and Department of Justice Order 2610.2 are being effectively and efficiently met.

Release of Information to the News Media:

Information permitted to be released to the news media and the public pursuant to 28 CFR 502 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of Information to Members of Congress:

Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is subject to the record.

Release of Information to the National Archives and Records: ADMINISTRATION (NARA) AND TO THE GENERAL SERVICES ADMINISTRATION (GSA):

A record from a system of records may be disclosed as a routine use to NARA and GSA in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

Policies and Practices for Storing, Accessing, Retaining, and Disposing of Records in the System:

STORAGE:

Information maintained in the system is manually stored in the boxes.

RETRIEVABILITY:

Information is retrieved manually by reference to the name of the employee on whom the investigation is being conducted.

SAFEGUARDS:

Information contained in the system is unclassified. It is safeguarded and protected in accordance with Personnel Service policies and procedures.

RETENTION AND DISPOSAL:

When a full-field background investigation or National Agency Check is initiated, the background investigation check-off card is

forwarded to the Justice Management Division Security Staff where it is ultimately merged in system Justice/JMD-008, Security Clearance Information System.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Personnel Service, Justice Management Division, U.S. Department of Justice, Suite 402, IND Building, Washington, D.C.

NOTIFICATION PROCEDURES:

Same as the System Manager.

RECORD ACCESS PROCEDURES:

Same as the System Manager.

CONTESTING RECORD PROCEDURES:

Same as the System Manager.

RECORD SOURCE CATEGORIES:

The sources of information contained in this system are those Personnel Service employees authorized to annotate these cards. Information reported is extracted from personnel documents initiating the various investigations and the resulting reports of completion.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/JMD-005

SYSTEM NAME:

Grievance Records.

SYSTEM LOCATIONS:

Records relating to grievances originating in an office, board or division (defined in 28 CFR 0.1) *except for the Executive Office for United States Attorneys, are located in the Office of the Assistant Director for Personnel Service. Records relating to grievances originating in the Executive Office for United States Attorneys or in a United States Attorney's office are located in the office of the Personnel Officer, Executive Office for United States Attorneys.* Records relating to grievances originating in a particular bureau (defined in 28 CFR 0.1) are located in the central personnel office of the bureau where the grievance originated, except for the Federal Bureau of Investigation (FBI) which is excluded from coverage of the Agency Administrative Grievance System by 5 CFR 771.206(a). (See caption "System managers and addresses.")

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former Department of Justice employees, except for employees of the FBI, who have submitted grievances in accordance with 5 CFR

Part 771 (Office of Personnel Management (OPM) regulations) and the Department's grievance procedures, or in accordance with a negotiated grievance procedure.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains records relating to grievances filed by the agency employees under 5 CFR Part 771 and the Department's grievance procedures, or under a negotiated grievance procedure. These case files contain all documents related to the grievance, including statements of witnesses, reports of interviews and hearings, examiner's findings and recommendations, or *arbitration award*, and a copy of any original and final decision and related correspondence and exhibits.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552a(f); 5 CFR Part 771; 5 U.S.C. 1032, 3301, 3302; E.O. 10577; 3 CFR 1954-1958 Comp., p. 218.

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

These records and information in these records may be used:

- To disclose pertinent information to another appropriate Federal, State, or local agency, responsible for investigating, prosecuting, enforcing, or implementing a statute rule, regulation, or order, where the Department becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

- To disclose information to any source from which additional information is requested in the course of processing a grievance to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

- To disclose information to another Federal agency (in response to its request) for its use in the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security and/or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit to the extent that the information is relevant and necessary to its decision on the matter.

- To provide information 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.

- To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

- By the National Archives and Records Administration and the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2908.

- By the Department or OPM in the production of summary descriptive statistics, if available, and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of data elements included in the study may be structured in such a way as to make the data individually identifiable by inference.

- To disclose information to officials of the Merit Systems Protection Board; the Special Counsel; the Federal Labor Relations Authority and its General Counsel; the Equal Employment Opportunity Commission; or, the OPM when requested to perform their authorized duties.

- To disclose in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

- To provide information to labor organization officials recognized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders.

RETRIEVABILITY:

These records are retrieved by the names of the individuals on whom they are maintained.

SAFEGUARDS:

These records are maintained in lockable metal filing cabinets to which only authorized personnel have access.

RETENTION AND DISPOSAL:

These records are disposed of three years after closing of the case. Disposal is by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

a. Offices, Boards and Divisions. Assistant Director for Personnel Service, U.S. Department of Justice, 633 Indiana Avenue, NW., Washington, D.C. 20530.

b. Bureau of Prisons. Personnel Director, Bureau of Prisons, HOLC

Building, 320 First Street, NW.,
Washington, D.C. 20534.

c. Drug Enforcement Administration.
*Deputy Assistant Administrator for
Personnel, Drug Enforcement
Administration, 1405 I Street, NW.,
Washington, D.C. 20537.*

d. Immigration and Naturalization
Service. Assistant Commissioner for
Personnel and Training, Immigration
and Naturalization Service, CAB
Building, 425 I Street, NW., Washington,
D.C. 20530.

e. Office of Justice Programs. Director,
Office of Personnel, Office of Justice
Programs, 633 Indiana Avenue, NW.,
Washington, D.C. 20530.

f. United States Marshals Service.
Personnel Officer, U.S. Marshals
Service, 600 Army-Navy Dr., Arlington,
VA 22202.

g. Executive Officer for United States
Attorneys. Personnel Officer, 601 D
Street, NW., Patrick Henry Building,
Washington, D.C. 20530.

NOTIFICATION PROCEDURES:

Individuals who have filed grievances
may contact the appropriate personnel
office (named under the caption "System
managers" and addresses" above)
where the action was processed
regarding the existence of such records
on them. They must furnish the
following information for the records to
be located and identified:

- a. Name.
- b. Approximate date of closing of the
case and the subject matter of the
grievance.
- c. Organization component involved.

RECORD ACCESS PROCEDURES:

Individuals who have filed grievances
may request access to the official copy
of the grievance file by contacting the
appropriate personnel office (named
under the caption "System managers
and addresses" above) where the action
was processed. Individuals must provide
the information listed under the caption
"Notification procedures" for their
records to be located and identified.
Individuals requesting access must also
follow the Department's Privacy Act
regulations (28 CFR 16.41) regarding
access to records and verification of
identity.

CONTESTING RECORD PROCEDURES:

Review of requests from individuals
seeking amendment of their records
which have been the subject of a
judicial or quasi-judicial action will be
limited in scope. Review of amendment
requests of these records will be
restricted to determining if the record
accurately documents the action of the
agency ruling on the case and will not

include a review of the merits of the
action, determination, or finding.

Individuals wishing to request
amendment to the records to correct
factual errors should contact the
personnel office (named under the
caption "System managers and
addresses" above) where the grievance
was processed. Individuals must furnish
the information listed under the caption
"Notification procedures" for their
records to be located and identified.

Individuals requesting amendment
must also follow the office's Privacy Act
regulations (28 CFR 16.41) regarding
amendment to records and verifications
of identity.

RECORD SOURCE CATEGORIES:

Information in this system of records
is provided:

- a. By the individual on whom the
record is maintained.
- b. By testimony of witnesses.
- c. By Department officials.
- d. From related correspondence from
organizations or persons.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/JMD-018

SYSTEM NAME:

Delegations of Procurement Authority,
Justice/JMD-018.

SYSTEM LOCATION:

Office of the Procurement Executive,
Department of Justice, Indiana Building,
Room 542, 633 Indiana Avenue, NW.,
Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED:

All Department of Justice procurement
personnel in the GS/GM 1102 and other
series who are actively engaged in the
acquisition process and who are or will
be designated as contracting officers, or
are authorized to obligate the
Government contractually.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual delegations of procurement
authority files will contain information
on the employees grade/series, job title,
employing bureau location, education,
procurement experience and
procurement training, type of delegation,
level of signatory authority, effective
date of entry into the program and
experience code.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C. 507, 509 and 510; 41 U.S.C.
257; 5 U.S.C. 301; 28 CFR 0.75(d) and
0.75(j); and Executive Order 12352.

PURPOSE OF THE SYTEM:

Individual delegations of procurement
authority files will be used to support a
newly established Contracting Officer
Standards Program which will serve as
a basis to establish Department-wide
training and experience standards for
issuing contracting officer delegations
and to ensure the standards are met. In
addition, the files will be used by the
Procurement Executive to manage and
enhance career development of the
Department's procurement work force.

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

(1) Records or information may be
disclosed as a routine use in a
proceeding before a court or
adjudicative body before which the
Department is authorized to appear
when any of the following is a party to
litigation or has an interest in litigation
and such records are determined by the
Department to be arguably relevant to
the litigation: The Department, or any of
the Department's components or its
subdivisions; any Department employee
in his or her official capacity, or in his or
her individual capacity where the
Department of Justice agrees to
represent the employee; or the United
States where the Department determines
that the litigation is likely to affect it or
any of the Department's components or
its subdivisions.

(2) Records or information permitted
to be released to the news media and
the public pursuant to 28 CFR 50.2 may
be made available unless it is
determined that release of the specific
information in the context of a particular
case would constitute an unwarranted
invasion of personal privacy.

(3) Records or information may be
disclosed as is necessary to respond to
congressional inquiries on behalf of
constituents.

(4) Records may be disclosed to the
National Archives and Records
Administration and to the General
Services Administration in records
management inspections conducted
under the authority of Title 44 U.S.C.
2904 and 2906.

POLICIES AND PROCEDURES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Originals of paper records are kept in
standard file cabinets. Duplicates of
original paper records will be stored
electronically in the Department's main
frame computer.

RETRIEVABILITY:

Records are retrieved by name of employee.

SAFEGUARDS:

Paper records are stored in metal filing cabinets and electronic records are stored on the Department's main frame computer. Access to the Indiana Building is protected by 24-hour guard service and is restricted to employees with official identification. Access to records is restricted to authorized personnel with official and electronic identification.

RETENTION AND DISPOSAL:

Files are maintained until the employee leaves the Department at which time paper records are destroyed and electronic records erased.

SYSTEM MANAGERS AND ADDRESS:

The system manager is the Procurement Executive, Justice Management Division, Department of Justice, Indiana Building, Room 542, 633 Indiana Avenue, NW., Washington, D.C. 20530.

NOTIFICATION PROCEDURES:

Direct inquiries to the system manager identified above, Attention: FOI/PA Officer. Clearly mark the letter and envelope "Freedom of Information/Privacy Act Request."

RECORD ACCESS PROCEDURES:

Make all requests for access in writing and clearly mark the letter and envelope "Freedom of Information/Privacy Act Request." Clearly indicate the name of the requester, nature of the record sought, approximate date(s) of the record(s); and, provide the required verification of identity (28 CFR 16.41(d)). Direct all requests to the system manager identified above, attention FOI/PA Officer; and, provide a return address for transmitting the information.

CONTESTING RECORDS PROCEDURES:

Direct all requests to contest or amend information to the system manager listed above. State clearly and concisely the information being contested, the reasons for contesting it, and the proposed amendment to the information sought. Clearly mark the letter and envelope "Freedom of Information/Privacy Act Request."

RECORD SOURCE CATEGORIES:

Information contained in the system is collected from the individual, training personnel, and general personnel records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/USA-003**SYSTEM NAME:**

Citizen Complaint Files.

SYSTEM LOCATION:

U.S. Attorney's Office: *Judiciary Center Bldg., 555 4th St. NW., Washington, D.C. 20001*; Executive Office for United States Attorneys; U.S. Department of Justice; 10th & Constitution Avenue, NW., Washington, D.C. 20530

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The individuals on whom records are maintained in this system may be broadly classified in four categories. (1) Those individuals who have been charged with Federal and D.C. Code violations; (2) those individuals who are currently under investigation for violations of Federal and D.C. Code; (3) those individuals about whom complaints have been made on upon whom investigations were conducted, but no prosecution was initiated; and (4) complainants.

CATEGORIES OF RECORDS IN THE SYSTEM:

A file may consist of a single sheet of paper describing briefly the nature of a complaint and its disposition or it may consist of a more comprehensive file containing the results of a hearing, depending on the complexity or seriousness of the complaint. If the complaint results in criminal charges being preferred, the contents of the file are transferred to the appropriate criminal file system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 28 U.S.C. 547, 23 D.C. Code 101(c).

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

A record maintained in this system of records may be disseminated as a routine use of such record as follows:

(1) In any case in which there is an indication of a violation or potential violation of law, whether civil, criminal, or regulatory in nature, the record in question may be disseminated to the appropriate agency, federal, state, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcement or implementing such laws;

(2) In the course of investigating the potential or actual violation of any law,

whether civil, criminal, or regulatory in nature, or during the course of a trial or hearing or the preparation for a trial or hearing for such violation, a record may be disseminated to a federal, state, local, or foreign agency, or to an individual, if there is reason to believe that such agency or individual possesses information relating to the investigation, trial, or hearing and the dissemination is reasonably necessary to elicit such information or to obtain the cooperation of a witness or an informant;

(3) Records or extracts thereof relating to case matters or matter may be disseminated to a defendant or his attorney or to the appropriate federal, state, local or foreign court or grand jury in accordance with established constitutional, substantive, or procedural law or practice;

(4) A record relating to a case or matter may be disseminated to a federal, state, or local administrative or regulatory proceeding or hearing in accordance with the procedures governing such proceeding or hearing;

(5) A record relating to a case or matter may be disseminated to an actual or potential party or his attorney for the purpose of negotiation or discussion on such matters as settlement of the case or matter, plea bargaining, or informal discovery proceedings;

(6) A record relating to a case or matter than has been referred for investigation may be disseminated to the referring agency to notify such agency of the status of the case or matter or of any decision or determination that has been made;

(7) A record relating to a person held arraignment, trial or sentence, or after conviction, may be disseminated to a federal, state, local, or foreign prison, probation, parole, bail or pardon authority, or to any agency or individual, concerned with the custody maintenance, transportation, or release of such person;

(8) A record relating to a case or matter may be disseminated to a foreign country pursuant to an international treaty or convention entered into and ratified by the United States;

(9) A record may be disseminated to a federal, state, local, or foreign law enforcement agency to assist in the general crime prevention and detection efforts of the recipient agency or to provide investigative leads to such agency;

(10) A record may be disseminated to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the

letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information relates to the requesting agency's decision on the matter;

(11) A record may be accessed by volunteer student workers and students working under a college work-study program, as is necessary to enable them to perform their function.

(12) Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(13) Release of information to Members of Congress. Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record and;

(14) Release of information to the National Archives and Records Administration (NARA) and the General Services Administration (GSA): A record from a system of records may be disclosed as a routine use to NARA and GSA in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Citizen complaint files are maintained in one of two ways; either on a single sheet which is a record of the complaint and disposition thereof or in complaints which result in further proceedings, a file folder would be established. *Some material is recorded and stored on magnetic tape, card or other data processing type storage matter for reproduction later into conventional formats and for management information purposes.*

RETRIEVABILITY:

Information is retrieved either by the name of a complainant, the name of a person about whom a complaint is registered or by a complaint number. If further proceedings are conducted with respect to a citizen's complaint and the complaint materializes into a criminal action, the file folder will become part of

the criminal files and then is retrievable in the same manner as any criminal file is retrieved. *Information may be accessed by means of cathode-ray tube terminals (CRT'S).*

SAFEGUARDS:

Information contained in the system is unclassified. It is safeguarded and protected by being maintained in files at the Citizens Complaint Center, and the Legal Services section of the Executive Office for United States Attorneys, which is manned at all times when it is open and at other times is locked. More sensitive files that materialize into hearings or require further action by the Misdemeanor Trial Section of the Superior Court Division, or the Executive Office for United States Attorneys, are maintained by the Chief of the Misdemeanor Trial Section in his office in Building B of the Superior Court, or the Assistant Director for legal Services, Executive Office for United States Attorneys in his safe. *Information that is retrievable by CRT's within various U.S. Attorneys' offices and the Executive Office for United States Attorneys require user identification numbers which are issued to authorized employees of the Department of Justice.*

RETENTION AND DISPOSAL:

Files are retained and disposed of in accordance with Title 3, U.S. Attorney's Manual.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Misdemeanor Trial Section: U.S. Attorney's Office; Superior Court. Operations, 555 4th St. NW. Washington, DC 20001; Director, Executive Office for United States Attorneys; U.S. Department of Justice; 10th & Constitution Avenue, NW.; Washington, DC 20530.

NOTIFICATION PROCEDURE:

Address inquiries to the System Manager.

RECORD ACCESS PROCEDURE:

The major part of these systems are exempt from this requirement under 5 U.S.C. 552a (j)(2), (k)(1) and/or (k)(2). To the extent that this system is not subject to exemption, it is subject to access. A determination as to exemption shall be made at the time a request for access is received. A request for access to a record from this system shall be made in writing, with the envelope and the letter clearly marked "Privacy Access Request." Include in the request the general subject matter of the document or its file number. The requestor will also provide a return address for transmitting the information. Access

requests will be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

The major parts of these systems are exempt from this requirement under 5 U.S.C. 552a (j)(2), (k)(1) and/or (k)(2). To the extent that this system is not subject to exemption, it is subject to contest. A determination as to exemption shall be made at the time a request for contest is received. Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system come primarily from citizens walking into this unit to register complaints. Sources also include but are not limited to investigative reports of federal, state and local law enforcement agencies, forensic reports, statements of witnesses and parties, as well as verbatim transcripts for grand jury proceedings and court proceedings, memoranda and reports from the court and agencies thereof and the work product of Assistant United States Attorneys and legal assistants working on particular cases.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3) and (4), (d), (e)(1), (2) and (3), (e)(4)(G) and (H), (e)(5) and (8), (f), (g) and (h) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(1) and (2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the Federal Register.

JUSTICE/USA-004

SYSTEM NAME:

Citizen Correspondence Files.

SYSTEM LOCATION:

Executive Office for United States Attorneys, U.S. Department of Justice, 10th & Constitution Avenue, NW., Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(a) Individuals who write to the Executive Office for United States Attorneys, its Director or a member of his staff.

(b) Individuals who write to the Attorney General or the Department of Justice and whose letter is referred to

the Executive Office of United States Attorneys.

(c) Individuals whose letter has been referred to the Executive Office of United States Attorneys for a response by the White House, Executive Agencies or Members of Congress.

In all of the above categories, the individuals include only those who express general views or seek information or assistance. Freedom of Information requests are not indexed in this system.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system includes the original correspondence received as well as any response, referral letters or notes concerning the subject of the correspondence and copies of any enclosures. The system is arranged alphabetically by the last name of the original correspondent.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

These records are kept for administrative convenience pursuant to 5 U.S.C. 301 and 44 U.S.C. 3101.

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

(a) Information from the responses may be provided to the *referrer* of the original correspondence. All other uses are internal within the Department.

(b) Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(c) Release of information to Members of Congress: Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member of staff requests the information on behalf of and at the request of the individual who is the subject of the record and;

(d) Release of information to the National Archives and Records Administration (NARA) and the General Services Administration (GSA): A record from a system of records may be disclosed as a routine use to NARA and GSA in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The material is stored within manila file folders, within metal file cabinets. *Some material is recorded and stored on magnetic tape, card or other data processing type storage matter for reproduction later into conventional formats and for management information purposes.*

RETRIEVABILITY:

The system is indexed by name, arranged alphabetically. *Information may be accessed by means of cathode-ray tube terminals.*

SAFEGUARDS:

The correspondence is maintained in a room which is occupied by office personnel during the day and locked at night. *Information that is retrievable by CRT's within various U.S. Attorneys' offices and the Executive Office for United States Attorneys requires user identification numbers which are issued to authorized employees of the Department of Justice.*

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with Department retention plans.

SYSTEM MANAGER(S) AND ADDRESS:

Director: Executive Office of United States Attorneys; U.S. Department of Justice; 10th & Constitution Avenue, NW.; Washington, DC 25030.

NOTIFICATION PROCEDURE:

Same as the above.

RECORDS ACCESS PROCEDURE:

A request for access to a record from this system shall be made in writing, with the envelope and the letter clearly marked "Privacy Access Request." Include in the request the name and address as included in the original letter, together with the current address if different, the date of the letter and to whom it was addressed. Requests should be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Any request for correction should also be directed to the System Manager and should indicate the exact correction required.

RECORD SOURCE CATEGORIES:

Sources of information in this system are the actual letter received, the response and any transmitted information and enclosures.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/USA-006

SYSTEM LOCATION:

Consumer Complaints.
U.S. Attorney's Office: Judiciary Center Bldg., 555 4th St. N.W.; Washington, D.C. 20001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The individuals on whom records are maintained in this system may be broadly classified in four categories: (1) Those individuals who have been charged with Federal and D.C. Code violations; (2) Those individuals who are currently under investigation for violations of Federal and D.C. Code; (3) Those individuals upon whom investigations were conducted, but no prosecution was initiated; and (4) Complainants.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contained allegations of consumer fraud by citizens of the District of Columbia Metropolitan area. It includes names, addresses, and the substance of the complaints.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.28 U.S.C. 547.23 D.C. Code 101(c).

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

A record maintained in the system of records may be disseminated as a routing use of such record as follows:

(1) In any case in which there is an indication of a violation or potential violation of law, whether civil, criminal, or regulatory in nature, the record in question may be disseminated to the appropriate agency, federal, state, local, or foreign, charged with enforcing or implementing such law;

(2) In the course of investigating the potential or actual violation of any law, whether civil, criminal, or regulatory in nature, or during the course of a trial or hearing or the preparation for a trial or hearing for such violation, a record may be disseminated to a federal, state, local, or foreign agency, or to an individual, if there is reason to believe that such agency or individual possesses information relating to the investigation, trial, or hearing and the dissemination is reasonably necessary to elicit such information or to obtain the cooperation of a witness or an informant;

(3) Records of extracts thereof relating to a case or matter may be disseminated

to a defendant or his attorney or to the appropriate federal, state, local, or foreign, court or grand jury in accordance with established constitutional, substantive, or procedural law or practice;

(4) A record relating to a case or matter may be disseminated to a federal, state, or local administrative or regulatory proceeding or hearing in accordance with the procedures governing such proceeding or hearing;

(5) A record relating to a case or matter may be disseminated to an actual or potential party or his attorney for the purpose of negotiation or discussion on such matters as settlement of the case or matter, plea bargaining, or informal discovery proceedings;

(6) A record relating to a case or matter that has been referred for investigation may be disseminated to the referring agency to notify such agency of the status of the case or matter or of any decision or determination that has been made;

(7) A record relating to person held pending arraignment, trial or sentence, or after conviction, may be disseminated to a federal, state, local or foreign prison, probation parole, bail or pardon authority, or to any agency or individual concerned with the custody maintenance, transportation, or release of such a person;

(8) A record relating to a case or matter may be disseminated to a foreign country pursuant to an international treaty of convention entered into or ratified by the United States;

(9) A record may be disseminated to federal, state, local, or foreign law enforcement agency to assist in the general crime prevention and detection efforts of the recipient agency or to provide investigative leads to such agency;

(10) A record may be disseminated to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information relates to the requesting agency's decision on the matter; and

(11) A record may be accessed by volunteer student workers and students working under a college work-study program, as is necessary to enable them to perform their function.

(12) Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice

unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(13) Release of information to Members of Congress: Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record and;

(14) Release of information to the National Archives and Records Administration (NARA) and to the General Services Administration (GSA): A record from a system of records may be disclosed as a routine use to NARA and GSA in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information maintained in this system is stored in the Fraud Section of the U.S. Attorney's Office.

RETRIEVABILITY:

Information is retrieved via a cross-index by complainant and potential defendant.

SAFEGUARDS:

Information contained in this system is unclassified. It is protected in accordance with Departmental rules and is safeguarded in the U.S. Attorney's Office in the Fraud Section.

RETENTION AND DISPOSAL:

The records are stored for a period of at least the statute of limitations for the offense charged.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Fraud Division, U.S. Attorney's Office: *Judiciary Center Bldg., 555 4th Street, NW., Washington D.C. 20001.*

NOTIFICATION PROCEDURE:

Address inquiries to the System Manager.

RECORD ACCESS PROCEDURES:

The major part of the information maintained in this system is exempt from this requirement under 5 U.S.C. 552a (j)(2), (k)(1) and/or (k)(2). To the extent that this system is not subject to exemption, it is subject to access. A determination as to exemption shall be

made at the time a request for access is received. A request for access to a record from this system shall be made in writing, with the envelope and the letter clearly marked "Privacy Access Request." Include in the request the general subject matter of the document or its file number. The requestor will also provide a return address for transmitting the information. Access requests will be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

The major part of the information maintained in this system is exempt from this requirement under 5 U.S.C. 552a (j)(2), (k)(1) and/or (k)(2). To the extent that this system is not subject to exemption, it is subject to contest. A determination as to exemption shall be made at the time a request for contest is received. Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

The sources of information contained in this system are complaints referred to the U.S. Attorney's Office by citizens and consumer protection agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3) and (4), (d), (e)(1), (2) and (3), (e)(4)(G) and (H), (e)(5) and (8), (f), (g) and (h) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(1) and (2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the Federal Register.

JUSTICE/USA-008

SYSTEM NAME:

Freedom of Information Act/Privacy Act Files.

SYSTEM LOCATION:

Executive Office for United States Attorneys; U.S. Department of Justice; 10th & Constitution Avenue, NW., Washington, D.C. 20530; *U.S. Attorney's Office for the District of Columbia, 555 4th St. N.W., Washington, D.C. 20001; Ninety-three United States Attorney's Offices (see attached Appendix).*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(a) Individuals who write to the Executive Office for United States

Attorneys, its Director or a member of his staff, or a U.S. Attorney's office.

(b) Individuals who write to the Attorney General or the Department of Justice or the FOI/PA Unit and whose letter is referred to the Executive Office for United States Attorneys.

(c) Individuals whose letter has been referred to the Executive Office for United States Attorneys for a response by the FOI/PA Unit or Appeals Unit.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system includes the original correspondence received as well as any response, referral letters or notes concerning the subject of the request and copies of any enclosures. The system is arranged alphabetically by the last name of the original requester.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

These records are kept for administrative convenience pursuant to 5 U.S.C. 301 and 44 U.S.C. 3101 and the provisions of the Freedom of Information Act.

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

(a) Information from the responses may be provided to the referrer or the original request of the requester. All other uses are internal within the Department.

(b) Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(c) Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record and;

(d) A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The material is stored within manila file folders, within metal file cabinets. *Some material is recorded and stored on magnetic tape, card or other data processing type storage matter for reproduction later into conventional formats and for management information purposes.*

RETRIEVABILITY:

The system is indexed by name of the requester, arranged alphabetically. Information may be accessed by means of cathode-ray tube terminals (CRT's).

SAFEGUARDS:

The correspondence is maintained in a room which is occupied by office personnel during the day and locked at night. *Information that is retrievable by CRT's within various U.S. Attorneys' offices and the Executive Office for United States Attorneys requires user identification numbers which are issued to authorized employees of the Department of Justice.*

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with Department retention plans.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Executive Office for United States Attorneys; U.S. Department of Justice; 10th & Constitution Avenue, NW., Washington, D.C. 20530; *Chief, Civil Division, Office of the U.S. Attorney for the District of Columbia, 555 4th St. N.W. Washington, D.C. 20001.*

NOTIFICATION PROCEDURE:

Address inquiries to the System Managers listed above.

RECORD ACCESS PROCEDURES:

A request for access to a record from this system shall be made in writing, with the envelope and the letter clearly marked "Freedom of Information" or "Privacy Access Request." Include in the request the name and address as included in the original letter, together with the current address if different, the date of the letter and to whom it was addressed. Request should be directed to the system managers listed above.

CONTESTING RECORD PROCEDURES:

Any requests for correction should also be directed to the System Managers and should indicate the exact correction required.

RECORD SOURCE CATEGORIES:

Sources of information in this system are the actual letter received, the response and any transmitted information and enclosures.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Records secured from other systems of records have been exempted from the provisions of the Privacy Act to the same extent as the systems of records from which they were obtained. The Attorney General has also exempted certain categories of records in this system from subsection (c)(3), (d) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c), and (e) and have been published in the Federal Register.

JUSTICE/USA-009

SYSTEM NAME:

Kline—District of Columbia and Maryland—Stock and Land Fraud Interrelationship Filing System.

SYSTEM LOCATION:

U.S. Attorney's Office; Judiciary Center Bldg., 555 4th Street, NW.; Washington, DC 20001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The individuals on whom records are maintained in this system may be broadly classified in three categories: (1) Those individuals who have been charged with Federal and D.C. Code violations; (2) Those individuals who are currently under investigation for violations of Federal and D.C. Code; (3) Those individuals upon whom investigations were conducted, but no prosecution was initiated. These include but are not limited to possible witnesses, corporate entities, corporate employees, business contacts, financial institutions and governmental contacts.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains an index record for individual names and types of transactions with named individuals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 28 U.S.C. 547, 23 D.C. Code 101(c).

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

A record maintained in this system of records may be disseminated as a routine use of such record as follows:

(1) In any case in which there is an indication of a violation or potential

violation of law, whether civil, criminal, or regulatory in nature, the record in question may be disseminated to the appropriate agency, federal, state, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing such law;

(2) In the course of investigating the potential or actual violation of any law, whether civil, criminal, or regulatory in nature, or during the course of a trial or hearing or the preparation for a trial or hearing for such violation, a record may be disseminated to a federal, state, local, or foreign agency, or to an individual, if there is reason to believe that such agency or individual possesses information relating to the investigation, trial, or hearing and the dissemination is reasonably necessary to elicit such information or to obtain the cooperation of a witness or an informant;

(3) Records or extracts thereof relating to a case or matter may be disseminated to a defendant or his attorney or to the appropriate federal, state, local, or foreign, court or grand jury in accordance with established constitutional, substantive, or procedural law or practice;

(4) A record relating to a case or matter may be disseminated to a federal, state, or local administrative or regulatory proceeding or hearing in accordance with the procedures governing such proceeding or hearing;

(5) A record relating to a case or matter may be disseminated to an actual or potential party or his attorney for the purpose of negotiations or discussion on such matters as settlement of the case or matter, plea bargaining, or informal discovery proceedings;

(6) A record relating to a case or matter that has been referred for investigation may be disseminated to the referring agency to notify such agency of the status of the case or matter or of any decision or determination that has been made;

(7) A record relating to a person held pending arraignment, trial or sentence, or after conviction, may be disseminated to a federal, state, local, or foreign prison, probation, parole, bail or pardon authority, or to any agency or individual concerned with the custody maintenance, transportation, or release of such a person;

(8) A record relating to a case or matter may be disseminated to a foreign country pursuant to an international treaty or convention entered into and ratified by the United States;

(9) A record may be disseminated to a federal, state, local, or foreign law enforcement agency to assist in the

general crime prevention and detection efforts of the recipient agency, or to provide investigative leads to such agency;

(10) A record may be disseminated to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information relates to the requesting agency's decision on the matter; and

(11) A record may be accessed by volunteer student workers and students working under a college work-study program, as is necessary to enable them to perform their function.

(12) Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(13) Release of information to Members of Congress. Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record and;

(14) Release of information to the National Archives and Records Administration (NARA) and to the General Services Administration (GSA): A record from a system of records may be disclosed as a routine use to NARA and GSA in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information maintained in the system is stored electronically in the Department of Justice Juris System.

RETRIEVABILITY:

Information is retrieved primarily by referencing the individuals' names who participated in the business transactions.

SAFEGUARDS:

Information contained in this system is protected as though it was classified as confidential. It is accessible only to holders of the entry code: the only holders of the code are the U.S. Attorney's Offices for the District of Columbia and Maryland.

RETENTION AND DISPOSAL:

The records are to be retained for the period of usefulness as determined by the U.S. Attorney's Office.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Fraud Division; U.S. Attorney's Office; Judiciary Center Bldg. 55 4th Street NW; Washington D.C. 20001.

NOTIFICATION PROCEDURE:

All inquiries should be addressed to the System Manager.

RECORD ACCESS PROCEDURES:

The major part of the information maintained in this system is exempt from this requirement under 5 U.S.C. 552a. (j)(2), (k)(1), and/or (k)(2). To the extent that this system is not subject to exemption, it is subject to access. A determination as to exemption shall be made at the time a request for access is received. A request for success to a record from this system shall be made in writing, with the envelope and the letter clearly marked "Privacy Access Request." Include in the request the general subject matter of the document or its file number. The requestor will also provide a return address for transmitting the information. Access requests will be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

The major part of the information maintained in this system is exempt from this requirement under 5 U.S.C. 552a (j)(2), (k)(1), and/or (k)(2). To the extent that this system is not subject to exemption, it is subject to contest. A determination as to exemption shall be made at the time a request for contest is received. Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Source of information contained in this system are individuals who have cooperated with the U.S. Attorney's Office in the investigation of criminal activity.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3) and (4), (d), (e)(1), (2) and (3), (e)(4)(G), and (H), (e)(5), and (8), (f), (g), and (h) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2), and (k)(1) and (2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c), and (e) and have been published in the Federal Register.

JUSTICE/USA-010

SYSTEM NAME:

Major Crimes Division Investigative Files.

SYSTEM LOCATION:

U.S. attorney's Office; *Judiciary Center Bldg., 555 4th St., N.W., Washington, D.C. 20001.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The individuals on whom records are maintained in the Major Crimes Division Investigative Files may be broadly classified in four categories: (1) Those individuals who have been charged with Federal and D.C. Code violations; (2) those individuals who are currently under investigation for violations of Federal and D.C. Code; (3) those individuals upon whom investigations were conducted, but no prosecution was initiated; and (4) other informants.

CATEGORIES OF RECORDS IN THE SYSTEM:

In addition to the standard files maintained in accordance with the U.S. Attorney's Manual and the Department of Justice Docket and Reporting System, there are also maintained in the Major Crimes Division of this office certain investigative and intelligence files. The type of information maintained is identifying data, criminal records, intelligence compiled for the purpose of investigation of criminal offenses, criminal investigative reports, informant debriefing summaries, and information provided in confidence during investigative and prosecutive states of criminal cases.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5. U.S.C. 301, 28 U.S.C. 547.23 D.C. Code 101(c).

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

A record maintained in this system of records may be disseminated as a routine use of such record as follows:

(1) In any case in which there is an indication of a violation or potential violation of law, whether civil, criminal

or regulatory in nature, the record in question may be disseminated to the appropriate agency, federal, state local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing such law;

(2) In the course of investigating the potential or actual violation of any law, whether civil, criminal or regulatory in nature, or during the course of a trial or hearing or the preparation for a trial or hearing for such violation, a record may be disseminated to a federal, state, local, or foreign agency, or to an individual, if there is reason to believe that such agency or individual possesses information relating to the investigation, trial, or hearing and the dissemination is reasonably necessary to elicit such information or to obtain the cooperation of a witness or an informant.

(3) Records or extracts thereof relating to a case or matter may be disseminated to a defendant or his attorney or to the appropriate federal, state, local or foreign, court or grand jury in accordance with established constitutional, substantive, or procedural law or practice;

(4) A record relating to a case or matter may be disseminated to a federal, state, or local administrative or regulatory proceeding or hearing in accordance with the procedures governing such proceeding or hearing;

(5) A record relating to a case or matter may be disseminated to an actual or potential party or his attorney for the purpose of negotiation or discussion on such matters as settlement of the case or matter, plea bargaining, or informal discovery proceedings;

(6) A record relating to a case or matter that has been referred for investigation may be disseminated to the referring agency to notify such agency of the status of the case or matter or of any decision or determination that has been made;

(7) A record relating to a person held pending arraignment, trial or sentence, or after conviction, may be disseminated to a federal, state, local, or foreign prison, probation, parole, bail or pardon authority, or to any agency or individual concerned with the custody maintenance, transportation, or release of such a person;

(8) A record relating to a case or matter may be disseminated to a foreign country pursuant to an international treaty or convention entered into and ratified by the United States;

(9) A record may be disseminated to a federal, state, local, or foreign law enforcement agency to assist in the general crime prevention and detection

efforts of the recipient agency or to provide investigative leads to such agency;

(10) A record may be disseminated to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information relates to the requesting agency's decision on the matter; and

(11) A record may be accessed by volunteer student workers and students working under a college work-study program, as is necessary to enable them to perform their function.

(12) Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(13) Release of information to Members of Congress. Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record and;

(14) Release of information to the National Archives and Records Administration (NARA) and to the General Services Administration (GSA): A record from a system of records may be disclosed as a routine use to NARA and GSA in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The information is maintained in memorandum form in file folders.

RETRIEVABILITY:

Information is retrieved primarily by the name of a person, complaint number, court docket number, FBI number, Metropolitan Police Department identification number and District of Columbia Department of Corrections number.

SAFEGUARDS:

Information contained in the system is both unclassified and classified and is safeguarded and protected by being maintained in tumbler locked file safes in the Major Crimes Division which is manned during all times that it is open and at other times is locked. This room is located in the U.S. Courthouse which is guarded by the Federal Protective Service twenty four hours a day with roving patrols during non-working hours.

RETENTION AND DISPOSAL:

Files are retained and disposed of in accordance with Title 6, U.S. Attorney's Manual, pages 70-77.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Major Crimes Division; U.S. Attorney's Office; *Judiciary Center Bldg., 555 4th Street, NW., Washington, DC 20001.*

NOTIFICATION PROCEDURE:

Address inquiries to the System Manager.

RECORD ACCESS PROCEDURES:

The major part of the information maintained in this system is exempt from this requirement under 5 U.S.C. 552a(j)(2), (k)(1), and/or (k)(2). To the extent that this system is not subject to exemption, it is subject to access. A determination as to exemption shall be made at the time a request for access is received. A request for access to a record from this system shall be made in writing, with the envelope and the letter clearly marked "Privacy Access Request." Include in the request the general subject matter of the document or its file number. The requestor will also provide a return address for transmitting the information. Access requests will be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

The major part of the information maintained in this system is exempt from this requirement under 5 U.S.C. 552a (j)(2), (k)(1), and/or (k)(2). To the extent that this system is not subject to exemption, it is subject to contest. A determination as to exemption shall be made at the time a request for contest is received. Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendments to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system are investigative reports of federal, state and local law enforcement agencies, statement of witnesses, informants and parties, as well as verbatim transcripts of grand jury proceedings and court proceedings, memoranda and reports from the court and agencies thereof and the work product of Assistant United States Attorneys and legal assistants working on particular cases.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsection (c) (3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G) and (H), (e) (5) and (8), (f), (g) and (h) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k) (1) and (2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the Federal Register.

JUSTICE/USA-011**SYSTEM NAME:**

Prosecutor's Management Information System (PROMIS).

SYSTEM LOCATION:

U.S. Attorney's Office; *Judiciary Center Bldg., 555 4th Street, NW., Washington, D.C. 20001.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The individuals on whom records are maintained in PROMIS are as follows: (1) Those individuals who have been charged with criminal violations; (2) those individuals who are currently under investigation for criminal violations; (3) those individuals upon whom criminal investigations were conducted, but no prosecution was initiated; and (4) the names and addresses of all witnesses and arresting police officers.

CATEGORIES OF RECORDS IN THE SYSTEM:

The data in PROMIS fall into six major categories.

1. Information about the accused or defendant. This includes name, alias, sex, race, date of birth, address, facts about prior arrest and convictions, and employment status. If judged appropriate, additional data could be added, such as information about alcohol or drug abuse. Some of this information is used to rate the gravity of the case in terms of the defendant's criminal history.

2. Information about the crime. The date, time, and place of the crime; the number of persons involved in the crime;

and a numerical rating reflecting the gravity of the crime in terms of the amount and degree of personal injury, property damage or loss, and intimidation.

3. Information about the arrest. The date, time, and place of the arrest, the type of arrest and identity of the arresting officers.

4. Information about criminal charges. The charges originally placed by the police against the arrestee the charges actually filed in court against the defendant, the reasons for changes in the charges by the prosecutor, the penal statute for the charge, the FBI Uniform Crime Report Code for the charge, and the Project SEARCH Code for the charge.

5. Information about court events. The dates of every court event in a case from arraignment through motion hearing, continuance hearing, final disposition, and sentencing; the names of the principals involved in each event, including the defense and prosecution attorneys and judge; the outcomes of the events and the reasons therefor.

6. Information about witnesses. The names and addresses, the prosecutor's assessment of whether the witnesses are essential to the case, and any indications of reluctance to testify by the witnesses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 28 U.S.C. 547, 23 D.C. Code 101(c).

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

A record maintained in this system of records may be disseminated as a routine use by such records as follows:

(1) In any case in which there is an indication of a violation or potential violation of law, whether civil, criminal, or regulatory in nature, the record in question may be disseminated to the appropriate agency, federal, state, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing such law;

(2) In the course of investigating the potential or actual violation of any law, whether civil, criminal, or regulatory in nature, or during the course of a trial or hearing or the preparation for a trial or hearing for such violation, a record may be disseminated to a federal, state, local, or foreign agency, or to an individual, if there is reason to believe that such agency or individual possesses information relating to the investigation,

trial, or hearing and the dissemination is reasonably necessary to elicit such information or to obtain the cooperation of a witness or an informant;

(3) Records or extracts thereof relating to a case or matter may be disseminated to a defendant or his attorney or to the appropriate federal, state, local, or foreign, court or grand jury in accordance with established constitutional, substantive, or procedural law or practice;

(4) A record relating to a case or matter may be disseminated to a federal, state, or local administrative or regulatory proceeding or hearing in accordance with the procedures governing such proceeding or hearing;

(5) A record relating to case or matter may be disseminated to an actual or potential party or his attorney for the purpose of negotiation or discussion on such matters as settlement of the case or matter, plea bargaining, or informal discovery proceedings, or to the Public Defender Service in connection with caseload management of other purposes;

(6) A record relating to a case or matter that has been referred for investigation may be disseminated to the referring agency to notify such agency of the status of the case or matter or of any decision or determination that has been made or to assist in eliciting additional information;

(7) A record relating to a person held pending arraignment, trial or sentence, or after conviction, may be disseminated to a federal, state, local or foreign prison, probation, parole, bail or pardon authority, or to any agency or individual concerned with the custody maintenance, transportation, or release of such a person;

(8) A record relating to a case or matter may be disseminated to a foreign country pursuant to an international treaty or convention entered into and ratified by the United States;

(9) A record may be disseminated to a federal, state, local, or foreign law enforcement agency to assist in the general crime prevention and detection efforts of the recipient agency or to provide investigative leads to such agency;

(10) A record may be disseminated to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information relates to the requesting agency's decision on the matter; and

(11) A record may be accessed by volunteer student workers and students

working under a college work-study program, as is necessary to enable them to perform their function.

(12) This office utilizes it to track the workload of the criminal court process from three separate vantage points. First, the workload is tracked from the vantage point of the crime or criminal incident. This is accomplished by including in PROMIS the complaint number which the police department assigns to a reported crime. With this number, prosecutors can follow the full history of the court actions arising from the crime even though those actions may involve multiple defendants, multiple cases, and multiple trials and dispositions.

(13) PROMIS tracks the court workload from the vantage point of the accused or defendant. This is achieved by incorporating in PROMIS the fingerprint-based number the police department assigns to the individual following his or her arrest. This identification number is used again by the department if the same individual is subsequently arrested. Through this number, prosecuting attorneys accumulate criminal history files on offenders and note incidents of recidivism.

(14) PROMIS tracks from the vantage point of the court proceedings. This is accomplished by including in PROMIS the docket number the Court assigns to the case pending before it. With this number, prosecutors trace the history of any formal criminal action from arraignment through final disposition and sentencing, and account for the separate fate of each count or charge.

The inclusion of these three numbers is significant. The numbers provide a capability to track the criminal incident, the defendant, or the court actions and provide the basis for the routine communication among the various Federal, state, local, and foreign law enforcement agencies.

(15) PROMIS generates, on a recurring basis, five categories of reports: Misdemeanor calendars, felony calendars, case status reports, workload reports, and special reports. These reports are prepared from information contained in the data base both by persons employed by this office, the Justice Department and persons under contract to the Department for this purpose.

(16) Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of

the particular case would constitute an unwarranted invasion of personal privacy.

(17) Release of information to Members of Congress: Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record; and

(18) Release of information to the National Archives and Records Administration (NARA) and to the General Services Administration (GSA): A record from a system of records may be disclosed as a routine use to NARA and GSA in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are stored on magnetic tapes and discs at the District of Columbia Metropolitan Police Department Computer Center. Printouts from the terminals are stored with case jackets. Status, calendars, and statistical reports are stored in the files and offices of supervisory attorneys.

RETRIEVABILITY:

This system has an on-line data retrieval capability with respect to certain information continued in the data base. These subsets of information are retrieved on data display terminals which are located at various work stations throughout the office. Certain of these terminals have a printout capability. All information on these subsets is a matter of public record. The system also has the capability for the production of periodic reports. Both the periodic reports and the on-line displays are utilized in accordance with the above listed routine uses.

SAFEGUARDING:

The magnetic tapes and discs are maintained in a secure vault at the Metropolitan Police Department Computer Center. In addition to the physical security safeguards, there is a twenty-four hour patrol. The data display terminals are located in semi-public areas of the office (i.e., administrative work stations through which the public must pass on official business). However, only trained operators may retrieve the information,

which is of public record. The terminals are not open to the public after working hours.

RETENTION AND DISPOSAL:

The files are retained and disposed of in accordance with Title 8, U.S. Attorney's Manual, pages 70-77.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Assistant: United States Attorney; *Judiciary Center Bldg., 555 4th St. NW., Washington, DC. 20001.*

NOTIFICATION PROCEDURE:

Address inquiries to the System Manager.

RECORD ACCESS PROCEDURES:

The major part of the information maintained in this system is exempt from this requirement under 5 U.S.C. 552a (j)(2), (k)(1) and/or (j)(2). To the extent that this system is not subject to exemption, it is subject to access. A determination as to exemption shall be made at the time a request for access is received. A request for access to a record from this system shall be made in writing, with the envelope and the letter clearly marked "Privacy Access Request." Include in the request the general subject matter of the document or its file number. The requestor will also provide a return address for transmitting the information. Access requests will be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

The major part of the information maintained in this system is exempt from this requirement under 5 U.S.C. 552a (j)(2), (k)(1) and/or (k)(2). To the extent that this system is not subject to exemption, it is subject to contest. A determination as to exemption shall be made at the time a request for contest is received. Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

About 80 percent of the data contained in PROMIS is obtained at the intake and screening stage as the by-product of the case documentation process. Carbon copies of various forms completed immediately before or during the case screening stage serve as input documents for PROMIS.

As a case moves through the subsequent proceedings, additional information about its status is fed to PROMIS. This is achieved through

turnaround documents—forms generated by PROMIS in advance of a court event—on which the results of a given processing (e.g., preliminary hearing, sentencing, etc.) are recorded and then entered in PROMIS.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c) (3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G) and (H), (e) (5) and (8), (f), (g) and (h) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k) (1) and (2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the Federal Register.

JUSTICE/USA—013

SYSTEM NAME:

U.S. Attorney, District of Columbia Superior Court Operations, Criminal Files, including but not limited to the following subsystems: (a) Criminal File Folder (USA-S1), (b) Criminal File Folder (USA-33), (c) Criminal Docket Card (USA-T7), and (d) Index.

SYSTEM LOCATION:

U.S. Attorney's Office *Judiciary Center Bldg., 555 4th St. NW.; Washington, D.C. 20001.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The individuals on whom records are maintained may be broadly classified in three categories (1) Those individuals who have been charged with criminal violations; (2) those individuals who are currently under investigation for criminal violations; and (3) those individuals upon whom criminal investigations were conducted, but no prosecution was initiated.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records, consisting of numbered Criminal File Folders, (USA-S1 and USA-33), contains criminal investigative reports about named individuals submitted to this office by federal, state, local and foreign law enforcement agencies involved with the investigation of suspected violations as well as by complaints made by private parties. Those matters which become cases either by way of indictment or information in addition to the data contained in the investigative reports, also contain copies of indictments, informations, complaints, and all pleadings submitted to the court in connection with the actual prosecution of the case. These files also contain communications between the Court and agencies thereof, and the United States

Attorney, and all correspondence relative to the case or matter. The files further contain psychiatric, chemical and other forensic reports, documentary evidence and the work product and internal memoranda of the Assistant United States Attorney in charge of the investigation compiled in preparation for the prosecution of each case. In those cases which have gone through trial and appeal, the file would further reflect transcripts of the trial, all pleadings and correspondence between the attorneys and the Court of Appeals, and copies of briefs submitted in the prosecution of the Appeal.

A synopsis record of a matter or case is maintained by means of a criminal docket card (USA-T7), for all actions through sentencing. A synopsis record of a case on appeal is maintained on an Appellate Docket Card (USA-9X-199), Appellate Proceedings). All of these subsystems comprise an internal cross-reference record keeping system of the criminal business at the office. Through the medium of forms and on-line data input, certain of this information is conveyed to a computer center for inclusion in the Prosecutor's Management Information System (a system which will be reported on separately), from which status and statistical reports are issued and distributed back to this office either in the form of computer printouts or on data display terminals which contain much of the same information as the files in different format.

Because of the number of diverse functions which must be performed with respect to each case; and because of the large volume of cases and because operations are conducted in three separate buildings, there are a number of file folder locator mechanisms and cross references utilized to constantly track a file folder when it is not physically located in file control. These indexes or locators are maintained in the form of 'out cards,' log books index card files, etc. They are referenced by name, number, and other identifiers. In themselves, they are not separate systems of records, but indexes or references to the primary system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

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

A record maintained in this system of records may be disseminated as a routine use of such record as follows:

(1) In any case in which there is an indication of a violation or potential violation of law, whether civil, criminal, or regulatory in nature, the record in question may be disseminated to the appropriate agency, federal, state, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing such law;

(2) In the course of investigating the potential or actual violation of any law, whether civil, criminal, or regulatory in nature, or during the course of a trial or hearing or the preparation for a trial or hearing for such violation, a record may be disseminated to a federal, state, local, or foreign agency, or to an individual, if there is reason to believe that such agency or individual possesses information relating to the investigation, trial, or hearing and the dissemination is reasonably necessary to elicit such information or to obtain the cooperation of a witness or an informant;

(3) Records or extracts thereof relating to a case or matter may be disseminated to a defendant or his attorney or to the appropriate federal, state, local, or foreign, court or grand jury in accordance with established constitutional, substantive, or procedural law or practice;

(4) A record relating to a case or matter may be disseminated to a federal, state, or local administrative or regulatory proceeding or hearing in accordance with the procedures governing such proceeding or hearing;

(5) A record relating to a case or matter may be disseminated to an actual or potential party or his attorney for the purpose of negotiation or discussion on such matters as settlement of the case or matter, plea bargaining, or informal discovery proceedings;

(6) A record relating to a case or matter that has been referred for investigation may be disseminated to the referring agency to notify such agency of the status of the case or matter or of any decision or determination that has been made or to assist in eliciting additional information;

(7) A record relating to a person held pending arraignment, trial or sentence, or after conviction, may be disseminated to a federal, state, local, or foreign prison, probation, parole, bail or pardon authority, or to any agency or individual concerned with the custody, maintenance, transportation or release of such a person;

(8) A record relating to a case or matter may be disseminated to a foreign country pursuant to an international treaty or convention entered into and ratified by the United States;

(9) A record may be disseminated to a federal, state, local, or foreign law enforcement agency to assist in the general crime prevention and detection efforts of the recipient agency or to provide investigative leads to such agency;

(10) A record may be disseminated to a federal agency, in response to its request, in connection with the hiring or retention of employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information relates to the requesting agency's decision on the matter; and

(11) A record may be assessed by volunteer student workers and students working under a college work-study program, as is necessary to enable them to perform their function;

(12) Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available for systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

(13) Release of information to Members of Congress. Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests for information on behalf of and at the request of the individual who is the subject of the record; and

(14) Release of information to the National Archives and Records Administration (NARA) and to the General Services Administration (GSA): A record from a system of records may be disclosed as a routine use to NARA and GSA in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The information in the various indexes is maintained on index cards, log books, out cards, etc. The criminal files themselves are maintained in criminal file folders (USA-S1 and USA-33). The synopsis information is maintained on a Criminal Docket Card (USA-T7) and Appellate Proceedings (USA-9X-199).

RETRIEVABILITY:

Information is retrieved primarily by the name of a person, complaint number, court docket number, FBI number, Metropolitan Police Department identification number and District of Columbia Department of Corrections number.

SAFEGUARDS:

Information contained in the system is both unclassified and classified and is safeguarded and protected by being maintained in filerooms which are manned during all times that they are open and at other times are locked. These rooms are located in the Superior Court for the District of Columbia, Buildings B and G which are guarded by the federal protective service twenty-four hours a day with roving patrols during non-working hours. Files which are not in the filerooms but which are checked out to attorneys are maintained in locked offices after working hours.

RETENTION AND DISPOSAL:

The files are retained and disposed of in accordance with Title 8, U.S. Attorney's Manual, pages 70-77.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Officer, U.S. Attorney's Office, Superior Court Operations, 555 4th Street, NW., Washington, DC 20001.

NOTIFICATION PROCEDURE:

Address inquiries to the System Manager.

RECORD ACCESS PROCEDURE:

The major part of the information maintained in this system is exempt from this requirement under 5 U.S.C. 552a (j)(2), (k)(1) and/or (k)(2). To the extent that this system is not subject to exemption, it is subject to access. A determination as to exemption shall be made at the time a request for access is received. A request for access to a record from this system shall be made in writing, with the envelope and the latter clearly marked "Privacy Access Request." Include in the request the general subject matter of the document or its file number. The requester will also provide a return address for transmitting the information. Access requests will be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

The major part of the information maintained in this system is exempt from this requirement under 5 U.S.C. 552a(j)(2), (k)(1) and/or (k)(2). To the extent that this system is not subject to exemption, it is subject to contest. A

determination as to exemption shall be made at the time a request for contest is received. Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system include but are not limited to investigative reports of federal, state and local law enforcement agencies, forensic reports, statements of witnesses and parties, as well as verbatim transcripts of grand jury proceedings and court proceedings, memoranda and reports from the court and agencies thereof and work product of Assistant United States Attorney and legal assistants working on particular cases.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c) (3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G) and (H), (e) (5) and (8), (f), (g), and (h) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k) (1) and (2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 533 (b), (c) and (e) and have been published in the Federal Register.

JUSTICE/USA-999

SYSTEM NAME:

Appendix of United States Attorney Office locations: (Written requests for access to records in any of the following U.S. Attorney's offices except the District of Columbia may be addressed to:

FOIA/Privacy Unit, Patrick Henry Building, 601 D Street NW., Room 6410, Washington, D.C. 20530.

Requests for access to records in the District of Columbia may be addressed to:

FOIA/Privacy, United States Attorney's Office, for the District of Columbia, Judiciary Center Building, 555 4th Street NW., Washington, D.C. 20001.

Systems are located as listed below:

Alabama, N.
200 Federal Building
1800 Fifth Avenue North
Birmingham, Alabama 35203
Alabama, M.
306 U.S. Post Office & Courthouse Building
15 Lee Street
Montgomery, Alabama 36104
Alabama, S.
Rm. 305, U.S. Courthouse Bldg. 113 St.
Joseph Center Mobile, Alabama 36602-3685

Alaska
Fed. Bldg. & U.S. Courthouse
Rm. C-252, Mail Box 9
701 C Street
Anchorage, Alaska 99513
Arizona
4000 U.S. Courthouse
230 North First Avenue
Phoenix, AZ 85025
Arkansas, E
331 P.O. & Courthouse Bldg.
600 West Capitol
Little Rock, Arkansas 72201
Arkansas, W
6th & Rogers
U.S. Post Office & Courthouse Bldg.
Fort Smith, Arkansas 72901
California, N
450 Golden Gate Avenue
San Francisco, Calif. 94102
California, E
3305 Federal Building
650 Capitol Mall
Sacramento, Calif. 95814
California, C
312 N. Spring Street Los Angeles, Calif. 90012
California, S
940 Front Street
Rm. 5-N-19
U.S. Courthouse
San Diego, Calif. 92189
Colorado
1961 Stout Street
Suite 1200—Drawer 3615
Federal Office Bldg.
Denver, Colorado 80294
Connecticut
United States Courthouse
141 Church Street
New Haven, Connecticut 06510
Delaware
J. Caleb Boggs Fed. Bldg.
844 King Street, Rm. 5110
Wilmington, Del. 19801
D.C.
Judiciary Center Bldg.
555 4th Street NW.
Washington, D.C. 20001
Florida, N
227 N. Bronough Street
Suite 4014
Tallahassee, Florida 32301
Florida, M
Robert Timberlake Bldg., Rm. 410
500 Zack Street
Tampa, Florida 33602
Florida, S
155 South Miami Avenue
Miami, Florida 33130
Georgia, N
Suite 1800 Richard Russell Bldg.
75 Spring Street, SW.
Atlanta, Georgia 30335
Georgia, M
Old P.O. Bldg., Rm 303
Mulberry & 3rd Streets
Macon, Georgia 31202
Georgia, S
U.S. Courthouse, Room 237
125 Bull Street
Savannah, Georgia 31412
Guam
Suite 502-A, PDN Bldg.
238 O'Hara Street
Agana, Guam 96910

Hawaii
Rm. C-242, PJKK Federal Bldg.
Box 50183, 300 Ala Moana Blvd.
Honolulu, Hawaii 96850
Idaho
Rm. 328 Federal Building
Box 037, 550 W Fort Street
Boise, Idaho 83724
Illinois, N
Everett McKinley Dirksen Bldg.
Rm. 1500 S, 219 S. Dearborn Street
Chicago, Illinois 60604
Illinois, S
Rm. 330
750 Missouri Avenue
East St. Louis, Illinois 62201
Illinois, C
Rm. 312, USPO & Federal Bldg.
600 East Monroe Street
Springfield, Illinois 62705
Indiana N
4th Floor, Federal Building
507 State Street
Hammond, Ind 46320
Indiana, S
274 U.S. Courthouse
46 E. Ohio Street
Indianapolis, Ind 46204
Iowa, N
425 2nd Street, Suite 950
The Center
Cedar Rapids, Iowa 52401
Iowa, S
115 U.S. Courthouse
E 1st & Walnut Streets
Des Moines, Iowa 50309
Kansas
385 Federal Building
444 Quincy Street
Topeka, Kansas 66683
Kentucky, E
Fourth Floor
Federal Building
Limestone & Barr Streets
Lexington, Kentucky 40507
Kentucky, W
Bank of Louisville Bldg.
510 West Broadway, 10th Floor
Louisville, Kentucky 40202
Louisiana, E
Hale Boggs Fed. Bldg.
500 Camp Street
New Orleans, LA 70130
Louisiana, M
352 Florida Street
Baton Rouge, LA 70801
Louisiana, W
Rm. 3B12, Fed. Bldg.
500 Fannin Street
Shreveport, LA 71101
Maine
East Tower—6th Floor
100 Middle Street Plaza
Portland, Maine 04101
Maryland
8th Floor, U.S. Courthouse
101 W. Lombard Street
Baltimore, MD 21201
Massachusetts
1107 John W. McCormack Fed. Bldg.
USPO & Courthouse
Boston, Mass 02109
Michigan, E
817 Federal Building
231 W. Lafayette

- Detroit, Michigan 48226
Michigan, W
399 Federal Building
Grand Rapids, Michigan 49503
- Minnesota
234 U.S. Courthouse
110 South 4th Street
Minneapolis, Minn. 55401
- Mississippi, N
Rm. 255 Federal Building
911 West Jackson Avenue
Oxford, Miss. 38655
- Mississippi, S
245 East Capitol St., Rm. 324
Jackson, Miss. 39205
- Missouri, E
Rm. 414, U.S. Court & Custom House
1114 Market Street
St. Louis, MO 63101
- Missouri, W
549 U.S. Courthouse
811 Grand Avenue
Kansas City, MO 64106
- Montana
5043 Federal Building
26th Street & 3rd Avenue, N
Billings, Montana 59103
- Nebraska
Room 8000, USPO & Courthouse
215 N 17th Street
Omaha, Nebraska 68101
- Nevada
Phoenix Bldg., Seventh Floor
330 South Third Street
Las Vegas, Nevada 89101
- New Hampshire
55 Pleasant Street, Rm. 439
Fourth Floor, Federal Bldg.
Concord, New Hampshire 03301
- New Jersey
Federal Building
970 Broad Street, Rm. 502
Newark, N.J. 07102
- New Mexico
U.S. Courthouse, Rm. 12020
500 Gold Avenue, S.W.
Albuquerque, New Mex. 87103
- New York, N
Rm. 369 U.S. Courthouse & Fed. Bldg.
100 South Clinton Street
Syracuse, N.Y. 13260
- New York, S
One St. Andrews Plaza
New York, N.Y. 10007
- New York, E
U.S. Courthouse
225 Cadman Plaza East
Brooklyn, N.Y. 11201
- New York, W
502 U.S. Courthouse
Court & Franklin Streets
Buffalo, N.Y. 14202
- N. Carolina, E
874 Federal Building
310 New Bern Avenue
Raleigh, N.C. 27611
- N. Carolina, M
326 Federal Bldg., & P.O. Bldg.
324 West Market Street
Greensboro, N.C. 27402
- N. Carolina, W
Rm. 306, U.S.P.O. & Courthouse
Post & Otis Streets
Asheville, N.C. 28802
- N. Dakota
219 Federal Building
655 1st Avenue, North
Fargo, N.D. 58108
- Ohio, N
Suite 500
1404 East Ninth Street
Cleveland, Ohio 44114
- Ohio, S
200 U.S. Courthouse
85 Marconi Boulevard
Columbus, Ohio 43215
- Oklahoma, N
3600 U.S. Courthouse
333 West Fourth Street
Tulsa, Okla 74103
- Oklahoma, E
333 Federal Courthouse & Office Bldg.
Fifth & Okmulgee
Muskogee, Okla 74401
- Oklahoma, W
Room 4434
U.S. Courthouse & Fed. Office Bldg.
Oklahoma City, Okla 73102
- Oregon
312 U.S. Courthouse
620 S.W. Main Street
Portland, Oregon 97205
- Penn. E
3310 U.S. Courthouse
Independence Mall West
601 Market Street
Philadelphia, PA 19106
- Penn. M
Suite 309, Federal Building
Washington & Linden Streets
Scranton, PA 18501
- Penn. W
633 U.S.P.O. & Courthouse
7th Avenue & Grant Street
Pittsburgh, PA 15219
- Puerto Rico
Rm. 101, Fed. Office Bldg.
Carlos E. Chardon Avenue
Hato Rey, P.R. 00918
- Rhode Island
Westminster Square Building
10 Dorrance Street
Providence, R.I. 02903
- South Carolina
Federal Building
1100 Laurel Street
Columbia, S.C. 29201
- S. Dakota
135 Fed. Bldg., & U.S. Courthouse
400 S. Phillips Avenue
Sioux Falls, S.D. 57102
- Tennessee, E
509 Main Street
Knoxville, TN 37901
- Tennessee, M
Room 879, U.S. Courthouse
801 Broadway
Nashville, TN 37203
- Tennessee, W
1026 Fed. Office Bldg.
167 North Main Street
Memphis, TN 38103
- Texas, N
310 U.S. Courthouse
10th & Lamar Streets
Ft. Worth, TX 76102
- Texas, S
Courthouse & Federal Bldg.
515 Rusk Avenue, 3rd Floor
Houston, TX 77002
- Texas, E
700 North Street, Suite 600
Beaumont, TX 77701
- Texas, W
727 E. Durango Blvd.
Suite A-601
San Antonio, TX 78206
- Utah
U.S. Courthouse, Room 466
350 South Main Street
Salt Lake City, UT 84101
- Vermont
Federal Building
11 Elmwood Avenue, 8th Floor
Burlington, VT 05401
- Virgin Islands
Federal Bldg., & U.S. Courthouse
Veterans Drive, Rm. 260
Charlotte Amalie
St. Thomas, V.I. 00802
- Virginia, E
1101 King Street
Suite 502
Alexandria, VA 22314
- Virginia, W
Room 456, Poff Federal Bldg.
210 Franklin Road, S.W.
Roanoke, VA 24011
- Washington, E
851 U.S. Courthouse
West 920 Riverside
Spokane, WA 99201
- Washington, W
3600 Seafirst 5th Ave., Plaza
800 Fifth Avenue
Seattle, WA 98104
- West Virginia, N
Room 247, Federal Building
1125-1141 Chapline Street
Wheeling, WV 26003
- West Virginia, S
Room 4106, Federal Building
500 Quarrier Street
Charleston, WV 25301
- Wisconsin, E
330 Federal Building
517 East Wisconsin Avenue
Milwaukee, WI 53202
- Wisconsin, W
120 N. Henry Street, Room 420
Madison, WI 53703
- Wyoming
J.C. O'Mahoney Fed. Building
Room 2141, 2120 Capitol Avenue
Cheyenne, WY 82001
- North Mariana Islands
c/o U.S. Attorney's Office
6th Floor, Naura Bldg.
P.O. Box 377
Saipan, CM 96950

JUSTICE/USM-001**SYSTEM NAME:**

U.S. Marshals Service Badge & Credentials File.

SYSTEM LOCATION:

Property Management Division, U.S. Marshals Service; 600 Army Navy Drive, Arlington, Virginia 22202-4210.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. Marshals Service (USMS) Personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel data system established to control issuance of badges and credentials to USMS personnel which contains photographs of all employees and hand receipts showing the employee's name, title, duty location, badge and credential numbers, and date of issuance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and 44 U.S.C. 3101.

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

This file serves as a record of issuance of credentials. Information from this file may be disclosed (a) to various law enforcement agencies, e.g., FBI, Secret Service, states, county and Municipal police.

(b) in a proceeding before a court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity, or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions.

(c) to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(d) to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

(e) to the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Records are kept in standard file folders.

RETRIEVABILITY:

Indexed by name of individual and numerical order of badges and credentials.

SAFEGUARDS:

Access restricted to personnel of the Property Management Division. Records are maintained in metal filing cabinets which are locked during non-duty hours.

RETENTION AND DISPOSAL:

Records are kept for duration of employee's tenure in the Service.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Property Management Division; United States Marshals Service, U.S. Department of Justice; 600 Army Navy Drive, Arlington, Virginia 22202-4210.

NOTIFICATION PROCEDURE:

Same as System Manager.

RECORD ACCESS PROCEDURE:

A request for access to a record from this system shall be made in writing with the envelope and the letter clearly marked "Privacy Access Request." It should clearly indicate name of requester, the nature of the record sought and approximate dates covered by the record. The requester shall also Provide the required verification of identity (28 CFR 16.41(d)) and provide a return address for transmitting the information. Access requests will be directed to the System Manager listed above, Attention: FOI/PA Officer.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Record of Notification of Employment by U.S. Marshals Service Personnel Division.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/USM-002**SYSTEM NAME:**

Internal Inspections System.

SYSTEM LOCATION:

United States Marshals Service; Department of Justice; 600 Army Navy Drive, Arlington, Virginia 22202-4210.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

United States Marshals Service (USMS) employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The Internal Inspections System contains reports prepared by the Office of Internal Inspections, United States Marshals Service on findings of alleged misconduct of U.S. Marshals, Service employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C. 509, 510 and 569; 5 U.S.C. 301; 44 U.S.C. 3101; and 28 CFR 0.111(n).

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

Records of information may be disclosed (a) to U.S. Marshals Service personnel in disciplinary proceedings against employees. (b) to the extent that investigations reveal actual or potential violations of criminal or civil laws, to other Federal law enforcement agencies for further investigations.

(c) in a proceeding before a Court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity, or in his or her individual capacity, where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions.

(d) to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(e) to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

(f) to the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Originals stored in standard file folders.

RETRIEVABILITY:

Information is retrieved by name of employee.

SAFEGUARDS:

Records are stored in locked safe.

RETENTION AND DISPOSAL:

Records are retained for 24 months and then referred to Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of Internal Inspections
U.S. Marshals Service; U.S. Department of Justice, 600 Army Navy Drive,
Arlington, Virginia 22202-4210.

NOTIFICATION PROCEDURE:

Same as the System Manager.

RECORD ACCESS PROCEDURE:

To the extent that this system is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received. A request for access to a record from this system shall be made in writing, with the envelope and the letter clearly marked "Privacy Access Request." It should clearly indicate name of the requestor, the nature of the record sought and approximate dates covered by the record. The requestor shall also provide the required verification of identity (28 CFR 16.41(d)) and provide a return address for transmitting the information. Access requests will be directed to the System Manager listed above. Attention: FOI/PA Officer.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Information derived from investigation of alleged malfeasance, by U.S. Marshals Service Office of Internal Inspections.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3) and (4), (d), (e)(2) and (3), (e)(4) (G) and (H), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(5). To the extent that investigations reveal actual or potential criminal or civil violations, this system is additionally exempt from subsection (e)(8) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the Federal Register.

JUSTICE/USM-003**SYSTEM NAME:**

U.S. Marshals Service Prisoner Transportation System.

SYSTEM LOCATION:

Prisoner Transportation Division, U.S. Marshals Service (USMS), Department of Justice; 911 Walnut Street, Kansas City, Missouri 64106.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Prisoners taken into U.S. Marshal custody.

CATEGORIES OF RECORDS IN THE SYSTEM:

D.J. 100's Compilation of identifying information for each prisoner taken into U.S. Marshal custody, when and where the prisoner is taken into custody, what he is charged with and where he is moved to. These files provide a ready reference source on the prisoner for purposes of arranging prisoner transportation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C. 509; 510 and 569; 5 U.S.C. 301; 44 U.S.C. 3101; and 28 CFR 0.111(k).

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

Used in the transporting of prisoners, by USMS, Bureau of Prisons and other federal, state and local law enforcement officials.

Records or information may be disclosed as a routine use as follows: (a) in a proceeding before a Court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity, or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions.

(b) to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(c) to a Member of Congress or staff acting upon the Member's behalf where the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

(d) to the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Information is stored in standard file cabinets. Duplicate copies of paper records are stored on magnetic discs.

RETRIEVABILITY:

Information is retrieved by name of prisoner and number.

SAFEGUARDS:

Access restricted to Operations Personnel. File cabinets are locked during non-duty hours.

RETENTION AND DISPOSAL:

Records are disposed of after 24 months.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Prisoner Transportation Division, United States Marshals Service U.S. Department of Justice, 911 Walnut Street, Kansas City, Missouri 64106.

NOTIFICATION PROCEDURE:

Same as System Manager.

RECORD ACCESS PROCEDURE:

A request for access to a record from this system shall be made in writing, with the envelope and the letter clearly marked "Privacy Access Request." It should clearly indicate name of requester, the nature of the record sought and approximate dates covered by the record. The requestor shall also provide the required verification of identity (28 CFR 16.41(d)) and provide a return address for transmitting the information. Access requests will be directed to the System Manager listed above, Attention: FOI/PA Officer.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Identifying material of each prisoner taken into custody by the U.S. Marshal.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/USM-004

SYSTEM NAME:

Special Deputy File.

SYSTEM LOCATION:

United States Marshals Service (USMS), Department of Justice, 600 Army Navy Drive, Arlington, Virginia 22202-4210.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Special Deputies, who are selected law enforcement officers or employees of the U.S. Government.

CATEGORIES OF RECORDS IN THE SYSTEM:

Special Deputization file contains oath of office of persons utilized as deputy marshals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 CFR Subpart T. Section 0.112, 28 U.S.C. 562.

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

Records or information may be disclosed (a) to Federal agencies for whom the Marshals Service has deputized employees.

(b) in a proceeding before a Court or adjudicated body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity, or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions.

(c) to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(d) to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

(e) to the National Archives and Records Administration and to the General Services Administration in records management inspections

conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Records are filed in standard file cabinets. Duplicate copies of paper record are stored on magnetic discs.

RETRIEVABILITY:

Files are indexed by name and by government department.

SAFEGUARDS:

Records are kept in a locked file.

RETENTION AND DISPOSAL:

Records are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, U.S. Marshals Service, U.S. Department of Justice, 600 Army Navy Drive, Arlington, Virginia 22202-4210.

NOTIFICATION PROCEDURES:

Address inquiries to: System Manager.

RECORD ACCESS PROCEDURE:

A request for access to a record from this system shall be made in writing with the envelope and letter clearly marked "Privacy Access Request." The requestor shall also provide the required verification of identity (28 CFR 16.41(d)) and provide a return address for transmitting the information. Access requests will be directed to the System Manager listed above, Attention: FOI/PA Officer.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reason for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Federal agencies requesting special deputations provide all necessary information required by the Marshals Service in making the special deputations.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/USM-006

SYSTEM NAME:

United States Marshals Service Training Files (Justice/USM-006).

SYSTEM LOCATION:

a. Primary system: Associate Director for Administration, U.S. Marshals Service (USMS), 600 Army Navy Drive, Arlington, Virginia 22202-4210.

b. Decentralized segments: Individual training files and the Fitness in Total (FIT) Program training assessment files, identified as items (1) and (3) under "Category of Records in the System," are located also at the USMS Training Academy, Department of Justice, Building 70, Glynco, Georgia 31524. Each district office of the USMS maintains FIT files only on their respective participants in the FIT Program (See Appendix).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

USMS employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Individual training files contain information on the individual's educational background and employee training history, and an individual career development plan; (2) Skills files identify languages and other special skills possessed by the individual USMS employee; and (3) individual FIT Program training assessment files contain records on physical and medical examinations, blood tests, health histories, physical assessments, and administrative records on participation, goal setting and progress while in the program. The Certificate of Medical Examination (SF-78) is maintained in the primary system at USMS Headquarters only unless obtained and placed in the district file by the individual FIT participant.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C. 509, 510 and 569; 5 U.S.C. 301; 44 U.S.C. 3101; and 28 CFR 0.111(h).

PURPOSE OF THE SYSTEM

Individual training files are used to make employment, promotion, or retention determinations for all Deputy U.S. Marshals; to develop training histories; and to determine training and/or promotion eligibility. In addition, FIT Program training assessment files are used to make hiring/retention determinations for Deputy U.S. Marshal personnel entering on duty as of July 1, 1984 and later; to determine employees' eligibility to participate in the program; to tailor an individual fitness program for each employee; to chart employee progress in the program; to determine the need for and to chart progress toward weight reduction; to develop physical fitness standards for performance appraisal purposes; and to

examine statistically the physical fitness level of the USMS workforce against law enforcement populations and the general population of the United States. Skills files are used to identify special skills and language abilities possessed by personnel to aid in staffing special assignments which require such skills.

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

Records or information may be disclosed as a routine use (a) in a proceeding before a court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity, or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions.

(b) to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(c) to congressional members or staff on behalf of constituents.

(d) to the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of Title 44 of the United States Code.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE

Originals of paper records contained in this system are kept in standard file cabinets. Skills files, summaries of FIT Program training assessment records, and duplicates of paper records are stored on magnetic discs.

RETRIEVABILITY:

Records are retrieved by name of employee.

SAFEGUARDS:

Records are maintained in metal filing cabinets which are locked during nonduty hours. Entry to headquarters is restricted by 24-hour guard service to employees with official and electronic identification. Entry to the Training Academy and district offices is restricted generally to trainees/

employees with official identification. Access to computerized records in this system is restricted to the responsible headquarters employees by assigned code.

RETENTION AND DISPOSAL:

Files are maintained until the employee leaves the USMS at which time paper records are shredded and magnetic discs are erased.

SYSTEM MANAGER AND ADDRESS:

The system manager is the Associate Director for Administration, U.S. Marshals Service, 600 Army Navy Drive, Arlington, Virginia 22202-4210.

NOTIFICATION PROCEDURES:

Direct inquires to the system manager identified above, Attention: FOI/PA Officer. Clearly mark the letter and envelope "Freedom of Information/Privacy Act Request."

RECORD ACCESS PROCEDURES:

Make all requests for access in writing and clearly mark letter and envelope "Freedom of Information Act/Privacy Act Request." Clearly indicate name of the requester, nature of the record sought, approximate dates of the records, and provide the required verification of identity (28 CFR 16.41(d)). Direct all requests to the system manager identified above, Attention: FOI/PA Officer, and provide a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

Direct all requests to contest or amend information to the system manager listed above. State clearly and concisely the information being contested, the reasons for contesting it, and the proposed amendment to the information sought. Clearly mark the letter and envelope "Freedom of Information Act/Privacy Act Request."

RECORD SOURCE CATEGORIES:

Information contained in this system is collected from the individual, training personnel, the Combined Federal Law Enforcement Training Academy, examining physicians, fitness coordinators, and personnel records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/USM-007

SYSTEM NAME:

Warrant-Information System.

SYSTEM LOCATION:

Primary System: Enforcement Operations Division, U.S. Marshals

Service (USMS), 600 Army Navy Drive, Arlington, Virginia 22202-4210.

Decentralized Segments: Each district office of the U.S. Marshals Service (USMS) maintains their own files. See Appendix.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals for whom Federal warrants have been issued.

CATEGORIES OF RECORDS IN THE SYSTEM:

The warrant and other court records and internal correspondence related to the warrant; biographical data including physical description, photograph and criminal history; wanted flyers/posters and investigative reports reflecting patterns of activity, leads developed, statements of witnesses and other persons cooperating with USMS fugitive investigations. Investigative reports and criminal record information from other Federal, State, local and foreign law enforcement agencies participating in or cooperating with USMS fugitive investigations and apprehension efforts are also included in this system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 USC 509, 510 and 569; 28 CFR 0.111(a).

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

Records of information may be disclosed (a) to public and private organizations, individuals, and Federal, State, local, and foreign agencies to the extent necessary to obtain information or cooperation in USMS fugitive investigations and apprehension efforts. (b) upon request, to the appropriate Federal, State, local, or foreign law enforcement agency responsible for investigating, prosecuting, enforcing, defending, or implementing a status, rule, regulation, or order, to the extent that the information is relevant to the recipient's function. (c) without a request, to an appropriate Federal, State or local law enforcement agency where there is an indication of an actual or potential violation of civil or criminal laws, statutes, rules, or regulations within the jurisdiction of the recipient agency. (d) in a proceeding before a court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity, or in his or her

individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions.

(e) to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(f) to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

(g) to the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on Roladex Cards and in standard file folders. *Duplicate copies of paper records are stored on magnetic discs.*

RETRIEVABILITY:

Records are retrieved by individual names.

SAFEGUARDS:

Access is restricted to personnel in the Enforcement Operations Division and in each district's U.S. Marshals office. Records are maintained in metal file cabinets within supervised areas of the U.S. Marshal's Offices. District Offices are locked during working and non-duty hours and entry is restricted to employees with official identification.

RETENTION AND DISPOSAL:

Records are kept in operating file until warrant is executed and then transferred to closed files, where they are indefinitely kept.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Enforcement Operations Division; U.S. Marshals Service; U.S. Department of Justice; 600 Army Navy Drive, Arlington, Virginia 22202-4210.

RECORD SOURCE CATEGORIES:

Information is obtained from the courts, Federal, State, local and foreign law enforcement agencies, public and private organizations, witnesses, informants and other persons interviewed during the course of the fugitive investigation.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsection (c)(3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G) and (H), (e)(5), (e)(8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j). (2) Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the Federal Register.

JUSTICE/USMS-008

SYSTEM NAME:

Witness Security Files Information System.

SYSTEM LOCATION:

Witness Security Division, United States Marshals Service (USMS), Department of Justice, 600 Army Navy Drive, Arlington, Virginia 22202-4210.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Government witnesses who are participants in the Federal Witness Security Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Request to enter program; (2) background information (education, experience, medical history, names, relatives, etc); (3) funding information; (4) moving information; (5) documentation of all the above.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for the Witness Security Program is 28 U.S.C. 509, 510 and 569; 5 U.S.C. 301; 44 U.S.C. 3101; 28 CFR 0.111(c); 28 U.S.C. 524; 18 U.S.C. 3521.

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

Records may be used by U.S. Marshals Service personnel as working files to plan and accomplish major functions of witness security e.g. protection of government witnesses and their families. Records or information may be disclosed as follows: (a) in a proceeding before a Court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity, or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions.

(b) to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(c) to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

(d) the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are kept in file folders.

RETRIEVABILITY:

Filed according to ID special number.

SAFEGUARDS:

Locked files limited access—(Witness Security Personnel).

RETENTION AND DISPOSAL:

All records at this time are being indefinitely maintained.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Witness Security Division; U.S. Marshals Service, U.S. Department of Justice, 600 Army Navy Drive, Arlington, Virginia 22202-4210.

RECORD SOURCE CATEGORIES:

All identifying background criteria of individual; (1) education; (2) job history; (3) medical history; (4) history of residence; (5) relatives, etc.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c) (3) and (4), (d), (e) (2) and (3), (e)(4) (G) and (H), (e)(8), (f)(2) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the Federal Register.

JUSTICE/USM-009

SYSTEM NAME:

U.S. Marshals Service Threat Analysis Information System.

SYSTEM LOCATION:

Threat Analysis, Division, U.S. Marshals Service (USMS), 600 Army

Navy Drive, Arlington, Virginia 22202-4210.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have directly threatened or pose a violent threat to Government witnesses, U.S. Attorneys and their assistants, Federal Jurists and other court officials, U.S. Marshals, deputies and other law enforcement officers; to courtroom security; and to Federal property and buildings.

CATEGORIES OF RECORDS IN THE SYSTEM:

Manual and automated indices contain abbreviated data, e.g., case number, name, social security number, known aliases, address, telephone number, descriptive physical data, an indication of the means by which the threat was issued, and the date of the threat. In addition to the abbreviated data named above, the complete file may contain criminal record information—in particular, known history of violence and skills related to the nature of the threat, associations with dangerous/outlaw gangs or violent extremist groups; and threat-related, investigative information furnished by other Federal, State and local law enforcement agencies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C. 509, 510, and 569; 5 U.S.C. 301; 44 U.S.C. 3101; and 28 CFR 0.111(c) through (f).

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

USMS officials responsible for conducting threat analysis and for planning and carrying out security operations access this information. Records or information may be disclosed (a) to other appropriate Federal, State and local law enforcement agencies in connection with actual or potential violation of criminal or civil laws, statutes, or regulations, or in conjunction with investigative or litigative responsibilities of the recipient agency, or to the extent that disclosure is necessary to obtain additional threat-related information or to develop protective measures. (b) To other law enforcement agencies to develop protective measures where a specific threat is posed to their members; and to an individual or organization where the recipient is or could become the target of a specific threat. (c) In a proceeding before a court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such

records are determined by the USMS to be arguably relevant to the litigation; the USMS or any of its subdivisions; any USMS employee in his or her official capacity or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions.

(d) To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(e) As is necessary to appropriately respond to congressional inquiries on behalf of constituents.

(f) To the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

An index record is stored on index cards and magnetic disks. Original paper records are kept in file folders.

RETRIEVABILITY:

Records are indexed and retrieved by name.

SAFEGUARDS:

Access to computerized records is restricted to Threat Analysis Division personnel by assigned code. In addition, records are stored in locked metal filing cabinets during off-duty hours. The records are located in a restricted area and USMS Headquarters is under 24-hour guard protection with entry controlled by official and electronic identification.

RETENTION AND DISPOSAL:

Records are maintained indefinitely until a detailed records retention plan and disposal schedule is developed by MARA and the USMS.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Threat Analysis Division, U.S. Marshals Service, 600 Army Navy Drive, Arlington, Virginia 22202-4210.

NOTIFICATION PROCEDURE:

Direct all inquiries to the system manager identified above. Clearly mark the letter and envelope "Freedom of Information/Privacy Act Request."

RECORD ACCESS PROCEDURE:

Make all requests for access in writing and clearly mark letter and envelope

"Freedom of Information/Privacy Act Request." Clearly indicate name of the requester, nature of the record sought, approximate date of the record, and provide the required verification of identity (28 CFR 16.4(d)). Direct all requests to the system manager identified above. Attention: FOI/PA Officer, and provide a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

Direct all requests to contest or amend information to the system manager identified above. State clearly and concisely the information being contested, the reason for contesting it, and the proposed amendment to the information sought. Clearly mark the letter and envelope "Freedom of Information/Privacy Act Request."

RECORD SOURCE CATEGORIES:

Information is obtained from public and confidential sources and from Federal, State and local law enforcement agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c) (3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G) and (H), (e)(5), (e)(8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the *Federal Register*.

JUSTICE/USMS-010

SYSTEM NAME:

Judicial Facility Security Index System.

SYSTEM LOCATION:

Court Security Division, U.S. Marshals Service, (USMS), 600 Army Navy Drive, Arlington, Virginia 22202-4210.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals employed, or offered employment as contract court security officers (CSO's) by companies contracting with the USMS to provide judicial area security in Federal courthouses.

CATEGORIES OF RECORDS IN THE SYSTEM:

An alphabetical index contains the name, date of birth and social security number of the contracting security firm (employer), completion dates and cost data for limited background investigation and orientation, district of employment, dates contract performance started and ended, posts and hours of duty and the status of

employment, i.e., active or inactive. For inactive CSO's; the index contains the reason for inaction, e.g. CSO resigned; applicant rejected based on the preliminary records check; CSO removed base of Office of Personnel Management (OPM) background investigation; etc. In addition to providing abbreviated data, the index assists in locating records on the court security officer related to the initial screening process for eligibility, e.g., application and preliminary checks for arrest records, which are filed under the contract number and name of the contracting security firm (employer). The index also assists in locating files containing OPM reports on the limited background investigation and internal suitability memoranda which are segregated by the categories "active" and "inactive."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C. 509, 510, and 569; 5 U.S.C. 301; 44 U.S.C. 3101 and 28 CFR 0.111 (c) through (f).

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

Contracting personnel and court security program officers within the USMS use this system to make security/suitability determinations in the hiring of contract court security officers, to monitor orientation completed, to track costs related to background investigations and attendance at Government-sponsored orientation, to monitor orientation completed, and to monitor contractor performance. Records may be disclosed as follows: Individual cost data may be disclosed to the contractor (employer) in connection with billing and recovering reimbursable costs. *In addition, records or information also may be disclosed as follows: (a) to an appropriate Federal, State or local law enforcement agency to the extent necessary to obtain information on arrests, or to the extent relevant to an actual or potential, criminal or civil investigation, litigation or enforcement proceedings of that agency. (b) in a proceeding before a court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United*

States where the USMS determines that the litigation is likely to affect it or any of its subdivisions.

(c) to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy. (d) to congressional members or staff on behalf of constituents.

(e) to the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

An index record is stored on magnetic disks and original paper records are kept in file folders.

RETRIEVABILITY:

Records are retrieved by name of the contract court security officer.

SAFEGUARDS:

Records are stored in locked metal filing cabinets during off-duty hours. Access to computerized records is controlled by restricted code to personnel on a need-to-know basis. Entry to USMS Headquarters is restricted by 24-hour guard service to employees with official and electronic identification.

RETENTION AND DISPOSAL:

Records are maintained indefinitely until a detailed records retention plan and disposal schedule is developed by the NARA and the USMS.

SYSTEM MANAGER AND ADDRESS:

Chief, Court Security Division, U.S. Marshals Service, 600 Army Navy Drive, Arlington, Virginia.

NOTIFICATION PROCEDURES:

Direct all inquiries to the system manager identified above. Clearly mark the letter and envelope "Freedom of Information/Privacy Act Request."

RECORD ACCESS PROCEDURES:

Make all requests for access in writing and clearly mark letter and envelope "Freedom of Information/Privacy Act Request." Clearly indicate name of the requester, nature of the record sought, approximate dates of the record, and provide the required verification of identity (28 CFR 16.41(d)). Direct all requests to the system manager identified above. Attention: FOI/PA

Officer, and provide a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

Direct all requests to contest or amend information to the system manager listed above. State clearly and concisely the information being contested, the reasons for contesting it, and the proposed amendment to the information sought. Clearly mark the letter and envelope "Freedom of Information/Privacy Act Request."

RECORD SOURCE CATEGORIES:

Information contained in this system is collected from the individual, USMS orientation records, other law enforcement agencies, OPM, and from the contractor (employer).

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3) and (d) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(5). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the Federal Register.

JUSTICE/USM-011

SYSTEM NAME:

Judicial Protection Information System

SYSTEM LOCATION:

Court Security Division, U.S. Marshals Service, (USMS), 600 Army Navy Drive, Arlington, Virginia 22202-4210.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been directly threatened or are subject to violent threat by virtue of their responsibilities within the judicial system, e.g., U.S. Attorneys and their assistants, Federal jurists and other court officials.

CATEGORIES OF RECORDS IN THE SYSTEM:

Manual and automated indices contain abbreviated data, e.g., case number, name of protectee, name of control district and district number, an indication of the type and source of threat, and the means by which the threat was made. In addition to the abbreviated data named above, the complete file may contain descriptive physical data of the protectee, and other information to identify security risks and plan protective measures in advance of or during periods of active protection, e.g., individual practices and routines, including associational memberships. Information regarding the expenditure of funds and allocation of

resources assigned to the protectee may also be included in the file to enable officials to develop operating plans to counteract threat situations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C. 509, 510 and 569; 5 U.S.C. 301; 44 U.S.C. 3101; and 28 CFR 0.111(c) through (f).

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

Records or information may be disclosed (a) to USMS officials responsible for planning and carrying out security operations (b) to other Federal, State and local law enforcement agencies to the extent that disclosure is necessary to develop and/or implement protective measures. (c) in a proceeding before a court or adjudicative body before which the USMS is authorized to appear when any of the following in a party to litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions.

(d) to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(e) congressional members or staff on behalf of constituents.

(f) to the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

An index record is stored on index cards and magnetic tape. Original paper records are kept in file folders.

RETRIEVABILITY:

Records are indexed and retrieved by name of protectee.

SAFEGUARDS:

Access to computerized records is restricted to Court Security Division personnel by assigned user code and password. In addition, records are stored in locked metal cabinets during

off-duty hours. The records are located in a restricted area, and USMS Headquarters is under 24-hour guard protection with entry controlled by official and electronic identification.

RETENTION AND DISPOSAL:

Records are maintained indefinitely until a detailed records retention plan and disposal schedule is developed by NARA and the USMA.

SYSTEM MANAGER AND ADDRESS:

Chief, Court Security Division, U.S. Marshals Service, 600 Army Drive, Arlington, Virginia 22202-4210.

NOTIFICATION PROCEDURE:

Direct all inquiries to the system manager identified above. Clearly mark the letter and envelope "Freedom of Information/Privacy Act Request."

RECORD ACCESS PROCEDURES:

Make all requests for access in writing and clearly mark letter and envelope "Freedom of Information/Privacy Act Request." Clearly indicate name of the requester, nature of the record sought, approximate dates of the record, and provide the required verification of identity (28 CFR 16.41(d)). Direct all requests to the system manager identified above, Attention: FOI/PA Officer, and provide a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

Direct all requests to contest or amend information to the system manager identified above. State clearly and concisely the information being contested, the reason for contesting it, and the proposed amendment to the information sought. Clearly mark the letter and envelope "Freedom of Information/Privacy Act Request."

RECORD SOURCE CATEGORIES:

Information is obtained from individual protectees. Where information is maintained in this system on identified threat sources to a particular protectee, such information is obtained from public and confidential sources and from Federal, State and local law enforcement agencies, and is not retrievable by name or other identifying particular assigned to the threat source.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/USM-012

SYSTEM NAME:

U.S. Marshals Service Freedom of Information Act/Privacy Act (FOIA/PA) Files.

SYSTEM LOCATION:

Office of Legal Counsel, U.S. Marshals Service, 600 Army Drive, Arlington, Virginia 22202-4210.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who request disclosure of U.S. Marshals Service (USMS) records pursuant to the Freedom of Information Act (FOIA); individuals who request access to or correction of records maintained in USMS systems of records pursuant to the Privacy Act (PA); and individuals whose FOIA or PA requests have been referred to the USMS by another Department of Justice component or another agency.

CATEGORIES OF RECORDS IN THE SYSTEM:

Alphabetical and chronological indices are maintained to aid in the orderly processing of requests and to compile statistical data for annual reports. Indices include such data items as the name and address of the requester; the type of requests; dates on which the request was received, acknowledged and answered; type or final responses; and exemptions used to deny access to records, when applicable. Identifying data, i.e., date and place of birth and social security number, is maintained on PA requesters to verify their identity and ensure proper disclosure. Files contain a record of the FOIA/PA request, along with the response, copies of documents which have been requested, and internal memoranda or other records related to the initial processing of such request, subsequent appeals and/or litigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and 44 U.S.C. 3101 to implement the provisions of 5 U.S.C. 552 and 5 U.S.C. 552a.

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

A record maintained in this system may be disseminated as a routine use:

(a) To any Department of Justice component for consideration in connection with an FOIA or PA request, appeal, or civil suit pursuant to the Acts.
(b) To a Federal, State or local agency which furnished the record to permit that agency to make a decision as to access or correction, or to consult with that agency to enable the USMS to determine the propriety access or correction.

(c) In a proceeding before a court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or

has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions. In addition, records or information which is relevant to the subject matter involved in a pending judicial or administrative proceeding may be disclosed in response to a request for discovery or for appearance of a witness.

(d) To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(e) To congressional members or staff on behalf of constituents.

(f) To the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Index cards are stored in standard card file boxes. Requests files are stored in standard cabinets. Duplicate copies of paper records are maintained on magnetic discs.

RETRIEVABILITY:

Records are retrieved by name of requester.

SAFEGUARDS:

Access to computerized records is restricted to Office of Legal Counsel personnel. In addition, request files are stored in locked metal filing cabinets within the Office of Legal Counsel, USMS headquarters, during off-duty hours. Access to USMS headquarters is controlled by 24-hour guard service.

RETENTION AND DISPOSAL:

Records are destroyed 6 years after final response or appeal determination by the Department of Justice, Office of Information and Privacy; or 3 years after final adjudication by the courts.

SYSTEM MANAGER AND ADDRESS:

General Counsel, Office of Legal Counsels, U.S. Marshals Service, 600 Army Navy Drive, Arlington, Virginia 22202-4210.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager identified above. Attention: FOIA/PA Officer. Clearly mark the letter and envelope "Freedom of Information Act/Privacy Act Request."

RECORD ACCESS PROCEDURE:

Make all requests for access in writing and clearly mark letter and envelope "Freedom of Information/Privacy Act Request." Clearly indicate name of the requester, nature of the record sought, approximate dates of the record, and provide the required verification of identity (28 CFR 16.41(d)). Direct all requests to the system manager identified above. Attention FOI/PA Officer, and provide a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

Direct all requests to contest or amend information to the system manager listed above. State clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought. Clearly mark the letter and envelope "Freedom of Information Act/Privacy Act Request."

RECORD SOURCE CATEGORIES:

The sources of information contained in this system are the individuals making requests, the systems of records searched in the process of responding to requests and other agencies who have referred to the USMS those requests for access to or correction of USMS records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted certain categories of records in this system from subsections (c)(3) and (4); (d); (e)(1), (2) and (3); (e)(4) (C) and (H); (e)(5); (e)(8); (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2), (k)(2) and (k)(5). The system is exempted pursuant to subsections (j)(2) and (k)(2) only to the extent that the records there reflect criminal and civil law enforcement and investigative information. The system is exempted pursuant to subsection (k)(5) only to the extent necessary to protect confidential sources. Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the Federal Register.

JUSTICE/USM-013

SYSTEM NAME:

U.S. Marshals Service Administrative Proceedings, Claims and Civil Litigation Files.

SYSTEM LOCATION:

Office of Legal Counsel, U.S. Marshals Service (USMS), 600 Army Navy Drive, Arlington, Virginia 22202-4210.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have filed tort and employee claims against the USMS; individuals who have initiated administrative proceedings against the USMS; individuals who have filed civil suits naming the USMS and/or personnel as defendants, including those suits arising from authorized criminal law enforcement activities; and individuals named as defendants in Federal Court actions initiated by the USMS.

CATEGORIES OF RECORDS IN THE SYSTEM:

In addition to the names of individuals covered by the system and the titles of cases, index cards contain certain summary data, e.g.: a summary of correspondence and pleadings received in a case, names of parties involved; name of attorney handling the case or matter, court in which action is brought, civil action number, and an indication of whether the case is open or closed, thereby facilitating location of the complete file. Cases or matters include adverse actions, grievances, unfair labor practice charges, tort claims, Equal Employment Opportunity and other employee claims, and suits against USMS employees in their official capacities, etc. Files contain correspondence/claim forms submitted by claimants and internal reports and related documents concerning the merits of the claim, attorney or staff recommendations and findings related to claim; records on actions taken by USMS giving rise to appeals, attorney notes, recommendations and strategy for defending appeals; copies of civil actions filed and criminal investigative records related to the action e.g., criminal investigative reports relating the underlying criminal matter which relates to or constitutes the basis of the claim or suit (including those from non-Federal law enforcement participants in USMS criminal or civil law enforcement activities), witness statements, reports of interviews, exhibits, attorney notes, pleadings, and recommendations and strategy for defending civil actions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and 44 U.S.C. 3101.

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

Records maintained in this system of records may be disseminated as follows:

(a) To any component of the Department of Justice for consideration in connection with the case or matter to which the record relates; (b) To the appropriate Federal, State or local agency responsible for investigating, prosecuting or defending an action where there is an indication of actual or potential violation of criminal or civil laws or regulations or civil liability of any government action; (c) To any Federal, State or local agency, organization or individual to the extent necessary to elicit information or witness cooperation if there is reason to believe the recipient possesses information related to the case or matter; (d) In a proceeding before a court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions; (e) To a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract or the issuance of a grant, license or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter; (f) To respond to a request for discovery or for appearance of a witness when the information is relevant to the subject matter involved in a pending judicial or administrative proceeding.

(g) To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(h) To congressional members or staff on behalf of constituents.

(i) To the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Index cards are stored in standard card file boxes. Administrative claim appeal and litigation files are stored in standard file cabinets. *Duplicate copies of paper records are stored on magnetic discs.*

RETRIEVABILITY:

Records are retrieved by name of claimant or litigant, or by caption of civil action or administrative proceeding.

SAFEGUARDS:

Access to computerized records is restricted to Office of Legal Counsel personnel. In addition, files are stored in locked metal filing cabinets within the Office of Legal Counsel, USMS headquarters, during off-duty hours. Access to USMS headquarters in controlled by 24-hour guard service.

RETENTION AND DISPOSAL:

Index cards are retained indefinitely. Claim files are destroyed after 7 years. Litigation files are destroyed after 10 years. Cases designated by the General Counsel as significant or precedential are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Office of Legal Counsel, U.S. Marshals Service, 600 Army Navy Drive, Arlington, Virginia 22202-4210.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager identified above, Attention: FOI/PA Officer. Clearly mark the letter and envelope "Freedom of Information/Privacy Act Request."

RECORD ACCESS PROCEDURE:

Make all requests for access in writing and clearly mark letter and envelope "Freedom of Information/Privacy Act Request." Clearly indicate name of the requester, nature of the record sought, approximate dates of the records, and provide the required verification of identity (28 CFR 16.41(d)). Direct all requests to the system manager identified above. Attention: FOI/PA Officer, and provide a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

Direct all requests to contest or amend information to the system manager listed above. State clearly and concisely what information is being contested, the reason for contesting it, and the proposed amendment to the information sought. Clearly mark the

letter and envelope "Freedom of Information Act/Privacy Act Request."

RECORD SOURCE CATEGORIES:

The sources of information contained in this system are the individual claimant/litigant, USMS officials, law enforcement agencies, statements of witnesses and parties, transcripts of depositions and court proceedings, administrative hearings and arbitrations, and work product of staff attorneys and legal assistants working on a particular case or matter.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted certain categories of records in this system from subsections (c) (3) and (4); (d); (e) (2) and (3); (e)(4) (G) and (H); (e)(8); (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(5). The system is exempted pursuant to subsection (j)(2) only to the extent that information in a record pertaining to a particular individual relates to a criminal investigation which relates to or constitutes the basis of a particular suit or claim. The system is exempted pursuant to subsection (k)(5) only to the extent necessary to protect a confidential source. Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the Federal Register.

JUSTICE/USM-999

Appendix to U.S. Marshals Service Systems of Records, Official Addresses of United States Marshals.

Northern Alabama
1729 5th Avenue, North, Room 240,
Birmingham, Alabama 35203
Middle Alabama
P.O. Drawer 4249, Montgomery, Alabama
36103
Southern Alabama
P.O. Box 343, Mobile, Alabama 36601
District of Alaska
U.S. Courthouse & Federal Building, 222 W.
7th Avenue, #28, Anchorage, Alaska
99513-7568
District of Arizona
8204 U.S. Courthouse, 230 North First
Avenue, Phoenix, Arizona 85025
Eastern Arkansas
P.O. Box 8, Little Rock, Arkansas 72203
Western Arkansas
P.O. Box 2625, Fort Smith, Arkansas 72902
Northern California
20005 U.S. Courthouse, 450 Golden Gate
Avenue, San Francisco, California 94102
Eastern California
1020 U.S. Courthouse, 750 Capitol Mall,
Sacramento, California 95814
Central California
U.S. Courthouse, 312 North Spring Street
G-23, Los Angeles, California 90012-4798
Southern California

- LLB-71 U.S. Courthouse, 940 Front Street,
San Diego, California 92189
- District of Colorado
Drawer 3599, Denver, Colorado 80294
- District of Connecticut
P.O. Box 904, New Haven, Connecticut
06504
- District of Delaware
4311 U.S. Courthouse, 844 King Street,
Wilmington, Delaware 19801
- District of Columbia
1103 U.S. Courthouse, 3rd & Constitution
Avenue, N.W., Washington, D.C. 20001
- District of Columbia Superior Court
Superior Courthouse, 500 Indiana Avenue,
N.W., Room C-250, Washington, D.C.
20001
- Northern Florida
P.O. Box 10229, Tallahassee, Florida 32302
- Middle Florida
P.O. Box 2907, Tampa, Florida 33601-2907
- Southern Florida
205 Federal Courthouse Square, 301 North
Miami Avenue, Miami, Florida 33218-
7785
- Northern Georgia
1669 Federal Building, 75 Spring Street,
S.W., Atlanta, Georgia 30303
- Middle Georgia
P.O. Box 7, Macon, Georgia 31202
- Southern Georgia
P.O. Box 9765, Savannah, Georgia 31412
- District of Guam
507 Pacific News Building, 238 Archbishop
Flores Street, Agana, Guam 96910
- District of Hawaii
P.O. Box 50184, Honolulu, Hawaii 96850
- District of Idaho
741 U.S. Courthouse, 550 West Fort Street,
Boise, Idaho 83724
- Northern Illinois
219 S. Dearborn Street, Room 2444,
Chicago, Illinois 60604
- Southern Illinois
127 U.S. Courthouse, 750 Missouri Avenue,
East St. Louis, Illinois 62201
- Central Illinois
P.O. Box 156, Springfield, Illinois 62705
- Northern Indiana
233 Federal Building, 204 South Main
Street, South Bend, Indiana 46624
- Southern Indiana
P.O. Box 44803, Indianapolis, Indiana 46244
- Northern Iowa
320 Federal Building, 101 1st Street SE,
Cedar Rapids, Iowa 52401
- Southern Iowa
208 U.S. Courthouse, East First & Walnut
Streets, Des Moines, Iowa 50309
- District of Kansas
456 Federal Building, 444 Southeast Quincy,
Topeka, Kansas 66683
- Eastern Kentucky
P.O. Box 30, Lexington, Kentucky 40501
- Western Kentucky
114 U.S. Courthouse, 601 West Broadway,
Louisville, Kentucky 40202
- Eastern Louisiana
C-600 U.S. Courthouse, 500 Camp Street,
New Orleans, Louisiana 70130
- Middle Louisiana
P.O. Box 3653, Baton Rouge, Louisiana
70821
- Western Louisiana
P.O. Box 53, Shreveport, Louisiana 71161-
0053
- District of Maine
P.O. Box 349 DTS, Portland, Maine 04112
- District of The Northern Mariana Islands
P.O. Box 570, Susupe, Saipan 96950
- District of Maryland
605 U.S. Courthouse, 101 West Lombard
Street, Baltimore, Maryland 21201
- District of Massachusetts
P.O. Box 352, Boston, Massachusetts 02101
- Eastern Michigan
120 Federal Building, 231 West Lafayette
Street, Detroit, Michigan 48226
- Western Michigan
514 Federal Building, 110 Michigan Avenue,
Grand Rapids, Michigan 49503
- District of Minnesota
523 U.S. Courthouse, 110 South 4th Street,
Minneapolis, Minnesota 55401
- Northern Mississippi
P.O. Box 887, Oxford, Mississippi 38655
- Southern Mississippi
P.O. Box 959, Jackson, Mississippi 39205
- Eastern Missouri
108 U.S. Courthouse, 1114 Market Street, St.
Louis, Missouri 63101
- Western Missouri
509 U.S. Courthouse, 811 Grand Avenue,
Kansas City, Missouri 64106
- District of Montana
5110 Federal Building, 316 North 26th
Street, Billings, Montana 59101-1362
- District of Nebraska
P.O. Box 1477, Omaha, Nebraska 68101
- District of Nevada
P.O. Box 18039, Las Vegas, Nevada 89101
- District of New Hampshire
P.O. Box 1435, Concord, New Hampshire
03302
- District of New Jersey
P.O. Box 188, Newark, New Jersey 07101
- District of New Mexico
P.O. Box 444, Albuquerque, New Mexico
87103
- Northern New York
213 Federal Building, 10 Broad Street,
Utica, New York 13501
- Eastern New York
172 U.S. Courthouse, 225 Cadman Plaza
East, Brooklyn, New York 11201
- Southern New York
114 U.S. Courthouse Annex, 1 St. Andrew's
Plaza, New York, New York 10007
- Western New York
129 U.S. Courthouse, 68 Court Street,
Buffalo, New York 14202
- Eastern North Carolina
P.O. Box 25640, Raleigh, North Carolina
27611
- Middle North Carolina
P.O. Box 1528, Greensboro, North Carolina
27402
- Western North Carolina
P.O. Box 710, Asheville, North Carolina
28802
- District of North Dakota
P.O. Box 2425, Fargo, North Dakota 58108-
2425
- Northern Ohio
B-1 U.S. Courthouse, 201 Superior Avenue,
Cleveland, Ohio 44114
- Southern Ohio
P.O. Box 688, Cincinnati, Ohio 45201
- Northern Oklahoma
P.O. Box 1097, Tulsa, Oklahoma 74101
- Eastern Oklahoma
P.O. Box 738, Muskogee, Oklahoma 74402
- Western Oklahoma
P.O. Box 886, Oklahoma City, Oklahoma
73101
- District of Oregon
420 U.S. Courthouse, 620 Southeast Main
Street, Portland, Oregon 97205-3087
- Eastern Pennsylvania
2110 U.S. Courthouse, 601 Market Street,
Philadelphia, Pennsylvania 19106
- Middle Pennsylvania
P.O. Box 310, Scranton, Pennsylvania 18501
- Western Pennsylvania
539 U.S. Courthouse, 7th & Grant Streets,
Pittsburgh, Pennsylvania 15219
- District of Puerto Rico
P.O. Box 3748, San Juan, Puerto Rico 00904
- District of Rhode Island
P.O. Box 1524, Providence, Rhode Island
02901
- District of South Carolina
P.O. Box 1774, Columbia, South Carolina
29202
- District of South Dakota
P.O. Box 1193, Sioux Falls, South Dakota
57101
- Eastern Tennessee
P.O. Box 551, Knoxville, Tennessee 37901
- Middle Tennessee
886 U.S. Courthouse, 801 Broadway,
Nashville, Tennessee 37203
- Western Tennessee
1029 Federal Building, 167 North Main
Street, Memphis, Tennessee 38103
- Northern Texas
1100 Commerce Street, 16F47 Federal
Building, Dallas, Texas 75242
- Eastern Texas
P.O. Box 299, Tyler, Texas 75710
- Southern Texas
P.O. Box 61608, Houston, Texas 77208
- Western Texas
235 U.S. Courthouse, 655 East Durango
Boulevard, San Antonio, Texas 78206
- District of Utah
P.O. Box 1234, Salt Lake City, Utah 84110
- District of Vermont
621 Federal Building, Elmwood Avenue &
Pearl Street, Burlington, Vermont 05402
- Eastern Virginia
104 Federal Building, P.O. Box 20227-22320,
200 South Washington Street,
Alexandria, Virginia 22312
- Western Virginia
P.O. Box 2260, Roanoke, Virginia 24009
- District of the Virgin Islands
P.O. Box 9018, St. Thomas, Virgin Islands
00801
- Eastern Washington
P.O. Box 1463, Spokane, Washington 99210
- Western Washington
300 U.S. Courthouse, 1010 5th Avenue,
Seattle, Washington 98104-1188
- Northern West Virginia
P.O. Box 1454, Elkins, West Virginia 26241
- Southern West Virginia
P.O. Box 2667, Charleston, West Virginia
25330
- Eastern Wisconsin
310 Federal Building, 517 East Wisconsin
Avenue, Milwaukee, Wisconsin 53202
- Western Wisconsin
440 Federal Courthouse, 120 N. Henry
Street, Madison, Wisconsin 53703-2559
- District of Wyoming

P.O. Box 768, Cheyenne, Wyoming 82003
 [FR Doc. 89-24076 Filed 10-12-89; 8:45 am]
 BILLING CODE 4410-01

DEPARTMENT OF JUSTICE

Federal Bureau of Prisons

Intent To Prepare Draft Environmental Impact Statement (DEIS) for Construction of a Federal Metropolitan Detention Center, Brooklyn, NY

AGENCY: Federal Bureau of Prisons, U.S. Department of Justice.

ACTION: Notice of Intent to prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: 1. Proposed Action: The U.S. Department of Justice, Federal Bureau of Prisons has determined that a new Metropolitan Detention Center is needed in its system. An existing eight-story structure known as Federal Building 1 located on the East River (Gowanus Bay) bounded by 29th Street to the north, 30th Street to the south 3rd Avenue to the east and 2nd Avenue to the west in Brooklyn, New York will be evaluated. This building occupies the majority of the site and fronts onto 3rd Avenue. The proposal calls for the construction of a 1000 bed facility to house individuals in a full range of security levels (i.e., minimum, medium, maximum) who are awaiting trial or sentencing by the Federal Courts.

Additionally the site would be used for road access, inmate housing, administration, programs and services, parking and support facilities.

2. In the process of evaluating the tract of land, several aspects will receive a detailed examination including: utilities, traffic patterns, noise levels, visual intrusion, threatened and endangered species, cultural resources, and socio-economic impacts.

3. Alternatives: In developing the DEIS, the options of no action and alternative sites for the proposed facility will be fully and thoroughly examined.

4. Scoping Process: During the preparation of the DEIS there will be numerous opportunities for public involvement in order to determine the issues to be examined. A scoping meeting will be held at a location convenient to the citizens of Brooklyn. The meeting will be well publicized and will be held at a time which will make it possible for the public and interested agencies or organizations to attend. In addition, a number of informal meetings have already been held and will be continued by representatives of the Bureau of Prisons with interested

community leaders, officials and citizens.

5. DEIS Preparation: Public notice will be given concerning the availability of the DEIS for public review and comment.

6. Address: Questions concerning the proposed action and the DEIS can be answered by: William J. Patrick, Chief, Facilities Development and Operations, U.S. Bureau of Prisons, 320 First Street, NW., Washington, DC 20534, Telephone: (202) 272-6535.

William J. Patrick,
 Chief, Facilities Development and
 Operations, Federal Bureau of Prisons,
 Department of Justice.

[FR Doc. 89-24188 Filed 10-12-89; 8:45 am]

BILLING CODE

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract

work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the *Federal Register*, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume State and page number(s).

Volume III

Montana, MT89-5 p. 222e, pp. 222e-222f

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

Connecticut, CT89-1 (Jan. 6, 1989) p. 61, p. 62, 64-65
 District of Columbia, pp. 77, pp. 82
 DC89-1 (Jan. 6, 1989).

Kentucky:

KY89-3 (Sept. 29, 1989) p. 289, p. 290
 KY89-7 (Jan. 6, 1989) p. 311, p. 312
 KY89-29 (Jan. 6, 1989) p. 370a, p. 370b
 Maryland, MD89-19 (Jan. 6, 1989) p. 456c, pp. 456c-456d

New York:

NY89-2 (Jan. 6, 1989) p. 683, pp. 686-688
 NY89-3 (Jan. 6, 1989) p. 701, pp. 702-703
 NY89-4 (Jan. 6, 1989) p. 709, p. 710
 NY89-7 (Jan. 6, 1989) p. 737, p. 739
 NY89-8 (Jan. 6, 1989) p. 755, pp. 757, 761
 NY89-9 (Jan. 6, 1989) p. 767, 768
 NY89-10 (Jan. 6, 1989) p. 769, p. 771
 NY89-12 (Jan. 6, 1989) p. 789, pp. 791, 795
 NY89-13 (Jan. 6, 1989) p. 799, p. 801
 NY89-14 (Jan. 6, 1989) p. 807, p. 808
 NY89-15 (Jan. 6, 1989) p. 811, p. 812
 NY89-17 (Jan. 6, 1989) p. 817, pp. 818, 821

Pennsylvania:

PA89-1 (Jan. 6, 1989) p. 837, p. 840
 PA89-7 (Jan. 6, 1989) p. 905, pp. 906-908, p. 911
 PA89-8 (Jan. 6, 1989) p. 915, pp. 916-918
 PA89-15 (Jan. 6, 1989) p. 957, p. 958
 Rhode Island, RI89-1 (Jan. 6, 1989) p. 1023, pp. 1024-1026
 West Virginia, WV89-3 (Jan. 6, 1989) p. 1233, p. 1236

Volume II

Iowa:

IA89-3 (Jan. 6, 1989) p. 33, p. 34
 IA89-4 (Jan. 6, 1989) p. 37, p. 38
 IA89-5 (Jan. 6, 1989) p. 41, pp. 45, 46
 Missouri, MO89-2 (Jan. 6, 1989) p. 647, pp. 649-650

Ohio:

OH89-1 (Jan. 6, 1989) p. 773, pp. 774-775
 OH89-3 (Jan. 6, 1989) p. 809, p. 810
 OH89-28 (Jan. 6, 1989) p. 863, p. 864
 OH89-29 (Jan. 6, 1989) p. 869, pp. 870-906

Texas, TX89-15 (Jan. 6, 1989) p. 1021, p. 1022

Wisconsin:

WI89-7 (Jan. 6, 1989) p. 1161, p. 1162
 WI89-8 (Jan. 6, 1989) p. 1165, pp. 1167, 1177
 WI89-10 (Jan. 6, 1989) p. 1187, pp. 1189, 1193
 WI89-15 (Jan. 6, 1989) p. 1215, p. 1216

Volume III

California, CA89-2 (Jan. 6, 1989) p. 43, pp. 44-46, 48, pp. 52-55
 Montana, MT89-5 (Jan. 6, 1989) p. 222e, pp. 222e-222f
 North Dakota, ND89-3 (Jan. 6, 1989) p. 235, p. 236

Oregon, OR89-1 (Jan. 6, 1989) p. 307, pp. 309, 315

Washington:

WA89-2 (Jan. 6, 1989) p. 389, pp. 390-392, 394
 WA89-3 (Jan. 6, 1989) 401, p. 402
 WA89-5 (Jan. 6, 1989) p. 411, p. 412
 WA89-6 (Jan. 6, 1989) p. 415, p. 416
 WA89-7 (Jan. 6, 1989) p. 417, p. 418
 WA89-8 (Jan. 6, 1989) P. 423, p. 424

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 6th day of October 1989.

Ethel P. Miller,

Acting Director, Division of Wage Determinations.

[FR Doc. 89-24308; Filed 10-12-89; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 23, 1989.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 23, 1989.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 2d day of October 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition number	Articles produced
AT&T Microelectronics (IBEW)	Union, NJ	10/02/89	09/21/89	23,436	Microelectronics.
AT&T Microelectronics (Workers)	Richmond, VA	10/02/89	09/19/89	23,437	Microelectronics.
AT&T Microelectronics (IBEW)	Clark, NJ	10/02/89	09/19/89	23,438	Microelectronics.
AT&T Microelectronics (IBEW)	Allentown, PA	10/02/89	09/08/89	23,439	Microelectronics.
Bluebonnet Savings Bank (Workers)	Colorado City, TX	10/02/89	09/20/89	23,440	Savings Bank.
Commodore Semiconductor (Workers)	Norristown, PA	10/02/89	09/08/89	23,441	Integrated Circuits.
Corlett-Turner Co., (Company)	Holland, MI	10/02/89	09/22/89	23,442	Journal Roller Bearings, Motor Shafts.
Ellwood City Iron & Wire Co (USWA)	Ellwood City, PA	10/02/89	09/19/89	23,443	Fabricated Steel.
General Motors Corp., BOC Janesville (UAW)	Janesville, WI	10/02/89	09/18/89	23,444	Automobiles.
Hercules Engines (UAW)	Canton, OH	10/02/89	09/20/89	23,445	Gasoline & Diesel Engines.
Kerr-McGee Corp (Workers)	Midland, TX	10/02/89	08/11/89	23,446	Crude Oil & Natural Gas.
Lee C. Moore Corp. (Iron Workers)	Tulsa, OK	10/02/89	09/18/89	23,447	Oilfield Machinery.
Mari Leather Works (Workers)	Hialeah, FL	10/02/89	08/31/89	23,448	Leather & Vinyl Car Products.
North American Cerutti Corp. (USWA)	Pittsburgh, PA	10/02/89	09/06/89	23,449	Printing Presses & Parts.
Palace Knitting Mills (Workers)	Brooklyn, NY	10/02/89	09/18/89	23,450	Knitted Fabrics.
Robinson Thread Co. (Workers)	Worcester, MA	10/02/89	09/19/89	23,451	Shoe Thread.
Rooster, Inc. (Workers)	Philadelphia, PA	10/02/89	09/22/89	23,452	Men's Ties.
Ship 'N Shore (ILGWU)	Baxley, GA	10/02/89	09/20/89	23,453	Ladies Sportswear.
Tubular, Inc. (Workers)	Youngstown, OH	10/02/89	09/20/89	23,454	Exercise Equipment
Wella Corp. (Workers)	Englewood, NJ	10/02/89	09/21/89	23,455	Hair Care Products.
Western Cutlery (Company)	Longmont, CO	10/02/89	09/19/89	23,456	Sporting Knives.

[FR Doc. 89-24249 Filed 10-12-89 8:45 am]

BILLING CODE 4510-30-M

[TA-W-23,001]

Getter Trucking, Inc., Corporate Headquarters, Billings, Montana and Operating at Various Locations in the Following States

In the matter of:

TA-W-23,001A Montana
 TA-W-23,001B North Dakota
 TA-W-23,001C Oklahoma
 TA-W-23,001D Texas
 TA-W-23,001E Wyoming
 TA-W-23,001F Utah

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 28, 1989 applicable to all workers of Getter Trucking, Inc.

Based on new information from the company, additional workers were separated from Getter Trucking in the State of Utah. The notice for Getter Trucking, therefore is amended by including all locations in the State of Utah. The amended notice applicable to TA-W-23,001 is hereby issued as follows:

All workers of Getter Trucking, Inc., headquartered in Billings, Montana (TA-W-23,001) and operating at various locations in the States of Montana, North Dakota, Oklahoma, Texas, Wyoming and Utah who

became totally or partially separated from employment on or after May 12, 1988 are eligible to apply for adjustment assistance under section 222 of the Trade Act of 1974.

Signed at Washington, DC this 2nd day of October 1989.

Stephen A. Wandner,
Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-24228 Filed 10-12-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-22,630]

**Imprimis Technology, Inc.,
 Bloomington, MN; Dismissal of
 Application for Reconsideration**

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Imprimis Technology, Inc., Bloomington, Minnesota. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-22,630; Imprimis Technology, Inc. Bloomington, Minnesota (September 29, 1989).

Signed at Washington, DC this 5th day of October 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89-24227 Filed 10-12-89; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-89-15-M]

**Aluminum Co. of America; Petition for
 Modification of Application of
 Mandatory Safety Standard**

Aluminum Company of America, Point Comfort Operations, Point Comfort, Texas 77978 has filed a petition to modify the application of 30 CFR 56.14130 (roll-over protection structures (ROPS) and seat belts) to its Bayer Alumina Plant (I.D. No. 41-00320) located in Calhoun County, Texas. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that scale haulage vehicles be equipped with roll-over protective structures (ROPS).

2. The use of ROPS on the scale haulage vehicles in the Precipitation Department would result in diminution of safety to the employees affected because the ROPS would:

(a) Interfere with process piping, hose connections, and other process equipment which could result in damage creating both thermal and chemical burn hazards; and

(b) Reduce visibility and creates head and neck pinch points between the ROPS and steel columns due to close clearances and congestion.

3. Elimination of the use of the scale haulers would greatly increase the physical demands for the employees and represent a serious potential for increased debilitating back injuries.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 13, 1989. Copies of this petition are available for inspection at that address.

Dated: October 5, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-24230 Filed 10-12-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-16-M]

Aluminum Co. of America; Petition for Modification of Application of Mandatory Safety Standard

Aluminum Company of America, Point Comfort Operations, Point Comfort, Texas 77979 has filed a petition to modify the application of 30 CFR 56.14131 (seat belts for haulage trucks) to its Bayer Alumina Plant (I.D. No. 41-00320) located in Calhoun County, Texas. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that seat belts are required to be provided and worn in haulage trucks.

2. In a separate petition (M-89-15-M), petitioner proposes to operate scale haulage vehicles without roll-over protective structures (ROPS).

3. The use of seat belts on the scale haulage vehicles in the Precipitation Department would result in a diminution of safety to the employees affected. The mobile equipment operator, if required to wear seat belts without ROPS being provided, would be restrained to a seat that has no additional zone of safety during a lateral overturn or rollover.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson

Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 13, 1989. Copies of the petition are available for inspection at that address.

Dated: October 5, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-24231 Filed 10-12-89; 8:45 am]

BILLING CODE 4510-43-M

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefits Plans; Work Group Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Enforcement of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 10:00 a.m., Wednesday, November 1, 1989, in Room C-5521, Seminar Room #4, U.S. Department of Labor Building, Third and Constitution Avenue NW., Washington, DC 20210.

This seven member work group was formed by the Advisory Council to study issues relating to enforcement for employee welfare plans covered by ERISA.

The purpose of the meeting will be for the Working Group to consider and discuss testimony received at the September 12, 1989 meeting, as well as other developments relating to the Department's ERISA enforcement program.

The Working Group will take testimony and/or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations, wishing to address the Working Group should submit written requests on or before October 27, 1989 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N-5677, 200 Constitution Avenue NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers

will be accepted and included in the record of the meeting if received on or before October 27, 1989.

Signed at Washington, DC, this 6th day of October, 1989.

[FR Doc. 89-24242 Filed 10-12-89; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: Office of Records Administration, NARA.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATE: Requests for copies must be received in writing on or before November 27, 1989. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESS: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what

happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending:

1. Defense Logistics Agency (N1-361-89-4). Procurement records.

2. Department of Commerce, Patent and Trademark Office (N1-241-89-1). Records of the Patent Cooperation Treaty Program.

3. Department of Commerce, Patent and Trademark Office (N1-241-89-2). Records of the Office of Legislation and International Affairs.

4. Department of the Interior, Office of the Secretary (N1-48-89-1). Solid Fuels Administration for War employee clearance forms.

5. Department of Justice, Federal Bureau of Investigation (N1-65-89-8). Records whose destruction has been mandated by Court Order.

6. Department of Labor, Bureau of Labor Statistics (N1-257-89-1). Records concerning consumer expenditure surveys, 1928-72.

Dated: October 5, 1989.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 89-24190 Filed 10-12-89; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the National Council on the Arts/National Assembly of State Arts Agencies/National Assembly of Local Arts Agencies Subcommittee to the National Council on the Arts will be held on November 2, 1989, from 2:30 p.m.-4:30 p.m. in room M07 at the Nancy Hanks Center, 1100 Pennsylvania Avenue N.W., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topic for discussion will be policy issues.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue N.W., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: October 5, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-24191 Filed 10-12-89; 8:45 am]

BILLING CODE 7537-01-M

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Advancement Section) to the National Council on the Arts will be held on November 13-16, 1989, from 9:00 a.m.-9:00 p.m. and November 17, 1989, from 9:00 a.m.-5:00 p.m. in Room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue N.W., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the

determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: October 5, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 24192 Filed 10-12-89; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice of permits issued.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On August 31, 1989, the National Science Foundation published a notice in the Federal Register of permit applications received. Permits were issued to the following individuals on October 4, 1989:

Albert Bennett
Paul Dayton
Cornelius Sullivan

Charles E. Myers,
Permit Office, Division of Polar Programs,
[FR Doc. 89-24156 Filed 10-12-89; 8:45 am]

BILLING CODE 7555-01-M

Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978, Public Law 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to

conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to these permit applications by November 15, 1989. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESS: Comments should be addressed to Permit Office, Room 627, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers at the above address or (202) 357-7934.

SUPPLEMENTAL INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95-541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed in 1964 by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctic and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest. Additional information was published in the *Federal Register* on July 17, 1989.

The applications received are as follows:

1. Applicant

Jonathan H. Berg
Department of Geology
Northern Illinois University
DeKalb, Illinois 60115

Activity for Which Permit Requested

Enter Specially Protected Areas, enter Sites of Special Scientific Interest. The applicant is conducting geological research and requests permission to enter protected areas to collect rock samples.

Location

Specially Protected Areas No. 5 (Beaufort Island) and No. 7 (Cape Hallett); Sites of Special Scientific Interest No. 3 (Barwick Valley), No. 12 (Taylor Valley), No. 18 (White Island), No. 19 (Linnaeus Terrace).

Dates

November 1989–February 1990.

2. Applicant

Mark D. Kurz
Woods Hole Oceanographic Institution
Woods Hole, Massachusetts 02543

Activity for which permit requested

Enter Site of Special Scientific Interest. The applicant is conducting geological research and requests permission to enter protected areas to collect rock samples.

Location

Sites of Special Scientific Interest No. 1 (Cape Royds), No. 4 (Cape Crozier), No. 19 (Linnaeus Terrace).

Dates

December 1989–January 1991.

3. Applicant

Malcolm Browne
Science News Department
The New York Times
229 West 43rd Street
New York, New York 10036
Michael D. Lemonick
Associate Editor
TIME
Time and Life Building
Rockefeller Center
New York, New York 10020
John Fanshaw
WETA/TV
P.O. Box 2626
Washington, DC 20013
David Baron
WBUR
630 Commonwealth Avenue
Boston, Massachusetts 02215
Alan Hall
Senior Editor for Science and Technology
Business Week
39th Floor
McGraw Hill Building
1221 Avenue of the Americas
New York, New York 10020
Ellen Hale
Gannett News Service
10th Floor
1000 Wilson Boulevard
Arlington, Virginia 22209

Activity for which permit requested

Taking.

The applicants are members of the news media who are in Antarctica to report on the U.S. Antarctic Program. They request permission to observe at close range scientists working with protected species of birds and mammals. Some members of the news media may enter Cape Royds site of Special Scientific Interest to observe scientists at work.

Location

McMurdo Station and vicinity, Antarctica.
Cape Royds Site of Special Scientific Interest.

Dates

November 1989–February 1990.

Charles E. Myers,
Permit Office.

[FR Doc. 89-24157 Filed 10-12-89; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-603-OM/SC, 50-604-OM/SC; ASLBP No. 87-596-01-OM/SC]

Atomic Safety and Licensing Board; Hearing

October 6, 1989.

Before Administrative Judges: Morton B. Margulies, Chairman; Oscar H. Paris; Frederick J. Shon.

In the matter of All Chemical Isotope Enrichment, Inc. (Construction Permit Nos. CPEP-1 and CPEP-2).

Please take notice that a hearing will be conducted in the captioned proceeding in response to a request made by All Chemical Isotope Enrichment, Inc., pursuant to an order issued by the Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support, dated August 8, 1989, entitled "Order Modifying Licenses and Order To Show Cause Why Licenses Should Not Be Revoked."

The order, published in the *Federal Register* (54 FR 35544-46, August 28, 1989), in summary alleges:

(1) All Chemical Isotope Enrichment, Inc. (AIChemIE or licensee) is the holder of Construction Permits CPEP-1 and CPEP-2, issued February 10, 1989, by the Nuclear Regulatory Commission pursuant to 10 CFR part 50. CPEP-1 authorizes AIChemIE to modify the existing Centrifuge Plant Demonstration Facility at the Department of Energy's Oak Ridge Tennessee Gaseous Diffusion Plant. CPEP-2 authorizes the licensee to construct a new facility at Oliver Springs, Tennessee. Both plants are to be used for the enrichment of stable isotopes, using classified gas centrifuge machines capable of enriching uranium, that are contracted to be acquired from the Department of Energy. The permits provide for the implementation of security and safeguard measures by the licensee;

(2) AIChemIE, in applying to the Nuclear Regulatory Commission for

permits, failed to fully and accurately disclose its true financial condition during the licensing review period that if the Staff had known the licensee's true financial conditions, it would not have issued construction permits to AlChemIE.

(3) AlChemIE has not demonstrated that it is financially qualified to conduct the activities under the licenses.

(4) The issuance of the construction permits to AlChemIE was based upon the licensee taking possession of the classified gas centrifuge equipment under the sales agreement. AlChemIE has failed to take possession of the equipment and the Department of Energy will not provide AlChemIE with the opportunity to take possession. Without possession of the gas centrifuge machines the projected activities cannot occur and there is no longer any purpose for the construction permits.

Because of the foregoing, the Deputy Executive Director for Nuclear Materials Safety Safeguards, and Operations Support, in the order, pursuant to Sections 103, 161b, 161c, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954 and 10 CFR 2.204 and 10 CFR part 50, modified the permits, effective immediately, so as to require 30 days notice to the Nuclear Regulatory Commission prior to the licensee's taking possession of the classified equipment.

Furthermore, AlChemIE was ordered, pursuant to Section 186 of the Act, 10 CFR 2.202(b) and 10 CFR part 50 to show cause why its licenses should be revoked. Licensee was advised that it could request a hearing. Also, notice was given that if a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which the person's interest is adversely affected by the order and address the criteria set forth in 10 CFR 2.714(d).

AlChemIE submitted a response to the Nuclear Regulatory Commission on September 13, in which it answered the order and requested a hearing.

AlChemIE asserts, among other things, that:

(1) It has not at any time deceived or intended to deceive the Nuclear Regulatory Commission in furnishing information pertaining to its corporate financial status.

(2) It is financially qualified to proceed with its planned scope of operation in a fashion that offers adequate protection for the common defense and security and fully effectuates security plans and arrangements.

(3) The contract with the Department of Energy has been satisfied by the licensee but the Department of Energy has taken actions beyond the licensee's control, actions which have impeded and interfered with AlChemIE's ability to perform. The issue of the transfer of equipment is yet to be resolved.

Licensee consents to providing notice to the Nuclear Regulatory Commission prior to taking possession of the classified equipment. However, it states that in the event the 30 day notice requirement should negatively impact on AlChemIE's ability to proceed with the project, it would request that the Commission review the circumstances and make such modifications as would be appropriate under the circumstances.

AlChemIE requested that its construction permits should not be suspended or revoked and that it should be given a full and fair hearing on the issues. No person other than the licensee requested a hearing.

The licensee shall be granted a hearing on the issues raised, as is provided for by law. The time and place of the hearing will be noticed by further order.

It is so Ordered. Bethesda, Maryland, October 6, 1989.

For the Atomic Safety and Licensing Board.
Morton B. Margulies,
Chairman, Administrative Law Judge.
[FR Doc. 89-24221 Filed 10-12-89; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-440]

The Cleveland Electrical Illuminating Co., et al.—Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 23 to Facility Operating License No. NPF-58 issued to The Cleveland Electric Illuminating Company, Duguesne Light Company, Ohio Edison Company, Pennsylvania Power Company and Toledo Edison Company (the licensees), which revised Attachment 1 to the Facility Operating License for operation of the Perry Nuclear Power Plant, Unit No. 1 located in Lake County, Ohio. The amendment is effective as of the date of issuance.

The amendment modified Attachment 1 to the license to incorporate by reference the licensees' reassessment of human engineering deficiencies (HED's) identified during their detailed control room design review (DCRDR) required by item I.D.1 of NUREG-0737. The new reference documents revised

commitments for resolution of the HED's previously identified in the DCRDR summary reports and supplements which are also referenced in Attachment 1 of the Facility Operating License.

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 21, 1989 (54 FR 11598). 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 February 10, 1989, (2) Amendment No. 23 to Facility Operating License No. NPF-58, (3) the Commission's related Safety Evaluation dated July 6, 1989, and (4) the Environmental Assessment dated June 26, 1989. 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 Perry Public Library, 3753 Main Street, Perry, Ohio 44081. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 4th day of October 1989.

For the Nuclear Regulatory Commission.
Thomas V. Wambach,

Acting Director, Project Directorate 111-3,
Division of Reactor Projects—III, IV, V and
Special Projects, Office of Nuclear Reactor
Regulation.

[FR Doc. 89-24224 Filed 10-12-89; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. STN-50-363]

Order Revoking Construction Permits; GPU Nuclear Corp.

In the matter of GPU Nuclear Corp., Forked River Nuclear Plant, Unit 1.

I

On July 10, 1973, the United States Nuclear Regulatory Commission (Commission) issued Construction Permit CPPER-96 to GPU Nuclear Corporation (GPUN), authorizing construction of the Forked River Nuclear Plant, Unit 1, a pressurized water reactor, at a site in Ocean County, New Jersey. The latest construction completion date set forth in the permit was February 1, 1983. GPUN submitted a timely request, by letter dated August 31, 1978, to extend the latest construction completion date to February 1, 1985. By letter dated July 30, 1979, in the aftermath of the TMI-2 event, the licensee requested that the NRC defer any action on their August 31, 1978 request.

II

By letter dated July 12, 1988, GPUN requested that the construction permit for Forked River be withdrawn. The letter stated that construction activity at Forked River was suspended in 1979. A site stabilized plan summary was also transmitted by the July 12, 1988, letter.

III

The site stabilization plan provides for the stabilization of the site by grading, revegetation and the use of holding ponds to limit erosional runoff until revegetation is completed. The plan will remain in effect until the long-term use of the site is implemented, at which time it will be incorporated into that use. Pursuant to 10 CFR 51.32, the Commission has determined that the revocation of this construction permit will have no significant impact on the environment. An Environmental Assessment and Finding of No Significant Impact was published in the Federal Register on October 4, 1989 (54 FR 4093).

The applicant's letter dated July 12, 1988, and the NRC staff's letter and evaluation of the request for withdrawal of the permit, and the staff's evaluation of the Site Stabilization Plan, dated September 27, 1989, are available for inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

It is hereby ordered, That Construction Permit CPPER-96 is revoked.

This Order is effective upon issuance.

Dated at Rockville, Maryland, this 4th day of October 1989.

For the Nuclear Regulatory Commission.
Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 89-24223 Filed 10-12-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket 70-25]; Special Material License Number SNM-2]

Rockwell International Corp., Rocketdyne Division; Assignment of Atomic Safety and Licensing Appeal Board

Notice is hereby given that, in accordance with the authority conferred by 10 CFR 2.787(a), the Chairman of the Atomic Safety and Licensing Appeal Panel has assigned the following panel members to serve as the Atomic Safety and Licensing Appeal Board for this special material license proceeding: Christine N. Kohl, Chairman, G. Paul Bollwerk, III, Howard A. Wilber.

Dated: October 5, 1989.

Barbara A. Tompkins,
Secretary to the Appeal Board.

[FR Doc. 89-24092 Filed 10-12-89; 8:45 am]

BILLING CODE 7590-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-029]

Yankee Atomic Electric Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (this Commission) is considering issuance of an amendment to Facility Operating License No. DPR-3, issued to Yankee Atomic Electric Company (the licensee), for operation of the Yankee Nuclear Power Station (Rowe), located in Franklin County, Massachusetts.

The amendment, in accordance with the licensee's application for amendment dated September 14, 1989, revises the Yankee Rowe Technical Specifications with respect to eliminating cycle-specific parameter limits from technical specifications and placing them in a Core Operating Limits Report. This report is referenced in the technical specifications.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By November 13, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a part in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rule of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and the Local Public Document Room located at the Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to

intervene, which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to a least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or petition for leave to intervene shall be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Richard H. Wessman, petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register Notice**. A copy of the petition should also be sent to Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Thomas Dignan,

Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02111, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)-(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice of public comment of its proposed finding of no significant hazards considerations in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated September 14, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Dated at Rockville, Maryland, this 6th day of October, 1989.

For the Nuclear Regulatory Commission,
Richard H. Wessman, Director,
Project Directorate I-3, Division of Reactor
Projects I/II, Office of Nuclear Reactor
Regulation.

[FR Doc. 89-24225 Filed 10-12-89; 8:45 am]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

[Docket No. N89-1]

Change in Service, 1989 First-Class Delivery Standards Realignment Prehearing Conference

October 6, 1989.

Notice is hereby given that pursuant to Presiding Officer's Notice, Dated October 6, 1989, a Prehearing Conference has been scheduled in the above-referenced proceeding, to be held on October 25, 1989, at 9:30 a.m., in the Commission's Conference Room, Postal Rate Commission, 1333 H Street NW., Suite 300, Washington, DC.

Charles L. Clapp,
Secretary.

[FR Doc. 89-24127 Filed 10-12-89; 8:45 am]

BILLING CODE 7710-FW-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142

Upon Written Request:

Copy Available From: Securities and Exchange Commission, Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549-1002

Extension: Form S-18, File No. 270-119; Form 15, File No. 270-170; Industry Guides, File No. 270-69

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Forms S-18, 15, and The Industry Guides For The Preparation And Filing Of Registration Statements ('Industry Guides'). The first, Form S-18, is used by any business not filing reports with the Commission that wants to sell its securities publicly. The second, Form 15, is needed by the Commission in order to fulfill the statutory responsibility of determining whether to accelerate the effective date of the termination of registration and to apprise investors that periodic reports concerning the affected issuer no longer will be filed with the Commission, and why. The third, the 'Industry Guides', is used by registrants in specified industries as guidelines to be followed in disclosing information to investors in registration statements filed pursuant to the 1933 Act.

Each of the estimated 632 respondents using Form S-18 incurs an average estimated 1280 burden hours to comply with the Form requirements. Each of the 1096 respondents using Form 15 incurs an average 1.5 burden hour to comply with the Form. The sole respondent using the 'Industry Guide' incurs an average of one burden hour.

The estimated average burden hours are solely for purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even representative sample or study of the costs of the Securities and Exchange Commission's rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC forms to Kenneth A. Fogash, Deputy Executive Director, 450 Fifth Street, NW., Washington, DC 20549-6004, and Gary Waxman, Clearance Officer, Office of Management and Budget, Paperwork

Reduction Project 3235-0101-Form S-18, 3235-0167-Form 15, and 3235-0069—Industry Guides, Room 3208 New Executive Building, Washington, DC 20543.

Dated: September 29, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-24128 Filed 10-12-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27326; File No. SR-AMEX-89-20]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Filing and Order Granting Accelerated Approval to Proposed Rule Change Relating to an Index Hedge Exemption

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 8, 1989 the American Stock Exchange, Inc. ("AMEX" or "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

Currently, Commentary .01 to Rule 904(C) provides for a hedge exemption from broad-based index options positions limits for holders of stock portfolios that meet criteria established by the Exchange. That provision is the subject of a one-year pilot program which is scheduled to expire on July 22, 1989. The Exchange requests approval of (1) an extension of the pilot program, and (2) expansion of the securities positions eligible for the hedge exemption as set forth in Exhibit 1 herein.

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 place 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 July 22, 1988, the Commission granted approval of a pilot program which permits the Exchange to exempt from position limits established for broad-based index options customers who hold pre-approved portfolios of long positions in common stocks. The Exchange is proposing to expand the scope of the exemption to include short stock positions as well as the securities eligible as the underlying basis of the hedge.

While the current exemption is available only to accounts with long positions in a diversified portfolio of stock who plan to hedge by selling calls or buying puts, the Exchange believes it can be equally useful to accounts with short stock positions in a diversified portfolio who seek to offset economic risk by buying calls or selling puts on a broad-based stock index. Accordingly, as more fully described in Exhibit 1, the Exchange intends to allow the following hedges:

- Long stock or its equivalent, short calls/long puts;
- Short stock or its equivalent, long calls/short puts.

In addition, the Exchange believes the types of "equivalent" positions that may be eligible to serve as the underlying basis of the exemption should be expanded to include convertible instruments such as convertible bonds. In all instances, the Exchange's surveillance staff will continue to review each application to determine a position's eligibility and track the positions and dollar values of the instruments. The expansion of the scope of the hedge exemption in this manner should give institutions greater flexibility in portfolio management.

The AMEX believes the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Exchange since it is designed to give investors with large portfolios the ability to hedge those portfolios while increasing the depth and liquidity of index option trading without increasing the risk of market manipulation or disruption.

Therefore, the AMEX believes the proposed rule change is consistent with section 6(b)(5) of the 1934 Act, which provides in pertinent part, that the rules of the Exchange are to be designed to

promote just and equitable principles of trade and to protect the investing public.

B. Self-Regulatory Organization's Statement on Burden on Competition

The AMEX believes that the proposed rule change will not impose a 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 Amex Board of Governors comprised of members and representatives of member firms, has endorsed the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission concludes, as it did with the original pilot program and a similar Chicago Board Options Exchange, Inc. ("CBOE") pilot program¹ that the amended pilot program will allow more effective hedging of stock portfolios and may increase the depth and liquidity of the stock index options market without significantly increasing concerns regarding manipulation of these products or disruptions of the stock market. Specifically, the Commission believes the amended proposal will enable public customers that have a short stock portfolio to utilize the hedge exemption. The Commission notes that, at present, institutions with significant short stock portfolios are generally constrained in their ability to hedge such positions with index options by current position limits. As a result, many institutions utilize financially equivalent index futures products to the competitive disadvantage of the options exchanges. Extending the public customer hedge exemption to institutions with short stock portfolios should provide such institutions with an alternative hedging technique. The Commission also notes that the AMEX's surveillance procedures will monitor unusual customer activity and take steps to

¹ See Securities Exchange Act Release No. 25938 (July 22, 1988), 53 FR 25938 (July 29, 1988) and Securities Exchange Act Release No. 25739 (May 24, 1988), 53 FR 20204 (June 2, 1988).

withdraw exemptions if violations are found. Moreover, the Exchange has proposed the revised pilot program for one year and the AMEX and the Commission can monitor the effects of the hedge exemption on the market to ensure that problems have not arisen due to the increased position and exercise limits.

Additionally, the Commission believes that it is appropriate for the Exchange, on a case-by-case basis, to include economically convertible bonds and readily convertible securities to determine the underlying basis for the hedge exemption. In this regard, the Commission notes that the Exchange's Surveillance staff will review the application of this provision to specific corporate instruments and monitor the position and dollar value of all the instruments that comprise the basis for the hedge.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication in the *Federal Register* because the proposal is substantially identical to another proposal submitted by the Chicago Board Options Exchange that was noticed for the full thirty-day period and recently approved by the Commission.²

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-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 3, 1989.

It is therefore ordered, pursuant to section 19(b)(2) of the Act³, that the

proposed rule change (SR-AMEX-89-20) is approved.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.⁴

Dated: October 2, 1989.

Jonathan G. Katz,
Secretary.

Exhibit 1—Position Limits—Hedge Exemption for Broad-Based Index Options

A customer may receive an exemption from broad-based index options position limits if the following procedures and criteria are met.

(a) The customer must receive Exchange approval for the hedge exemption which will specify the maximum number of contracts which may be exempt. A customer so approved is hereinafter referred to as a "hedge exemption customer". The hedge exemption customer may apply from time to time for an increase in the maximum number of contracts exempt from position limits.

(b) The hedge exemption customer must provide all information required on Exchange-approved forms and keep such information current.

(c) The customer holds a net long or short position in each of the stocks in a portfolio which has been previously established or in securities readily convertible into or economically equivalent to a portfolio of stocks. The hedge position must be carried in an account with an Exchange member.

(d) The stock portfolio or its equivalent is composed of net long or short positions in common stocks in at least four industry groups and contains at least twenty stocks, none of which accounts for more than fifteen percent of the value of the portfolio (hereinafter "qualified portfolio"). To remain qualified, a portfolio must at all times meet these standards notwithstanding trading activity in the stocks or their equivalents.

(e) The exemption [only] applies to [short call and long puts in] broad-based index options dealt in on the Exchange [a combination thereof or such equivalent positions as are approved in advance by the Exchange] to the extent the underlying value of such position does not exceed the value of the qualified portfolio. The value of the portfolio is:

(1) The total value of the net [long] stock position and/or its economic equivalent less;

(2) The value of any economically offsetting positions in (a) [any short calls and long puts in] broad-based stock index options, (b) [any short positions in] stock index futures, and (c) [any economically equivalent positions in] options on stock index futures [stock index options or futures]. In no event may exempted positions exceed 75,000 XII contracts for options and 50,000 contracts for XMI options.

(f) The hedge exemption customer shall agree to promptly provide the Exchange with any information requested concerning the dollar value and composition of the customer's stock portfolio, and/or equivalent, the current hedged and aggregate option

position, and any stock index futures or options on stock index futures positions.

(g) The hedge exemption customers and any member carrying an account for the customer shall:

(1) Comply with all Exchange rules and regulations;

(2) Liquidate and establish options, [and] stocks and their equivalent positions in an orderly fashion, not initiate or liquidate positions in a manner calculated to cause unreasonable price fluctuations or unwarranted price changes, and not initiate or liquidate a stock or its equivalent position with an equivalent index option position with a view toward taking advantage of any differential in price between a group of securities and an overlying stock index option;

(3) Liquidate any options prior to or contemporaneously with a decrease in the [value] size of the qualified portfolio;

(4) Promptly notify the Exchange of any material change in stock or its equivalent positions [portfolio] or stock index futures positions which materially affects the value of the qualified portfolio;

(5) Cause all options orders subject to this exemption on the floor to be designated "hedge";

(6) Abide by prevailing exercise limits allowed pursuant to Rule 905C, without regard to this exemption provision, except in expiring series exercised on the last business day prior to expiration.

(h) If any member carrying an account for a hedge exemption customer with broad-based index options positions dealt in on the Exchange has reason to believe that as a result of an opening transaction the customer would, acting alone or in concert with others, directly or indirectly, violate this hedge option position exemption, [and such opening transaction occurs,] then the member has violated Exchange Rule 904C.

(i) Violation of any of these provisions, absent reasonable justification or excuse, shall result in withdrawal of the hedge exemption and may form the basis for subsequent denial of an application for a hedge exemption hereunder.

[FR Doc. 89-24133 Filed 10-12-89; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-27334; File No. GSCC-89-10]

Self-Regulatory Organizations; Government Securities Clearing Corp.; Notice of Filing of Proposed Rule Change Making Various Changes to GSCC's Rules

October 3, 1989.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 21, 1989, GSCC 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

² See Securities Exchange Act Release No. 27322 (September 29, 1989).

³ 15 U.S.C. 78s(b) (1982).

⁴ 17 CFR 200.30(a)(12) (1986).

GSCC. The Commission is publishing this notice to solicit comments on the proposed rules changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms and Substance of the Proposed Rules Changes

The proposed rules changes would modify GSCC's Rules as in Exhibit A of the filing which may be examined at the places specified in item IV.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules Changes

In its filing with the Commission, GSCC included statements concerning the purpose of, and basis for, the proposed rule changes and discussed any comments it received on the proposed rules changes. The text of these statements may be examined at the places specified in Item IV below. GSCC 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 Rules Changes

(a) The purpose of this rule filing is to make various changes to the current GSCC rules that are now appropriate in view of the changes to the GSCC rules that were approved on July 7, 1989 with regard to the commencement of the netting operation and in view of GSCC's experience to date with netting.

1. Revised Rule 3 (Lists to be Maintained)

The current section 1 of Rule 3 refers to "Cleared Securities", which is no longer a defined term in Rule 1. The section is amended to refer to "Eligible Securities" and "Eligible Netting Securities", which are now defined terms in Rule 1. The section also is amended to make clear that each Member is entitled to (and, indeed, GSCC will endeavor to make readily available) a copy of the lists of eligible securities and eligible netting securities maintained by GSCC.

The current section 2 of Rule 3 is amended to reflect the three categories of Members of GSCC that are now provided for in Rule 2 and the fact that there is now a netting service also being provided by GSCC, and to make clear that each Member is entitled to (and, again, GSCC will endeavor to make readily available) a copy of the lists of GSCC Members. Moreover, certain language is deleted because there no

longer is good reason to maintain a list of brokers and dealers on whose behalf Members have indicated they will act in comparing trades.

2. Revised Rule 13 (Funds-Only Settlement)

The first and second paragraphs of section 5 are revised by deleting the references to 10:00 a.m. and 11:00 a.m. and substituting references to one-and-a-half hours and two-and-a-half hours after the opening of the cash FedWire. The latter references are more appropriate because, while the cash FedWire ordinarily opens at 8:30 a.m., at times it opens later than that. Such delayed openings, which may even be later than 10:00 a.m., may result in insufficient time for the making of a payment by or to a Netting Member; such a scenario is not sufficiently provided for in the current rule. It was the intention of GSCC to provide its Netting Members (assuming no delay in the normal early morning availability of the report of funds-only payment obligations) with a one-and-a-half hour period after the opening of the cash FedWire to make requisite funds-only settlement amount payments to GSCC, and to provide GSCC with an additional hour thereafter within which to make any requisite funds-only payments to Netting Members. The revised language makes clear that a Netting Member has up to one-and-a-half hours after the opening of the cash FedWire to make a required funds-only payment to GSCC, and that GSCC's obligation to make required funds-only payments to Netting Members need be fulfilled no earlier than two-and-a-half hours after the opening of the cash FedWire.

3. Revised Rule 26 (Bills Rendered)

Rule 26 is revised to reflect the current billing practices of GSCC, which take into account the ability of GSCC to collect charges owed it by Netting Members as a part of the daily funds-only settlement with each such Member. GSCC believes that its billing procedures provide Members with sufficient time to review charges to their account and to inform GSCC of any errors or problems with regard thereto.

4. Revised Rule 37 (Hearing Procedures)

The revisions to this Rule reflect the recent additions of Rules 18 (Ceasing to act for a Member) and 20 (Insolvency of a Member), and the proposed deletion, discussed below, of current Rule 46 (Restrictions on Access to Services).

5. Revised Rule 45 (Notices)

The revisions to the first two sections of this Rule are proposed in order to

provide for notice to be given by GSCC to a Netting Member, and vice versa, by facsimile machine. The revisions to the third section result from the need to reflect the recent additions of Rules 18 and 20, and the proposed deletion of current Rule 46.

6. Deleted Rule 46 (Restrictions on Access to Services)

In view of the addition of Rules 18 and 20, which provide GSCC with the flexibility to cease to act for a Member in varying manners and under a number of circumstances, and the proposed changes to rule 45, it is GSCC's view that current Rule 46 is now redundant and unnecessary, and should be deleted.

(b) The proposed rules changes will promote the prompt and accurate clearance and settlement of securities transactions for which GSCC is responsible and are, therefore, consistent with the requirements of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder applicable to self-regulatory organizations.

B. Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rules changes will have an impact on, or impose a burden on, competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the proposed rules changes have not yet been solicited from all Members. Members will be notified of the rule filing, and comments will be solicited, by an Important Notice. GSCC will notify the Securities and Exchange Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rules Changes and Timing and 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 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 (File No. SR-CSCC-89-10) and should be submitted by November 3, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-24129 Filed 10-12-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27341; File No. SR-MSRB-88-5]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Partial Approval to a Proposed Rule Change Relating to the Arbitration Process and the Use of Predispute Arbitration Clauses

I. Introduction and Background

The Municipal Securities Rulemaking Board ("MSRB" or "Board") has submitted to the Securities and Exchange Commission ("Commission" or "SEC")¹ proposed rule changes pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder³ to amend its current rules for administering arbitration proceedings. The filing is similar to rule filings of the New York Stock Exchange ("NYSE"), National Association of Securities Dealers ("NASD"), and American Stock

Exchange ("AMEX") that were approved by the Commission on May 10, 1989,⁴ and by the Chicago Board Options Exchange ("CBOE") approved on August 2, 1989,⁵ and by the Midwest Stock Exchange ("MSE") approved on August, 1989.⁶

The proposed rule changes would amend the Board's rules for administering arbitration proceedings and address many issues regarding the fairness and efficiency of the arbitration process administered by the Board, as well as institute new requirements applicable to Board members' use of predispute arbitration clauses in customer agreements.

The Board developed these proposed rule changes through the auspices of the Securities Industry Conference on Arbitration ("SICA"). The self-regulatory organizations ("SROs") have worked together over the past twelve years to develop uniform arbitration rules through SICA, which is composed of representatives of the Board, nine other SROs, four public members, and the Securities Industry Association.⁷

On September 10, 1987, after a review of securities industry-sponsored arbitration, the Commission sent a letter to SICA that set out its views regarding the need for changes to the Uniform Code of Arbitration ("Uniform Code").⁸ The Commission also sent letters to the SROs on July 8, 1988 requesting that they review the issues raised by their member firms' current use of mandatory predispute arbitration agreements.⁹ Since September 1987, SICA and its subcommittees have met regularly to develop proposals in response to the Commission's letters.

The majority of the proposals to amend the MSRB's rules were based on changes in the Uniform Code made by SICA largely in response to the September 1987 and July 1988

Commission letters. Other proposals included in this order were developed to meet concerns that have arisen through the administration of the arbitration programs. The proposals in SR-MSRB-88-5 related to the definitions of public and industry arbitrators under MSRB section 12, and related to challenges for cause under sections 8(c) (ii) and (iii) are not included in this approval order. These particular proposals differ from comparable rules developed by SICA and adopted by the other SROs, and the MSRB has agreed to consider amending these provisions.

In its May 10, 1989 Order approving the NYSE, NASD, and AMEX filings, the Commission addressed fully the significant public dialogue and comment that preceded its action. This order, granting partial approval of the proposed rule changes contained in SR-MSRB-88-5 and its amendments, is consistent with the substance of the May 10, 1989 Order, and the discussion set out in that order is fully applicable to the MSRB rules approved herein.

Notice of the proposed rule changes together with the terms of substance of the proposals was given by the issuance of a Securities Exchange Act release and by publication in the *Federal Register*.¹⁰ One comment letter was received regarding the MSRB's proposals. The Commission has reviewed the filing and has determined that the proposed rule changes are consistent with the Act, including the requirements set forth in sections 15(b)(2) (C) and (D) of the Act.

II. Description of the Proposals and Analysis

A. Arbitrator Disclosure and Background Information to be Supplied to the Parties

The MSRB has proposed changes to its rules dealing with disclosures to be made by arbitrators, and with supplying arbitrator disclosures to the parties. Under the current rules, parties are provided only with the names and current business affiliations of the arbitrators proposed for their cases. The Board's proposed rule changes would provide the necessary guidance to arbitrators about the types of relationships that may create conflicts of interest and that are likely to preclude the arbitrator from rendering an objective and impartial determination. The Board's proposed rule change would provide to the parties all of the information disclosed by

¹ SR-MSRB-88-5 was submitted on November 23, 1988 and amended on March 3, 1989 and June 13, 1989.

² 15 U.S.C. 78s(b)(1).

³ 17 CFR 240.19b-4 (1987).

⁴ Securities Exchange Act Release No. 26805 (May 10, 1989), 54 FR 21144 (May 10, 1989) (approving File Nos. SR-NYSE-88-8, SR-NYSE-88-29, SR-NASD-88-29, SR-NASD-88-51, SR-NASD-88-19, and SR-AMEX-88-29) ("May 10, 1989 Order").

⁵ Securities Exchange Act Release No. 27093 (August 2, 1989), 54 FR 32731 (August 9, 1989).

⁶ Securities Exchange Act Release No. 27187 (August 25, 1989), 54 FR 36926 (September 5, 1989).

⁷ The SROs that administer arbitration programs are the MSRB, CBOE, NYSE, NASD, Amex, MSE, Pacific Stock Exchange, Boston Stock Exchange, Cincinnati Stock Exchange and Philadelphia Stock Exchange.

⁸ See letter from Richard G. Ketchum, Director, Division of Market Regulation, SEC, to James E. Buck, Senior Vice President, NYSE, dated September 10, 1987. This letter was also addressed separately to each of the other members of SICA.

⁹ See letter from David S. Ruder, Chairman, SEC, to John J. Phelan, Jr., Chairman, NYSE, dated July 8, 1988. This letter was also addressed to the senior executive officers of all other SROs that administer arbitration facilities.

¹⁰ See Securities Exchange Act Release No. 26465 (January 17, 1989), 54 FR 3705 (January 25, 1989).

arbitrators pursuant to the amended disclosure rules at the time when the parties are first given the arbitrators' backgrounds to parties at the earliest possible stage in the process, and should therefore avoid unnecessary postponements of hearings and promote informed use of challenges.

Accordingly, proposed MSRB section 13 establishes specific disclosure obligations of arbitrators. Section 13(a)(2) requires that arbitrators disclose any existing or past financial, business, professional, family or social relationships that are likely to affect impartiality or that might reasonably create an appearance of partiality or bias. These disclosures extend to any relationships the arbitrators may have with any party or its counsel, or with any individual whom they have been told will be a witness. The rule also requires arbitrators to disclose any such relationship involving members of their families or their current employers, partners or business associates.

MSRB section 13(b) admonishes prospective arbitrators to make a reasonable effort to inform themselves of any interests or relationships described in paragraph (a). Section 13(c) advises arbitrators that the obligation to disclose under paragraph (a) of the section is a continuing duty, and that any person who serves as an arbitrator must disclose at any stage of the arbitration any such interests or relationships that arise, or that are recalled or discovered. Also, under section 13(d), the MSRB has clarified that prior to the commencement of the first hearing session, the Director of Arbitration may remove an arbitrator who discloses such information. Parties are to be informed of any information disclosed pursuant to the rule if the arbitrator has not been removed.¹¹

In addition, section 8(b) provides that parties will be informed of the names and employment histories of the arbitrators for the past ten years, as well as any information disclosed pursuant to section 13, at least eight days prior to the date fixed for the initial hearing session. Under section 8(b), a party may make further inquiry of the Director of

Arbitration concerning any arbitrator's background.

B. Appointment of Replacement Arbitrators on a Panel

The MSRB also proposed two changes with respect to its ability to appoint a replacement arbitrator on a panel when a vacancy occurs. The first of these changes concerns the ability of the Director of Arbitration to replace an arbitrator who becomes unavailable to serve after appointment and prior to the first hearing session. Under the proposed amendment, if after appointment and prior to the first hearing session an arbitrator is disqualified, resigns, dies, withdraws, refuses, or is otherwise unable to perform or discharge his duties, section 14(a) authorizes the Director of Arbitration to appoint a replacement arbitrator. While section 8(b) requires that parties be notified of the initial appointment of arbitrators at least eight days prior to the initial hearing session, section 14(a) permits the appointment of replacement arbitrators closer than eight days to the hearing. The rule also explicitly provides that parties are entitled to receive the same disclosure regarding the background of the replacement arbitrator as they received for the initial arbitrator(s), and have the same right to request more information, and to challenge the arbitrator as provided in the rules, although within a shorter time frame.

The second change concerning the ability to appoint replacement arbitrators addresses situations where an arbitrator is disqualified, resigns, dies, or is unable to perform or discharge his duties as an arbitrator after the commencement of the first hearing session. Under the MSRB's existing rules, if a vacancy occurs after the hearings have begun, both parties must consent either to the appointment of a replacement arbitrator to hear the rest of the case, or to continuing with the remaining arbitrator(s). Otherwise, if that consent cannot be obtained, the case must be reheard from the beginning with a full panel.

The proposed amendment to MSRB section 14(b) permits the remaining arbitrator(s) to continue with the hearing and determination of the controversy unless a party objects to such continuation within five days of notification of the arbitrator's disqualification. Under the proposal, if a party objects, a replacement arbitrator would be appointed by the Director of Arbitration under the same procedures as for the replacement of an arbitrator prior to the first hearing. The rule is

designed to permit parties in particular cases to make the decision that makes the most sense for their case. For example, in cases where only peripheral issues have been dealt with and relatively little progress has been made, it may make sense for parties to request a replacement arbitrator. Conversely, where the hearings have progressed significantly, or are in fact substantially completed, it would make less sense for parties to request a replacement arbitrator, who then would have to learn all that had occurred in his absence.

In the event that parties do request a replacement arbitrator, the arbitrators may use their judgment and authority in determining whether to require the rehearing of part or all of the case or to withdraw from the case, thereby effectively requiring the appointment of another panel. A party, however, may no longer delay the resolution of the dispute by insisting on a rehearing whenever an arbitrator is unexpectedly unable to continue hearing a case.

C. Availability of Small Claims Procedures and the Number of Arbitrators Required to Hear a Claim

The MSRB proposes to amend section 34 to increase to \$10,000 from \$5,000 the monetary claim limit for cases to be heard under the simplified procedures developed in the Uniform Code. Under these expedited procedures, a single arbitrator decides a case based upon the papers submitted by the parties. No oral hearing is held unless requested by the investor, or ordered by the arbitrator. This change is designed to decrease the costs of arbitration.¹² The proposed amendments to section 34 would also increase the dollar amount for intra-industry small claims to \$10,000.

MSRB section 12(a) would change the number of arbitrators generally used for large cases from five to three. The rule currently provides for the appointment of five arbitrators in cases brought by public customers in which the claim exceeds \$500,000. In order to alleviate administrative delays and costs encountered in such cases, the proposed rule would eliminate the requirement of five-member panels, allowing the Director of Arbitration to exercise discretion in appointing panels of no fewer than three and no more than five arbitrators in cases not heard under the MSRB's simplified arbitration procedures.

The MSRB also proposed a technical amendment to MSRB section 34(f)

¹¹ Once the arbitration panel is sworn, it controls all of the procedural aspects of the hearings. Accordingly, under the Uniform Code and the MSRB's Arbitration Code, the Director of Arbitration may not remove an arbitrator after the hearings have begun. An arbitrator should be alert to the guidelines set out in the American Bar Association American Arbitration Association Code of Ethics for Arbitrators in Commercial Disputes ("ABA AAA Code") and the applicable law with respect to arbitrator bias, and remove himself from the panel when conflicts arise after hearings have begun. See Canon II, E.(2) of the ABA AAA Code.

¹² Section 34(c) would establish a filing fee of \$200 in cases where the amount in controversy is more than \$5,000 but does not exceed \$10,000.

regarding single arbitrators used in cases administered under the simplified procedures. The amendment codifies the existing practice of appointing a public arbitrator as the single arbitrator in the case.

D. Discovery

The MSRB is proposing significant changes to its arbitration discovery rules, which should assist in the early resolution of discovery disputes and encourage the efficient resolution of cases on their merits. Under current MSRB rules, parties are expected to exchange documents informally and voluntarily. Parties may also request documents pursuant to subpoena under the existing rules, but these do not have to be produced until the day of the hearing.

The MSRB's proposed changes to its discovery rule expand party access to prehearing discovery and provide specific time frames for parties to request information from parties and for responding to such an information request. The rule changes also establish a mechanism for prehearing conferences and for arbitrator involvement in prehearing matters where needed. Under the MSRB's proposed rule changes, arbitrators may also order depositions when appropriate.

Proposed section 22(a) continues the policy established under existing rules for parties to cooperate to the fullest extent possible in the voluntary exchange of documents and information. In the event that voluntary exchanges are not sufficient, the rule establishes a clear framework for document production and information requests.

Proposed MSRB section 22(b)(1) provides that a party may serve a written request for information or documents twenty days after service of the claim or upon the filing of the answer, whichever is earlier. All parties are to receive copies of the request, and parties are required to endeavor to work out disputes regarding the request between themselves before an objection to the request is filed. Unless the requesting party allows more time, information requests must either be objected to within fifteen calendar days or satisfied within thirty calendar days from the date of service.¹³ The party

who made an information request has ten days from receipt of the objection to respond to the objection.

Under proposed MSRB section 22(d), a party may request that the Director of Arbitration schedule a prehearing conference to help the parties reach agreement on such matters as the exchange of information, exchange or production of documents, identification and exchange of hearing documents, stipulations of fact, identification and briefing of contested issues, and any other matter which will expedite the arbitration proceedings. Prehearing conferences would be scheduled upon the request of an arbitrator or at the discretion of the Director of Arbitration.¹⁴

Under proposed MSRB section 22(b)(4), a party whose information request has not been satisfied is entitled to have the matter referred to either the full panel of arbitrators or to a single arbitrator pursuant to procedures set out in MSRB section 22(e) for resolution at least ten days prior to any hearing on the substantive issues.¹⁵ Proposed section 22(e) reserves for the arbitration panel the decision as to whether the full panel or a single arbitrator should consider the discovery dispute. Proposed section 22(e) also provides that with the consent of the majority of the panel the Director of Arbitration may appoint a single arbitrator to resolve any other unresolved prehearing issues. The section allows the arbitrator to issue subpoenas, direct appearances of witnesses, direct the production of documents and depositions,¹⁶ and set deadlines and issue any other ruling which will expedite the hearing and permit any party to develop fully its case. MSRB section 22(e) provides that the single arbitrator appointed to decide prehearing matters would be a public arbitrator in those cases where public customers have requested a majority of public arbitrators for their panel.

¹³ The prehearing conference provision of proposed MSRB Section 22(d) differs from the comparable provision in the Uniform Code adopted by the other SROs. The MSRB proposal retains for the arbitrators and the Director of Arbitration the discretion to schedule prehearing conferences, while under the other SROs' rules, parties are entitled to a prehearing conference upon written request.

¹⁴ In a letter to the Commission, dated September 25, 1989, the MSRB confirmed that ordinarily such referrals of unresolved information requests to the arbitrators would be made as soon as practicable, and that the ten day period is intended only as the latest time that such a resolution would be made.

¹⁵ The Securities Industry Association submitted a comment letter on February 16, 1989, commenting on the rule proposals of the MSRB and AMEX. In its letter, the SIA stated that the proposed rules provided the arbitrators with the flexibility to request depositions and are sufficient to permit parties to develop fully their cases.

Other amendments to the prehearing provisions require parties to serve on one another at least ten days prior to the first hearing copies of documents in their possession that they intend to present at the hearing and identify witnesses they intend to present at the hearing. Under proposed section 22(c), arbitrators may exclude from the arbitration those documents not exchanged or witnesses not identified at that time. The provision does not extend to documents or witnesses that parties may use for cross-examination or rebuttal. In addition, the MSRB is proposing to amend its rules regarding subpoenas. In MSRB section 23(a), the Board proposes to require all parties to provide a copy of any subpoena to all other parties.

E. Preservation of a Record

The MSRB is amending its arbitration rules to assure that records of arbitration proceedings are made and preserved. These records are necessary for courts to use in conjunction with any review of the proceedings they may make. MSRB section 27 would require that a verbatim record by stenographic reporter or tape recording of all arbitration hearings be maintained. The rule further provides that, if a party to a dispute elects to have a record transcribed, the cost of such transcription shall be borne by that party unless the arbitrators direct otherwise. The arbitrators may also direct that the record be transcribed. If the record is transcribed at the request of a party, the rule requires that a copy shall be provided to the arbitrators.

F. Content and Public Availability of Arbitration Awards

The MSRB's proposed rule for arbitration awards expands both the content and public availability of arbitration awards. Prior to the Commission's May 10, 1989 approval of the amended arbitration rules of the Amex, NASD and NYSE, and prior to the submission of the proposal made in this filing, the only information generally available to the public regarding SRO arbitration cases was the percentage of investors that received some portion of the amount they claimed against their broker-dealer. No data had been previously available with respect to particular arbitrators' awards. The MSRB's proposal affords substantially more public access to the results of the dispute resolution process.

Proposed MSRB section 31 provides that awards shall contain the names of the parties, a summary by the arbitrators of the issues in controversy, the damages and/or other relief

¹³ Proposed MSRB section 22(b)(2) differs from the Uniform Code provision adopted by the NYSE, NASD, AMEX, CBOE and MSE. Under the Uniform Code, the party receiving an information request has thirty days, rather than fifteen days under the MSRB proposal, to file an objection to an information request. The MSRB proposal represents an attempt to impose tighter discipline on prehearing activities.

requested, the damages and/or other relief awarded, a statement of any other issues resolved, the names of the arbitrators, the dates the claim was filed and the award rendered, the number and dates of hearing sessions, the location of the hearing(s), and the signatures of those arbitrators concurring in the award. Awards involving public customers, including any written opinion voluntarily prepared by the arbitrators, are to be made public, except that the names of arbitrators will not be disclosed and the names of customer parties to the arbitration will not be made public unless the customer agrees to the disclosure of his identity. A party to an arbitration involving a public customer may review prior awards rendered by the arbitrators assigned to the party's current case.

G. Arbitration Fees

MSRB Rule A-16 currently provides that a \$25 administrative fee is to be retained in an arbitration case that is settled or withdrawn prior to the commencement of the first session. Such fees assist in defraying certain administrative costs associated with processing arbitration claims. The proposed rule change would increase the fee retained to \$50, due to increasing costs of the Board's arbitration program. This fee would not apply to customers' small claims so that the entire fee for those claims may be returned upon settlement of such disputes.

H. Predispute Arbitration Clauses

The MSRB also has proposed two rule changes designed through the auspices of SICA to improve disclosure to customers in account opening agreements and to restrict the content of the arbitration clauses. Proposed section 36 would require MSRB members that employ predispute arbitration clauses to highlight such clauses and to place introductory language that would inform customers that they are waiving their right to seek remedies in court, that arbitration is final, that discovery in arbitration is generally more limited than in court proceedings, that the award is not required to contain factual findings and legal reasoning, and that the arbitration panel typically will include a minority of arbitrators associated with the securities industry.

Proposed MSRB section 36 also would require that the disclosure language be highlighted in four ways. First, large or otherwise distinguishable type must be used. Second, the disclosure language must be set out in outline form so as to be noticeable to readers. Third, a statement, also highlighted, that

provides that the agreement contains a predispute arbitration clause, and where that clause is located in the contract, must be inserted into the agreement immediately preceding the signature line. Fourth, a copy of the agreement containing a predispute arbitration clause must be given to the customer, who is to acknowledge receipt of the agreement, either in the agreement itself or in a separate document.

Additionally, proposed MSRB section 36 prohibits SRO members from having agreements with customers that limit or contradict the rules of any SRO, or limit the ability of a party to file any claim in arbitration or limit the ability of the arbitrators to make any award.¹⁷

III. Conclusion

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Board, and, in particular, the requirements of sections 15B(b)(2)(C) and 15B(b)(2)(D) of the Act,¹⁸ which require that the Board's rules be designed to promote just and equitable principles of trade, and provide for the arbitration of claims, disputes and controversies relating to transactions in municipal securities.¹⁹

The Commission believes that the proposed rule changes strike an appropriate balance between the need to strengthen investor confidence in the SRO arbitration systems, and the need to maintain arbitration as a form of dispute resolution that provides for the equitable and efficient administration of justice. The proposed rules improve the procedures for administering arbitration and create clear obligations regarding the use by SRO members of predispute arbitration clauses. In particular, the rule changes affecting arbitrator disclosure, discovery, the preservation of a record, the form and public availability of awards, and guidelines for the use of predispute arbitration

clauses advance the public interest in SRO arbitration. Likewise, the MSRB's initiatives with respect to the appointment of replacement arbitrators, the use of small claims procedures, and the number of arbitrators should improve the efficiency of arbitration, thus maintaining those bargained for qualities of traditional arbitration. Because these rules will aid in the just resolution of disputes between investors and dealers, the Commission concludes that these rules are designed to promote just and equitable principles of trade, and provide for the arbitration of claims, disputes and controversies relating to transactions in municipal securities, consistent with sections 15B(b)(2)(C) and 15B(b)(2)(D).

It is therefore ordered, pursuant to section 19(b)(2) of the Act,²⁰ that the above-mentioned proposed rule changes be, and hereby are, approved.²¹

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²²

Dated: October 5, 1989.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-24134 Filed 10-12-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-27338; File No. SR-NYSE-89-27]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange, Inc., Relating to an Examination Administration Fee for the Compliance Official Qualification Examination

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 September 25, 1989, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹⁷ 15 U.S.C. 78o-4(b)(2)(C) & (D).

¹⁸ The Commission's approval of MSRB section 36, and the comparable rules of the NYSE, NASD, AMEX, CBOE and MSE, is consistent with the conclusion of the Court of Appeals for the Sixth Circuit in *Roney v. Goren*, No. 88-1874 (May 26, 1989), that the Commission has the authority to assure customer choice among SRO arbitration forums.

¹⁹ The MSRB's proposed rule changes in File No. SR-MSRB-88-5 related to the definitions of public and industry arbitrators under MSRB section 12, and related to challenges for cause under sections 8(c) (ii) and (iii), are not included in this approval order. The MSRB has agreed to consider amending these provisions. Pending the amendment of these provisions, the existing rules that require that a majority of the arbitrators not be associated with a broker, dealer or municipal securities dealer will continue to apply.

²⁰ 15 U.S.C. 78s(b)(2).

²¹ The proposed rule changes to MSRB sections 5, 8, 12, 13, 14, 22, 23, 27, 31, 34, 35, and 36 of Rule G-35 are effective on December 1, 1989. The proposed rule change to Rule A-16 is effective for cases filed with the MSRB after November 30, 1989.

²² 17 CFR 200.30-3(a)(12) (1989).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of adoption of a \$200 examination administration fee in connection with the new Compliance Official Qualification (Series 14) Examination to be given by the Exchange.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 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 purpose of the proposed fee of \$200 for the new Compliance Official Qualification (Series 14) Examination is to offset the costs associated with development, implementation and administration of that examination by the Exchange. These costs include manpower, automation, travel, printing and proctoring costs already incurred or to be incurred in designing and implementing the Series 14 examination.

Pursuant to Rule 342.13(b), the examination will generally be required of (1) Exchange members not associated with a member organization and (2) the person or persons designated by a member organization as having day-to-day compliance responsibilities or who supervise ten (10) or more people engaged in compliance activities.

(2) Basis Under the Act for the Proposed Rule Change

The statutory basis for the proposed rule change is section 6(b)(4) of the Act which permits the rules of an exchange to provide for the equitable allocation of

reasonable dues, fees and other charges among the members, issuers and other persons using its services.

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 not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments from members or other interested parties regarding the rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of the Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such action 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 statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE.

All submissions should refer to File No. SR-NYSE-89-27 and should be submitted by November 3, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 4, 1989.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-24131 Filed 10-12-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-27339; Filed No. SR-PSE-89-23]

Self-Regulatory Organizations; Proposed Rule changes by the Pacific Stock Exchange Incorporated relating to Board of Governor Liability

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 September 18, 1989, the Pacific Stock Exchange Incorporated ("PSE") 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 PSE, pursuant to Rule 19b-4 under the Act, hereby proposes the following changes to the Certificate of Incorporation and the Rules of the Board of Governors of the PSE. (Italics indicate new language.)

Certificate of Incorporation, Ninth Article

* * * * *

Ninth. The Corporation may provide indemnification for members of its Board of Governors and of committees of the Board of Governors and of other committees of the Corporation, its officers, agents and employees, and those serving another corporation, partnership, joint venture, trust or other enterprise at the request of the Corporation, within the limits permitted by Delaware law, to safeguard such persons from expense and liability for actions they take in any such capacity in good faith in furtherance of, or without belief that such actions are opposed to, the best interests of the Corporation and its members. *To the fullest extent permitted by Delaware law, or any other applicable laws, the members of the board of Governors shall not be liable to the Corporation or its members for monetary damages for breach of fiduciary duty as a Governor.*

¹ The Compliance Official Qualification (Series 14) Examination was created by the Exchange in order to ensure the fulfillment of compliance obligations by Exchange members and member organizations. Individuals who are Compliance Supervisors, as defined in NYSE Rule 342.13(b), must take and pass the Series 14 examination within six(6) months of the date of the first administration of the examination.

Rules of the Board of Governors, Rule XXIII

Any provision of the certificate of incorporation, the Constitution, or the Rules of the Exchange that provides or purports to provide that the members of the Board of governors shall not be liable to the Exchange or its members for monetary damages for breach of fiduciary duty as a Governor shall not be applied in any instance in which such liability arises directly or indirectly as a result of a violation of federal securities laws.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule changes

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

Rule Filing SR-PSE-88-01 proposed an amendment to the PSE Certificate of Incorporation which would exempt PSE Governors, committee members, and employees from monetary damages for breach of fiduciary duty. This amendment was removed from SR-PSE-88-01 and is being resubmitted here. In addition, the proposed amendment to the PSE Rules introducing the limitation language is being added pursuant to a recommendation by the Commission.

The proposed amendment to the PSE Certificate of Incorporation is based on a change in the law of Delaware, the state in which the PSE is incorporated. Delaware Corporations Code, section 102(b)(7), (added 1986), states that a Certificate of Incorporation may include a provision eliminating or limiting a director's personal liability to the corporation for monetary damages for breach of fiduciary duty as a director. Many Boards of Delaware Corporations adopted similar provisions in 1987. The new law:

(a) Does not permit the elimination or limitation of a director's liability for breach of its duty of loyalty, for acts or omissions not in good faith, for intentional misconduct, or for any

transaction from which the director derived an improper personal benefit,

(b) Does not eliminate the fiduciary duty, it merely prevents the imposition of monetary damages in the event of breach. Other legal remedies such as rescission and injunction remain available,

(c) Applies to a breach of fiduciary duty (standard of care) only, and does not extend to other duties owed by the directors to the Corporation (standard of loyalty).

The proposed rule change is consistent with Section 6(b) of the Act and furthers the objective of Section 7(b)(3) by providing liability protections which will attract competent Governors, thereby helping to assure a fair representation of the PSE members in the selection of its directors and administration of its affairs.

(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

The proposed change of the Certificate of Incorporation was sent to each member and approved by over a 3/4 majority vote of the general membership at the annual meeting on January 28, 1988 and the proposed limitation language was approved by the PSE Board of Governors on July 29, 1988 after a recommendation by the SEC to add such. The PSE is adding the limitation language to the Rules of the Board of Governors.

Comments on the amendment to the PSE Rules were neither solicited nor received from members.

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 approved 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. section 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 PSE. All submissions should refer to File No. SR-PSE-89-23 and should be submitted by November 3, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 4, 1989.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-24132 Filed 10-12-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17162; File No. 812-7377]

Fidelity and Guaranty Life Insurance Co. et al.

October 4, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

Applicants: Fidelity and Guaranty Life Insurance Company ("Company"), F&G Life Variable Annuity Account ("Variable Account") and F&G Securities, Inc. ("F&G Securities") (collectively, "Applicants").

Relevant 1940 Act Sections: Exemption requested under section 6(c) of the Act from sections 26(a)(2)(C) and 27(c)(2).

Summary of Application: Applicants seek an order to permit the assessment of the mortality and expense risk charges from the assets of the Account.

Filing Date: The application was filed on August 11, 1989; an amended and

restated application was filed on September 7, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on October 30, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants(s) with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Applicants, c/o Brian E. Bayus, Esq., Fidelity and Guaranty Life Insurance Company, 100 Light Street, Baltimore, Maryland 21202. Copies to Joan E. Boros, Esq., Freedman, Levy, Kroll & Simonds, 1050 Connecticut Avenue, NW., Suite 825, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Michael V. Wible, Staff Attorney, at (202) 272-2026, or Clifford E. Kirsch, Acting Assistant Director, at (202) 272-2061 (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 (800) 231-3282 (in Maryland, (301) 258-4300).

Applicants' Representations

1. The Company is a stock life insurance company incorporated in the State of Maryland. It markets, issues and services a variety of life insurance and annuity products. The Company is the depositor of the Variable Account.

2. The Variable Account, registered as a unit investment trust under the Act, was established to fund variable annuity contracts, including an individual flexible premium deferred variable annuity contract ("Contract" or "Contracts"), to be offered by the Company. The Variable Account is currently divided into nine divisions ("Division" or "Divisions") which will invest solely in the shares of a corresponding series ("Series") of the American Eagle Fund, Inc. ("Fund").

3. F&G Securities is the principal distributor of the Contracts. F&G Securities is 50% owned by the Company and 50% owned by USF&G

Financial Services Corporation. F&G Securities is a registered broker-dealer under the Securities and Exchange Act of 1934 and a member of the National Association of Securities Dealers, Inc.

4. The Contract is designed to provide fixed and variable benefits under retirement plans that qualify for favorable Federal income tax treatment under the Internal Revenue Code of 1986, as amended, and under retirement arrangements that do not so qualify.

5. Contract owners ("Owners") will be able to allocate premium payments to one or more Divisions of the Variable Account, which will invest in shares of a corresponding Series of the Fund. Premium payments allocated to the Variable Account will be used to acquire accumulation units of a Division as instructed by the Owner. Owners also will be able to allocate premium payments to certain general account investment options that provide for guarantees of principal and interest. These include "General Account Option A," which provides such guarantees for single calendar year periods, and "General Account Option B," which provides such guarantees for "Guarantee Periods" under "Durations" of two or more years. General Account Option A and General Account Option B are collectively referred to as the "General Account Options". The Divisions, General Account Option A and the respective Durations under General Account Option B are sometimes referred to, individually, as the "Account" and, collectively, as the "Accounts".

6. Amounts held under a Contract may be transferred from one Division to another or into the General Account Options at any time prior to the annuity date. Prior to the annuity date, Owners will be able to make up to four partial withdrawals in each Contract year, after the first Contract year. The Contract may also be surrendered in full, at any time prior to the annuity date, for its "Surrender Value", which is the Account Value less any surrender and withdrawal charges, maintenance charges and any premium taxes.

7. For assuming the mortality and expense risks associated with the Contract, the Company will make a daily charge, at the annual rate of 1.25% (consisting of .55% for mortality risks and approximately .70% for expense risks), against the assets held in each Division under the Contracts. This charge is assessed during the accumulation and annuity periods.

8. The Company bears a mortality risk because of its contractual obligation to continue to make annuity payments under annuities with life contingencies

regardless of how long all annuitants, or any individual annuitant, might live, and regardless of the sufficiency of the funds accumulated and remaining under a contract. The Company also bears a mortality risk from a death provided under the Contract. The death benefit is payable in the event of the death of an annuitant prior to the annuity date. No surrender and withdrawal charge is imposed upon the payment of a death benefit. This places a further mortality risk on the Company. The expense risk the Company assumes is that expenses actually incurred by the Company in issuing and administering the Contract will exceed the administration and maintenance charges imposed under the Contract. In that event, the loss would be borne by the Company.

9. If longevity among annuitants and/or Contract expenses are lower than anticipated, the Company may realize a gain from the mortality and expense risk charge. The Company expects a profit from this charge. To the extent that the surrender and withdrawal charge is insufficient to cover the actual costs of distribution, the expenses will be paid from the Company's general account assets, which will include profit, if any, derived from the mortality and expense risk charge.

10. A daily charge, at the annual rate of .15% will be made against the assets held in each Division under the Contract to reimburse the Company for administrative expenses associated with the Contracts. This charge is imposed during both the accumulation and annuity periods. Also, a \$30 Contract maintenance charge will be deducted on a pro-rata basis from each of the Accounts, including Guarantee Periods, in which amounts are held under the Contract. The charge is imposed on each anniversary date of the Contract prior to the annuity date and if the Contract is surrendered prior to the anniversary date. It is designed to reimburse the Company for administrative costs of maintaining issued Contracts on the Company's records system and servicing the individual Contracts.

11. The Company does not deduct a sales charge from any premium payment under the Contract. However, to defray certain expenses relating to the sale of the Contracts, the Company will impose a surrender and withdrawal charge upon a surrender of the Contract in its entirety, or upon a partial withdrawal of amounts held in any of the Accounts. The charge is imposed on the amount of premium payment deemed surrendered or withdrawn. No surrender or withdrawal charge is applicable to amounts excluded under the Free

Surrender and Withdrawal Amount, to amounts paid as a death benefit, to Account Value applied to an annuity type upon annuitization, or to payments made in certain other circumstances. The charge is 6% of the amount of premium surrendered or withdrawn, in excess of the Free Surrender and Withdrawal amount, in the first year from the date of the premium payment and declines thereafter. The charge is eliminated as to premium payments made six or more years prior to surrender or withdrawal.

12. Section 26(a)(2)(C) of the Act provides that no payment to the depositor or principal underwriter for a registered unit investment trust shall be allowed as an expense except as a fee, not exceeding a reasonable amount as the Commission may prescribe, for bookkeeping and other administrative services. Section 27(c)(2) of the Act requires that the proceeds of all payments on a periodic payment plan certificate (except amounts deducted for sales load) be deposited with a trustee or custodian as prescribed by section 26(a)(1) of the Act and held under an agreement as prescribed by section 26(a)(2) of the Act. The Applicants do not concede the applicability of sections 26(a)(2)(C) and 27(c)(2) of the Act to the mortality and expense risk charge because such charge is a traditional insurance charge and, therefore, is not a charge subject to regulation by the Commission. However, to remove any doubt with regard to the applicability of these provisions, the Applicants are seeking the subject exemptions to permit the assessment of this charge in the manner described herein.

13. The Company has designed the mortality and expense risk charge to reasonably compensate the Company for the assumption of these risks. Applicants state that they have reviewed publicly available information regarding comparable annuity contracts of other companies taking into consideration such factors as: guaranteed minimum death benefits; guaranteed annuity purchase rates; minimum initial and subsequent purchase payments; other contract charges; the manner in which charges are imposed; market sector; investment options under contracts; and availability to individual qualified and non-tax-qualified plans. Applicants have concluded that the mortality and expense risk charge is within the range of industry practice for comparable annuity contracts. Applicants represent that they will maintain at their principal office, and make available on request to the Commission or its staff, a

memorandum setting forth in detail the variable annuity products analyzed and the methodology, and results of, the Company's comparative review.

14. Applicants acknowledge that if the revenues generated by the surrender and withdrawal charge are insufficient to cover all actual costs relating to the distribution of the Contracts, such costs will be paid from the Company's general account assets, which may include any ultimate profit realized from the mortality and expense risk charge. The Company has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the Contracts will benefit the Variable Account and the Owners. The basis for such conclusion is set forth in a memorandum which will be maintained by the Company at its principal office and will be available to the Commission or its staff upon request.

15. The Company represents that the Variable Account will invest only in an underlying mutual fund which undertakes, in the event any such fund should adopt any plan under Rule 12b-1 to finance distribution expenses, to have such plan formulated and approved by a board of directors, a majority of which are not "interested persons" of such fund within the meaning of section 2(a)(19) of the Act.

16. Applicants submit, for all the reasons stated herein, that their requests for exemptions meet the standards set out in section 6(c) as summarized above and that an order, therefore, be granted. Accordingly, Applicants request exemptions pursuant to section 6(c) of the Act from the operation of the provisions of sections 26(a)(2)(C) and 27(c)(2) to the extent necessary to permit the assessment of the mortality and expense risk charge with respect to the Contracts.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-24130 Filed 10-12-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 35-24965]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

October 5, 1989.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the

application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by October 23, 1989 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Columbia Fuels, Inc., et al. (70-6688)

Columbia Fuels, Inc. ("Columbia"), and its parent company Alabama Power Company ("Alabama"), both located at 600 North 18th Street, Birmingham, Alabama 35291, indirect and direct subsidiaries, respectively, of The Southern Company, a registered holding company, have filed a post-effective amendment to their application-declaration pursuant to sections 9(a), 10 and 12(b) of the Act and Rule 45 thereunder.

By prior Commission orders (HCA Nos. 22786, 23047, 24468 and 24807, December 20, 1982, August 31, 1983, September 30, 1987 and January 24, 1989, respectively), Columbia was authorized, among other things, to enter into a \$100 million note-issuing credit agreement ("Note-Option") with Bank of America ("Bank") for a line of credit to be used to finance the purchase of nuclear fuel, which would then be leased by Alabama under a related fuel lease agreement. The particular credit arrangement, together with an additional \$50 million arrangement with Credit Suisse, provides aggregate credit available to Columbia for nuclear fuel financing of up to \$150 million. Columbia was subsequently authorized to enter into an amended agreement ("Agreement") with the Bank to provide for the issuance and sale of commercial paper ("Commercial Paper-Option"), in

addition to the previously authorized Note-Option, for nuclear fuel financing.

Columbia now proposes to terminate the arrangement with Credit Suisse, and to provide for \$150 million of borrowings from the Bank only, under substantially the same terms and conditions, but with the commitment fee reduced from .20% per annum to .1833% per annum of the total credit commitment, less the sum of the aggregate outstanding credit resulting from direct borrowings under the Agreement. The line of credit available to Columbia from the Bank will become \$150 million and the aggregate credit limit of \$150 million available to Columbia for nuclear fuel financing will remain unchanged. Under the Agreement, as proposed to be amended, the Commercial Paper-Option will be changed so that the commercial paper of Columbia will be offered for sale by Merrill Lynch, Pierce, Fenner & Smith, Incorporated, in addition to the Bank.

The Connecticut Light and Power Company, et al. (70-6961)

The Connecticut Light and Power Company ("CL&P"), Selden Street, Berlin, Connecticut 06037, and Western Massachusetts Electric Company ("WMECO"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, subsidiaries ("Companies") of Northeast Utilities, a registered holding company, have filed a post-effective amendment to their declaration pursuant to sections 6(a) and 7 of the Act and Rule 50(a)(5) thereunder.

By prior Commission orders in this matter (HCAR Nos. 23366, 23403 and 24218, July 12, 1984, August 28, 1984 and October 22, 1986, respectively), the Commission authorized transactions relating to the financing of each of the Companies' portion of the cost of acquiring, constructing, and installing certain pollution control facilities, and sewage or solid waste disposal facilities at the Millstone 1, Millstone 2, and Millstone 3 nuclear electric generating facilities, which resulted in the issuance of \$69.8 million of Pollution Control Revenue Par Value Demand Bonds for CL&P and \$16.4 million of Pollution Control Bonds for WMECO (together, "Bonds"). In connection with each of these transactions, CL&P and WMECO, pursuant to certain loan agreements ("Agreements"), each incurred certain repayment obligations to the Connecticut Development Authority ("CDA"), as evidenced by promissory notes ("Notes") issued by each of the Companies, and, pursuant to certain reimbursement and letter of credit agreements supporting the repayment obligations ("Letters of Credit"), each

incurred certain reimbursement obligations to various banks (such repayment and reimbursement obligations together the "Obligations").

The repayment obligations of CL&P and WMECO under the Agreements and the Notes are secured by the Letters of Credit issued by Bankers Trust Company ("BTC"). The CL&P Letter of Credit is in the amount of \$74.39 million, representing principal of \$69.8 million and interest coverage for 120 days at an assumed rate of 20%. Pursuant to the CL&P Letter of Credit, CL&P is obligated to pay to BTC an annual Letter of Credit commission at a rate of .75% on \$63.945 million of the total Letter of Credit amount and .90% on the balance. The WMECO Letter of Credit is in the amount of \$17.494 million, representing principal of \$16.4 million and interest coverage for 120 days at an assumed rate of 20%. WMECO is further obligated to pay the BTC an annual Letter of Credit commission at a rate of .75% of the total Letter of Credit amount.

The Companies now propose to substitute their letter of credit provider ("New Letters") to replace the Letters of Credit securing the repayment obligations now provided by BTC with those to be provided by Union Bank of Switzerland, New York Branch ("UBS"), for a term of five years from the date of substitution. Under the terms of the proposal, each of CL&P and WMECO will be obligated to pay to UBS an annual commission at a rate of .35% per annum on their respective New Letter amounts. In addition, at the time of the substitution of the New Letters, CL&P and WMECO will be obligated to pay to UBS a one-time facility fee of \$74,390 and \$17,494, respectively (.10% of the total New Letter amount). Each of CL&P and WMECO will also be responsible for the fees of UBS's counsel, estimated to be approximately \$10,000 per transaction, and the fees of its own counsel, also estimated to be approximately \$10,000 per transaction.

Because of the significantly lower New Letter commission proposed by UBS, the substitution will save CL&P \$313,227 annually and WMECO \$69,976 annually, except in the first year. The substitution of the New Letter will be accomplished by terminating the existing Letter of Credit with BTC and entering into new agreements with UBS called Reimbursement and Security Agreements. When BTC is removed as the Letter of Credit provider for both the CL&P Bonds and the WMECO Bonds, CL&P and WMECO intend to substitute UBS for BTC as a beneficiary of the second mortgage, above.

Energy Initiatives, Incorporated (70-7646)

Energy Initiatives, Incorporated ("EII"), One Gatehall Drive, Gatehall Center I, Parsippany, New Jersey 07054, a subsidiary of General Portfolios Corporation, Mellon Bank Center, Tenth and Market Streets, Second Floor, Wilmington, Delaware 19801, a subsidiary of General Public Utilities Corporation, a registered holding company has filed an application-declaration pursuant to sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rule 45 thereunder.

In connection with the development of a natural gas-fired generating facility in the Virginia Power Company ("Virginia Power") service territory, which is certified as a Qualifying Facility under PURPA, EII proposes to: (1) Acquire all the issued and outstanding shares of common stock of Bermuda Hundred Energy, Inc. ("EII Sub"), a New Jersey corporation for \$1,000; (2) make a capital contribution to EII Sub of \$1,000 which would, in turn, use such funds to acquire all of the general partnership interest in the Bermuda Limited Energy, L.P. ("Partnership"), a New Jersey limited partnership; and (3) guarantee, either directly or indirectly, letter of credit obligations of the Partnership up to a maximum amount of \$7,275,000 in order to provide for the Partnership's liquidated damage security obligations under the Power Purchase Agreement with Virginia Power. The Power Purchase Agreement with Virginia Power requires the Partnership to pay liquidated damages in the amount of up to \$7,275,000 under certain circumstances. To secure such liquidated damage obligations, the Partnership is required to furnish Virginia Power with an irrevocable stand-by letter of credit issued by a commercial bank in such amount.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-24233 Filed 10-12-89; 8:45 am]
BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/1313]

The U.S. Organization for the International Telegraph and Telephone Consultative Committee CCITT Study Group A; Meeting

The Department of State announces that Study Group A of the U.S.

Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on November 20, 1989 at 9:30 a.m. in Room 1107, Department of State, 2201 C Street, NW, Washington, DC.

Study Group A deals with international telecommunications policy and services.

The purpose of the meeting will be to review the activities of the recent meetings of Study Groups I, II and III; prepare U.S. contributions for upcoming Working Party/Study Group meetings; examine contributions from other sources, and review general procedures and working methods currently underway. Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl S. Barbely, State Department, Washington, DC; telephone 647-5220. All attendees must use the C Street entrance to the building.

Dated: October 5, 1989.

Earl S. Barbely,

Director, Office of Telecommunications and Information Standards; Chairman U.S. CCITT National Committee.

[FR Doc. 89-24237 Filed 10-12-89; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/1314]

The U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) Study Group D; Meeting

The Department of State announces that Study Group D of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on November 7, 1989 at 10:00 a.m. in Room 1912, Department of State, 2201 C Street NW., Washington, DC.

The agenda for the meeting will be to review results of Study Group XVII meeting, prepare and review contributions for the next meetings of Study Group VII, scheduled for February, 1990, consider other matters related to the work of special rapporteurs of Study Groups VII, VIII and XVII, and take up any other business relevant to U.S. Study Group D.

Members of the general public may attend the meeting and join in the

discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting.

Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl Barbely, State Department, Washington, DC, telephone (202) 647-5220. All attendees must use the C Street entrance to the building.

Dated: October 7, 1989.

Earl S. Barbely,

Director, Office of Telecommunications and Information Standards; Chairman U.S. CCITT National Committee.

[FR Doc. 89-24238 Filed 10-12-89; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/1315]

The U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) Study Group B; Meeting

The Department of State announces that Study Group B of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on November 15, 1989 at 9:30 a.m. in Room 1912, Department of State, 2201 C Street NW., Washington, DC.

The agenda of the meeting will include approval of the August 3 meeting minutes, reports on CCITT Study Group XI Working Party meeting, CCITT Study Group XVIII Rapporteurs meeting, consideration of contributions in preparation for the Study Group XI/4 and 7, Study Group XVIII ISDN Experts, January 8-19, 1990, Study Group I Working Parties, February 20-March 2, 1990.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl S. Barbely, State Department, Washington, DC, telephone (202) 647-5220. All attendees must use the C Street entrance to the building.

Dated: October 5, 1989.

Earl S. Barbely,

Director, Office of Telecommunications and Information Standards; Chairman U.S. CCITT National Committee.

[FR Doc. 89-24239 Filed 10-12-89; 8:45 am]

BILLING CODE 4710-07-M

[CM-8/1312]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea, Working Group on Radiocommunications; Change in Meeting Location

The Working Group on Radiocommunications of the Subcommittee on Safety of Life at Sea was scheduled to conduct an open meeting at 0930 on November 16, 1989, in room 9230 of the Department of Transportation, 400 Seventh Street, SW., Washington, DC 20950-0001. The location of this meeting has been changed to Seafarers Harry Lundeberg School of Seamanship in Piney Point, Maryland. The date and time remain the same as originally scheduled.

For directions on how to get to the meeting location contact Mr. Ronald J. Grandmaison, U.S. Coast Guard Headquarters (G-TTS-3), 2100 Second Street, SW., Washington, DC 20593-0001. Telephone: (202) 267-1389.

Dated: October 3, 1989.

Thomas J. Wajda,

Chairman, Shipping Coordinating Committee.

[FR Doc. 89-24193 Filed 10-12-89; 8:45 am]

BILLING CODE 4710-07-M

TENNESSEE VALLEY AUTHORITY

Supplemental Environmental Impact Statement: Aquatic Plant Control on the Reservoir System

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of intent to prepare a supplemental environmental impact statement (SEIS).

SUMMARY: TVA will prepare a supplement to the final EIS for aquatic plant control on the TVA reservoir system. The supplement will update information contained in the original EIS and evaluate alternatives for controlling Eurasian watermilfoil and other aquatic macrophytes that infest the TVA reservoir system. In addition to the no action alternative, chemical, biological, mechanical, and water level manipulation control methods will be

evaluated. TVA is inviting comments on the scope of the draft SEIS analysis.

DATE: Comments on the scope of the draft SEIS must be received on or before November 13, 1989.

ADDRESS: Written comments should be sent to M. Paul Schmierbach, Manager of Environmental Quality, Tennessee Valley Authority, 400 West Summit Hill Drive, 201 Summer Place Building, Knoxville, Tennessee 37902-1499.

FOR FURTHER INFORMATION CONTACT:

A. Leon Bates, Tennessee Valley Authority, Aquatic Biology Department, OSA 1S 122B, Muscle Shoals, Alabama, Phone No. (205) 386-2278.

SUPPLEMENTARY INFORMATION: TVA manages an integrated reservoir system consisting of 39 dams on the Tennessee River and its major tributaries. This system encompasses more than 11,000 miles of shoreline and 600,000 acres of water. Several of these reservoirs are infested with excessive amounts of submersed aquatic vegetation.

In August 1972, TVA released an EIS entitled, "Control of Eurasian Watermilfoil (*Myriophyllum Spicatum* L.) in TVA Reservoirs" (TVA-OHES-EIS-72-8). When this EIS was prepared, Eurasian watermilfoil was the predominant aquatic plant infesting the shallow littoral zones of the TVA reservoirs. Water level manipulation supplemented by applications of the herbicide 2,4-D in areas where aquatic plants resulted in reservoir use conflicts were the primary control strategies evaluated in the original EIS.

Since the late 1970's, the amount of aquatic plants infesting the reservoir has dramatically increased. Both aquatic plant abundance and species composition have changed, although the same kinds of areas in the reservoirs (the shallow littoral zones) continue to be the areas affected. Eurasian watermilfoil is still the predominant species, but other aquatic plants, especially the exotics, spinyleaf naiad and hydrilla, have increased to problem levels. These new species do not respond well to 2,4-D; thus, other herbicides approved by the U.S. Environmental Protection Agency for aquatic sites have been added to TVA's inventory of chemical controls used in its aquatic plant control program.

The SEIS will update the 1972 EIS and describe the process TVA uses to evaluate and select aquatic herbicides for its use in aquatic plant control program. Since 1972, TVA has also accumulated substantial data on the effects of the control methods it has employed and from special studies it periodically conducts on aquatic herbicides. These data will be used to

update the SEIS and will be summarized in the SEIS.

The effectiveness, potential health and environmental effects, and costs of various alternatives will be analyzed. An internal scoping committee has identified the following alternatives for detailed analysis in the SEIS:

1. No action—Cessation of TVA's aquatic plant control program;
2. Chemical controls—Applications of various aquatic herbicides at targeted locations;
3. Mechanical controls—Use of cutters, harvesters, or dredges to physically remove aquatic plants at targeted locations; and
4. Biological Controls (e.g., the grass carp, insects, or other competitive aquatic plants) on selected reservoirs and at targeted locations.
5. Environmental manipulation—Water level manipulation on selected reservoirs.

TVA requests comments on whether these alternatives are an adequate scope for the SEIS and whether there are other alternatives or issues which should be evaluated. After reviewing any comments, the scope of the draft SEIS will be set. Notice of availability of the SEIS will be published in the *Federal Register* and will be provided to individuals, organizations, and Federal and State agencies who respond to this notice or who are known to have an interest in aquatic plant control on the TVA reservoir system.

Public participation during this review is very important and TVA encourages everyone with an interest in this subject to begin participating now by providing comments on the scope of the SEIS or by at least indicating your interest.

M. Paul Schmierbach,

Manager, Environmental Quality.

[FR Doc. 89-24219 Filed 10-12-89; 8:45 am]

BILLING CODE 8120-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements: Submittals to OMB on October 4, 1989

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation on October 4, 1989, to the Office of Management and Budget (OMB) for its approval in accordance

with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

FOR FURTHER INFORMATION CONTACT:

John Chandler, Annette Wilson, or Cordelia Shepherd, Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 Seventh Street SW., Washington, DC 20590, telephone, (202) 366-4735, or Gary Waxman or Edward Clarke, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503, (202) 395-7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the *Federal Register*, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial, approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "For Further Information Contact" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "For Further Information Contact" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB on October 4, 1989.

DOT No: 3261

OMB No: 2127-0503

Administration: National Highway Traffic Safety Administration

Title: Consolidated Labeling Requirements for Motor Vehicle Tires & Rims (FMVSS 571.109, 110, 117, 119, 120) Regulations Part 569 and 574)

Need for Information: To identify the tires and rims for safe operation of the vehicle.

Proposed Use of Information: All persons driving or riding in a motor vehicle need to have proper labeling on the tires and rims provided with the vehicle for safe operation.

Frequency: On occasion

Burden Estimate: 264,669 hours

Respondents: 6,673

Form(s): None.

Average reporting time: 1 hour 55 minutes

DOT No.: 3262

OMB No.: 2127-0006

Administration: National Highway Traffic Safety Administration

Title: Fatal Accident Reporting System (FARS)

Need for Information: Data will be used to support NHTSA's Motor Vehicle safety standards evaluation.

Proposed Use of Information: The Fatal Accident System is a census of all fatal motor vehicle accidents in the U.S. data is extracted from existing state records and automated for the agency's use in highway and motor vehicle safety problem identification, travel analyses and program evaluation.

Frequency: Monthly/On Occasion

Burden Estimate: 96,600 hours

Respondents: State/local governments

Form(s): HS-214, 214A, and 214B

Average Burden Hours Per Response: 2 hours 18 minutes

DOT No.: 3263

OMB No.: 2120-0034

Administration: Federal Aviation Administration

Title: Medical Standards and Certification—FAR 67

Need for Information: The FAA needs the information to assess if an applicant is medically qualified to perform the duties associated with the class of airmen medical certificate sought.

Proposed Use of Information: The information obtained from FAA Form 8500-8 is used to determine medical eligibility for the certificate sought. The information obtained on FAA Forms 8500-7, 14, and 20, is used to facilitate a fair and equitable ruling that may allow applicant's operational activities that are commensurate with their medical condition and public safety.

Frequency: On occasion

Burden Estimate: 1,149,025 hours

Respondents: Airmen

Form(s): FAA Forms 8500-7, 8500-8, 8500-14, 8500-20

Average Burden Hours Per Respondent: FAA Form 8500-7 is 15 minutes; FAA

Form 8500-8 is 2 hours; FAA Form 8500-14 is 15 minutes; and FAA Form 8500-20 is 10 minutes

DOT No.: 3264

OMB No.: 2127-0501

Administration: National Highway Traffic Safety Administration

Title: Incentive Grant Criteria for Drunk Driving Prevention Programs

Need for Information: To promote effective programs to reduce drunk driving problems.

Proposed Use of Information: An alcohol incentive grant program is established to promote: Expedited driver license suspension for drunk drivers; self-sufficient community DWI programs; enforcement of underage drinking laws; and to discourage open alcohol containers and consumption of alcohol in motor vehicles.

Frequency: Annually

Total Estimated Burden: 2,340 hours

Respondents: States & local governments

Form(s): HS-62

Average Burden Per Response: 1½ minutes

DOT No.: 3265

OMB No.: 2127-003

Administration: National Highway Traffic Safety Administration

Title: Federal-Aid Agreement and Cost Summary Forms for the Highway Safety Plan

Need for Information: To serve as a basis for the execution for a Federal-Aid Agreement.

Proposed Use of Information: The Highway Safety Plan (HSP) identifies that States traffic safety problems and describes the programs and projects to address those problems. It serves as the basis for the execution for a Federal-Aid Agreement.

Frequency: Annually

Burden Estimate: 95,304 hours

Respondents: States/Territories

Form(s): HS-62, 62A, and 217

Average Burden Hours Per Respondent: 1 hour

DOT No.: 3267

OMB No.: 2125-0522

Administration: Federal Highway Administration

Title: Utility Use and Occupancy Agreements

Need for Information: For the Federal Highway Administration to fulfill its statutory obligation regarding controls on utility use of right-of-way of a Federal-aid highway.

Proposed Use of Information: Serves to document the arrangement made between the State highway agency and a utility to allow the utility to use public right-of-way under the control of the highway agency.

Frequency: Recordkeeping requirement/ no retention period specified

Burden Estimate: 552,000 hours

Respondents: Utility companies and state highway agencies

Form(s): None

Average Burden Hours Per Respondent: 8 hours

DOT No.: 3268

OMB No.: New Submission

Administration: Federal Railroad Administration

Title: Disqualification Proceedings

Need for Information: To assure compliance with the Rail Safety Improvement Act and prevent individuals from violating the terms of a disqualification order.

Proposed Use of Information: To prevent an individual serving under a disqualification order from obtaining employment in a safety sensitive position with another railroad.

Frequency: Recordkeeping

Burden Estimate: 8 hours

Respondents: 12 individuals

Form(s): None

Average Burden Hours Per Respondent: 30 minutes

DOT No.: 3269

OMB No.: 2106-0049

Administration: Office of the Secretary

Title: Basic Essential Air Service Questionnaire

Proposed Use of Information: Basic informational documents for DOT analysis of small community air transportation needs.

Need for Information: To enable DOT to meet statutory mandate to review basic essential air service requirements for all eligible points.

Frequency: Triennial

Burden Estimate: 1,192 hours

Respondents: State and local governments

Form(s): None

Average Burden Hours Per Respondent: 8 hours

DOT No.: 3270

OMB No.: 2115-0545

Administration: U.S. Coast Guard

Title: Financial Responsibility for Water Pollution

Need for Information: The information collection requirement is needed to implement the oil pollution responsibilities in the Federal Water Pollution Control Act, Trans-Alaska Pipeline Authorization Act, Outer Continental Shelf Act Amendments of 1978 and for administering and managing the Deepwater Port Liability Fund.

Proposed Use of Information: The Coast Guard uses the information to ensure that vessel operators can meet the

statutory liability in the vent of water pollution incidents in the United States waters.

Frequency: On occasion

Burden Estimate: 2,182

Respondents: Vessel Operators

Form(s): CG-5358-8, CG-5358-9, CG-5358-3, CG-5358-4, CG-5358-1, CG-5358-2

Average Burden Hours Per Respondent: 30 minutes for reporting and 10 minutes for recordkeeping

DOT No.: 3271

OMB No.: 2115-0142

Administration: U.S. Coast Guard

Title: Plan Approval and Records for Marine Engineering Systems

Need for Information: This information collection requirement is needed to ensure that a vessel construction, arrangement and equipment meet the applicable regulations.

Proposed Use of Information: Coast Guard uses the information to determine that all applicable standards are complied with.

Frequency: On occasion

Burden Estimate: 1,577 hours

Respondents: Vessel builders and owners

Form(s):

Average Burden Hours Per Respondent: 15 minutes

DOT No.: 3272

OMB No.: 2115-0096

Administration: U.S. Coast Guard

Title: Oil and Hazardous Materials Pollution Prevention and Safety Records, Equivalents/Alternatives and Exemptions

Need for Information: The information collection requirements contained in the regulations are necessary to prevent or mitigate the results of an accidental release of bulk liquid hazardous materials transferred at waterfront facilities. The requirements are also necessary to verify that regulatory mandates for safety tests, inspections, training, designations, etc., are being followed. Provisions such as alternatives and exemptions are contained to allow the vessel or terminal operators flexibility in complying with the regulations.

Proposed Use of Information: The Coast Guard uses this information to help minimize the number and impact of pollution discharges and accidents occurring during the transfer of oil or hazardous materials. It is also used to evaluate the proposed alternative and requests for exemptions.

Frequency: On occasion

Burden Estimate: 111,444 hours

Respondents: Operators of bulk oil and hazardous materials facilities and vessels

Form(s):

Average Burden Hours Per Response: 4 hours for reporting and 5 minutes for recordkeeping

DOT No.: 3273

OMB No.: 2133-0515

Administration: U.S. Maritime Administration

Title: Determination of Fair and Reasonable Rates for the Carriage of Dry Bulk Preference Cargoes in Less than full Shiploads on U.S. Flag Commercial Liner Vessels

Need for Information: To document compliance with data-gathering provisions of certain cargo preference regulations.

Proposed Use of Information: To develop fair and reasonable guideline dates for the carriage of preference cargoes on U.S. flag vessels

Frequency: Annually

Burden Estimate: 48 hours

Respondents: Ship owners, ship operators

Form(s):

Average Burden Hours Per Respondent: 16 hours

Frequency: On occasion

Burden Estimate: 458 hours annually

Respondents: Individuals (pilots)

Form(s): AC Form 3150-7

Average Burden Hours Per Response: 5 minutes

DOT No.: 3276

OMB No.: 2115-0514

Administration: U.S. Coast Guard

Title: Merchant Marine License, Certificate and Document Application Recordkeeping/Reporting Requirements

Need for Information: This information collection requirement is needed to determine and document the training, experience, physical condition, professional qualifications and character of persons applying for a merchant marine license, certificate or document.

Proposed Use of Information: The information will be used to determine the applicant's qualifications to receive or continue to hold a license, certificate or document.

Frequency: On occasion

Burden Estimate: 101,087 hours

Respondents: Applicants for merchant marine license, certificate or document

Form(s): CG-719K, 866, 4509, 4510, 719B, 2675, 2838, 719A, 5206, 5205, 4865, 3750, 2987, 2849, 887, and FD-258

Average Burden Hours Per Response: Reporting burden is 26 minutes; recordkeeping burden is 7 minutes

DOT No.: 3274

OMB No.: 2133-0505

Administration: U.S. Maritime Administration

Title: Revised Standby Voluntary Tanker Agreement Under Public Law 774, 81st Congress as Amended

Need for Information: To document each participant's compliance with the provisions of the voluntary tanker agreement.

Proposed Use of Information: Defense contingency planning

Frequency: On occasion

Burden Estimate: 19 hours

Respondents: Tanker owners and operators participating in the agreement

Form(s):

Average Burden Hours Per Respondent: 30 minutes

DOT No.: 3275

OMB No.: 2120-0101

Administration: Federal Aviation Administration

Title: Physiological Training

Need for Information: This collection of information is necessary to determine if the applicants meet the qualifications for training under the FAA/USAF/USN/NASA Training Agreements.

Proposed Use of Information: The information will be used by the Airman Education Programs Branch (AAM-420) to determine if the applicant is qualified to receive physiological training.

DOT No.: 3277

OMB No.: 2106-0023

Administration: Office of the Secretary

Title: Part 201—Application for Certificates of Public Convenience and Necessity

Need for Information: Required to issue a certificate of public convenience and necessity for carriers to engage in air transportation operations

Proposed Use of Information: Required to determine the nature and scope of required authority

Frequency: As needed

Burden Estimate: 1,050 hours

Respondents: 100

Forms: None

Burden Per Response: 10 hours and 30 minutes

Issued in Washington, DC, on October 4, 1989.

Robert J. Woods,

Director of Information Resource Management.

[FR Doc. 89-24143 Filed 10-12-89; 8:45 am]

BILLING CODE 4910-62-M

[Docket 46534; Order 89-10-19]

Expanding International Air Service Opportunities to More U.S. Cities; Order Requesting Comments

Issued by the Department of Transportation on the 10th day of October, 1989.

SUMMARY: By this order, we are requesting comments on a new Department proposal designed to expand international air service opportunities to more U.S. cities.

BACKGROUND: During the past months, state and local officials, as well as business leaders, have advised the Department that their communities are interested in improved international air service. They have also expressed concern that on some occasions our traditional bilateral aviation negotiating process prevents foreign airlines from responding to their service needs. While these community parties understand the importance of maintaining a healthy U.S. airline industry, they also have recognized the importance to their communities of international air service, regardless of the flag of the carrier providing it. They have pointed out that international air service can mean expanded tourism, business, foreign investment, and jobs—in short, a boon to economic development. With these factors in mind, they have asked us to reevaluate our approach to the creation of expanded opportunities for foreign carriers to serve U.S. points.

PROPOSAL: We have considered the above comments and have determined that they justify our taking a fresh look at the process that produces international aviation services. Specifically, we have decided to explore an approach in which, under certain well-defined conditions, we will be able to grant foreign carrier requests to offer new U.S. services, notwithstanding the absence of a bilateral right supporting grant to the foreign carrier of such authority.

The text of the proposal is as follows:

DOT Proposal for Expanding International Air Service Opportunities to More U.S. Cities

In response to the desire expressed by U.S. cities for expanded international air service opportunities, the Department will approve a foreign carrier's application for one year, renewable exemption authority to provide scheduled combination nonstop international air service, or one-stop single-plane international air service via another U.S. point, between its homeland and a U.S. community provided that: (1) A U.S. or foreign

carrier does not provide nonstop or one-stop single-plane international air service to that community from the same foreign country; (2) there is a procompetitive agreement in place with the homeland country and thus a basis does not exist for a traditional aviation trade to obtain benefits for U.S. airlines; (3) the foreign carrier's proposal does not involve service to and from third countries; (4) interested U.S. parties have not raised overriding public interest reasons for denying the requested authority;¹ (5) The foreign carrier has firm plans to operate the proposed service; and (6) the foreign carrier meets all other applicable licensing standards. If the foreign carrier has not inaugurated such service within 90 days² or suspends such service for more than nine months, the authority would expire by its terms without prejudice to any subsequent application for the same authority.

This proposal is not designed to replace the traditional bilateral negotiating process. We believe that, in the majority of cases, this negotiating process advances the public interest, including the interests of communities and carriers.

On the other hand, our own experience, and the experience of many communities interested in improved international air service, indicates that bilateral negotiations may not satisfy community service needs where U.S. carriers have no immediate plans to expand their services to a particular destination, or where they do not need additional foreign government permission to do so. It is in this situation that the traditional balance-of-benefits negotiating approach does not provide the opportunity to accord greater rights to foreign airlines seeking to provide our communities with new international air services.

Our proposal is designed to address this specific problem. As such, we view the proposal as having the potential to address the needs of our communities for additional international air service opportunities while at the same time

¹ Such public interest issues could be, for example: (1) that there are substantial outstanding aviation problems with the foreign carrier's home country, or (2) that a U.S. carrier has firm plans to provide the requested service within a reasonable time frame. A foreign government's reaction to U.S. carrier requests for extrabilateral rights will be relevant in our determination of whether to grant and whether to continue in effect the foreign carrier exemption.

² We propose to give foreign carriers only 90 days to inaugurate service, because that is what we require of U.S. carriers when a start-up condition is imposed. However, we would be prepared to grant extensions of the 90-day period for good cause shown.

ensuring that the interests of U.S. carriers are properly taken into account.

We appreciate that it represents an important and significant step that deserves to be seriously considered and thoroughly discussed. To that end, we request interested parties to submit comments in the docket within 30 days from the service date of this order. Any reply comments must be filed within 15 days after that date.

Accordingly,

1. We request comments from interested parties addressing the topic above be filed in this docket by November 13, 1989; reply comments will be due November 28, 1989;

2. We will serve this order on all certificated air carriers, all foreign air carriers, the Airport Operators Council International, U.S. Airports for Better International Air Service, and the U.S. Departments of State and Commerce; and

3. We will publish a copy of this order in the *Federal Register*.

Jeffery N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 89-24285 Filed 10-12-89; 8:45 am]

BILLING CODE 4910-62-M

[Docket No. 46459]

Order to Show Cause; Joint Application of Midway Airlines, Inc., Eastern Air Lines, Inc., and Continental Airlines, Inc.

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Order 89-10-12, order to show cause.

SUMMARY: By Order 89-10-12, the Department has tentatively decided to approve the transfer of Eastern/Continental's nonstop authority in the Philadelphia-Montreal and Philadelphia-Toronto markets to Midway Airlines. Midway's new authority for these routes would be in the form of five year, experimental certificates of public convenience and necessity. The Department also tentatively concludes that labor protective provisions should not be imposed as a condition to its approval of this transaction.

DATE: Comments and objections shall be filed by October 13, 1989 and answers shall be filed three calendar days thereafter.

ADDRESS: The above pleadings should be filed in Docket No. 46459, addressed to the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street SW., Room 4107,

Washington, DC 20590, and shall be served on all parties in Docket 46459.

Dated: October 5, 1989.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 89-24140 Filed 10-12-89; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD-89-084]

National Boating Safety Advisory Council; Subcommittee Meetings

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App.1), notice is hereby given of meetings of the National Boating Safety Advisory Council's Subcommittees on Consumer Education, Propeller Guards, Masthead Lights, Accident Reporting, Passengers for Consideration and Personal Watercraft to be held on Saturday, November 4, 1989, at the Las Palmas Inn, 6233 International Drive, Orlando, Florida, beginning at 1:30 p.m. and ending at 5:30 p.m. The agenda for each meeting will be to review the status of various projects that have been undertaken by the subcommittees.

Attendance is open to the interested public. With advance notice to the Chairman, members of the public may present oral statements at the meetings. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meetings. Any member of the public may present a written statement to the Council at any time. Additional information may be obtained from Captain William S. Griswold, Executive Director, National Boating Safety Advisory Council, U.S. Coast Guard, (G-NAB), Washington, DC 20593-0001, or by calling (202) 267-0997.

Issued in Washington, DC.

Dated: October 5, 1989.

Robert T. Nelson,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 89-24136 Filed 10-12-89; 8:45 am]

BILLING CODE 491-014-M

DEPARTMENT OF TRANSPORTATION

[CGD-89-083]

National Boating Safety Advisory Council; Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub.

L. 92-463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the National Boating Safety Advisory Council to be held on Monday and Tuesday, November 6 and 7, 1989 at the Las Palmas Inn, 6233 International Drive, Orlando, Florida, beginning at 8:00 a.m. and ending at 4:00 p.m. on both days. The agenda for the meeting will be as follows:

1. Introduction and Swearing-in of a new Council Member.
2. Review of action taken at the 43rd meeting of the Council.
3. Members' items.
4. Executive Director's report.
5. Consumer Education Subcommittee report.
6. Propeller Guard Subcommittee report.
7. Report on the National Boating Survey.
8. Accident Reporting Subcommittee report.
9. Report of the Personal Watercraft Subcommittee.
10. Report of the "Passengers for Consideration" Subcommittee.
11. Review of Developments in Personal Flotation Devices (PFDs).
12. Report of the Masthead Light Subcommittee.
13. Video "Boating Safety" as aired by WCVB-TV/Boston.
14. Report on National Safe Boating Week.
15. Report on Short Range Aids to Navigation.
16. Briefing on Boating Safety at Disney World.
17. Presentation on Pontoon Boats.
18. Presentation on the National Boating Education Seminar.
19. Presentation on Inflatable PFDs of the Future.
20. Remarks by Chief, Office of Navigation Safety and Waterway Services.
21. Reply to members' items.
22. Chairman's session.

Attendance is open to the public. With advance notice to the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Council at any time. Additional information may be obtained from Captain William S. Griswold, Executive Director, National Boating Safety Advisory Council, U.S. Coast Guard, (G-NAB), Washington, DC 20593-0001, or by calling (202) 267-0997.

Issued in Washington, DC.

Dated: October 5, 1989.

Robert T. Nelson,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 89-24137 Filed 10-12-89; 8:45 am]

BILLING CODE 491-014-M

[CGD 89-088]

Towing Safety Advisory Committee; Meeting of Subcommittee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Subcommittee on Tug-Barge Construction, Certification and Operations of the Towing Safety Advisory Committee (TSAC). The subcommittee meeting will be held on October 31, 1989 in Room 7234 at Department of Transportation Headquarters, 400 Seventh Street, SW., Washington, DC. The meeting is scheduled to begin at 9:00 a.m. The agenda for the meeting consists of the following items:

1. Development of suggested improvements in the provisions of 46 CFR part 151.
2. Evaluation of the adequacy of current 46 CFR part 31 inspection intervals for tank barges.
3. Evaluation of the adequacy of U.S. Coast Guard policy regarding the application of "Rivers" structural rules for tank barges regularly plying "Lakes, Bays and Sounds" route or an "Oceans" route within the boundary line.
4. Evaluation of the requirement for a buckling analysis for existing barges with "Rivers" scantlings as a condition of continuing operation on "Lakes, Bays and Sounds" or "Oceans" routes within the boundary line.
5. Evaluation of the requirement for high level alarms in cargo tanks on tank barges to reduce the incidence of cargo tank overfilling and overpressurization.
6. Evaluation of the progress in identifying problems confronting the towing industry that could result from a full conversion to 1969 Tonnage Convention tonnage.

Members of the public may present oral or written statements at the meeting.

FOR FURTHER INFORMATION CONTACT: Mr. Gene Hammel, Executive Director, Towing Safety Advisory Committee, U.S. Coast Guard Headquarters (G-MP-2), 2100 2nd Street, SW., Washington, DC 20593-0001, (202) 267-1406.

Dated: October 6, 1989.

M.J. Schiro,

Captain, U.S. Coast Guard Acting Chief,
Office of Marine Safety, Security and
Environmental Protection.

[FR Doc. 89-24138 Filed 10-12-89; 8:45 am]

BILLING CODE 491-014-M

Federal Highway Administration

Environmental Impact Statement: Alameda and Santa Clara Counties, CA

AGENCY: Federal Highway
Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that environmental impact statements will be prepared for proposed transportation projects in Alameda and Santa Clara Counties, California.

FOR FURTHER INFORMATION CONTACT:

C.G. Clinton, District Engineer, Federal Highway Administration, P.O. Box 1915, Sacramento, California 95812-1915, Telephone: (916) 551-1314.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Surface Transportation Act of 1987, Section 149 (Demonstration Projects), the FHWA, in cooperation with Caltrans, will demonstrate methods of improving access to and alleviating congestion on Interstate 880 and its access roads, including access roads from Oakland International Airport and Alameda Island, California.

This demonstration project will comprise the following:

- A first tier (planning level) environmental impact statement (EIS) focusing on broad issues such as general location, type of facility, land use implications, and impacts in general of the major alternatives. The study limits are generally from the I-80/I-880/I-580 Distribution Structure to Hegenberger Road in the City of Oakland.

- An EIS (project level) addressing location, type of facility and specific details on project impacts, cost, and mitigation measures of major alternatives. The study limits are from Hegenberger Road in the City of Oakland to Route 84 in the City of Newark.

- A first tier (planning level) EIS focusing on broad issues such as general location, type of facility, land use implications, and impacts in general of the major alternatives. The study limits are from Route 84 in the City of Newark to generally Route 237 in Santa Clara County.

The range of alternatives to be studied will include:

- Widening and/or modifications to existing I-880 with and without High Occupancy Vehicle (HOV) facilities.
- New alignment freeway/multimodal facility with and without High Occupancy Vehicle (HOV) facilities (State Route 81).
- A combination of the above
- No Project alternative

A scoping meeting will be held at 7:30 p.m. on October 17, 1989 at San Leandro High School, 2200 Bancroft Ave., San Leandro for affected Federal, State, and local agencies and the public to solicit comments on the scope of the studies. A series of public meetings will also be held during the course of the environmental studies to inform and receive input from the public. Each draft environmental impact statement will be circulated for public and agency review and comment followed by a formal public hearing. Public notice will be given of the time and place of the meetings and hearings.

To ensure that the full range of issues related to these proposed actions are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning these proposed actions and the EISs should be directed to the FHWA at the address provided previously in this Notice.

(Catalog of Federal Domestic Assistance and Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12371 regarding intergovernmental consultation on Federal Programs and activities apply to this program.)

Issued on: October 6, 1989.

C. Glenn Clinton,

District Engineer, Sacramento, California.

[FR Doc. 89-24208 Filed 10-12-89; 8:45 am]

BILLING CODE 4910-22-M

Federal Highway Administration

Environmental Impact Statement: Hennepin County, MN

AGENCY: Federal Highway
Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public of their intent to prepare an Environmental Impact Statement for proposed highway improvements on I-494 in Hennepin County, Minnesota.

FOR FURTHER INFORMATION CONTACT:

Mr. Stephen Bahler, Area Engineer,
Federal Highway Administration,
Suite 490, Metro Square Building,

Seventh and Robert Streets, St. Paul,
Minnesota 55101 (612) 290-3259.

or

Mr. Leonard Palek, Assistant Corridor
Manager, Minnesota Department of
Transportation, Metro District, Golden
Valley Office, 2055 North Lilac Drive,
Golden Valley, Minnesota 55442 (612)
593-8578.

or

Ms. Constance Kozlak, Project Manager,
Metropolitan Council of the Twin
Cities Area, Mears Park Centre, 230
East Fifth Street, St. Paul, Minnesota
55101 (612) 291-6346.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Minnesota Department of Transportation and the Metropolitan Council of the Twin Cities Area, is planning to prepare an Environmental Impact Statement (EIS) on a proposal to improve I-494 from approximately Trunk Highway (TH) 5 in the City of Bloomington to I-394 (TH 12) in the City of Minnetonka. The section of I-494 proposed for improvement is approximately twenty miles long. The proposed improvements include:

- Addition of one lane in each direction on I-494 between 24th Avenue South and TH 100 and between CSAH 18/TH 169 and I-394;
- Addition of two lanes in each direction between TH 100 and CSAH 18/TH 169; and
- Interchange modifications at 12th Avenue South, Portland Avenue South, Nicollet Avenue South, France Avenue South, TH 100, East Bush Lake Road, TH 169/212, TH 5, Valley View Drive, TH 62, Baker Road, TH 7, CSAH 5, and I-394.

Interchange modifications currently underway at 34th and 24th Avenues South and at TH 77 are part of the TH 77/I-494 Improvement Project. Proposed interchange modifications (improvements) at Lyndale Avenue South, I-35W, and Penn Avenue South are being evaluated as part of the I-35W EIS.

The proposed roadway improvements are part of a comprehensive program for the corridor which includes transit service improvements, implementation of travel demand management techniques by the private sector, and land use management. The proposed roadway improvements include ramp metering and HOV bypass ramps as an incentive for carpools and vanpools. Mainline alternatives under consideration include, but are not limited to: (1) No-build, (2) HOV lanes, (3) Mixed traffic lanes plus HOV lanes. Interchange alternatives include removal of an existing interchange at

Nicollet Avenue South, relocation of ramps at 12th Avenue South to Portland Avenue South, and new interchanges at West Bush Lake Road, Washington Avenue, and Baker Road. Design alternatives will be considered at all interchanges as part of the EIS.

Improvements to I-494 are needed to provide capacity for traffic forecasted in the year 2010 and to solve existing safety problems and roadway geometric deficiencies. Traffic volumes forecast for the year 2010 are between 56 and 136 percent higher than existing volumes. Current volume/capacity ratios over several segments of I-494 exceed 0.89, and ramp volumes are found to exceed available capacities. Many segments of I-494 pavement have deteriorated and will require extensive maintenance or replacement in the near future.

A Scoping Document will be prepared for agency and public comment in accordance with state requirements. A public meeting will be held to receive comments on proposed alternatives and the issues addressed in the Scoping Document. That meeting will be held during the fall of 1989. Public notice of the time and place of the meeting will be given. A Scoping Decision Document will subsequently be issued focusing alternatives and impacts to receive detailed analysis in the EIS.

To ensure that a full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions will be invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Minnesota state law requires that an EIS be prepared for the proposed I-494 improvements. That EIS will be prepared as a joint document with the federal EIS.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction)

The provisions of the Minnesota Intergovernmental Review Process regarding state and local clearinghouse review of federal and federally assisted programs and projects apply to this program.

Issued on: October 4, 1989.

Alan Friesen,

District Engineer, St. Paul, Minnesota.

[FR Doc. 89-24194 Filed 10-12-89; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement, Lehigh County, PA

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 Lehigh County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT:

Mr. Philibert A. Ouellet, District Engineer, Federal Highway Administration, 228 Walnut Street, P.O. Box 1086, Harrisburg, Pennsylvania 17108-1086. Telephone: (717) 782-4422

or

Mr. Jack Porter, Project Manager, Pennsylvania Department of Transportation, Engineering District 50, 1713 Lehigh Street, Allentown, PA 18105. Telephone: (215) 821-4100

or

Glenn Taggart, Chief Planner, Lehigh/Northampton Joint Planning Commission, ABE Government Building, Allentown, PA 18101. Telephone (215) 264-4514

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Pennsylvania Department of Transportation (PennDOT) and Lehigh County, will prepare an Environmental Impact Statement (EIS) on a proposal to improve US-222 (S.R. 0222) from the Interstate 78 interchange through Lower Macungie and Upper Macungie Townships to the vicinity of the Berks County line.

The proposed improvement would involve the reconstruction of US-222 for a distance of approximately 7-miles. Previous transportation planning studies have demonstrated that there is a need to enhance east-west traffic flow in the western section of Lehigh County. The project will relieve traffic congestion along the corridor and improve the regional transportation system. It will also provide needed access to a designated development area of Lehigh County.

This project has been selected as a pilot project to demonstrate highway corridor preservation and accelerated right-of-way acquisition principles and techniques. One of the primary goals of the pilot project is to demonstrate ways of acquiring right-of-way earlier or otherwise preserving potentially needed right-of-way for this project prior to land development or rapid escalation in land values in anticipation of the highway project benefits.

The study process will consist of two phases. The first phase will consist of a traffic and transportation analysis and a Phase I Alternatives Analysis including preliminary engineering and environmental studies. Preliminary alternatives analysis will consider the impacts of the various alternatives on the environment as they relate to the areas of air quality, quality, noise, historical and archaeological resources, traffic, transportation, energy, water resources, socioeconomic, land use, terrestrial ecology, water quality and aquatic biota, farmlands evaluation, floodplain and flood hazard, wetlands, visual resources, soils and erosion analysis, municipal, industrial and hazardous waste facilities, and construction impacts.

Alternatives to be considered during the Phase I Study will include upgrading the existing facility by widening to four lanes with appropriate center turn lanes, four lane controlled access Bypass north of Wescosville and Trexlertown, Transportation Systems Management (TSM) and a do-nothing alternative.

Throughout the Phase I Study process, there will be continuing coordination and involvement with the public and agencies by holding public meetings and meetings with involved agencies. A Phase I Study Report will be prepared.

During preparation of the Phase I Study, an appropriate environmental evaluation document will also be prepared to evaluate the impacts of preservation of the right-of-way for the alternative(s) resulting from the Phase I study in order to preserve the corridor. Methods for the preservation of the corridor could include right-of-way dedication, land donation and actual purchase.

The Phase I Study Report and the environmental evaluation document for corridor preservation will be made available for public and regulatory agency review and a public hearing held, if appropriate.

Approval will be obtained from the FHWA at the end of Phase I for the Phase I environmental evaluation document and for the alternatives to be advanced into the next study phase.

The second phase study will consist of a Phase 2 Alternatives Analysis process including detailed engineering and environmental studies and analyses for the approved Phase I Alternatives and the preparation of a Draft and Final EIS.

These alternatives will be studied in detail and their impacts to the environment will be assessed as they relate to the Environmental areas mentioned under the Phase I Study. In

addition, a cost analysis of the various alternatives, preliminary engineering information and all public and agency consultation and coordination will be documented. The review of these studies will be coordinated with the public and the agencies via public meetings, meetings with agencies, circulation of the Draft EIS, and a public hearing.

Letters describing the proposed action and the Scope of Studies soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who express interest in the proposal. Scoping meetings are planned with the agencies during the fall of 1989. An initial public meeting was held in the project area in the spring of 1989 and additional meetings will be held throughout the study process. Public notices of the date, time and place of these meetings, and also of any required public hearings, will be provided in the local newspapers. Public involvement and interagency coordination will be maintained throughout the EIS process.

To ensure that the full range of issues related to this proposed action are addressed and that all significant issues are identified, comments or questions concerning this action and the EIS should be directed to FHWA or PennDOT at the address provided above.

(Catalog of Federal Domestic Assistance Program No. 20.205, Highway Research, Planning and Construction and the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, regarding State and Local Review of Federal and Federally Assisted Programs and Projects apply to this Program)

Issued on: October 6, 1989.

George L. Hannon,

Assistant Division Administrator, Federal Highway Administration.

[FR Doc. 89-24195 Filed 10-12-89; 8:45 am]

BILLING CODE 4910-22-M

Urban Mass Transportation Administration

Environmental Impact Statement for Transit Improvements in the Hunt Valley Corridor of Metropolitan Baltimore, MD

AGENCY: Urban Mass Transportation Administration, U.S. Department of Transportation.

ACTION: Notice of Intent.

SUMMARY: The Urban Mass Transportation Administration (UMTA) and the Mass Transit Administration (MTA) of the Maryland Department of Transportation intend to prepare an Environmental Impact Statement (EIS)

for alternative transit improvements in the Hunt Valley corridor of the metropolitan area of Baltimore, Maryland. The UMTA and MTA will prepare the EIS in conformance with 40 CFR Parts 1500-1508, Council on Environmental Quality, Regulations for Implementing the Procedural Requirements of the National Environmental Policy Act of 1969, and 49 CFR part 622, UMTA, Environmental Impact and Related Procedures. In addition, in conformance with the Urban Mass Transportation Act of 1964 and UMTA policy, the Draft EIS will be prepared in conjunction with an Alternatives Analysis, and the Final EIS in conjunction with Preliminary Engineering.

FOR FURTHER INFORMATION CONTACT:

John T. Garrity, UMTA Region 3, 841 Chestnut Street, Suite 714, Philadelphia, PA 19107; Telephone: (215) 597-4179.

Scoping

The UMTA and MTA invite the public and affected Federal, State, and local agencies to participate in determining the alternatives to be evaluated in the EIS and identifying the significant issues related to the alternatives. Written materials describing the proposed alternatives, the expected impact areas, a citizen involvement program, and the preliminary work schedule are being mailed to affected Federal, State, and local agencies and to interested parties on record. Others may request these scoping materials by calling or writing to Kenneth Goon, Director of Planning, Mass Transit Administration, 300 W. Lexington Street, Baltimore, Maryland 21201-3414; Telephone (301) 333-3366. No scoping meeting is planned. The MTA has already met with the Hunt Valley business community, the Cockeysville-Hunt Valley Special Advisory Committee, and the Hunt Valley Transportation Management Association. Written comments from the public and affected agencies on the scope of the EIS may be sent to Mr. Goon by November 13, 1989. Opportunity for additional public comment will be provided during the study.

Corridor Description

The Hunt Valley corridor in Baltimore County is bounded by Interstate Highway I-83 on the west, Timonium Road on the south, York Road on the east, and the Shawan Center and Hunt Valley Mall on the north. The corridor includes the communities of Hunt Valley, Texas, Padonia, part of Timonium, and part of Cockeysville. The area is predominantly industrial from

Timonium to Schilling Circle. Major land uses include the Maryland State Fairgrounds, the Genstar Quarry, and the Texas Landfill. Also included are major manufacturing centers for Noxell, Westinghouse, McCormick, Sherwin Williams, and Becton Dickinson. A small residential area is located off York Road between the Fairgrounds and Padonia Road. The York Road area is predominantly a strip of commercial development. The northern section of the corridor from Schilling Circle to International Circle is largely office use, with the exceptions of the Hunt Valley Mall located north of Shawan Road, and the Masonic Home of Maryland, which are commercial and institutional uses, respectively.

Independently of UMTA, the MTA is constructing the Central Light Rail Line (CLRL) from Metro Center in downtown Baltimore south to Dorsey Road in Anne Arundel County, and north to Timonium in Baltimore County. The northern section to Timonium is being constructed in the Conrail (formerly the Northern Central Railroad) right-of-way and terminates at the existing Timonium park-and-ride facility located between York Road and I-83. The U.S. Army Corps of Engineers is preparing an environmental assessment of the impacts on wetlands and navigable waterways of this related but independent projects. The EIS to be prepared by MTA and UMTA will evaluate transit alternatives northward from the Timonium terminus of the CLRL to the Hunt Valley area.

Alternatives

Transportation alternatives proposed for consideration in the Hunt Valley corridor include: (1) The No-Build option, under which the existing and committed bus and rail systems (including the CLRL out to Timonium and its accompanying feeder bus system) would continue to operate, and committed roadway improvements such as the extension of Warren Road and its interchange with I-83, are assumed to be implemented; and (2) a Transportation Systems Management (TSM) alternative which expands the bus feeder and distribution systems, increases the parking access at the Timonium CLRL terminal, and optionally includes a shuttle bus system serving the major employment concentrations in Hunt Valley.

The alternatives to be considered also include three light rail alignments which extend the CLRL from the Timonium terminal where the committed section ends, to the Hunt Valley Mall. The three alignments are generally off-street and

at-grade. They all follow the Conrail right-of-way from Timonium to Cockeysville and then diverge: (3) At Cockeysville, Alternative 3 follows the Cockeysville Industrial spur and then Gilroy Road. From Gilroy, it turns onto Schilling Circle and crosses Shawan Road along either McCormick Road (Alternative 3a) or Pepper Road (Alternative 3b) to end at the Mall. (4) From Cockeysville, Alternative 4 crosses the Noxell property and Beaverdam Creek on aerial structure, and then follows Pepper Road across Shawan Road to end at the Mall (Alternative 4a). A design option (Alternative 4b) shifts the alignment east of Pepper Road behind the buildings between Wight Avenue and Schilling Road. (5) Alternative 5 is identical to Alternative 3a up to the Mall. At the Mall, it parallels Shawan Road east to Pepper Road where it turns south and crosses back over Shawan. It then follows Pepper to Wight Avenue and Wight back to Gilroy to close a loop.

During scoping, comments on the alternatives should focus on the appropriateness of these and other options for consideration in the study, not on preferences for a particular alternative.

Probable Effects

The UMTA and MTA propose to evaluate in the EIS all significant social, economic, and environmental impacts of the alternatives under consideration. The impacts analyzed will include noise, residential and business displacements, changes in development patterns and land use, community disruption due to traffic, noise, displacements, and parking changes, safety considerations, effects on historic sites, degradation of

the air quality and water quality especially near stations, impacts on wetlands, floodplains, ecologically sensitive areas, navigable waterways, coastal zones, hazardous waste sites, and the aesthetic quality of the area. These impacts will be evaluated both for the construction period and for the long-term operation of each alternative. Measures to mitigate harm will be explored for any adverse impact identified.

Construction of any alternative other than the No-Build will require increased capital outlays for several years. The TSM and light rail alternatives are expected to increase transit service and patronage with associated increases in operating and maintenance costs. The alternatives are expected to have no significant impact on parklands, energy use, regional air quality, or highway congestion except near stations.

During scoping, comments on the probable effects should focus on the completeness of the proposed set of impacts to be evaluated. Other impacts or criteria judged relevant to decision-making should be identified.

Issued on: October 6, 1989.

Peter N. Stowell,

Southeastern Area Director

[FR Doc. 89-24139 Filed 10-12-89; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Environmental Hazards; Meeting

The Department of Veterans Affairs gives notice under Public Law 92-463, section 10(a)(2), that a meeting of the

Veterans' Advisory Committee on Environmental Hazards will be held at the Department of Veterans Affairs Central Office, 810 Vermont Avenue NW., Room 119, Washington, DC 20420 on November 2-3, 1989. The purpose of the Committee is to review the scientific and medical literature relating to the issue of whether there exists a significant statistical association between exposure to a herbicide containing dioxin and the subsequent development of a non-Hodgkin's lymphoma.

The meeting will convene at 9:00 a.m. both days in Room 119. This meeting will be open to the public up to the seating capacity of the room. Because this capacity is limited, it will be necessary for those wishing to attend to contact Ms. Sylvia Arrington, Department of Veterans Affairs Central Office (phone 202/233-2115) prior to October 26, 1989.

Members of the public may direct questions or submit prepared statements for review by the Committee in advance of the meeting, in writing only, to Mr. Frederic L. Conway, Deputy Assistant General Counsel, Room 1078, Department of Veterans Affairs Central Office. Submitted material must be received at least five days prior to the meeting. Such members of the public may be asked to clarify submitted material prior to consideration by the Committee.

Dated: October 5, 1989.

By direction of the Secretary.

Sylvia Chavez Long,

Committee Management Officer.

[FR Doc. 89-24101 Filed 10-12-89; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register

Vol. 54, No. 197

Friday, October 13, 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 MARITIME COMMISSION

TIME AND DATE: 3:00 p.m.—October 16, 1989.

PLACE: Hearing Room One—1100 L Street NW., Washington, DC 20573-0001.

STATUS: Closed.

MATTER TO BE CONSIDERED:

1. Docket No. 89-16—Actions to Address Adverse Conditions Affecting United States Carriers in the United States/Taiwan Trade—Consideration of the Record.

CONTACT PERSON FOR MORE

INFORMATION: Joseph C. Polking, Secretary, (202) 523-5725.

Joseph C. Polking,

Secretary.

[FR Doc. 89-24370 Filed 10-11-89; 3:48 pm]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, October 18, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20 and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE

INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 11, 1989

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-24332 Filed 10-11-89; 11:41 am]

BILLING CODE 6210-01-M

Corrections

Federal Register

Vol. 54, No. 197

Friday, October 13, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 85-061]

Horse Quarantine Facility Standards; Collection of Fees at Animal Quarantine Facilities

Correction

In proposed rule document 89-20736 beginning on page 36986 in the issue of Wednesday, September 6, 1989, make the following correction:

§ 92.11 [Corrected]

On page 36995, in the first column, in § 92.11(e)(2)(B)(2), in the third line from the bottom of the paragraph, "contained" should read "continued".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPP-180815; FRL 3634-3]

Emergency Exemptions

Correction

In notice document 89-19820 beginning on page 35059 in the issue of Wednesday, August 23, 1989, make the following corrections:

1. On page 35060, in the second column, in paragraph 24., in the fourth line, "beetles" was misspelled.
2. On the same page, in the same column, in paragraph 25., in the second line, "carboxin" was misspelled.
3. On the same page, in the third column, in paragraph 38., in the third line, "coffee" was misspelled.
4. On page 35061, in the first column, in paragraph 45., in the fourth line, "bulk" should read "bulb".

BILLING CODE 1505-01-D

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 60

RIN 3067-AB32

National Flood Insurance Program; Elevation Requirements for Manufactured Homes in Existing Manufactured Home Parks and Subdivisions

Correction

In rule document 89-22894 beginning on page 40278 in the issue of Friday, September 29, 1989, make the following correction:

§ 60.3 [Corrected]

On page 40283, in the second column, in § 60.3(c)(6)(iv), in the sixth line, "flood" should read "floor".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-943-09-4214-12; I-1639]

Partial Termination of Classification for Multiple Use Management; Idaho

Correction

In notice document 89-9187 beginning on page 15561 in the issue of Tuesday, April 18, 1989, make the following correction:

On page 15562, in the first column, under "T.21 N., R. 23 E.", the second line should read "Sec. 4, NW¼, N½SW¼".

BILLING CODE 1505-01-D

**FRIDAY
OCTOBER 13, 1989**

**Friday
October 13, 1989**

Part II

**Department of
Health and Human
Services**

Family Support Administration

45 CFR Part 205 etc.

**Aid to Families With Dependent Children;
Job Opportunities and Basic Skills
Training Program and Child Care and
Supportive Services; Final Rule**

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

45 CFR Parts 205, 224, 233, 234, 238, 239, 240, 250, 255 and 256

RIN 0970-AA68

Aid to Families With Dependent Children; Job Opportunities and Basic Skills Training (JOBS) Program; Child Care and Supportive Services; Conforming Changes to Existing Regulations

AGENCY: Family Support Administration (FSA), HHS.

ACTION: Final rule.

SUMMARY: This final rule implements title II of the Family Support Act of 1988 (the Statute), Public Law 100-485, which creates the Job Opportunities and Basic Skills Training (JOBS) Program for recipients of Aid to Families with Dependent Children (AFDC). The JOBS program is designed to assist recipients to become self-sufficient by providing needed employment-related activities and support services.

This final rule also implements sections 301 and 302 of the Statute. Section 301 guarantees child care and provides other supportive services for JOBS participants and recipients who are in approved educational and training activities, and guarantees child care for those who are working. Section 302 guarantees child care for twelve months for certain individuals who have lost AFDC eligibility due to increased earnings, increased hours of work, or loss of the earned income disregard.

EFFECTIVE DATE: October 13, 1989. (For further explanation, please see "Overview of JOBS Program Implementation.")

FOR FURTHER INFORMATION CONTACT: Mark Ragan, Family Support Administration, Office of Family Assistance, Fifth Floor, 370 L'Enfant Promenade, SW., Washington, DC, 20447, telephone (202) 252-5118.

SUPPLEMENTARY INFORMATION:

Background

Studies indicate that the average length of time an AFDC family receives assistance is about 2 years. Included in that average are many families who remain on assistance for a protracted period of time. Often, the parent (or parents) in these families lacks the necessary skills or basic education to find employment and become self-sufficient. In many cases, the parent began to receive assistance as a teenager, never finished high school, and

has never developed the skills needed to find and keep employment.

Current Federal law and implementing regulations provide for a number of work and training programs for AFDC recipients—the Work Incentive (WIN) program, the Work Incentive Demonstration (WIN Demo) program, the community work experience program (CWEP), the employment search program, and the work supplementation program. However, since most of these work programs are optional, and State support for the programs has varied, implementation of work and training programs has been uneven among the States. A number of studies of possible factors fostering welfare dependence cite the need for reliable and affordable child care in order to obtain and maintain employment. Lack of other support services, such as transportation, has also been mentioned as hindering employment.

On October 13, 1988, the President signed the Family Support Act (the Statute), Public Law 100-485. Title II of the Statute establishes the Job Opportunities and Basic Skills Training (JOBS) program under title IV-F of the Social Security Act (the Act). The purpose of JOBS is to assure that needy families with children obtain the education, training, and employment that will help them avoid long-term welfare dependence. Title III provides child care and other services in support of employment and education and training activities.

Because the Statute affects programs administered by a number of Departments, we actively sought suggestions and comments from the Departments of Education, Interior, and Labor. We also considered letters received in the mail and comments at numerous meetings held with representatives of State IV-A agencies, Indian Tribes, Alaska Native organizations, welfare rights organizations, and other interested parties during the period in which the proposed regulations were being developed. In addition, we carefully reviewed over 700 comments which were received on various aspects of the regulations.

Discussion of the Regulations

In the final regulations, we have followed the format of the proposed regulations issued April 18, 1989 (54 FR 15638) with one exception. We have moved the definition of "participation" to a new § 250.78. We have written the preamble and final regulations so that they do not require reference back to the proposed regulations. Preamble

language in the final regulations generally follows the same sequence as in the preamble to the proposed regulations, and we have interspersed comments and responses as appropriate. Regulatory language remains the same except when pertinent changes have been made. Some information about the WIN and IV-A work programs, which we had included as background for the proposed regulations, has been deleted from the preamble to the final regulations.

This discussion is divided into three parts. The first addresses all aspects of the JOBS program; the second addresses provisions regarding child care and other supportive services; and the third part describes changes to the existing regulations in the title IV-A program.

Provisions contained in title II of the Statute regarding workers' issues, such as working conditions, tort claims protection, workers' compensation, and displacement are included in a separate regulatory package developed jointly by the Department of Health and Human Services and the Department of Labor. Several related amendments affecting the AFDC program contained in the Statute, as well as changes to the title IV-D program, are included in separate regulations packages. Section 303, which provides for the extension of Medical Assistance under title XIX of the Social Security Act when a family loses AFDC eligibility, will be implemented under separate regulations to be published by the Health Care Financing Administration.

JOBS

Public Law 100-485 requires State IV-A agencies to have a JOBS program under a plan approved by the Secretary of HHS no later than October 1, 1990, or, at State option, as early as July 1, 1989. It further requires each State IV-A agency to make the program available in each subdivision of the State where it is feasible to do so by October 1, 1992. At least every 2 years, the State IV-A agency must review and update its JOBS plan and submit the updated plan to the Secretary for approval.

Sections 202(a) and 204 of the Statute provide for the repeal of the current WIN and WIN Demonstration programs upon State implementation of the JOBS program, which may be no later than October 1, 1990. JOBS program authority is under the new title IV-F of the Act.

Child Care and Other Supportive Services

Under the Statute, at the time that a State IV-A agency implements the JOBS program, the State IV-A agency must

provide funding for child care, or provide child care, if the State IV-A agency determines that it is necessary to accept or maintain employment, or to enable participation in a JOBS education or training program or another approved education or training program. It also requires that participants be assisted with transportation and other work-related supportive services. Under section 302, effective April 1, 1990, twelve months of child care (transitional child care) is guaranteed for former recipients who received AFDC in 3 of the 6 months prior to the loss of AFDC as the result of increased hours of work, increased earnings, or the loss of the earned income disregards. Child care fees (to partially offset the costs) must be charged on a sliding scale based on the family's ability to pay. The transitional child care provision is in effect until September 30, 1998.

Technical and Conforming Amendments

Section 202 of the Statute amends certain sections of title IV-A of the Act and repeals title IV-C. These changes are necessitated by the creation of the JOBS program and the close-out of the WIN and WIN Demo programs. They include, among others, the repeal of the community work experience, employment search and work supplementation programs as of October 1, 1990, unless the State IV-A agency is operating under an approved JOBS plan prior to that date.

Regulatory Procedures

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be performed for any "major rule." A major rule is one that:

- Has an annual effect on the national economy of \$100 million or more;
- Results in a major increase in costs or prices for consumers, any industries, any government agencies, or any geographic region; or
- Has significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The increased expenditures authorized for JOBS and child care and other supportive services under the Statute are expected to have an annual effect on the national economy of over \$100 million in each of the first five years of operation. The calculations for expenditures under the Statute are based on the anticipation of increased expenditures in work, training and

education programs, and related supportive services (particularly child care), which will be partially offset by payment of child care fees by parents as well as reduced welfare costs in the long run. It is envisioned that required funding levels will decrease over time as a result of the impact of the JOBS program on long-term dependency and the number of families on AFDC.

We have determined that any economic impact in excess of \$100 million per year is the result of section 201 of Public Law 100-485 (the Statute). The implementing regulations will not significantly affect expenditures. For this reason, an extensive analysis of the economic impact of these regulations is not required.

There may be increased administrative costs for State IV-A agencies due to the expansion of work programs and related support services, but such costs are not mandated by these regulations. State IV-A agency decisions concerning work programs and supportive services will affect administrative costs. Some increase in costs may be necessary because the Statute requires a minimum number of programs.

There is no evidence that competition, employment, investment, productivity, innovation or the United States' competitiveness will be affected adversely, as a result of these regulations.

Paperwork Reduction Act

Public reporting burden for the collections of information found at 45 CFR 250, 255, and 256 are estimated to average 22 hours for FSA 302, 12 hours for FSA 103, and 50 hours for FSA 104, including the time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information. These information collection requirements are subject to review and approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980. Send comments regarding the burden estimates or any other aspect of these collections of information to the Family Support Administration, 370 L'Enfant Promenade, SW., Washington, DC 20447; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Regulatory Flexibility Act

The Secretary certifies, under 5 U.S.C. 605(b), enacted by Public Law 96-354, the Regulatory Flexibility Act, that these regulations, if promulgated, will not result in a significant impact on a

substantial number of small entities because it primarily affects State governments and individuals. Certain small entities, such as providers of child care services, could receive a positive benefit from this program.

We received one comment requesting that we address economic impacts, whether they are positive or negative. The Department has traditionally taken the view that if the economic impact of a given action is expected to be positive, an economic impact statement under the Regulatory Flexibility Act is unnecessary. The additional spending on child care is expected to be a very small part of the total spending on child care in the United States. We have identified nothing in these regulations which have a direct economic effect on child care providers or other small businesses. Any economic impact would stem not from these regulations but, from the additional Federal funding appropriated by Congress to implement this Statute. These regulations merely ensure that the basic decisions on what services shall be provided and chosen will be made by the States, and parents of the children involved.

Therefore, we have concluded, and the Secretary has certified, that a regulatory impact analysis as provided in Public Law 96-354, the Regulatory Flexibility Act, is not required. These regulations are issued under the authority of section 1102 of the Social Security Act.

Federalism and Family Effects

We certify that this action has been assessed using the criteria and principles set forth in Executive Orders 12606 and 12612.

Analysis Required by Executive Order 12612 on Federalism

If a policy leads to Federal control over traditional State responsibilities or decreases the ability of a State to make policy decisions with respect to its own functions, that policy is determined to have a significant federalism effect.

The Statute requires that all State IV-A agencies implement a JOBS program by October 1, 1990. In addressing the problems of welfare dependency, which are national in scope, the Statute mandates certain JOBS activities, and requires State IV-A agencies to choose to implement two of four optional program activities (job search, on-the-job training, work supplementation, and community work experience programs).

Previously, State IV-A agencies were required to have a Work Incentive (WIN) or WIN Demonstration program and could elect to provide other work

programs. Under the work program option, the State IV-A agency chose which type of work programs to implement.

The Family Support Act is more specific than prior work program authorities regarding the activities which may be offered by State IV-A agencies and the population they are to serve under the various program authorities. However, within these limitations, the final regulations are written to allow the State IV-A agency considerable flexibility in the design and operation of its JOBS program. Moreover, title II of the Statute provides authority to Indian Tribes and Alaska Native organizations to operate autonomous programs.

HHS has consulted with State IV-A Directors, other State, County, Tribal and local representatives, welfare rights advocacy groups, labor unions, and similar organizations for their comments and suggestions in those areas of the program where options are available. In response to the Notice of Proposed Rulemaking published April 18, 1989, we received over 700 comment letters covering a number of areas in the regulations. The final regulations reflect consideration of those comments and suggestions.

The Statute mandates Federal support and technical assistance from the Departments of Health and Human Services and Labor in enhancing the flexibility and information resources of each State. Federal assistance is also required to be available to State IV-A agencies upon request for program assessment and to ensure that State IV-A agencies have adequate information both to carry out the program and to develop programs specifically fashioned to their demographic requirements.

The Statute calls for the development of performance standards by October 1993. The Department is directed to do so in consultation with the Secretary of Labor, Governors, State and local program administrators, community-based organizations, and similar groups. This permits participation by States through the entire development process. In its rulemaking, the Department has made a conscious effort to refrain from prematurely establishing standards but, based on section 487(b) of the Act, as added by section 203 of the Statute, the Department establishes certain uniform reporting requirements for performance standard purposes. We expect no State laws to be preempted.

Analysis Required by Executive Order 12606 on the Family

The JOBS program is expected to have an overall beneficial family impact. This

analysis discusses this impact in terms of the criteria in the Executive Order.

(a) The objectives of the JOBS program, to provide training, education, job placement, and employment to end welfare dependency, will result in more secure and stable family units. For two-parent families, the Statute provides State options for the participation of both parents, thus enlisting each in the drive toward independence. The potential danger to family self-image, stability and marital commitment posed by welfare dependency increases as a family remains on welfare. The decrease in dependency and increase in self-sufficiency which the Statute is designed to achieve will help strengthen families and ameliorate the erosive effects of poverty.

(b) The Statute provides significant support for the nurture and supervision of children in the form of guaranteed child care, which will enable parents to work to achieve self-sufficiency and increase their earnings. Parents will continue to have supervision of their children as they would have in any working family, with options for choosing sources of child care. Federal financial support for child care services in no way changes the nature of that care, which may continue to be provided by relatives, friends and neighbors without State intrusion, except insofar as States and localities have already chosen, or may in the future choose, to regulate or license day care providers, or ensure that center-based care becomes subject to health and safety protections.

Some families may feel that control over their own destiny is diminished by the extension of mandatory requirements established by Congress to continue their education or seek employment while placing their children in child care. This is true in a limited sense, but it represents a positive compromise by a family in which a tradeoff is made between immediate autonomy and a better future through cooperation with the requirements under the JOBS program.

(c) The JOBS program does not substitute governmental activity for any of the functions of the family. It will help the family perform its nurturing functions. It will also provide support while the family attains economic independence.

(d) The JOBS program is specifically directed at increasing family earnings. Under JOBS and the other Family Support Act provisions for enhanced earned income disregards, supportive services, transitional child care and other benefits lasting beyond the period of AFDC eligibility, earnings are less apt

to be offset by reductions of grants or loss of associated benefits.

(e) The JOBS options and services are to be designed and delivered by the non-Federal levels of government, i.e., States, localities, and Indian Tribes. The Federal government will not intrude upon family autonomy or decisions.

(f) The provisions in the Statute regarding the JOBS training program and the related child care and other supportive services emphasize that a strong family structure is critical for the nation's economic strength, and is an important source of values that promote the work ethic. Targeting families in economic crisis with supportive services and active help towards gaining (or regaining) strength and self-sufficiency, sends the message that all levels of government are getting involved in assisting families.

(g) Finally, the emphasis on achievement in the JOBS program should send the right message to young people about the rewards of self-reliance and the direct connection between responsible behavior and their own economic success.

Objectives of the Family Support Act and These Regulations

The Family Support Act embodies a new consensus that the well-being of children depends not only on meeting their material needs, but also on the parent's ability to become economically self-sufficient. The Statute assumes that self-sufficiency and family responsibility are necessary and achievable goals and makes education, training, and child care available to allow individuals to reach these goals. The Statute further recognizes the mutual obligations of parents, who are currently dependent, to work toward self-sufficiency through private employment, and of the government to support that effort.

These final regulations have been drafted to implement the objectives of the Statute and of the Administration of President Bush. Several key principles have guided their development:

- That the value of the Aid to Families with Dependent Children program should be measured not just by its ability to meet the income needs of individuals served, but also by its ability to help these individuals achieve independence;
- That parents have the primary responsibility for the support and welfare of their children and that programs should be designed to help parents meet these responsibilities;
- That women and their children represent the overwhelming proportion of AFDC recipients; that

within this group the most dependent are never-married mothers who did not complete high school and who had their first child at a young age; and that programs designed to reduce overall dependency must necessarily address this group;

- That consistent with individual responsibility is choice, and that parents be given a wide range of options for child care while participating in the program;
- That education (such as literacy and high-school equivalency) is one of the most important tools an individual needs to achieve full citizenship and independence, and that this should be an important JOBS component;
- That skills training can be an important element in an individual's reaching self-sufficiency;
- That JOBS programs be designed to prepare participants for private employment in jobs they can realistically be expected to obtain;
- That resources be maximized through the coordination of existing programs at all levels of government and in concert with community-based volunteer and business organizations; and
- That States be given maximum flexibility to design program components within the JOBS provisions of the Statute in order to tailor programs to meet local needs.

In the sections below, we discuss our overall plan for program implementation, and provide in-depth discussions of each section of the final regulations. In these discussions, we refer to the Family Support Act of 1988 as "the Statute," and the Social Security Act as "the Act." We also use the pronoun "she" when referring to applicants, recipients, and participants. Unless otherwise specified, "she" is a generic term meaning both she and he. This choice of terminology is appropriate because the great majority of adult caretakers in the AFDC program are women.

Overview of JOBS Program Implementation

Section 204 of the Family Support Act of 1988 permits State IV-A agencies to implement a JOBS program as of July 1, 1989, regardless of the publication of implementing regulations. Fifteen States implemented on July 1, 1989.

JOBS and Supportive Services plans for States, Indian Tribes and Alaska Native organizations implementing JOBS prior to publication of the final regulations must meet the requirements of the Statute.

We plan to provide preprints for JOBS and Supportive Services plans following

publication of the final regulations. These preprints will provide for a description of the design and operation of States' JOBS programs and associated supportive services. Prior to issuance by the Department, these forms will be submitted for approval to the Office of Management and Budget.

For the purposes of the following discussion, we use the terms "interim plans" and "initial plans". Interim plans are plans submitted by a State IV-A agency in a format other than preprints. Initial plans are the first plans submitted by a State IV-A agency and can be either an interim plan or a preprinted plan, depending on when the plans are submitted. State IV-A agencies must submit initial JOBS and Supportive Services plans 45 days before planned implementation. When the plan preprint is made available, States which are operating a JOBS program under interim plans will be given 90 days to resubmit plans in the required format.

Federal financial participation (FFP) will not be available for expenditures incurred before the date that initial JOBS and Supportive Services plans are approved. More information regarding this issue, as well as the State JOBS and Supportive Services plan review process, is provided below.

The preamble discussion generally follows the sequence of the final regulations, with the exception that the description of conforming changes to the existing regulations is last, whereas the conforming changes precede the JOBS and Supportive Services sections in the final regulations.

PART 250—JOB OPPORTUNITIES AND BASIC SKILLS TRAINING PROGRAM

Subpart A—Purpose and Definitions

Purpose (§ 250.0 of the Final Regulations)

This section of the final regulations contains the goals of the JOBS Program and the regulatory objectives of Part 250.

Comment: Several commenters suggested that we use the purpose of the JOBS Program as stated in section 481(a) of the Act instead of the language from section 482(c) of the Act, which provides that the State agency "must ensure that all applicants for and recipients of aid to families with dependent children are encouraged, assisted, and required to fulfill their responsibilities to support their children by preparing for, accepting, and retaining such employment as they are capable of performing."

Response: We have decided to use the language from section 481(a) of the Act to describe the overall purpose of the JOBS Program. However, we have

added the language from section 482(c) of the Act that emphasizes parental responsibility to the more specific list of program goals contained in this section. We believe that the goal of ensuring that parents have primary responsibility for the support of their children is fundamental to the entire purpose of the Family Support Act of 1988.

Definitions (§ 250.1 of the Final Regulations)

We have included a number of definitions in order to facilitate understanding of the regulations. These definitions are discussed below.

Terms Related to the JOBS Program

The term "adult recipient" is defined in accordance with section 403(k)(4) of the Social Security Act. The term "caretaker relative" is used in several places in the Act. However, we have not provided a definition in these regulations. Traditionally, States have established procedures for determining who the caretaker relative is for each assistance unit, and we have continued this practice. The term "target population" is defined to meet the requirements of sections 403(1)(2)(B) and 403(1)(2)(C) of the Act. The definition includes provision for any State to adjust the particular target populations if it satisfactorily justifies the change to the Secretary.

For purposes of convenient reference in the body of the regulations, we define a number of words and acronyms. These include standard references such as "Secretary" and "Department"; thus, any reference to the Departments of, or the Secretaries of, Education, Interior, or Labor is made specific. We define "component" as including all services and activities that a State may make available under §§ 250.44 through 250.48. We define a number of acronyms common to work and welfare programs, such as "CWEP," "OJT," and "UP." We include "FFP" for Federal financial participation. We include a definition of "MSA" since we require the use of defined Metropolitan Statistical Areas in assessing issues related to statewide requirements in the legislation. We add several acronyms that are specific to JOBS, such as the "JOBS" acronym itself, and "JAS" as the reference for the JOBS Automated System for recordkeeping and reporting purposes.

Terms Related to Educational Programs, Services or Activities

The Family Support Act provides for extensive educational services, and sets certain requirements, such as that

participants "make satisfactory progress." We have defined the terms related to these services and requirements in accordance with Federal and State definitions when they are well understood, widely accepted, and feasible to use in connection with JOBS. For example, the definition of the term "institution of higher education" derives from the corresponding definition of the term found in section 481(a) and section 1201(a) of the Higher Education Act of 1965, as amended (20 U.S.C. 1088 and 1141).

Basic Literacy Level. The phrase "basic and remedial education to achieve a basic literacy level" is listed in the Act as one of the mandatory educational activities of JOBS. Also, section 482(d)(2) of the Act provides that the State agency shall include educational activities as a component of participation in JOBS if the individual does not have a high school diploma or the equivalent, unless her employability plan has a long-term employment goal that does not require high school education or she demonstrates a basic literacy level.

In the NPRM, we proposed that basic literacy level mean a basic literacy level that allows a person to function at the level of an individual who has successfully completed the eighth grade. Our basis for that proposal was the recently proposed regulations for implementing the Adult Education Act, which indicated both that adult basic education includes education through grade 8.9 and that "adult secondary education" includes instruction designed for an adult who "is literate and can function in everyday life, but is not proficient." We also considered that in the list of mandatory educational activities contained in the Act, "basic and remedial education to achieve a basic literacy level" is an item separate from "high school or equivalent education." Further, we took into account that these terms were characterized in the Act as "educational activities," and that "job skills training" and "job readiness activities to help prepare participants for work" were listed separately from the educational activities.

Comment: We received many letters containing comments on our proposed definition of basic literacy level. The majority of the commenters did not favor our proposal. Many of those commenters stated a preference for the level of completed high school. A few commenters said the proposed level of "successfully completed the eighth grade" is too high. A few commenters advocated the use of State or local

literacy criteria. Some commenters did not approve of the concept of completion of a school grade level, preferring a competency based, functional definition. A few commenters did not object to completed eighth grade as a basic literacy level. One commenter suggested that the definition refer only to reading skills at the completed 8th grade level. Similarly, another commenter preferred a 10th grade reading skill definition.

While most commenters said the eighth grade is too low to promote self-sufficiency, some stated that the level is too high to be in harmony with the goals of JOBS and to take advantage of existing services with which JOBS is intended to be coordinated, e.g. JTPA programs. A committee of a State legislature observed that using the proposed level of literacy would increase costs and thereby reduce the number of educational assignments that could be made for JOBS participants. Another agency within the same State asked that if a grade level continued to be used, it should be no higher than the grade level proposed. An organization involved in serving AFDC clients approved of the definition, which it saw as being advantageous in coordinating with adult and alternative education programs. Some commenters did not view "successfully completed the eighth grade" as being as precise in meaning as "grade 8.9." Others stated that the definition did not convey adequately measured performance. They, therefore, suggested that the definition incorporate the use of a standardized testing tool to measure successful completion of the eighth grade.

One commenter pointed out that using only a grade level, as opposed to setting out the specific proficiencies that comprise basic literacy, posed problems in instances where criterion-referenced assessment measures are used. Many groups suggested focusing the definition on a list of those proficiencies, usually consisting of reading comprehension, written communication, verbal communication, computation, and problem-solving.

Many of the groups seeking to have basic literacy established at the completed high school level cited studies of workforce trends that indicate that most new jobs being created will require basic skills at the high school level or above. Some of them reasoned that the wording of the Act at section 482(d)(2), concerning participants age 20 or over, indicated Congress' intent that basic literacy would be equivalent with a high school level education. Some stated that the definition of basic

literacy should be compatible with what they saw as the strong emphasis upon achieving a high school education for participants under the age of 20 contained in section 402(a)(19)(E) of the Act. It was the sense of some of the comments that the use of a lower than high school level in defining basic literacy would result in States choosing to deny participants the opportunity to earn a high school diploma or the equivalent.

Other commenters requested that the States be given flexibility in defining basic literacy levels for the purpose of JOBS, in view of regional differences in the skills needed by the labor force. However, one literacy group favored a national, functional standard, because it said that States vary in their views of the content of a particular grade level. Some stated that basic literacy should be determined by the particular occupational goal of the participant. Some commenters wanted "life skills" to be incorporated as part of the definition.

We also received views that indicated that the broader range of goals appropriate for participants under the Adult Education Act, many of which are not oriented toward employment, made it difficult to apply definitions designed for adult education programs to the JOBS program. We note that Congress has required the U.S. Department of Education to make a determination of the criteria for defining literacy. The results of that study will be available in 1990. Also, the Department of Labor has contracted for a study of JTPA program participation that will profile workplace literacy levels and produce a workplace literacy testing instrument by 1991. These two Federal studies are expected to produce useful information on literacy relative to JOBS.

Response: Since the comments on this issue did not yield clear guidance concerning establishing a definition of "basic literacy level," and since the results of the two important Federal studies are not yet available, we have decided that at this time we will maintain our proposed definition with two modifications made for the purpose of clarification. First, for purpose of precision, we now refer to grade 8.9, instead of successfully completed eighth grade. Second, we now indicate that the individual is expected to function "at least" at that level, emphasizing that States may define basic literacy at a higher level.

We did not choose to lower the grade level for this definition because the comments indicate a trend toward greater literacy needs in the workplace. Moreover, even though a few States said

they preferred a lower level than proposed in order to coordinate with JTPA, the Department of Labor commented that the basic literacy level should be defined as a literacy level above the 8th grade on a generally accepted standardized test or equivalent score on a criterion referenced test. Since our definition of basic literacy level does not prescribe the method of assessing the individual's educational achievement level, our reference to a grade level should not be interpreted to preclude use of equivalent scores in criterion-referenced assessment systems.

We recognize the trend toward a more literate workforce and strongly urge each State to adopt a definition of basic literacy level that will fulfill the aim of JOBS to reduce welfare dependency and foster self-sufficiency. The individual's educational skills, her skills that compose the concept of "job readiness," and appropriate job skills form a critical core of characteristics leading toward self-sufficiency. It would not serve any useful purpose under JOBS for a State to excuse an individual from educational activities on the basis of her performance at grade 8.9 if the local job market requires a higher level of educational competency to produce long-term self-sufficiency.

The issue of literacy impacts upon all aspects of life in the United States and has commanded the close attention of the administration of President Bush. Thus, our interest in the topic reaches far beyond literacy's relevance to welfare reform. We will continue to coordinate with the Departments of Education and Labor to reach an understanding of the basic literacy needs of this country. It is crucial to our economy and to the general well-being of our population that this country continue to strive to provide our citizens with appropriate educational opportunities—not only to achieve the goal of individual self-sufficiency but to fulfill the intellectual potential of each citizen. We urge all interested parties affected by the JOBS program to remain constantly attentive to literacy issues.

Comment: A few commenters asked that the definition of basic literacy level take into account the worth and potential of those who are learning disabled and do not have the ability to achieve an 8th grade literacy level.

Response: The regulations at § 250.44 provide for States to take into account those who are unable to achieve the basic literacy level. Specifically that section allows for placement in any educational activity below the postsecondary level that the State IV-A agency determines to be appropriate to

the participant's employment goal. Moreover, § 250.32 provides appropriate opportunities for individuals of each of the age levels addressed in that section to be placed in educational activities other than those leading to high school level credentials or the basic literacy level defined in the regulations.

Limited English Proficiency

The definition of "limited English proficiency" is consistent with the manner in which the Department of Education's Office of Vocational and Adult Education uses the term. In the preamble to the NPRM we stated that a State IV-A agency would not have to provide instruction in English as a Second Language (ESL) if such instruction would not be necessary for an individual to become self-sufficient. As an example of an instance in which instruction in ESL might not be necessary for self-sufficiency, we cited the case of an employer who does not require English proficiency.

Many groups commented that they believed that these statements would discourage States from providing ESL education. Several commenters stated that limited English proficiency is one of the most significant barriers to true self-sufficiency, and that ESL instruction is mandated in the Act. One State labor department approved of the flexibility given to States regarding possible exceptions from ESL education but asked that the regulations require the State JOBS plan to give assurance that an individual will be excused from ESL education only if sufficient employment opportunities exist that meet the needs of the person's employability plan.

Education in English proficiency is listed as a mandatory component of JOBS in § 250.44 of these regulations. Our discussion in the preamble to the NPRM was intended to indicate that States have flexibility in selecting activities for the participant's employability plan that will best suit her needs to become self-sufficient. If the State IV-A agency determines that ESL instruction is not necessary for the participant to achieve self-sufficiency, other activities may be selected to help meet the goal. It is not our intent to diminish the use of ESL instruction when it is needed to help a participant achieve self-sufficiency.

Comment: One commenter from the adult literacy field observed that, while ESL instruction is highly important, JOBS should permit transitional bilingual educational programs in which the participant might receive instruction in fields such as mathematics and science in her first language.

Response: These regulations provide the States with the flexibility to place a

JOBS participant in such a program, based upon her assessed needs and employability plan.

Comment: Some commenters found that the definition of "limited English proficiency" was not totally consistent with the reference to "education in English proficiency" located in § 250.44(a)(3). They asked that the terms be conformed.

Response: We agree with the commenters and have conformed the terms. We added "reading" to the list of limitations in English covered by the definition of "limited English proficiency." We added "understand" to the list of limitations in English to which § 250.44(a)(3) refers.

Comment: One commenter read the part of the definition of "limited English proficiency" that refers to the participant's family or community environment as a separate definition. The commenter observed that the wording might not serve to screen out those who lack proficiency in English. There were other comments that the final part of the definition was confusing.

Response: The definition should not be read as a two-part definition. We have revised the wording so that it is clear that the person's environment is considered along with her limited ability in English. The definition is compatible with the regulations recently proposed for implementing the Adult Education Act (20 U.S.C. 1201 et seq.)

Postsecondary Education. The term "postsecondary education" is defined to include a program of postsecondary instruction in the institutions captured in the definition of "institution of higher education," and a program of instruction in other institutions referenced by section 435(b) and section 435(c) of the Higher Education Act (20 U.S.C. 1085) as well as in any public institutions in the State that may not be covered by the Higher Education Act. The definition of postsecondary education: (1) allows a State to exercise a wide choice among educational activities, (2) includes private postsecondary schools among the institutions that the State might utilize to meet the educational needs of JOBS participants, (3) provides the protection concerning educational quality that is built into the Higher Education Act, and (4) permits States to select training from among any public postsecondary institutions that might not have been determined to meet the definitions in the Higher Education Act.

We wish to avoid uncertainty in applying the terms found in the Higher Education Act to the educational activities used in the JOBS program.

Therefore, our definitions provide that the State IV-A agency use the determinations that result from the Secretary of Education's process for certifying institutional eligibility to apply for the Higher Education Act student financial assistance programs. This provision does not appear to be burdensome, nor is it an unrealistic way of securing a decision regarding a postsecondary institution's compliance with the definition, since we anticipate that welfare recipients who enroll in postsecondary education or activities will have the benefit of Federal student financial aid, such as Pell Grants and Guaranteed Student Loans.

Comment: One State commented that the inclusion of "vocational school" as part of the definition of "postsecondary education" was confusing, since the term "vocational training" appears in § 250.44(b) as part of a self-contained definition of "job skills training," which is listed as one of the mandatory components of JOBS. The State's interpretation was that the similar terms would therefore make postsecondary vocational education a mandatory part of JOBS, and they sought clarification of this point.

Response: The position of the commenter is not accurate. The Act identifies postsecondary education as a separate, optional JOBS activity. The unavoidable similarity of terms must not be used to blur the distinction between mandatory and optional activities.

Remedial Education. Since the term "remedial" appears within the clause, "basic and remedial education to achieve a basic literacy level," in section 482(d)(1)(A)(i) of the Act, we invited comment as to whether the distinction of remedial education from basic education can be an operationally useful distinction. All who commented on this issue indicated that a distinction of remedial education from basic education is artificial, unnecessary, and potentially confusing. Therefore, we have decided to delete the definition of remedial education from § 250.44(a)(2) and will consider "basic and remedial education" as a term not requiring an operational distinction.

Terms Related to Making Good or Satisfactory Progress in Educational Activities

The definition of "make good progress" and "making satisfactory progress" affects a participant's involvement in educational activities in two specific places. First, in section 402(a)(19)(E) of the Act, a State IV-A agency may require an 18 or 19-year-old custodial parent who lacks a high school diploma or its equivalent to accept a job

or training—instead of enrolling in educational activities—if the participant "fails to make good progress in successfully completing such educational activities." Second, in section 402(a)(19)(F) of the Act, a State IV-A agency may accept, as satisfactory participation in the JOBS program, a participant's attendance in good standing in an "institution of higher education," or in a "school or course of vocational or technical training," if the participant is "making satisfactory progress."

The concept of satisfactory progress should be used in connection with other educational activities whenever a State IV-A agency performs a reassessment of a participant, in order to help determine whether the participant has been appropriately placed in an educational activity. It should be used to determine whether to continue to provide supportive services, pursuant to § 255.2 of the final regulations. If a State elects to allow educational activities for unemployed parent under 25 in lieu of the work requirement at § 250.33, the unemployed parent meets the requirement if she is making satisfactory progress, as defined in § 250.1, in the educational activity. However, as indicated in our discussion related to participation in education at § 250.32, making satisfactory progress in an educational activity is not a factor in defining participation, for the purposes of participation rates under § 250.74 of the regulations.

Our definition of "make good progress" and "making satisfactory progress" is consistent with the *Federal Student Financial Aid Handbook* of the U.S. Department of Education, which is available in most schools and public libraries. The definition requires that a standard include both a qualitative element (e.g., grade point average or performance on a criterion referenced test) and a quantitative element (e.g., time limit for completion of the program or course of study). The final regulations permit the standard to provide that a participant may be considered to be making satisfactory progress during a probationary period or due to mitigating circumstances.

The regulations provide that a standard be used that was developed by the educational institution or program and approved by both the State or local education agency, and the State IV-A agency or Indian Tribe or Alaska Native organization. We believe that the institution or program offering the education should be involved in devising the standard, because of wide diversity among educational programs. Furthermore, the practice is compatible

with Department of Education student financial assistance guidelines.

In order to assure that participation in educational components is meaningful and productive, we sought comments on the issue of including time standards where the educational activity is not part of an established educational program, such as high school. The examples that we gave were average hours per week or limits on the time period permitted to make specified educational gains.

Comment: A few commenters, including two postsecondary institutional membership organizations, specifically stated that they approved of the satisfactory progress definition for educational activities. A State education agency, for example, specifically noted the appropriateness of involving the State IV-A agencies and the State education agencies in approving the institutional definition, but at the same time the commenter asked that satisfactory progress be based solely upon attendance and grades. One organization, however, favored simply using existing Federal definitions where available and measuring literacy program progress by "satisfactory participation" and effort. Another commenter recommended that the State IV-A agency's definition prevail over any institutional, programmatic, or provider policy. A few commenters favored individualized plans for each participant. Some groups said that the definition should be used only for purposes of reassessing a participant and not for purposes of determining participation rates or continued receipt of supportive services. Several groups applauded the concept of a probationary period and recognition of mitigating circumstances, but they asked that a probationary period clearly be made mandatory.

More groups opposed the requirement for a qualitative component in the standard or asked for refinement of that requirement. Although grade point average was cited in the preamble of the NPRM as an example of the qualitative aspect of the standard, most commenters seemed to see it as the only qualitative measure permitted. They said a grade average is not applicable to nontraditional educational programs, such as adult education activities. One of the commenters specifically asked that the definition be adjusted to incorporate alternate ways to measure progress, e.g., criterion-referenced tests. One commenter suggested adding "improvement of basic skill competencies" as a specific example of a qualitative measure of a participant's

progress. Another stated that promotion to a higher grade, particularly for young parents, should override other satisfactory progress requirements.

Some of these commenters said that the participant who faithfully attends an educational activity should not be penalized for failing to make progress according to an institution's standard. Some commenters pointed out that participants who are in adult education activities are more likely than the normal population to be learning disabled and therefore would progress more slowly. They feared that the definition would discourage the placement of those who are the most in need of education into educational activities. Some of them observed that an individualized definition of satisfactory progress might be needed. A few groups suggested that interim participation measures are too cumbersome, and some of them said that those measures should be replaced by outcome measures.

Concerning the issue posed in the NPRM as to whether to establish minimum hours for those who were in educational activities outside of regular high school, the comments were evenly divided between those in favor and those opposed. Of those opposed to a Federal requirement, one commenter stated that its experience was that time standards are not good measures of progress. One commenter noted that since those programs were likely to enroll people with learning disabilities, time is an inappropriate factor. One State asked that the States be allowed to establish their own standards. Another commenter said that States would purposefully underestimate time needed to complete an activity.

Response: We have decided to retain the definition essentially as proposed, because we believe that it provides adequate flexibility to accommodate the concerns of those who commented. (However, we will no longer use the concept for defining participation under § 250.78.) Since students who are participating in a wide variety of Federal financial aid programs are accountable for qualitative and quantitative progress, we believe that the JOBS population should not be exempted from accountability in these areas. At the same time we do allow for the State IV-A agency to take into account any special characteristics of the JOBS population. Therefore, for the purpose of assuring maximum flexibility, we have decided to delete the reference to the satisfactory progress definitions of accrediting bodies recognized by the U.S. Secretary of Education. Also, we

will not require that minimum hours be established for those who are in programs, such as evening adult educational activities, that are outside of traditional educational settings.

While we give examples of qualitative and quantitative measures, these are not intended to be limiting. The State IV-A agency, therefore, has the flexibility to work with educational institutions or programs to develop standards that take into account the special needs of the JOBS population. While we do not see the need to mandate provisions for mitigating circumstances, our definition clearly allows for a probationary period relative to JOBS, and we encourage States to be sensitive to the issue.

We further note that, insofar as JOBS participants are enrolled in postsecondary education and are receiving loans and grants under the Higher Education Act, continued receipt of those loans and grants will be governed by the institution's provisions regarding satisfactory progress relative to the Higher Education Act, regardless of whether the State IV-A agency has accepted a more lenient definition of "good progress" or "satisfactory progress" from the provider for the purpose of JOBS.

Making Good or Satisfactory Progress in Training Programs. The Act does not include a qualitative measure of making good or satisfactory progress for training programs under JOBS, such as OJT and skills training. However, after consultation with the Department of Labor, we decided to expand the definition of making good or satisfactory progress to apply to OJT and skills training. We do so to assure that training offered through JOBS results in an increase in participants' skills and competencies, and that such progress be monitored by the State IV-A agency.

Operationally, this will require that qualitative measures be developed by the provider and approved by the State education agency and the State IV-A agency or Indian Tribe or Alaska Native organization. If such measures already exist for a training program, then they can be applied with the agreement of the State IV-A agency. If they do not exist, the State IV-A agency should secure appropriate measures as a condition of including such training in a JOBS component. States will have flexibility concerning measures of good or satisfactory progress because there will be a great deal of variation in the types of training programs which States will choose to offer. However, we strongly urge the State IV-A agency to consult with the appropriate State employment

and training agency in developing such measures.

The measure of good or satisfactory progress should be used by the State IV-A agency to determine whether a participant should continue in a particular training activity and whether to continue to provide supportive services, pursuant to § 255.2 of the final regulations.

We considered whether to apply the concept of making satisfactory progress in measuring participation rates for OJT and skills training. However, we sought comments on the issue because we were concerned that including such measures in training components for purposes of the participation standards could discourage a State from setting meaningful standards if the standards would affect the State's ability to meet the participation rates.

We also considered precluding FFP for the costs of training activities for individuals not making good or satisfactory progress. However, we sought comments on the issue because we were concerned that this might discourage States from including training components in their JOBS programs.

Comment: Those who commented on using a standard of good or satisfactory progress for training programs observed that the Act does not require such a standard for training programs. Most of these commenters did not favor applying the concept to training programs relative to continuing supportive services or determining participation; therefore, they did not discuss the content of the definition. Other commenters discussed the issue of satisfactory progress in training along with the issue of satisfactory progress in education or did not differentiate between the two, since they had the same concerns with both, such as whether the definitions would discourage placement of those most in need of the education or training into such activities.

However, we received about a dozen comments specifically related to the proposed definition of satisfactory progress in training activities. Some of the commenters had concerns about how well qualitative standards could be constructed for training programs. Some commenters stated that performance based contracting and outcomes would accomplish what was intended by imposing standards of satisfactory progress. A few commenters observed that the standard posed problems for coordination with JTPA programs. One of these commenters said that subcontracts with JTPA providers are outcome-oriented, that the monitoring

aspect of the definition would be burdensome, and that the definition unfairly called for a standard for all participants in a single activity which did not take into account differing ability levels.

One commenter noted no objection to using qualitative measures of satisfactory progress in training as long as they did not discourage placement of the difficult to serve, but they stated that States have to be given time to develop the standards. A few groups did not object to the concept of satisfactory progress in training but recommended that the definition allow maximum flexibility and reliance upon training providers. One commenter highlighted the necessity to differentiate between the kinds of qualitative measures that would be used in determining satisfactory progress in educational activities from those measures that would be used to measure progress in job skills training and OJT. They suggested progress should be tracked through a sequence of learning objectives, related curriculum, and pre- and post-assessment.

Response: We are retaining our definition of "making good progress" and "making satisfactory progress" in training to help assure that the training results in an increase in the skills and competencies of JOBS participants. Periodic assessment of the participant's progress while she is in the program is preferable to determining at the program's conclusion that the participant did not profit from it, either because the placement was inappropriate or because the participant did not make an adequate effort to learn from the activity.

Our definition provides broad flexibility concerning the measures and time periods that can be used. Since there is such a variety of training programs, our definition allows for the provider to participate in setting the standard. Moreover, very short programs that do not meet the time increments established by the State IV-A agency for monitoring progress need not be subject to the policy.

In deference to those commenters who asked for time in which to develop standards of satisfactory progress in training activities, we will not require State IV-A agencies to use the definition until October 1, 1992, the second full JOBS cycle, although we encourage States to employ such standards before then if they are available. We believe that the two-year grace period will allow State IV-A agencies to work with providers and employment and training agencies, as well as to amass some initial experience in the area, in the

development of definitions for programs that lack such standards.

Terms Related to Participation

We have moved the definition of participation to the new § 250.78.

Subpart B—Administration

State IV-A Agency Administration (§ 250.10 of the Final Regulations)

Section 482(a)(2) of the Social Security Act identifies the State IV-A agency as the State agency responsible for the administration or supervision of the JOBS program. Similar provisions apply to the AFDC and Adult Assistance programs (see sections 2(a)(3), 402(a)(3), 1002(a)(3), 1402(a)(3), and 1602(a)(3) (Aid to Aged, Blind, and Disabled) of the Social Security Act). Longstanding Federal policy construing these latter requirements has interpreted them to mean that the State IV-A agency must maintain overall responsibility for the design and operation of the program and may not delegate to other than its own officials functions involving discretion in the overall administration or supervision of the program (see § 205.100).

However, section 485 of the Act provides States with contract authority to administer the JOBS program (see § 250.13 and related preamble). Accordingly, in view of both sections 482(a)(2) and 485, we believe that certain JOBS functions and activities which involve decision-making with regard to individual participants may be performed by entities other than the State IV-A agency, so long as there are specific rules and regulations issued by the State IV-A agency governing their implementation. For example, the State IV-A agency may contract out a wide range of functions—such as orientation, literacy testing, and JOBS component activities and services.

A number of questions have arisen regarding the effect of the single State agency requirement on the delivery of JOBS services to individual participants. Questions regarding this issue were raised in the comments to the NPRM, as well as through review of the State JOBS plans of the fifteen States which implemented the program on July 1, 1989. Longstanding policy with regard to State IV-A agency administration has required that decision-making and other functions which affect individual eligibility for and the amount of the AFDC benefit must be performed by an office of the State IV-A agency, or through the local welfare agency under the supervision of the State IV-A agency. We have said that such activities as processing applications, determining eligibility, providing

hearings, and imposing sanctions must be performed by the State IV-A agency. This policy derives from congressional expressions of intent—e.g., section 402(a)(7) (the State agency is to determine need), and section 402(a)(4) (hearings are to be before the State agency).

Many States have questioned the effect of this policy on JOBS services to be provided under contract or agreement—e.g., assignment of an individual to a particular component. Others have asked if such functions as assessment and case management could be contracted out. Some States have asked if entire components could be provided by agreement with other State agencies. Other States have submitted plans in which overall program administration, including planning and control of the program, as well as the delivery of services, would be performed by another agency. In some plans it was clear that the States intended to make few changes to the existing service delivery system and would simply call the existing system "JOBS".

We believe that the State IV-A agency should have maximum flexibility to administer its programs within the requirements of the Act. We recognize that in many States, other agencies—such as Job Training Partnership Act (JTPA) agencies, the State education agency, the State employment security agency and community-based organizations—have been effectively performing a range of educational, training and employment-related functions for welfare recipients. Rather than requiring a State IV-A agency to train or expand in-house staff to perform similar JOBS functions which do not directly involve discretionary judgment, the final regulations provide the State IV-A agency with the flexibility to determine how it can most effectively use all potential State resources.

It is also clear that Congress intended to expand the variety of services available to assist families in achieving self-sufficiency. Many of these services involve decision-making. To be consistent with section 482(a), delivery of these services must be directed by the IV-A agency, both at the State and local level. However, in view of section 485, we believe that States may generally contract out such functions if they wish.

Therefore, certain JOBS functions and activities which involve decision-making with regard to individual participants may be performed by entities other than the IV-A agency, but only according to policies, rules and regulations of the State IV-A agency. In doing so, such entities must not have the authority to

review, change, or otherwise substitute their judgment for that of the IV-A agency.

Accordingly, if the State IV-A agency develops specific criteria under which the decision-making regarding a participant is carried out by the contractor, then such functions can be performed by the contractor. Such activities might include assessment, priority determinations, provision of component services, case management, and conciliation. If a situation arises that is not covered by the general policies of the IV-A agency, then the contractor must make recommendations to the IV-A agency, which has final authority for all decision-making regarding the participant. Alternatively, if the State does not have specific criteria for an activity, the State may utilize a contractor for the sole purpose of making recommendations in individual cases to the State IV-A agency.

This policy does not extend to AFDC activities under title IV-A traditionally performed by title IV-A staff, such as determining the amount of the AFDC payment, which must continue to be performed by title IV-A staff. Related JOBS functions under title IV-F affecting eligibility for and the amount of the AFDC payment must be performed by title IV-A staff. These functions include determining exemption status, determining good cause for failure or refusal to participate, providing notice of case actions, implementing sanctions, and holding hearings. We have amended the final regulations to clarify the circumstances under which the State IV-A agency may contract out for services and activities.

Comment: One State questioned the applicability of § 205.100(b), describing the single State agency concept, to the State IV-A agency administration of the JOBS program.

Response: Section 482(a)(2) of the Act requires that "[t]he State agency that administers or supervises the administration of the State's plan approved under section 402 shall be responsible for the administration or supervision of the administration of the State's program." A principal purpose of the single State agency provision is to assure that there is a central point of responsibility in the State, i.e. the State IV-A agency, with adequate legal authority, to which the Federal Government can look for the carrying out of the approved State plan and with which it can deal in all matters related to the grants, and that the State functions not be so fragmented as to preclude effective administration. The single State agency principle does not

preclude the purchase of services from other State agencies, nor is it designed to set aside the cooperative relationships that are normal and proper within a State. Purchase of services and working cooperatively with other agencies are, however, different from delegating administrative responsibility for performance of functions required under State and Federal laws to other agencies or individuals. The State may make use of the expertise of other agencies as long as the State IV-A agency does not delegate administrative decision-making authority.

Comment: Several commenters asked what single State agency administration meant in terms of the responsibilities of the State IV-A agency for overall management of the program.

Response: The State IV-A agency must submit the State JOBS and Supportive Services plan to the Department for approval. It must have sole responsibility for promulgating rules, regulations, and guidelines that govern the operation of the program. It must be responsible for program design decisions, including, but not limited to: (1) optional provisions, such as lowering the age of the youngest child that qualifies an individual for an exemption; (2) what optional components will be offered; (3) definition of failure to participate and good cause for failure to participate; and (4) the minimum requirements for conciliation.

Limits on Contracting

Before a State IV-A agency contracts for any JOBS service or activity, it must ensure that such service or activity is not otherwise available to JOBS participants on a non-reimbursable basis. This requirement is discussed in detail in § 250.13 and related preamble on contracting and in § 250.72 and related preamble concerning maintenance of effort.

Requirement for a Statewide Program (§ 250.11 of the Final Regulations)

Section 482(a)(1)(D) of the Social Security Act requires that by no later than October 1, 1992, a State IV-A agency must make the JOBS program available in each subdivision of the State where it is feasible to do so, taking into account the number of prospective participants, the local economy, and other relevant factors. The regulation at § 250.11(a) describes this requirement, and specifies that the State must operate a JOBS program, including all components described in § 250.44 and two of the components in § 250.45, in each political subdivision of the State, unless the State determines that it is not feasible to do so.

If the State IV-A agency determines that the program will not be made available in all political subdivisions, it must provide appropriate information regarding the extent of the State JOBS program to the Secretary in its JOBS plan. In order to determine whether a State IV-A agency needs to submit additional justification for less than statewide operation, we will apply the criteria described in § 250.11(c)(1). If a State meets these criteria, then no additional justification will be required. If these criteria are not met and additional justification is necessary, the Secretary will disapprove the plan if the justification is inadequate.

It is expected that the State IV-A agencies will make a serious and determined effort to implement programs throughout all local jurisdictions to the maximum extent possible, so that eligible families will have an opportunity to benefit from the new services that are authorized under the legislation.

In determining how specific to be in the regulations, we considered the statements in the Conference Report (H. R. Rep. No. 100-998, 100th Cong., 2d Sess. 112 (1988)). The conferees intended that the program be provided to as many recipients as possible. Specifically, section 482(d)(1)(A)(i)(I) of the Act requires that the State JOBS plan include educational activities, such as high school or equivalent education, and basic literacy and English proficiency training. The conferees noted (H. R. Rep. No. 100-998, 100th Cong., 2d Sess. 141 (1988)) that there would be those for whom enrollment in regular school programs would be inappropriate, and consequently suitable alternatives would have to be identified or developed. We believe that at least some of these educational activities are available in the majority of political subdivisions in all States, and they, therefore, should be made available, as appropriate, to AFDC recipients.

However, State resources may not permit the inclusion of the same optional components, listed in section 482(d)(1)(A)(ii) of the Act, in all political subdivisions. To allow maximum State flexibility in designing State JOBS programs, a State IV-A agency will not be required to implement the same optional components in all political subdivisions in which it operates a JOBS program. Further, the State need not operate components in the same manner in each political subdivision.

Criteria for Determining Whether Further Justification is Necessary

First, a "minimal" JOBS program should be available to most adult recipients in a State. A minimal program includes high school or equivalent education, as specified at section 482(d)(1)(A)(i)(I) of the Act, one optional component from among those specified at section 482(d)(1)(A)(ii) of the Act, and information and referral to non-JOBS employment services. In determining whether a JOBS program is statewide, we will first determine whether a minimal program is available in a number of political subdivisions in which 95 percent of adult recipients reside.

Second, a "complete" JOBS program should be available to a large proportion of adult recipients. A complete program includes, but is not limited to, all mandatory and any two optional components, pursuant to section 482(d)(1)(A) of the Act. For the purposes of meeting this criterion, a complete program should be available in all Metropolitan Statistical Areas (MSAs) in the State, as well as in a number of political subdivisions in which 75 percent of adult recipients reside.

The use of MSA boundaries is a nationally recognized system for distinguishing among economically different areas of States. The 75 percent requirement is included because the number of adult recipients living in MSAs is relatively low in many rural States.

In the NPRM, we proposed the criteria set forth above as an alternative to requiring a justification for less than statewide operation in all circumstances when a State would not offer a JOBS program in all areas of the State. Based on the number and content of comments regarding the criteria, it is clear that further clarification is necessary.

In general, commenters appear to have read the above criteria as requirements. Many commenters complained that the criteria are too restrictive, do not allow for variation between States, and would require that resources be spread too thin. However, some commenters felt that use of the criteria was inappropriate because it would mean that some areas of a State might not have a JOBS program.

The statutory requirement that the program be available in each political subdivision where it is feasible to do so, as well as the requirement that a justification be provided when a State would not provide the program in all political subdivisions indicates congressional intent that the program be

available to as many potential participants as possible.

However, it is also clear that Congress recognized that economic and demographic factors would affect States' ability to provide the program to all potential participants. We expect, therefore, that many States will not provide an identical program throughout the State, but rather will provide different levels of service in some areas, and no program in others. In this case, a justification would be required. However, in order to ease the administrative burden for these States, we have provided the criteria described in § 250.11 for the purposes of our review of this requirement.

We emphasize that States are not precluded from operating a JOBS program that does not meet the criteria. If a State JOBS program does not meet the criteria, then a justification, as required by the Statute and described in the following discussion, must be provided as part of the State's JOBS plan. We believe that the alternative to these criteria—to require a justification for all State JOBS programs that would not be absolutely statewide—would be extremely burdensome.

Comment: In the NPRM, we proposed that a minimal program include high school or equivalent education. A number of commenters felt that other educational activities listed in section 482(d)(1)(A)(i)(I) of the Act should be included in the definition of a minimal program, in order to provide additional flexibility for States. Some commenters indicated that literacy levels in their States were relatively high, and that considering only high school for purposes of the criteria was too restrictive.

Response: We have not expanded the criteria to include any of the other educational activities listed in section 482(d)(1)(A)(i)(I) of the Act, such as basic and remedial education, and education for individuals with limited English proficiency. We believe the statutory emphasis is on high school education in the JOBS program. If the characteristics of a State AFDC population are such that inclusion of high school as a mandatory component in most political subdivisions is not appropriate, the State should request waiver of the statewide requirement.

Comment: In the NPRM, we indicated that because high school is generally available in all political subdivisions of a State, job search is relatively inexpensive to operate, and referral to public employment services is a simple method for directing recipients to potential employment, implementation

of a minimal JOBS program in most areas of a State was a reasonable expectation. Many commenters felt that it was unreasonable to expect States, particularly those States with a largely rural population, or with limited resources, to provide even a minimal program to such a large percentage of the AFDC population. They felt that resources would be spread too thin in order to meet this criterion.

Response: The criteria are provided for the purpose of the review of the statewide requirement. They are not absolute lower limits. States are free to design and implement JOBS programs that do not meet these criteria, so long as an acceptable justification is included in their approved JOBS plan.

Comment: A number of commenters felt that our use of the term "political subdivision" in these criteria was too restrictive, since services are often provided through program service delivery areas that may not coincide with political subdivisions. They felt that States should be free to define political subdivision for the purposes of this provision.

Response: The term political subdivision, which is contained in section 482(a)(1)(D)(i) of the Act, has longstanding meaning for the AFDC program, and is defined by each State. Typically, this includes counties, parishes, or other political jurisdictions in a State. Since JOBS is integrally related to the AFDC program, we see no basis for defining the term differently for purposes of the JOBS program. For this reason, we have retained the term "political subdivision" but eliminated any specificity as to types of political subdivisions in the final regulations.

Nevertheless, States are free to provide services in areas defined geographically in terms other than political subdivisions, such as JTPA service delivery areas. In order to maximize use of available resources, a State might include services provided at a site other than a local welfare office, perhaps in a neighboring county. The service would nevertheless be considered available to all potential participants. However, in the State JOBS plan, the State must describe component services provided under an alternative scheme in terms of political subdivisions.

Comment: One commenter was concerned that by including one mandatory component as well as one optional component in the criteria for a minimal program, we would discourage States from providing other mandatory components, choosing instead the

optional component in order to meet the criteria.

Response: States are free to determine the mix of services and the location of such services. If the program will not meet the criteria for a minimal program, the State would then need to provide a justification for less than statewide operation.

Comment: One commenter asked why we included high school as the mandatory component in a minimal program to the exclusion of job skills training, job readiness, or other educational activities.

Response: The focus on educational activities, particularly high school, is based on the statutory emphasis on education. The Act contains specific educational requirements for custodial parents under 20 years of age. States must include educational activities in the employability plan of certain custodial parents who are 20 years of age or older and who do not have a high school diploma or equivalent. Educational activities are an alternative to the work requirement in the AFDC-UP program for parents under 25 years of age. It is, therefore, appropriate to expect such activities to be included in a JOBS program in almost all areas of the State, particularly in light of the general availability of such activities.

Comment: Some commenters felt that by including only one mandatory and one optional component in the definition of a minimal program, we would limit State program design. They felt that States might design programs merely to satisfy the criteria. Others felt that because the definition of a minimal program includes an optional component, which would then be available in most areas, States would include job search or CWEP, rather than another optional component that might be more expensive to operate.

Response: These criteria have been included to ease the burden for States by reducing the necessity to provide a justification for less than statewide operation, as well as to facilitate review of this requirement. We do not intend or expect States to design programs merely to meet these criteria. We encourage the design of programs that will meet the unique needs of the individual States.

There may also be some misunderstanding of the criteria as they relate to the mix of services that might be available. A State need not have the same optional component available in the number of political subdivisions in which 95 and 75 percent, respectively, of adult recipients reside. For example, for purposes of meeting the criterion for a minimal program, a State might make a CWEP program available in part of the

State, and job search activities available in other areas.

Comment: A few commenters asked whether, for purposes of these criteria, the program should "serve" 95 and 75 percent, respectively, of adult recipients, or whether it should "be available" to these percentages. One commenter discussed phasing in the program in counties that currently do not operate work programs, in considering the statewide requirement. The discussion related to the level of service, particularly the number of people who could be served during the phase-in of the program.

Response: For purposes of these criteria, a "minimal" and "complete" JOBS program must be available in a number of political subdivisions in which 95 and 75 percent, respectively, of potential participants reside. The program need not be capable of actually serving these percentages. The requirement related to actually serving individuals is the participation rate requirement at § 250.11(c)(1) in order to clarify this point.

Comment: Another commenter asked whether the percentages would be measured in each political subdivision—that is, whether in a county with a minimal program, JOBS components must be available to 95 percent of the potential participants in the county.

Response: For purposes of these criteria, percentages will be measured on the State level, rather than at the political subdivision level. For example, JOBS components need not be available to 95 percent of potential participants within a county for it to be considered to have a minimal program.

Comment: A few commenters asked how implementation of Tribal JOBS programs would affect computation of the percentages in the criteria.

Response: For the purposes of these criteria, members of Indian Tribes and Alaska Native organizations to be served by Tribal JOBS programs will not be included in computing percentages. The regulations at § 250.11(c)(1)(iv) now include language to this effect.

Justification for Less Than Statewide Operation

Section 250.11(c) provides the basis for our review of the statewide requirement. If a State JOBS program will not be available in a number of political subdivisions sufficient to meet the criteria of § 250.11(c)(1), the justification to the Secretary will include the information identified in § 250.11(c)(2).

The factors listed in § 250.11(c)(2) expand on the items identified in section

482(a)(1)(D) of the Act, which specifies two factors—i.e., the number of prospective participants and the local economy. We have added one additional item: whether a State IV-A agency will, even with the proposed areas excluded, fully expend all JOBS funds available to it for the period covered by the plan. This additional information will help in determining whether a State IV-A agency is proposing to concentrate services on specific geographic areas identified as particularly critical to reducing long-term dependency, and as a consequence, is unable to implement a statewide program.

We do not believe that depressed local market conditions would necessarily make a JOBS program infeasible. For example, even in areas of high unemployment, there are generally job opportunities because of job turnover and segmented job markets. However, in a rural area where the sole employer has recently closed its plant, a State IV-A agency might be justified in not operating a JOBS program, or in operating a minimal program. A State IV-A agency should consider these types of distinctions, and include this information in the justification for less than statewide operation.

In designing a State JOBS program that will be less than statewide, a State should assure that political subdivisions not be excluded on the basis of ethnic, racial or religious characteristics.

Because the statewide requirement is not effective until October 1, 1992, phased implementation of the program will be permitted. As a consequence, an initial State JOBS plan may not reflect a level of component availability sufficient to meet the statewide requirement. We would therefore expect that, no later than the first biennial review, for the plan period beginning October 1, 1992, the State JOBS plan and the State Supportive Services plan (pursuant to § 255.1) will be updated to reflect either sufficient program availability to meet this requirement, or a justification for less than statewide implementation.

Comment: A number of commenters felt that the additional information requested for the justification—whether the State will fully expend available Federal funding—will disadvantage States that are unable to secure the additional funding necessary to draw down all available Federal matching. One commenter, on the other hand, asked for clarification of the "automatic denial" when a State has "sought its full capped entitlement."

Response: The additional information will be used in assessing whether a State should be permitted to operate a JOBS program on less than a statewide basis. Drawing down all available Federal matching may be an indication that the State is targeting resources to specific areas. However, drawing down all available Federal matching will not, in and of itself, result in waiver of the statewide requirement. This factor will be considered in light of other information provided by the State in determining whether the requirement should be waived.

Comment: Other commenters felt that the lack of State resources should be included as a factor in the justification for less than statewide program operation.

Response: We believe that by providing additional funding under the JOBS program, Congress intended that States include a wider range of services than are currently available in order to provide the opportunity to achieve self-sufficiency to as many recipients as possible. Failure of a State to provide funding to operate an adequate JOBS program should not be a basis for waiving the statewide requirement. Section 482(a)(1)(D)(i) of the Act bases feasibility of statewide operation on the number of prospective participants, local economic conditions, and other relevant factors, which in our view do not include availability of State resources. Congress explicitly included availability of State resources in other sections of the Act. Because it did not include similar language in describing the statewide requirement, we conclude that this factor should not be considered in determining whether a JOBS program is statewide.

Comment: A number of commenters asked that the regulations contain specific criteria to be used in determining whether a request for waiver of the statewide requirement should be approved.

Response: We do not believe that it would be appropriate to provide specific criteria. The reaction of commenters to the criteria described above is an indication of the general opposition to such specific language. Each State program will differ, and must be viewed in light of the unique demographic and economic factors in the State.

Coordination and Consultation (§ 250.12 of the Final Regulations)

Section 402(g) and section 483 of the Social Security Act contain a number of provisions designed to assure coordination of the JOBS program, including child care and supportive services pursuant to § 255.3(h) of the

regulations, with other education, training, and employment programs available in a State. The purpose of this coordination is to provide comprehensive, quality services to meet the multifaceted needs of welfare recipients in the most effective and efficient manner.

At the Federal level, the Department is working closely with the Departments of Labor, Education, and Interior, and expects State and local IV-A agencies to promote coordination among their counterpart agencies. The Department has had discussions with the Department of Agriculture on ways to insure coordination between JOBS and Food Stamp work programs and with the Department of Housing and Urban Development to develop linkages between JOBS and supportive services in public housing projects. The JOBS program should be coordinated with providers such as Job Training Partnership Act (JTPA) agencies, the Employment Service, vocational education, adult basic education, Head Start and preschool programs under chapter I of the Education, Consolidation and Improvement Act of 1981, school and nonprofit child care programs, public housing agencies, and other human development programs.

Congress intended that agencies identify existing resources to prevent duplication of services and to assure that other program services are available to JOBS participants. Such coordination is necessary to assure that costs for services for which welfare recipients have been eligible are not shifted to the JOBS program. The final regulations preclude such shifts in costs, as described in the maintenance of effort provisions in § 250.72.

Section 483 of the Act requires coordination with JTPA agencies, since one of JTPA's major goals is reducing welfare dependency. The JTPA requires that AFDC recipients be served in at least equal proportion to their incidence within the eligible population.

At the State level, the JOBS plan must be consistent with JTPA coordination criteria and must be reviewed by the State job training coordinating council (SJTCC) prior to submission to the Secretary. We strongly encourage the State IV-A agency to meet regularly with the SJTCC regarding the planning and implementation of the JOBS program to identify common JOBS-JTPA activities and services, and to develop an integrated strategy which ensures that eligible AFDC recipients receive training and employment services in an effective, non-duplicative manner.

At the local level, the welfare agency must consult with private industry

councils (PICs) on the development of arrangements and contracts under JOBS and to identify and obtain advice on the types of jobs that are available, or are likely to become available, in the area. These provisions reflect congressional concern that JOBS resources not be used inefficiently, i.e., provided to ineffective service providers or expended on training for jobs which are not available to participants.

The local relationship between the welfare agency and the PIC is crucial to assure that welfare recipients receive the JTPA services for which they are eligible. Thus, we strongly urge local welfare administrators to be represented on the PIC or, at a minimum, to become actively involved in PIC meetings, as appropriate.

Initial and ongoing coordination between the State IV-A agency and local State and educational systems will enable the State IV-A agency to access needed expertise in this new area of welfare agency involvement, to avoid duplication of services and to assure that welfare recipients receive the necessary educational services for which they are eligible. Welfare agencies should meet regularly with their State or local educational counterparts to ensure that educational providers are involved in the planning and delivery of the JOBS program at all levels.

Section 250.21 of the final regulations requires State IV-A agencies to describe in the JOBS plans efforts to coordinate with other agencies including but not limited to JTPA, basic and adult education programs, programs under the Carl D. Perkins Vocational Education Act and other vocational services, and other human development programs.

Furthermore, the final regulations at § 250.20 specifically provide that State IV-A agencies make the proposed JOBS plan available to members of federally-recognized Indian Tribes and Alaska Native organizations during the public comment period. This segment of the population is highlighted to assure that a Tribal entity eligible to operate a separate JOBS program, pursuant to § 250.91 of the regulations, has sufficient opportunity to coordinate with the State in the planning of JOBS.

Coordination is necessary whether the Tribe or organization operates an independent program or receives services from the State, but is particularly important if a Tribal entity does operate a separate program. While a Tribal grantee will have responsibility for JOBS, the State IV-A agency will maintain responsibility for the basic AFDC program and for child care

services, including transitional child care services. Given this interrelationship, §§ 250.12 and 250.93(b)(1) of the regulations require that the State IV-A agency and the Tribal applicant exchange all available information on adult Tribal AFDC recipients necessary to determine a Tribe's or organization's JOBS funding level. In addition, the requirements in § 250.94 concerning Tribal JOBS administration and in § 250.95 regarding child care elaborate on the need for the State and Tribal grantee to develop mutually agreed upon procedures and methodologies to assure that Tribal participants receive equitable treatment under the AFDC and JOBS programs.

Comment: Some commenters objected to the provision that JOBS provide training only for the types of jobs which are, or are likely to become, available in the area, because the local area may be economically depressed.

Response: Section 250.12(d)(2) implements section 485(e) of the Act which requires that the State IV-A agency (1) consult with PICs on the types of jobs available or likely to become available in the Service Delivery Area (SDA) and (2) ensure that the State program provides training in any area for jobs of a type which are, or are likely to become, available in the area.

We believe that the requirement of consultation with PICs is meant to give the State IV-A agency a broad picture of the labor market in the State. There are over 600 service delivery areas nationwide, many serving geographical areas that constitute one labor market. State and local IV-A agencies may have to coordinate with PICs in several different SDAs to serve its JOBS clientele. We do not believe that Congress meant to be so limiting as to bar training for a job that happens to be in an adjacent service delivery area. Rather, we interpret the "shall ensure" language of section 485(e) to require that at a minimum a State must provide training in an area for jobs that are or likely to become available in the area—not that it may not do more.

Comment: One State suggested that the requirement at § 250.12(d)(1) that State IV-A agencies consult with private industry councils on the development of arrangements and contracts promotes a conflict of interest since PICs with private, non-profit (rather than public) status might compete for contracts for which they had provided prior consultation.

Response: State rules on procurement must be observed. We do not believe that Congress intended to impede contracting with private industry

councils when it adopted the provision for consultation on the development of arrangements and contracts. To the extent that prior consultation would prohibit a private industry council from competing for a contract to provide services, the State IV-A agency should limit consultation with private industry councils to subjects that would not result in conflict of interest.

Comment: One State recommended consulting with the Employment Service agency for labor market information rather than with private industry councils.

Response: Consultation with the private industry councils on labor market information is required by section 485(e) of the Family Support Act of 1988. However, in § 250.12 of the regulations, we specifically provide for consultation and coordination with several other organizations, including the State Employment Service agency. Such consultation could include labor market information, but it does not substitute for the statutorily required PIC consultation.

Contracting Authority (§ 250.13 of the Final Regulations)

Section 485 of the Social Security Act grants the State IV-A agency broad contracting authority, which is reflected in § 250.13 of the final regulations. At the same time, however, the Act requires administration of the JOBS program by the single State IV-A agency.

Comment: Many commenters asked for clarification about which activities and services can be contracted out under JOBS.

Response: We have addressed the question of what activities and services can be contracted out in § 250.10 and in the accompanying preamble on what administration by the State IV-A agency means in terms of the JOBS program.

Comment: One commenter asked for flexibility in contracting and in determining the wide range of methods used to purchase services.

Response: As discussed in the preamble to § 250.10 on State IV-A agency administration, States have broad authority to contract for services. Some of the methods that may be used include but are not limited to fixed price, cost reimbursement, and performance-based contracts.

Selection of Providers

Section 250.13 incorporates the requirements of section 485 of the Act regarding the factors which must be taken into consideration in selecting service providers and the prohibition against contracts for services which are

otherwise available on a non-reimbursable basis. Regarding the issue of provider selection, the requirement for consultation with private industry councils is described in § 250.12 on coordination and consultation.

Comment: One State asked that the consulting role of the private industry councils be limited to providing labor market information and not include consulting on the development of contracts for JOBS.

Response: Section 485(c) of the Act requires that the State IV-A agency consult with private industry councils on the development of arrangements and contracts for the JOBS program. The only exception is discussed in the preamble to § 250.12 and involves the situation in which such consultation could result in a conflict of interest if the private industry council is also a competitor for contracts.

The statutory prohibition against contracts for services which would be otherwise available on a non-reimbursable basis reflects congressional concern that costs of services for which welfare recipients have been eligible not be shifted to the JOBS program. Since it is so closely connected to the provisions on maintenance of effort (section 482(a)(3) of the Act), we elaborate on its interpretation in § 250.72 of the regulations and preamble.

Before a State contracts for services under JOBS, we expect that it will carefully identify those services which have traditionally been available to welfare recipients at no cost, as well as community-based or volunteer programs that may provide competent services at minimal or no cost. The statutory language clearly intends that the State IV-A agency fully utilize all resources otherwise available to serve JOBS participants on a non-reimbursable basis. For instance, other programs have paid for many educational services provided to AFDC recipients, including those available under the Adult Education Act (20 U.S.C. 1201 *et seq.*), the Higher Education Act (20 U.S.C. 1001 *et seq.*) and the Carl D. Perkins Vocational Education Act (20 U.S.C. 2301 *et seq.*) Similarly, through JTPA, the State employment security agency, State employment and training programs and the Community Services Block Grant program, extensive employment and training services—such as job counseling, job development and placement, job skills training, and on-the-job training—have been offered to eligible low income individuals, many of whom are AFDC recipients.

Segregation of Costs by Matching Rate

For the purposes of FFP, the State IV-A agency must segregate costs according to applicable matching rates, as defined at § 250.73(b)(1), in any contract or arrangement under the JOBS program. This means that contracted services will qualify for Federal matching funds at the same rate as those services which the State IV-A agency provides directly. This provision is included to assure that State IV-A agency decisions on contracting will be based upon the efficient administration of the program and that consistent Federal matching will be available to the State IV-A agency regardless of the method used to provide services.

Comment: Several commenters said that segregation of costs would be extremely burdensome. They pointed out that the definitions in JOBS might not be compatible with other programs, such as JTPA. They said that it might cause some providers not to do business with JOBS, or that it would drive up the cost of the contracts with no benefit to participants.

Response: The Act does require different matching rates for different activities, and we maintain our position that State agency decisions about contracting not be driven by available matching rates.

However, based on all the comments we received, we have amended § 250.73 as to what activities are eligible for the different matching rates. A full discussion of these changes appears in the preamble to § 250.73. The effect of these changes is that more of the costs of providing services directly to participants will be eligible for enhanced match, whether the service is provided by the State IV-A agency or another entity. Therefore, it is less likely that segregation of costs will be required. However, we have not amended § 250.13 in the final regulations since there may be some contracts which will still require segregation of costs because of the nature of the activities.

Other Applicable Regulations

In addition to the specific contracting requirements in this section, contracted services under JOBS are subject to the requirements of Part 92 with the following exception. We have excluded the provisions under § 92.30(d)(4). These provisions, which require prior Federal approval of contracts, appear to be inconsistent with congressional intent since they would severely limit a State IV-A agency's contracting authority under section 485 of the Act.

State IV-A agencies are subject to the procurement requirements of only paragraph (a) of § 92.36. This means that the State IV-A agency is required to assure that JOBS contracts follow State and local laws, regulations, and procedures regarding procurement. Indian Tribes and Alaska Native organizations, however, are subject to the Federal procurement requirements of § 92.36(b) through (i).

Subpart C—State Jobs Plan Requirements and Content*Requirement for a State JOBS Plan (§ 250.20 of the Final Regulations)*

The JOBS provisions are found in title II of the Family Support Act, which includes changes to Part A and creates Part F in title IV of the Social Security Act. State implementation of these provisions will be covered under a new State plan for JOBS (the JOBS plan). The requirements for that plan and the procedures for its submission are discussed below. Title III of the Statute also requires that States provide child care and other necessary supportive services. These services will be covered under a Supportive Services plan, to be developed and submitted with the JOBS plan. A discussion of the Supportive Services plan and related requirements is at § 255.1.

We believe that it is appropriate to include the new statutory requirements in section 402(a)(19) of the Social Security Act as well as all requirements of title IV-F in a separate JOBS plan. This position is supported by the language of section 482(a)(1)(A) of the Social Security Act, which requires the JOBS plan to meet "all of the requirements of this part and section 402(a)(19)."

Section 482(a)(2) of the Act provides that the State IV-A agency will be responsible for the administration or supervision of the State's JOBS program. Based on this provision, the final regulations provide that the State IV-A agency is responsible for the submission of the State JOBS and Supportive Service plans, after completion of all coordination requirements and review by the Governor.

Comment: Several commenters asked why we require separate JOBS and Supportive Service plans when they are so integrally connected and must be submitted concurrently.

Response: Child care under section 402(g) of the Act is a part of title IV-A, and, therefore, we believe, it would be inappropriate for it to be included in the IV-F (or State JOBS) Plan. A fuller discussion of the Supportive Services plan is contained in the preamble to

§ 255.1. We have carefully refrained from requiring any duplicate information in both plans. Since the same regulations for submission and approval govern both the JOBS Plan and the Supportive Services Plan, we do not believe that treating them as separate plans is burdensome on States. Furthermore, any State which has not implemented JOBS as of April 1, 1990 will have to submit a Supportive Services plan for transitional child care at that time.

Plan Approval Prior to Implementation

Section 250.20(a)(2) of these regulations requires States to submit the initial JOBS and Supportive Services plans for approval 45 days prior to implementation.

The Family Support Act does not directly address the question of whether a State's JOBS plan must be submitted and approved prior to a State's implementation of the program. However, the statutory language best supports the position that the JOBS plan should be approved prior to a State's implementation. In several places the Statute references JOBS programs operated and funded under approved plans; the implication is that programs could not be operated and funded unless a JOBS plan had been approved. Specifically, the statutory language includes the following: (1) Section 482(a)(1)(A) of the Social Security Act states, "As a condition of its participation in the program of aid to families with dependent children under part A, each State shall establish and operate a job opportunities and basic skills training program * * * under a plan approved by the Secretary * * *"; (2) Section 403(k)(1) provides that "Each State with a plan approved under part F shall be entitled to payments * * *"; and (3) Section 403(l)(1)(A) provides, "In lieu of any payment under subsection (a), the Secretary shall pay to each State with a plan approved under section 482(a) * * *" (emphasis added).

Submission of Initial JOBS Plans 45 Days Before Anticipated Implementation

This timeframe is not found in the Family Support Act. We have adopted the 45-day period for the initial submission as we proposed in the NPRM, because we believe this will provide a reasonable period of time within which to conduct an orderly and responsible review of a State's submission. We received no comments to the contrary.

Comment: Several commenters asked that we establish a timeframe in the

regulations by which the Secretary would act to formally approve or disapprove a State JOBS Plan.

Response: We see no need for establishing a time frame. The Department is committed to acting expeditiously on all State JOBS and Supportive Services plans that are submitted timely, as evidenced by the fact that all fifteen plans submitted for July 1, 1989 start dates were approved before July 1.

Interim Plans

Initial State JOBS and Supportive Services plans submitted prior to the issuance of plan preprints have been and will continue to be approved as interim plans. States with interim plans will be required to submit new JOBS and Supportive Services plans 90 days after the issuance of a preprint form by the Secretary. An approved interim plan shall remain in force until action is taken by the Secretary to approve or disapprove the preprint. Although described as a new plan, a State's first JOBS plan preprint following its interim plan will not be subject to the requirement for review by the SJTCC before submission to the Secretary, unless there are substantial changes.

Comment: Several commenters said that the 60-day period for resubmission of the plan on the preprint form issued by the Secretary is too short, especially if State legislative action is necessary prior to resubmission.

Response: We have amended the final regulations at § 250.20(d)(2)(i) to provide that States will have 90 days after the publication of the State plan preprints to submit them to the Department for approval. Interim plans will remain in effect until the Secretary acts to approve or disapprove the new plans.

Comment: One commenter asked that the interim plan remain in effect in the event the final plan is disapproved.

Response: The regulations provide that the interim plan remains effective until the Secretary acts to approve or disapprove a State's final plan. Section 250.20(g) of the final regulations provides for an opportunity to make revisions to any plan prior to final disapproval. However, once the Secretary does issue a formal disapproval of a plan, there is no provision for continuation of an interim plan.

Resubmission of State Plans: Biennial Update

Section 482(a)(1)(A) of the Act requires that the State submit its State plan not less often than every two years to the Secretary for approval. Under these regulations, the biennial update

shall be considered a new plan, which must be submitted for approval 90 days prior to the date it is to become effective. The biennial update must be available for public review and comment in accordance with the provisions of § 250.20(c).

We recognize that this process is very different from existing title IV-A plan amendment procedures. However, we believe that there are several compelling reasons to treat the biennial update as a new plan for which approval by the Secretary is required: (1) the specific requirement that it be resubmitted (not less than every two years) distinguishes it from the regular title IV-A plan amendment process at § 201.3, which requires only that plan amendments be submitted by the end of the calendar quarter of implementation; (2) the requirements for coordination and consultation, including the requirement that the State plan be submitted to the SJTCC for review and comment, would be significantly lessened if it were only required once prior to JOBS implementation and never thereafter; and (3) the nature of the information that section 482 of the Act requires be in the State plan makes it an "operational plan." Much of it is specific to the period which the plan covers, such as the number of persons to be served and the extent to which other services will be available by provider and type of service. Such information must be updated for each new period in order to make the plan a useful document.

Content of Biennial Update

The State plan update will consist of four parts: (1) assurances regarding those parts of the State JOBS plan and Supportive Services plan that remain unchanged; (2) a description of any changes in program operations, including but not limited to, changes in the mix of components or target populations to be served; (3) specific information for the period of the update regarding estimates of persons to be served and the availability of services provided by the State IV-A agency as well as other providers; and (4) an assurance that the State JOBS plan is consistent with the coordination criteria specified in the current Governor's Coordination and Special Services Plan required under section 121 of the JTPA. The State plan preprint shall be the vehicle for the update.

Comment: Several commenters asked that we reduce the requirements for the biennial update. One suggested that if it were considered a new plan, it would trigger the consultation requirements which could result in the plan being disapproved for technical reasons.

Another asked that only changes be submitted.

Response: In the NPRM, we outlined several reasons for our approach in considering the update a new plan. We have restated them in the final regulations because we find them no less compelling after review of the comments we received. Congress could have easily mandated that the same procedure that governs amendments for the AFDC program apply to JOBS. Instead it required an update at least every two years which must be submitted to the Secretary for approval. The conference report (H. R. Rep. No. 100-998, 100th Cong., 2d Sess. 113 (1988)) specifically describes the State plan as an "operational plan" which would describe how the State planned to operate the JOBS program during the period covered by the plan. We regard the requirement for consultation and coordination to be an on-going one.

Our regulations do not require the State to submit an entire plan as its biennial update. Section 250.20(e)(2)(i) simply requires assurances regarding those parts of the State JOBS plan and Supportive Services plan that remain unchanged. We do require the State to submit a description of any changes to program operation and estimates of the number of persons to be served by the program during the next biennium. The State plan preprint will be the vehicle for submitting this information.

Submission of First Biennial Update

All plans submitted between the issuance of the preprints and October 1, 1990, (whether resubmission of interim plans or initial plans), if approved, will remain in force until the Secretary acts to approve or disapprove the first biennial update. To ease the administrative burden, the first biennial update for all States will be due on July 1, 1992 for the period beginning October 1, 1992. However, States may submit plans on April 1, 1992 to be effective July 1, 1992 if this would be administratively easier because it would coincide with either the State fiscal year or the program year under the Job Training Partnership Act or the Carl D. Perkins Vocational Act.

Comment: Several commenters asked that we make the biennial update submission consistent with the program period under JTPA and Carl D. Perkins Vocational Act by moving the submittal date back to April 1, 1992 for the period beginning July 1, 1992.

Response: In the NPRM, we proposed October 1, 1992 as the start date for the first biennium because it coincided with the date on which all States will have to

have statewide programs, and we believed that it would ease the administrative burden to put all plans on the same schedule.

However, we are persuaded that for some States it would be advantageous to have the program period coincide with either the State fiscal year or the program period for other employment and training programs. Therefore, we have amended the final regulations to give States the option of submitting the first biennial update either on April 1, 1992 for the period beginning July 1, 1992 or on July 1, 1992 for the period beginning October 1, 1992. If a State, which does not have a statewide JOBS program, submits a plan for the period beginning July 1, 1992, the State plan must explain how the program will be statewide as of October 1, 1992.

Amendments

A State IV-A agency may submit amendments to an approved plan, if necessary, prior to the required resubmission described below. The current process for submission and review of amendments, as described at § 201.3(f) and § 201.3(g), will apply. Submission of plan amendments does not relieve the State of the obligation to resubmit its plan to the Secretary for approval every two years.

Comment: One commenter asked that we specify what circumstances would require a plan amendment.

Response: Amendments are required when the State IV-A agency changes its program in two circumstances: (1) it makes changes which would affect eligibility for services or the requirements to participate. These would include, but are not limited to, reducing the age of the youngest child exemption from 3 to 1, redefining "good cause" for failure to participate, and changing the criteria for excusing those under 18 from school attendance requirements; and (2) it makes changes in program design that alter the nature of the program. These would include, but not be limited to, expanding the geographical coverage (prior to October 1, 1992), adding or dropping any of the optional components including any other education, training, or employment activities pursuant to § 250.47, or proposing to change the target groups specified in § 250.1. We have renumbered § 250.20(f) to designate the existing language as paragraph (f)(1) and added paragraph (f)(2) to describe when an amendment to the JOBS or Supportive Services plan is required.

Public and Inter-Agency Review of State JOBS Plans

The Act requires that the State agency submit its JOBS plan to the State Job Training Coordinating Council (SJTCC) 60 days before submission to the Secretary. The final regulations require submission of the plan to the State education agency, based on the extensive required and optional educational activities under JOBS, and the general coordination requirements in section 483 of the Act related to State and local education agencies.

In accordance with section 483(a)(1) of the Act, the content of the plan, where it relates to job training and work preparation, must be consistent with the coordination criteria specified in the Governor's coordination and special services plan required by section 121 of the Job Training Partnership Act.

The Statute also requires that the State JOBS plan be made available for public review and comment 60 days prior to submission to the Secretary. All public and State agency comments on the plan shall be resolved at the State level. It was noted that if this were not made clear, the State efforts to resolve disagreements could become a problem, since commenters might choose to press their view at the Federal level rather than at the appropriate State level.

Comment: Several commenters said that the final regulations should require the State IV-A agency to submit any comments it receives during the 60-day review period to the Secretary as part of its JOBS Plan.

Response: We see no practical reason for requiring submission of comments to the Secretary. The fact that the Act requires the comments of the SJTCC to be submitted to the Governor supports our position that disagreements should be resolved at the State level and not submitted to the Secretary.

Comment: Several commenters asked that the initial plan submitted after the preprint is issued be subject to the 60-day comment and review period prior to submittal to the Department.

Response: We have carefully reviewed the changes that we have made in the final regulations to determine whether there would be any reason to require States with approved interim JOBS plans to go through the public comment and review period when they submit their initial plans using the preprint. We conclude that the changes are not so substantial as to automatically require another comment and review period for all States. However, we have maintained the provision that if the State makes substantial changes in its program, the

plan should be submitted for review and comment. We have amended the regulations to provide for an abridged review and comment period of 30 days.

Comment: One commenter pointed out that the proposed regulations omitted the statutory language "made reasonably available to the general public through local news facilities and public announcements * * *"

Response: The final regulations have been revised to contain the provisions of the statutory language which were inadvertently left out of the proposed regulations.

State Plan Content (§ 250.21 of the Final Regulations)

Section 250.21 lists the information required in the JOBS plan. We will provide a preprint which will elicit all necessary information in a standardized format. The preprint will guide States in submitting the JOBS plan and will expedite review. It will also provide a basis for comparison of State programs.

In the NPRM preamble, we said that some of the requirements for the JOBS plan were included in other sections of the proposed regulations (54 Fed. Reg. 15647). In the final regulations, we have collected all of those requirements and listed them in § 250.21. We have also made some changes in the order of items in this section in response to comments.

Comment: Several commenters requested that § 250.21(a)(1)(ii) be reworded to reflect the statutory provision that a recipient may only be required to participate when that recipient is guaranteed child care, rather than when child care is available "in the political subdivision," as stated in the NPRM.

Response: We clarified our language in the final regulations to meet these commenters' concern.

Comment: Several commenters requested that we clarify and expand paragraph (f) to ensure that the statutory requirements for consultation and coordination are carried out. Some commenters suggested that we require descriptions of State efforts in this area to ensure the most efficient and effective coordination of services possible.

Response: We agree with these commenters that the integration of JOBS with other programs serving those in need is essential to the success of the program. The consultation and coordination requirements of § 250.12 are intended to ensure this extremely important function is carried out. We have clarified and expanded paragraph (e) to require that the State plan include the specific results of any coordination

and consultation that the State undertakes.

Comment: Some commenters asked us to soften our required descriptions of assessment techniques employed by States, claiming that requiring descriptions of the techniques used by each political subdivision was too burdensome.

Response: We do not wish to be unnecessarily burdensome in our requirements and have removed the requirement to describe assessment techniques in the State JOBS plan.

Comment: Similarly, some commenters believed the required descriptions of case management were too burdensome.

Response: To meet these concerns, we have amended the final regulations to provide for a general description of case management, including what entity will be responsible for providing the service and, if not used statewide, a description of methods by which individuals will be assigned a case manager.

Comment: Several commenters asked us to employ better assurances that the statutorily identified target groups would only be replaced if they were infeasible to serve, and that any alternative target groups would meet the statutory requirements.

Response: We have included a new paragraph (b)(5) in § 250.21 to meet this concern. Section 403(l)(2)(C) of the Act requires a State to demonstrate, to the satisfaction of the Secretary, that serving the statutorily identified target groups is infeasible and to define alternative target groups. Any alternative target groups must meet the statutory criteria of being populations of long-term or potentially long-term recipients.

Comment: Several commenters requested that we include under this section other information that § 250.35(d) and § 250.72(e) require in State plans.

Response: We have collected other State plan requirements and included them in this section. We added § 250.21(d)(12), requiring States to set forth in their State plans additional grounds for good cause selected by the State, as required by § 250.35(d). We added an assurance at § 250.21(a)(7) because § 250.72(e) requires the State to certify that services provided by the State IV-A agency are not otherwise available on a nonreimbursable basis.

Comment: Some commenters believed the State plan requirements were too extensive and structured and did not provide States with enough flexibility.

Response: We disagree. The Statute requires States to submit a plan and describe how the JOBS program will

operate in the State. It also provides the Secretary with the authority to require additional information necessary for the proper administration of the program. We have tried to give States maximum flexibility, and our final regulations reflect that philosophy.

Comment: Some commenters asked us to require States to describe how they will decide who will receive JOBS services, including how they will give priority to volunteers.

Response: We do not believe this kind of detail is necessary in the State plan. We do not believe we must approve a process in order to ensure that volunteers are served according to the State and the regulations.

Comment: Some commenters asked us to use the term "basic skills assessment" instead of "literacy tests." Other commenters asked that we require an assurance that recipients will not be discriminated against on the basis of literacy.

Response: We have removed the requirement to describe the types of assessment tools a State will use. As for discrimination, since one of the principal goals of the program is to reach those recipients most in need, the provisions designed to assure that State programs strive toward those goals should prevent any discrimination against those in need of literacy training, since they are a population most in need.

Comment: Some commenters requested that, in States opting for an alternative hearing process, the State plan contain assurances that participants in these States who request use of the normal State hearing process will not be subject to delay or prejudice due to that request.

Response: If a State establishes a separate hearing process for JOBS as an alternative to the IV-A hearing process, as provided by section 482(h) of the Act, the participant does not have the option to pursue her case through the IV-A hearings process. The State is only required to insure that whatever hearing process it establishes meets the requirements of *Goldberg v. Kelly*.

Comment: Some commenters believe that the provisions under §§ 250.21(d) and (g)(3) (now subsection (f)) regarding estimates of numbers of people to be served and ways of serving them were too specific, while other commenters did not believe they were specific enough.

Response: The information asked for is required by section 482(a)(1)(B) of the Act. We believe that it is useful for planning purposes. We have not gone beyond the statutory requirements in these areas.

Comment: Some commenters asked us to require States to describe, in their

State plan, how child care will be provided for parents under age 20.

Response: The Supportive Services plan covers methods of providing child care. We do not believe these questions need to be addressed in the JOBS plan.

Comment: Some commenters asked us to require States to describe, in the State plan, the circumstances under which assignment to each JOBS component is appropriate.

Response: We do not believe this type of specificity is needed in the State plan. We are unaware of any need for federally approved procedures.

Comment: Some commenters asked us to require States to state whether they will allow unemployed parents under age 25 to meet the 16-hour participation requirement in § 250.33 through education.

Response: Section 250.21(c)(6) requires a State to describe whether it will allow a parent under age 25 to meet the unemployed parent program 16-hour work requirement by participating in educational activities.

Comment: Some commenters asked us to delete "education" from the § 250.21(n) State plan requirement that the State describe its actions to assure that education and training be directed to jobs in the area.

Response: We declined to adopt this suggestion. We believe education under the JOBS program should have the same goals as the training components—to provide necessary skills for self-sufficiency. Preparing participants for jobs available, or likely to become available, in the State is a primary means of assisting in the achievement of self-sufficiency, and provides enough latitude to include education. This provision, however, has been renumbered as § 250.21(e)(4) in the final regulations.

Comment: Some commenters asked us to require States to describe how they will ensure recipients will not be required to take a job that would result in a net loss of income.

Response: We have added a provision at § 250.21(c)(5) that provides that a State must describe what necessary and reasonable expenses it uses to calculate "net loss of cash income."

Comment: Some commenters asked us to require States to state in the plan any other priorities that could affect the order of participation in or access to the program.

Response: We believe that requiring this kind of detail is not appropriate. States must retain the flexibility to make some program assignments on a case-by-case basis, without having federally-

approved procedures to follow in making every decision.

Comment: Some commenters asked us to require a medical assessment of all participants to determine whether or not they are handicapped, and then to require a handicapping assessment for those found to be handicapped, for the purpose of measuring residual functional capacity to assist in planning appropriate participation.

Response: We believe that requiring a medical assessment of all participants would be unduly burdensome. However, when a State does identify a participant as handicapped, we would expect it to provide her with the necessary services to insure meaningful participation.

Comment: Some commenters asked that we include vocational rehabilitation service organizations as a listed example of possible contractors under § 250.21(g)(4)(i).

Response: In the final regulations, we have elected not to list any specific kinds of providers with which a State might contract. As a result, we have not incorporated vocational rehabilitation service providers. This section has been renumbered as § 250.21(b)(3)(iii) in the final regulations.

Comment: Some commenters asked us to amend § 250.21(n) to require that the State plan provide that participants must be trained for jobs "in demand," rather than jobs which "will become available."

Response: We decline to make this change. JOBS is intended to provide skills for long-term self-sufficiency. This is not limited to jobs presently in demand, but must include jobs that will become available in the future. We do not necessarily want to place JOBS participants just in slots presently in demand, which may be limited in many areas, but to prepare them to compete in the workforce for jobs that are appropriate for them. This provision has been renumbered as § 250.21(e)(4) in the final regulations.

Subpart D—Participation Requirements, Exemptions and Requirements for Individual Participation and Exemptions

(§ 250.30 of the Final Regulations)

Section 402(a)(19)(C) of the Act provides for exemptions from participation in JOBS that are similar to those that exist under WIN. The exemptions are contained at § 250.30 and are discussed below.

Child Under 16

A child who is under 16 or is attending full-time an elementary, secondary, vocational or technical school is exempt.

Comment: Several commenters said that the designation in the NPRM of a minor parent as an adult for purposes of exemption determination is beyond the scope of the Statute. They contend that the statutory exemption applies to any child under 16. They further say that the fact that minor parents fall within the definition of "adult recipient" in section 403(k)(4) of the Act has no relevance to their exemption status; many other non-exempts are counted as "adult recipients" for the purposes of the funding formula.

Response: We have amended the final regulations to remove the exception for minor parents under age 16 because of the statutory exemption. However, we are concerned that this could result in these young parents being out of school for a very long time, and we, therefore, encourage States to help these young women to complete their educations.

Comment: One commenter asked whether a child, who did not qualify for this exemption because she was not in school, and is required to return to school as a required JOBS activity, would then qualify for the exemption for attending school.

Response: If a child is required by the State agency to participate in JOBS because the child was not attending school full-time (and thus did not qualify for this exemption), such participation could consist of required full-time school attendance. The regulations clarify that such school attendance, as a required JOBS activity, does not then trigger the exemption.

Advanced Age

We define "advanced age" for the purposes of this exemption to mean age 60 or older. This is consistent with the upper age exemption in the Food Stamp Program and should ease the administrative burden on State agencies.

Remoteness

Section 402(a)(19)(C)(vii) of the Act also provides an exemption for remoteness. This exemption is for the individual who lives in a political subdivision that has a JOBS program, but who resides so far away from a JOBS activity that participation is not feasible.

Comment: One State commented that the exemption for remoteness was changed in the Act to permit exemption only in the areas where the program is not available, and that the proposed regulations went beyond the exemption provided in the Act in the definition of remoteness.

Response: We do not agree. Section 402(a)(19)(B)(i) of the Act provides that

the State will require participation by all recipients to the extent that the JOBS "program is available in the political subdivision involved" (and the individual is not otherwise exempt.) Thus, in a subdivision that does not have a JOBS program, there is no requirement to participate. In order to give meaning to the exemption at section 402(a)(19)(C)(vii), there must be circumstances in which even in a subdivision with a JOBS program, an individual would be so "remote" from services as to consider the services to be unavailable.

Comment: Several commenters suggested that the travel standard applied in the determination of remoteness (taken from prior WIN regulations) may have been reasonable when persons with children under six were exempt, but does not acknowledge the different circumstances of parents with very young children. They suggested the calculation of reasonable travel time should include child care travel time.

Response: We believe that remoteness in this context means physical distance from a JOBS office or activity. The amount of time it takes to get from home to the site can be objectively calculated if one knows distance and mode of travel.

On the other hand, the amount of time it takes to deliver a child to a caregiver is a very individual determination, and every working parent must factor in the time involved in delivering a child to a caregiver when determining the duration of her commute. We believe that calculating the commute for JOBS participants should be no different than calculating it for any working parent.

Working More Than 30 Hours per Week

Section 402(a)(19)(C)(iv) of the Act retains the exemption for working 30 hours or more per week. Currently, under WIN, § 224.20 provides a Federal standard for this exemption: the job has to be unsubsidized and expected to last at least 30 days. The Federal standard was designed to insure that the employment is bona fide and likely to lead to self-sufficiency for the family. However, in consultation with States, we have heard that the Federal definition does not provide States with enough flexibility to require participation by individuals who are working sporadically at very low wages.

Therefore, the final regulations allow State IV-A agencies to establish their own standards for the type of "work" that qualifies for this exemption. For example, such a standard might require that the job pay at least minimum wage.

The standards must be included in the State JOBS plan as provided at § 250.21.

Comment: One State suggested that the regulations allow those averaging 30 hours of work per week to be considered exempt from participation.

Response: We believe the regulations, as written, leave it open for States to "establish minimum standards in its JOBS plan for work that qualifies an individual for this exemption." The State JOBS plan would have to define the period over which the averaging would be calculated.

Comment: One State asked if States are allowed to develop a policy for self-employed people for the purposes of the 30 hour work exemption.

Response: States are given maximum flexibility to establish their own standards for the type of work that qualifies for this exemption as long as it is contained in the State JOBS plan.

Pregnancy

Currently, a pregnant woman in her third trimester is exempt based on the pregnancy. Section 402(a)(19)(C)(vi) of the Act exempts pregnant women during the second and third trimesters based on the pregnancy.

However, we strongly encourage States to urge pregnant women to volunteer to participate in the program, particularly those who are not yet 20 years of age and are without a high school education.

Comment: One commenter objected to our urging States to encourage young pregnant women to participate, saying that singling out these exempt individuals for special pressure to volunteer subverted the intent of the Act.

Response: We do not see it as singling them out for pressure. We believe that it is important that these young women stay in school for their own sake and that of their children. A six-month absence from school is almost the equivalent of missing an entire year of school. We recognize the statutory exemption, but we believe these young women would be better served by continuing in educational activities. We decline to change the preamble.

Age of the Youngest Child

Section 402(a)(19)(C)(iii) of the Act provides that a parent or other relative of a child under 3 (or an age less than 3, but not less than 1, if the State plan so provides) is exempt if the parent or relative is personally caring for the child. It also provides that the parent or relative of a child under 6 is exempt if personally caring for the child unless the State IV-A agency assures the necessary child care and that

participation in the program will not be required for more than 20 hours per week. However, both of these exemptions are superseded by the requirement at section 402(a)(19)(E) of the Act that custodial parents under age 20 attend educational activities if they have not finished high school and child care is otherwise available. A more complete discussion of this requirement is contained in the preamble for § 250.32.

The child care exemption is limited to one parent or caretaker relative per case. This is consistent with section 402(a)(19)(D) of the Act which specifically allows only one such exemption in a two-parent unemployed parent case. We believe that by analogy it is a reasonable interpretation to apply the same requirement in an AFDC case and, therefore, where there is more than one person who can qualify for the exemption, only one person may be exempt. We also believe that this policy is consistent with the language that the individual must be "personally providing care."

Exemptions in Unemployed Parent (UP) Cases

Section 402(a)(19) of the Act does not exempt a parent in an AFDC-UP family from JOBS participation due to the other parent's participation in JOBS. Accordingly, the second parent must participate unless he or she meets another exemption criterion such as caring for a young child. However, section 402(a)(19)(D) of the Act also allows a State to require both parents to participate, notwithstanding the exemption for personally providing care for a young child, if child care is guaranteed in accordance with section 402(g) of the Act.

If the State IV-A agency does not elect this option, section 402(a)(19)(D) of the Act provides that only one parent may be exempt for personally caring for a young child. We allow a State to establish policy on whether the principal earner is eligible for the exemption for caring for a child under age 3.

Comment: One State commented that the final regulations should clearly specify that if one parent in an AFDC-UP case is participating, the second parent is not required to participate unless the State IV-A agency chooses to require his or her participation.

Response: The State's interpretation is incorrect. Section 402(a)(19)(C) of the Act contains no exemption for the second parent in a two-parent family. The second parent is required to participate unless he or she meets another exemption criterion such as caring for a young child. This is a

change from prior law at section 402(a)(19)(A)(viii) of the Act which exempted the second parent in an AFDC-UP case from participation if the principal earner was participating.

Comment: Two commenters asked if the option for States to require both parents in an AFDC-UP case to participate, notwithstanding the exemption for having a young child, means that the parents can be required to participate if their child is one day old.

Response: The commenters are correct. The statutory option to require both parents to participate specifically makes section 402(a)(19)(C)(iii) inapplicable to the parents. It does provide that child care must be guaranteed. However, as we explain in the preamble on the incapacity exemption, a woman who has recently given birth may qualify for an exemption for incapacity.

Incapacity

Section 402(a)(19)(C)(i) of the Act provides an exemption for incapacity. We do encourage State IV-A agencies not to automatically exempt someone as incapacitated if the individual could be served or employed if reasonable accommodation for the person's condition were made.

Comment: One commenter asked that we delete the language in the NPRM which provided that the State could take an individual's age into account in determining whether an incapacity prevented her from participating in employment or training. The commenter was concerned that this could result in age discrimination.

Response: We have deleted the language "by itself or in conjunction with age."

Comment: One commenter said the standards for verifying incapacity seem unreasonably strict.

Response: We do not regard the requirements of verification of incapacity to be so onerous as to require modification. The law distinguishes between exemptions for illness and incapacity, and our regulations provide different standards of verification. In the case of illness, which we define to include injury, the regulations require medical evidence or some other sound basis for verifying the illness. The commenter's example of a broken leg would clearly fall into this category, and the cast on the leg could provide evidence for a temporary exemption for illness. In the case of an incapacity, the regulations require verification by a physician or a licensed or certified psychologist. Since incapacity must be

something other than a short-term illness, we believe that the verification standards are appropriate.

Comment: Several commenters pointed out that section 402(a)(19)(E) of the Act, requiring young custodial parents to participate in educational activities without regard to the age of the youngest child, does not provide for any period of "bonding" or recovery after a young mother gives birth. These commenters suggested that we add an exemption which allows a teen parent to stay home with her child for a "bonding period." Suggestions for the length of the bonding period varied from eight weeks to one year in duration.

Response: We agree with the comments that it is very important for young children to establish an early and firm bond with their mothers and that the mothers should spend sufficient time nurturing their children. Research seems to indicate that both the age of the child when separation begins and the amount of time of separation are critical to the normal development of young children. Infants who are placed in part-time, non-maternal care do not seem to suffer deleterious effects from separation. We believe, therefore, that it is important for the agency staff working with young mothers to design program options which are sensitive to the needs of both the mothers and their children. This could include working with school systems to encourage in-school programs for teen mothers and their children, including courses in parenting skills.

We also believe that the mother's physician is in the best position to determine when the mother is incapable of participating in educational activities after childbirth. The State IV-A agency may exempt her as "incapacitated" for an appropriate period of recuperation prescribed by her physician.

Other Exemptions

Other exemptions provided in section 402(a)(19)(C) of the Act, including caring for another ill or incapacitated individual in the household, are implemented in the final regulations and follow the language of the current WIN regulations, which implement identical exemptions.

Comment: One commenter suggested that we include in the final regulations an exemption for VISTA volunteers pursuant to the Domestic Volunteer Service Act Amendments of 1979 (Pub. L. 96-143) which provides that "a person enrolled for full-time service as a volunteer under title I of * * * [the Domestic Volunteer Service Act of 1973] who was otherwise entitled to receive assistance or services under any

governmental program prior to such volunteer's enrollment shall not be denied such assistance or services because of such volunteer's failure or refusal to register for, seek, or accept employment or training during the period of such service."

Response: We agree. Section 250.30 of the final regulations has been amended to include a new § 250.30(b)(10).

Review of Exemptions

The final regulations require that the State IV-A agency regularly review the appropriateness of exemptions, especially those of a temporary nature. Such review must occur, at a minimum, at each redetermination for AFDC.

Comment: One State asked that the final regulations be amended to require that the IV-A agency promptly notify the recipient and the appropriate service provider of any change in exemption status.

Response: We agree. Since there is no longer a "registration" requirement compelling an affirmative step by either the State or the recipient to change a status, it is possible that, without the provision for notice, the individual's status could change without her knowledge. We also believe that it is appropriate to notify service providers if an individual's status changes. For example, an agency providing case management services should be notified. In § 250.30 of the final regulations, paragraph (c) has been redesignated as paragraph (c)(1) and a new paragraph (c)(2) has been added to include that notification requirement.

Volunteers (§ 250.31 of the Final Regulations)

Section 402(a)(19)(B)(i)(II) of the Act contains a general requirement that the State IV-A agency must allow applicants for and recipients of AFDC who are exempt under section 402(a)(19)(C) to participate in JOBS on a voluntary basis if the program is available in their area and State resources otherwise permit. However, section 402(a)(19)(B)(iv) of the Act specifically provides that a State IV-A agency need not allow or require participation of an individual if such participation would affect the State's rate of reimbursement pursuant to Section 403(l)(2) because the State could not expend 55 percent of its funds on individuals in the target groups. This provision is incorporated in the regulations at § 250.74(a)(3).

Section 402(a)(19)(B)(ii) of the Act contains a specific requirement that in determining priority of participation within the target groups defined in section 403(l)(2)(B) of the Act, the State

IV-A agency shall give first consideration to applicants and recipients who volunteer. We interpret the use of the term "volunteer" to include both non-exempt and exempt applicants and recipients so that a State may elect to prioritize among volunteers and, if appropriate, give priority to non-exempt volunteers.

The statutory priority given to volunteers in target groups does not usurp the State IV-A agency's authority to determine the type of program it will offer. Several factors may affect a State's decision to provide services, including: (1) goals of the State program, (2) availability of resources, and (3) the effect of selection of individuals to participate on the States's ability to meet participation rate standards.

The regulations at § 250.31(b) describe the consequences for volunteers who stop participating in JOBS. For exempt individuals who stop participating in the program without good cause, their priority status to participate in the program is lost as long as other individuals are actively seeking to participate. For individuals who are not exempt but enter the program voluntarily, the regulations provide that if such an individual stops participating without good cause, the individual is subject to sanction as described in § 250.34. We believe that this approach provides fair and equitable treatment for all non-exempt participants and avoids the situation in which a non-exempt (mandatory) participant could avoid participating in JOBS by volunteering first and then dropping out without good cause. If the rule about volunteers losing priority status were applied in that situation, the non-exempt individual would become part of the group served after all others thereby avoiding her obligation to participate.

Comment: Many commenters felt that the preamble to the proposed regulations went beyond statutory intent by giving States discretion in determining whether to serve volunteers. Many felt that the JOBS programs would have a greater likelihood of success by including as many volunteers as possible, since volunteers are more likely to cooperate, and would require less administrative activity, such as conciliation. They therefore felt that the regulations should require States to serve all volunteers first. One commenter indicated that the statutory language "clearly stated that volunteers were to be served before the mandatory population." Others asked for clarification of the language regarding the treatment of volunteers.

Response: We reviewed the conference report as well as the language of the Family Support Act. Though earlier versions of the bill contained stronger language relating to the status of volunteers, we feel that our reading of the Act is correct. Although many commenters felt that the Act requires States to serve volunteers first, the actual language does not support this view.

The statutory language does not include an absolute requirement that all volunteers be given priority; the Act requires the State to make reasonable efforts to allow volunteers to participate. Only in the case of members of the target groups is the State required to treat volunteers differently than other participants. While it may be appropriate for some States to emphasize volunteering in the JOBS program, this may not be the case in other States. For these reasons, we have retained the language of the proposed regulations.

The language of section 402(a)(19)(B) of the Act and the implementing regulations at § 250.31 provide the State with the flexibility to give volunteers, including those outside the target groups, priority. The State is in the best position to determine the emphasis to be given to including volunteers in its JOBS program, while considering such factors as targeting and participation rate requirements.

The State must provide applicants and recipients with information about the JOBS program, and allow individuals who are not required to participate to volunteer. Decisions to serve volunteers should be made on the basis of such factors as availability of services, resource constraints, effect on the targeting and participation requirements, and program goals. The exception to this general approach involves individuals in the target groups. As required by section 402(a)(19)(B)(ii) of the Act, the State must give first consideration to volunteers within the target groups. But even for this group, Congress stopped short of absolutely requiring that such individuals be served first by using the term "give first consideration." This language indicates that even for this group, the State may exercise judgment in serving volunteers.

Comment: A number of commenters felt that the preamble and regulations should not permit a State to consider such factors as the availability of resources, program goals, and possible impact on the State's ability to meet the participation rate requirement in serving volunteers, particularly those in the target groups. One commenter argued that Congress explicitly included the

qualification that a State need not serve volunteers if doing so would result in failure to meet the targeting requirement, but did not include a similar qualification regarding the participation rate requirement.

Response: We do not agree that the qualification in section 402(a)(19)(B)(iv) of the Act is the only factor which a State may consider in deciding whether to serve volunteers. We believe that a better reading of the Act requires consideration of all of the paragraphs of section 402(a)(19)(B) in harmony. Subparagraph (iv) qualifies the general participation requirement in subparagraph (i), as well as the provisions regarding volunteers. A State need not require individuals to participate, nor allow individuals to volunteer, if by doing so it would fail to meet the targeting requirement.

Comment: One commenter asked for clarification of the term "give first consideration" in § 250.31 of the proposed regulations.

Response: This phrase comes directly from section 402(a)(19)(B)(ii) of the Act. We interpret this language to mean that in determining priority in serving target group members, a State must first look to volunteers. However, the Act does not require that volunteers necessarily be served before others, regardless of the individual circumstances. Rather, a State must give priority to a volunteer over a non-volunteer when all relevant factors are equal.

Comment: A few commenters felt that there should be no penalty for volunteers who drop out of the program, and that an individual in a program which did not meet her long-term aspirations should be encouraged to drop out. One State felt that only non-exempt individuals who drop out should be penalized, and that the penalty should be loss of priority status. Another commenter felt that the penalty should be the same for all volunteers, regardless of their exemption status. Others felt that non-exempt volunteers should not be subject to possible sanction.

Response: Section 402(a)(19)(B)(ii) of the Act provides that exempt individuals who drop out of the program without good cause will lose their priority status. This section of the Act does not address non-exempt volunteers who drop out of the program. We believe that such individuals should be treated as other non-exempt participants for the purpose of the sanction requirements at section 402(a)(19)(C) of the Act, as described in § 250.34 of these regulations. To do as other commenters suggest—providing no penalty for non-exempt volunteers who drop out—would

result in preferential treatment for non-exempt volunteers, since exempt volunteers who drop out lose priority status.

Comment: One State asked for clarification of the language in the regulations which provides that individuals who are not otherwise required by the State to participate, as well as those who are exempt, may volunteer. The commenter felt that the only individuals not required to participate are those who are exempt. One commenter asked that we not require staff to make determinations based on the apparent oxymoron of the "mandatory volunteer." Another asked for clarification of this term. Another asked that the term "volunteer" be defined in such a way as to exclude non-exempt individuals.

Response: Section 402(a)(19)(B)(i) of the Act specifies that a State require participation "to the extent the program is available in the political subdivision involved and State resources otherwise permit * * *". There will therefore be circumstances in which non-exempt individuals are not required by the State to participate. Individuals from this group who then volunteer are "mandatory (non-exempt) volunteers".

We do not believe that it would be appropriate to exclude this group from the requirement that a State allow individuals to volunteer for the program.

Comment: A number of commenters stated that the preamble language implied that a State would not have to serve volunteers if they would not participate in an activity for 20 hours per week. Another felt that not counting participation of less than 20 hours per week would discourage potential participants from volunteering and the State from serving them.

Response: Changes made to the definition of participation, now at § 250.78 of these regulations, will affect the State's decisions regarding volunteers. However, some discussion of the term "volunteer" is appropriate, as it was apparent from the comments that there are differences in the treatment of volunteers with respect to the services that are provided in various programs.

An individual can volunteer to participate in JOBS, and at that point, be accepted into the program as would any non-volunteer—that is, the State would perform an assessment, formulate an employability plan with input from the individual, and assign the individual to a component. On the other hand, many commenters apparently believe that volunteers tend to volunteer for specific

components and for a certain number of hours within a component.

While it may be possible to permit the flexibility of the latter type of "volunteering" in some State programs, other States will operate under the former. Once an individual volunteers, the components and activity level in their employability plan will be determined as for any non-volunteer. As indicated in § 250.41, the State has final authority for approval of the employability plan. We believe that both interpretations are acceptable and that the State should determine how volunteers will be served.

Comment: One commenter felt that it was inappropriate to permit States to prioritize among volunteers—for example, serving non-exempt volunteers first.

Response: The Act does not provide any incentives for serving non-exempt volunteers first. However, a State may determine that it would be more cost-effective to do so. In determining which volunteers to serve in circumstances in which not all can be served, the State is permitted to prioritize. For example, an individual may be exempt by reason of remoteness from an appropriate component site. The State might choose to serve an individual who is not exempt (e.g., one who is not remote) on the basis that there are limited funds available to provide for transportation for the exempt individual. We believe that the Act permits such flexibility, and we, therefore, have retained the language in question.

Comment: One commenter suggested that exempt volunteers be counted in determining participation rates.

Response: Exempt individuals living in JOBS areas of the State who participate will be included in determining State participation rates (but will not be included in the denominator pursuant to section 403(l)(3)(B)(iii)(II) of the Act).

Comment: One State suggested that in order to prevent children who are in school from requesting supportive services, such as reimbursement for transportation, by volunteering, we should specify that the provision applies only to adult recipients.

Response: We do not believe that there is a rational basis for making such a distinction. However, the State has final authority in determining the need for supportive services in individual cases.

Comment: Many commenters felt that volunteers, particularly those in target groups, should be provided child care.

Response: This subject is addressed in the revised preamble and regulations at § 255.2.

Participation Requirements for Education (§ 250.32 of the Final Regulations)

Congress recognized the importance of education to the achievement of long-term self-sufficiency, especially for young parents, and it addressed it in two ways in the Family Support Act. First, the Act requires the State IV-A agency to make available a range of educational activities which are described in the final regulations at § 250.44. Second, the Act requires that to the extent educational services are available and State resources permit, the State must (subject to certain exceptions described below) require a custodial parent under 20 who has not finished high school (or its equivalent) to participate in an appropriate educational activity.

Since teen mothers who drop out of school are prone to long-term welfare dependence, Congress specifically provided that a young parent under 20 years of age is not exempt from educational activities even if she has a child under 3 and gave the State IV-A agency the option to require that she attend full-time if it is in the pursuit of a high school diploma or its equivalent. This is a very important step in ensuring that the young parent remains in school and not be ignored until her youngest child turns 3. In addition, in section 403(l)(2)(B)(iii) of the Act, Congress designated custodial parents under 24 who have not completed high school and who are not enrolled in high school (or a high school equivalency course) at the time they apply for aid, as one of the four populations specifically targeted for services.

Section 402(a)(19)(E) of the Act provides the State IV-A agency with several options for young custodial parents. The State may establish criteria for excusing custodial parents under age 18 from the high school attendance requirements described above. We believe, however, that excusing custodial parents from high school attendance should be rare. Accordingly, the final regulations indicate that in such cases the State IV-A agency must provide for assignment to alternative educational activities or to training activities that are combined with education. Job Corps under Title IV of the Job Training Partnership Act is an example of an alternative program that has an educational component. All determinations must be based on an assessment of the individual's circumstances. The State agency's criteria may not excuse anyone from high school who is subject to the State's compulsory attendance requirements.

The State may not categorically excuse someone because of the grade level she has completed. For example, it is not sufficient to say that a 17-year-old who has only finished 8th grade is excused automatically.

For custodial parents who are age 18 or 19, the State IV-A agency may require participation in training or work activities in lieu of educational activities if the individual is not making good progress in completing educational activities or, if an educational assessment, prior to assignment, determines that such educational activities are inappropriate for the individual.

The statutory reference to "custodial parent" in section 402(a)(19)(E) has prompted some to question whether 16- to 18-year-old individuals who are not parents are eligible for JOBS services. We want to be clear that they are. If they are not in school, they are mandatory participants because they do not meet the exemption criteria. In addition, if the individual is a member of a family in which the youngest child will lose eligibility within two years because of age, she is a member of one of the target groups described at § 250.1 earmarked for services. We believe that, like their counterparts who are parents, 16- to 18-year-old individuals should be encouraged and helped to remain in school or to participate in other educational or training activities.

For individuals 20 years of age or over, who have not earned a high school diploma (or its equivalent), section 482(d)(2) of the Act provides that if the State IV-A agency requires such an individual to participate, it must include educational activities consistent with her employment goals as a component in her employability plan. There are two exceptions: (1) if the individual demonstrates a basic literacy level, or (2) if the long-term employment goal identified in the individual's employability plan does not require a high school diploma (or its equivalent).

Comment: Concerning the proposed section in general, there were some groups that indicated approval for the strong emphasis upon education for those under 20 and stated that the emphasis upon education for those over 20 might not be strong enough.

Most of the comments were about § 250.32(a)(2), which sets forth the regulations for the State's criteria for excusing a custodial parent under age 18 from educational activities. The majority of these comments did not support the provisions, because the groups felt that the requirements exceeded congressional intent by only allowing

for placement in another educational activity, instead of the larger range of JOBS activities. Some commenters felt that the regulations overemphasized traditional high school as an educational activity for teen parents. They stated that the requirements deny a State the flexibility to address the needs of young AFDC parents in favor of an approach that is only experimental. They did not want these participants' benefits cut off if they are not in school. They sought more flexibility in the provisions, such as allowing the State to use categorical exemptions. One commenter noted, for example, such an exemption might be made for parents of children under the age of 2, in view of the high cost of child care for that age group.

Response: The conference report indicates that Congress gave careful consideration to the intended effect of educational activities upon reducing the welfare dependency of young parents. The stronger Senate amendment language concerning mandatory educational activities for young parents prevailed over the language in the House bill. We therefore believe that the emphasis upon placement of teen parents in educational activities is supported by the Act. Section 402(a)(19)(E) requires that, to the extent of program availability and State resources, the State agency must require a custodial parent under age 20 "who has not completed a high school diploma or its equivalent * * * to participate in an educational activity."

As to the issue of overemphasis upon full-time high school for teen parents, the regulations follow the Statute in indicating that the State IV-A agency "may require full-time participation (as defined by the educational provider) in educational activities directed toward the attainment of a high school diploma or its equivalent," and so we provide for the State to assign the participant to alternative educational activities following the full range of options outlined in the regulations at § 250.44(a) or into training activities that are combined with education. These options provide for flexibility within the congressionally mandated requirement that the teen parents be in an educational activity.

The Act provides for the State to establish criteria concerning exempting custodial parents under age 18 from educational activities "in accordance with regulations established by the Secretary." Since Congress placed such a clear emphasis upon educational services for this age group, we believe that allowing categorical exemptions, including completion of a certain grade

level, would dilute the requirement to serve this special group of participants, which is highlighted in the Act.

Comment: A few commenters stated that, taken literally, the regulations at § 250.32 do not allow a young parent an adjustment period after childbirth. They asked that the section be revised to provide for a bonding period between the infant and parent, so that the parent is not sanctioned for failing to return to her educational activity the day after the child is born.

Response: We encourage State IV-A agencies to be sensitive to the need for fostering a healthy relationship between mother and child, such as through assignment to educational activities with on-site child care and by encouraging young mothers to devote sufficient time to nurturing their children. Moreover, the exemption at § 250.30(b)(3), concerning incapacity has been modified to specifically allow a period after childbirth prescribed by the mother's physician in which she is not required to participate in JOBS activities.

Comment: Some organizations said that States should be required to provide alternative educational programs and on-site child care for teen parents.

Response: The regulations provide for State flexibility in fashioning appropriate JOBS activities and do not mandate a particular method of delivering services. Neither this section nor § 250.44 on mandatory components would prohibit a State from using such alternative educational programs.

Comment: Some States and other groups expressed concern with what they saw as this section's emphasis upon achieving universal coverage, since they felt there were not enough resources for appropriate educational activities to meet the special needs of the participants.

Response: The regulations in § 250.32 repeat the statutory language regarding consideration for the availability of the program in the political subdivision and whether State resources otherwise permit. If the State does not have the capacity to meet the needs of the individual, as determined by the agency's assessment, she is not required to attend inappropriate activities.

Comment: A commenter asked for clarification of the participation of 16- to 18-year-old non-parents in JOBS.

Response: Sixteen to eighteen-year-old non-parents are subject to the mandatory JOBS participation requirements unless they meet one of the statutory exemptions such as being in school.

Comment: One commenter read the preamble regarding the proposed regulations for this section as meaning that 16-to-18-year-old individuals who are not parents are mandatory participants in education. The commenter stated that the Statute referred only to custodial parents relative to the educational requirements, and that the provisions conflict with State requirement regarding compulsory school attendance, and that undue pressures, perhaps leading to physical abuse, would be placed upon the affected children of families who would receive sanctions if their children do not cooperate and remain in school.

Response: Sixteen to eighteen-year-old individuals who are not parents are subject to the participation requirements of JOBS if they are not exempt pursuant to section 402(a)(19)(C) of the Act. The commenter is correct in saying that they are not required by Federal law to participate in educational activities. We encourage educational activities in keeping with the general emphasis upon education in the Act, but the State may determine that another activity is more appropriate.

Comment: Some commenters requested that we define or give examples of when participation in educational activities would be inappropriate for the 18 or 19-year-old parent, provided in § 250.32(a)(3)(ii).

Response: The provision concerning the determination of appropriateness for individuals in this age group is taken from the Act. The determination of appropriateness or inappropriateness of educational activities is to be made based upon both an educational assessment and employability plan. For example, a person not likely to benefit from additional available educational activities might profit from other component activities of JOBS. In another example, the individual might be capable of continuing with educational activities, but activities meeting her needs might not be available in her area due to lack of resources. Further, an individual's assessment coupled with her employability plan might indicate that JOBS component activities other than education might be more effective in helping the individual reach her long-term employment goal more quickly.

Comment: A group expressed alarm about the provision that individuals aged 18 or 19 could be placed in training or work activities if they failed to make good progress in successfully completing educational activities. They stated that rote adherence to such a standard would deprive those in this age group of

a chance for a renewed attempt at education.

Response: Our definition of making "satisfactory progress" or "good progress" provides for the State to adopt safeguards against this situation. It allows a State to use a probationary period or to consider mitigating circumstances. We encourage States to be sensitive to the special needs of the welfare population in educational activities. We also note the value of using the assessment of the individual's educational progress to reconsider educational placements. These regulations take account of Congress' great emphasis upon the education of young parents and should be applied in that spirit to those participants who are 18 or 19 years old.

Comment: A State education agency commented on the importance of the development of high quality basic education and remediation activities to serve the needs of JOBS participants. They asked that the regulations more clearly encourage the use of Federal funds to improve and expand such educational resources beyond typical local and State educational agency programs, in order to more directly serve the special needs of welfare recipients.

Response: When appropriate resources are not otherwise available, these regulations allow the development of special activities for JOBS participants to be directly administered by the IV-A agency, to be offered under contract, or to be offered through or in coordination with other Federal or State agencies. (See our comments regarding mandatory components of JOBS at § 250.44.)

Participation Requirements for Unemployed Parents (§ 250.33 of the Final Regulations)

Section 403(l)(4)(A)(i) of the Act provides that a State IV-A agency must require at least one parent in a family eligible for AFDC due to the unemployment of the principal earner in the family to participate for at least 16 hours a week in one of the following components of the JOBS program: work supplementation program, a community work experience program or other work experience program, on-the-job training, or a State-designed work program approved by the Secretary.

If a parent is under age 25 and has not completed high school or an equivalent course of education, section 403(l)(4)(A)(i) of the Act permits the State IV-A agency to require the parent to participate in educational activities directed at attaining a high school diploma (or equivalent) or in another

basic education program. The Act does not specifically define minimum levels of participation for individuals in this category. In the NPRM, we proposed to define the minimum level of participation in educational activities for unemployed parents to be the same as we defined it for the purpose of determining the general participation rate. Although we no longer use "making satisfactory progress" as a standard for participation rates (see discussion at preamble to § 250.78), we have maintained the definition for other purposes, including determining whether an 18-or-19-year old custodial parent should be assigned to work or training activities in lieu of educational activities. (See § 250.32.) Since we have maintained the definition proposed in the NPRM of "making good or satisfactory progress," we believe that it is reasonable to use this standard in determining whether a parent under 25 who has not completed high school or its equivalent is meeting the educational requirements of section 403(l)(4)(A)(i) of the Act.

Section 403(l)(4)(A)(ii) of the Act provides that in the case of a parent participating in a community work experience program for the maximum number of hours as provided in § 250.63, such participation shall meet the requirements of this section even if it is less than 16 hours per week. On the other hand, nothing in this section relieves the parent of the obligation under § 250.63(d) to participate in CWEP for the maximum number of hours even if it exceeds the 16 hours per week provided in this section.

Sections 403(l)(4)(B) and (C) of the Act provide that, by FY 1994, each State IV-A agency must have 40 percent of its Unemployed Parent caseload participating at least 16 hours per week in a work component described in this section. This requirement increases by steps to 75 percent in FY 1997. The consequences of not meeting these rates are contained at § 250.74(c) and discussed further in the preamble to that section. We believe that it would be prudent for the State IV-A agency to incorporate programs designed to meet these requirements at the time that they implement JOBS (or as soon as they have a UP program). Early implementation of this provision will allow the State to increase the coverage of its program on an incremental basis so that it can be at 40 percent by FY 1994. In addition, by implementing concurrently with JOBS, the State IV-A agency will maintain a consistent approach to serving unemployed parents.

In addition, we have read this provision together with the technical amendments that section 202 of the Statute makes to the Unemployed Parent program. These amendments impose additional requirements on the State to require early participation by principal earners, and on principal earners to participate or apply for participation in JOBS within 30 days of receipt of aid. These provisions are discussed more fully in the preamble to the technical and conforming amendments. By establishing a work program in accordance with this section, the State IV-A agency would have in place a program to which it could promptly and easily assign principal earners.

Comment: Based on the many comments received there is confusion regarding the effective date of these provisions. Although the preamble acknowledges that participation rates are not effective until FY 1994, and § 250.74(c) discusses the fiscal sanctions for not satisfying the relevant standards beginning in FY 1994, the regulations in this section are silent. Several commenters suggested that it was more appropriate and less confusing to place the effective date in this section of the regulations rather than in the fiscal section.

Response: We recognize the concern for including the effective date in this section of the regulations. However, since sections 403(l)(4)(B) and (C) of the Act tie participation rates to fiscal penalties it is appropriate to include this provision in § 250.74(c) of the regulations.

Comment: There were several comments suggesting that as States do not have to implement the UP provisions until FY 1994, they should be allowed under the regulations to treat mandatory UP participants as they would any other mandatory participant until that time; i.e. allow the unemployed parent to participate in any JOBS activity without the constraints of the 16-hour requirement until FY 1994. Other commenters also proposed that a phase-in period for unemployed parents be allowed after a State implements JOBS.

Response: Until FY 1994 a State with an approved JOBS plan has the option to either phase-in the unemployed parent 16-hour work requirement provisions for participation rate purposes or serve the unemployed parents under the regular JOBS program requirements. For a State without an approved JOBS plan there are no requirements to change the services currently being provided. States should also review section 202 of the Statute which imposes additional

requirements on unemployed parents. Despite the several options available under these provisions we want to stress that States should consider implementing programs incorporating the unemployed parent requirements as early as possible to provide consistency of services for the unemployed parent population.

Comment: Section 250.33(a) explicitly provides that a State-designed work program may not substitute education or training activities for the work requirement. Several commenters suggested that there are many instances in which work involves training and education. By making a flat prohibition of training and education in the regulations many of the options available to States in assisting a UP client in finding work may be hampered.

Response: A work component such as CWEP or OJT may well contain a training component, and such activities, as part of the work assignment, would be appropriate. The prohibition in the regulations means that the State may not substitute an education or training component, such as a skills training course, for the work requirement. However, an education or training activity could certainly be offered in addition to the work requirement.

Comment: Several commenters also suggested that States be allowed to waive the 16-hour requirement when an assessment indicates that the client would be better served in another component requiring more time.

Response: Section 403(l)(4)(A)(i) of the Act requires that at least one parent in a UP household participate for a total of at least 16 hours per week in a work supplementation program, CWEP or other work experience program, on-the-job training, or a State-designed work program approved by the Secretary. This is a minimum requirement. If additional education or training is appropriate, based on the individual's assessment, the State may require the unemployed parent to participate in these activities as well.

Comment: Several commenters suggested that the "making satisfactory progress" requirement for those unemployed parents under 25 participating in an educational activity should be dropped. They suggested that these participants should be required to meet the same 16-hour participation requirements as unemployed parents assigned to work components.

Response: There is no statutory requirement that there be a 16 hours per week participation standard for educational activities. Moreover, we are unaware of any reason for imposing

such a standard under general rulemaking authority.

Comment: One State asked if an unemployed parent could be required to participate for more than 16 hours per week in CWEP and, if so, when would they be expected to look for employment.

Response: Yes. There is nothing in section 403(l)(4)(A)(ii) of the Act which prohibits the unemployed parent from meeting the obligation of CWEP participation even if it exceeds the 16 hours per week requirement. In addition, the unemployed parent could be required to participate in a job search activity. However, this job search activity would not count towards meeting the 16 hours of work per week requirement.

Comment: One State asked if both parents are required to participate, are the hourly standards prorated among the two or is the requirement mandatory with only one of the parents.

Response: Section 403(l)(4)(A)(i) of the Act requires one parent in an AFDC-UP case to participate for at least 16 hours per week in a work activity. The requirement attaches to one parent designated by the State. There is no provision in the law for prorating the hour requirement between parents when the State requires both parents to participate in JOBS.

Comment: Several commenters asked if the 16-hour requirement would count towards meeting the JOBS participation standard. Others noted that as the 16-hour requirement does not count toward meeting the basic JOBS participation standard, States would be compelled to stretch the 16 hours of activity to 20 hours so that the unemployed parents participation could count.

Response: As we have redefined the participation standard to be an average of 20 hours of activity by the aggregate of participants, the 16 hours of UP activity could count in meeting the JOBS participation standard. However, there will need to be other activity occurring so that the established average can be met. For example, if an unemployed parent is meeting the 16 hours per week requirement, and another participant were active in a component for 24 hours per week, the 20-hour per week average would be met for these two individuals.

Comment: One commenter suggested that States should be allowed to design work programs for unemployed parents. They stated that workfare for large numbers of individuals for limited time periods is costly and not necessarily effective.

Response: Section 403(l)(4)(A) of the Act explicitly states the types of programs in which unemployed parents

are required to participate. The State IV-A agency does have the option to develop its own work program which must be described in the State JOBS plan.

Sanctions (§ 250.34 of the Final Regulations)

Section 402(a)(19)(G) of the Act provides for sanctions if an individual who is required to participate in JOBS fails to participate in the program or refuses to accept employment without good cause.

Comment: One State pointed out that § 250.34(a)(1) of the regulations discusses sanctions for those who fail without good cause to participate in JOBS or refuse to accept employment, but does not include language contained in the similar provision from prior regulations at § 224.51, relating to termination of employment or reducing earnings without good cause. The State asked if the less expansive language of the JOBS regulations indicates an intentional change in the interpretation of what constitutes refusal to accept employment.

Response: The Act contains a sanction provision virtually identical in language to the former section 402(a)(19)(F) of the Act. The sanction provisions for WIN are spelled out in § 224.51. Where, as here, Congress enacts a new law incorporating language from a prior law, it is presumed to have been aware of the administrative interpretation of the prior law and to have ratified that interpretation.

The legislative history of the AFDC statute does not expressly mention terminating employment as a basis for imposing sanctions. However, Congress has repeatedly stated its intent to encourage welfare recipients to obtain and to maintain employment. In enacting the new JOBS program, the 100th Congress provided further incentives and opportunities designed to assist welfare recipients to become and to remain members of the workforce. Evidence of congressional intent can be found in section 482(c)(1) of the Act (Provision of Program and Employment Information): "The State agency must ensure that all applicants for and recipients of aid to families with dependent children are encouraged, assisted, and required to fulfill their responsibilities to support their children by preparing for, accepting, and retaining such employment as they are capable of performing."

Interpreting section 402(a)(19)(G) of the Act restrictively to authorize sanctions for refusing to take a job and

not for voluntarily refusing to continue employment would defeat the statutory purpose of encouraging recipients to obtain and maintain employment. Congress did not intend to create such a loophole in fashioning a program designed to encourage continued employment.

Omission of the phrase "terminates employment or reduces earnings without good cause" from the NPRM was an oversight. The final regulations at § 250.34(a)(1) have been amended to include this language.

Length of Sanctions

Section 402(a)(19)(G)(ii) of the Act sets forth the length of sanction periods for JOBS purposes. For the first failure to participate or accept employment, the sanction lasts until the failure to comply ceases. For the second failure, the sanction lasts until the failure to comply ceases or 3 months whichever is longer. For any subsequent failure, the sanction lasts until the failure to comply ceases or 6 months, whichever is longer.

Determining When "Failure to Comply Ceases"

Many States have indicated that it is difficult to determine when a "failure to comply ceases." Accordingly, the final regulations contain an option which allows the State IV-A agency to determine that the individual has actually demonstrated a willingness to participate in the program and, therefore, has ceased her non-compliance. A State may require an individual to engage in either the activity to which she was previously assigned, or in some other activity designed by the State to lead to full participation, for a period of up to two weeks in order to demonstrate willingness to participate. If the individual successfully participates in such activities, the sanction will cease as of the day she agreed to participate. If the State IV-A agency has no activity to which it can assign the individual, the sanction will cease on the day she agrees to participate. If the individual fails to participate, during the trial period, she remains in sanction status until such time as she successfully demonstrates a willingness to participate in the program and, therefore, ceases her non-compliance.

For instance, if a sanctioned individual says on Monday that she wants to participate, the State may require her to come in and develop an employability plan or attend a pre-employment orientation. If she successfully completes the assigned activity, her sanction shall be considered to have ended on Monday.

However, if she fails to complete the assigned activity, she will remain in sanction status.

Comment: Several commenters suggested that we eliminate this option. They claim that it goes beyond the provisions of the Statute. Some commenters also asked why it only applied to the first sanction.

Response: We believe that providing States with the option to require a trial period in order to determine that the individual has demonstrated a willingness to participate in the program is consistent with section 402(a)(19)(G)(ii) of the Act. Therefore, the option is retained in the final regulations. We have amended the final regulations to clarify that, as a participant, the individual will be eligible for the child care and supportive services necessary to allow her to participate.

We have also determined that it was an oversight not to make the option to require a trial period applicable to the second and all subsequent sanctions since they also contain the provision "until the failure to comply ceases." We have amended § 250.34(b) of the final regulations to reflect this change.

Nature of Sanction

If a parent or other caretaker relative in a one-adult AFDC family fails or refuses to participate in the WIN program or accept employment, her needs are not taken into account in determining the family's need for assistance and the amount of the assistance payment. In addition, aid has to be paid to a third party in the form of protective or vendor payments unless the agency was unable to arrange such payments. Further, section 402(a)(19)(F)(iii) of the Act specifically provided that if the only dependent child in a family failed or refused to participate, the entire family would be ineligible for AFDC. Finally, if the parent who was designated as the principal earner, for purposes of section 407, failed or refused to participate, the entire family was sanctioned.

Section 402(a)(19)(G) of the Act makes several changes to the way the sanction is applied to the parent (or caretaker) and her family. The general rule is that the needs of the individual are not taken into account in determining need for assistance and the amount of the assistance payment.

Sanction When Only Dependent Child Fails to Participate

Aid is not denied to a family if the only dependent child fails to participate; the general rule applies to such a family, and only the needs of the dependent

child are removed in determining the need for assistance and the amount of the assistance payment. Prior to the enactment of the Family Support Act, section 402(a)(19)(F)(iii) of the Social Security Act specifically provided that the entire family was sanctioned when the only dependent child failed to participate. The Family Support Act, in amending the Social Security Act, did not retain this provision. The specific provision was necessary to sanction the entire family because despite an only dependent child's failure to participate, she is still considered a "dependent child" under section 406(a) of the Act for the purpose of determining the eligibility of the family. We have added a provision at § 250.34(c)(3) that explicitly states the policy with regard to the only dependent child who fails or refuses to participate.

Comment: Two States suggested that the existing AFDC eligibility determination provisions must be amended to allow the parent to receive a grant while the only dependent child is under sanction.

Response: Section 406(a) of the Act defines "dependent child." Cooperation with the JOBS Program is not part of the definition. Therefore, a child remains a "dependent child" even if under sanction as long as she otherwise meets the definition in section 406(a). Thus the parent or caretaker relative may still receive benefits if she is otherwise eligible. We do not find that any change to existing AFDC eligibility determination regulations is required.

Sanctions in AFDC-UP Cases

Section 402(a)(19)(G)(i)(I) of the Act revises the sanctions for unemployed parent families who are eligible under section 407 of the Act. In addition to applying the general rule to the individual who fails or refuses to participate, the Act provides that the needs of his or her spouse will also not be taken into account in determining the family's eligibility for AFDC and the amount of its assistance payment if the spouse is not participating in the JOBS Program. The rest of the family will have its eligibility and payment amount determined without inclusion of the needs of the sanctioned parent (and spouse, if such spouse is not participating in JOBS).

Comment: Several commenters asked for clarification regarding the requirement to sanction the spouse of a noncomplying unemployed parent under section 402(a)(19)(G)(i)(II) of the Act.

Response: Section 402(a)(19)(G)(i)(II) of the Act provides that if the spouse of a noncomplying AFDC-UP parent is not

participating in the JOBS Program, the needs of the spouse shall also not be taken into account. This penalty is a lesser penalty than that imposed under the WIN Program, under which the entire family lost eligibility. We believe that the new penalty reflects the mutual obligations of both parents to support their children. Therefore, if one parent is not participating, the other is obliged to do so. At the time a State provides the program information to a participant required by § 250.40, it should provide information to both parents about their mutual obligations. If the second parent does not participate, his or her needs are not taken into account in making the determination of the family's eligibility for AFDC and the amount of the payment, whether or not the second parent would otherwise be exempt.

Comment: One commenter pointed out that the second parent in an unemployed parent case is not necessarily the "spouse" and use of the term "spouse" would result in unequal treatment of unemployed parent cases.

Response: We agree. We have revised the final regulations to use the term "second parent" in place of "spouse."

Protective or Vendor Payments

Section 402(a)(19)(G)(i)(I) of the Act retains the requirement for protective or vendor payments if the sanctioned individual is the parent or other caretaker relative, and the State can make such an arrangement. This applies to both one-parent and two-parent families. We have amended § 234.60(a)(12) to apply this provision to the JOBS Program.

3-Month Notice

Section 402(a)(19)(G)(iii) of the Act requires the State IV-A agency to notify an individual whose failure or refusal has continued for 3 months of the individual's option to end the sanction by terminating the failure. The regulations clarify that, in the case of the third and all subsequent sanctions, the notice must be sent after 3 months, but it must say that the individual cannot terminate the sanction until the full 6-month sanction has elapsed.

Comment: Several commenters asked for regulatory relief from the statutory provision that notice must be sent to the individual after 3 months even though she is under a 6-month sanction. One commenter suggested that the final regulations require that a notice be sent at 6 months to those individuals experiencing 6-month sanctions in order to remind them in a more timely fashion of their option to terminate the sanction promptly.

Response: Section 402(a)(19)(G)(iii) of the Act provides that the State shall promptly remind any individual whose failure to comply has continued for 3 months, in writing, of the individual's option to end the sanction by terminating such failure. We find no basis for not following the statutory requirement of a 3-month notice, nor do we find any basis for requiring a State to provide for an additional notice at 6 months. However, the State has the option to provide an additional reminder at 6 months, if it chooses, and providing such a notice would be an allowable cost under the JOBS Program.

Other Comments

Comment: Several States asked whether a work program sanction in progress at the time a State implements JOBS must be cancelled or allowed to run its course.

Response: Such a sanction was properly imposed under the rules of the program existing at the time it was imposed and must run its course. However, once a State implements the JOBS Program, all new sanctions must be imposed under the provisions of the Statute applicable to JOBS. This means that the first sanction imposed on any participant after a State adopts JOBS counts as the first sanction for JOBS purposes, and all previous sanctions under prior work programs are ignored.

Comment: Several commenters suggested that the sanction provisions of the regulations be stricken and States be allowed to operate all voluntary programs.

Response: Section 402(a)(19) of the Act requires that all non-exempt individuals participate in the program, and section 402(a)(19)(G) of the Act provides for specific sanctions for failure to participate. There is no provision for an all-volunteer program.

Good Cause (§ 250.35 of the Final Regulations)

Sections 402(a)(19)(G) and (H) of the Act provide that a sanction may only be imposed if the individual does not have good cause for failing to participate in JOBS or refusing to accept employment. The concept of "having good cause" covers a broad range of circumstances. Sometimes situations arise where an individual is unable to participate for a day or several days because of such things as illness or a breakdown in child care arrangements or transportation. These are often short-term situations resulting from events beyond her control. There are other circumstances in which good cause will give the individual an on-going reason for not participating (lack of available child

care). Between these two, there will be circumstances in which an individual will have "good cause" for turning down a specific job or assignment ("net loss of cash income") but will be required to continue to participate.

Under the WIN program "good cause" was defined in the Federal WIN Handbook. Prior regulations for CWEP and employment search required the State to define good cause in the State IV-A plan. The Family Support Act includes several specific provisions that give an individual "good cause" for failing or refusing to participate or to accept employment. We have incorporated these requirements into the final regulations at § 250.35 and describe them as follows:

(1) If the individual is a parent or other relative personally providing care for a child under age 6 and the employment would require such individual to work more than 20 hours per week, the participant shall have good cause.

(2) For all individuals, good cause exists if child care (or day care for any incapacitated individual living in the same home as a dependent child) is necessary for an individual to accept employment or enter or continue in the program and such care is not available and the State agency fails to provide the care.

(3) If accepting a job would result in a net loss of cash income for an assistance unit pursuant to section 402(a)(19)(H) of the Act, good cause exists. However, if the State IV-A agency elects to make a supplemental payment to the family so that it does not experience a net loss of cash income, good cause does not exist.

In addition, the State IV-A agency must include in its State JOBS plan other reasons for good cause which encompass circumstances beyond a household's control. These could include such events as inclement weather, breakdown of transportation and/or child care arrangements, short-term illness not requiring a doctor's care, or a family emergency. While we believe that each State is in the best position to establish its own additional reasons for "good cause," we expect that States will develop standards that will insure the integrity of the JOBS program.

Comment: Many commenters recommended that the final regulations set minimum standards for good cause. Alternatively, several suggested that the regulations specify that a State must identify minimum standards and describe these standards in its State JOBS plan. Several suggestions were received for additional good cause circumstances. Several agencies

suggested that good cause should be granted for non-delivery and/or non-receipt of mail. The commenters indicated this is a pervasive problem in poor neighborhoods and housing projects and believed this problem should be acknowledged in the regulations. Another commenter suggested that the good cause definition for family emergencies should include psychological and psychosomatic behavioral emergencies of the children. One comment suggested that the lack of child care for a non-dependent child for whom the JOBS participant is responsible be considered good cause.

Response: Although we have received many comments supporting a minimal standard for good cause set by regulation, we have elected not to do so. We believe that the State is in the best position to establish policy regarding the additional circumstances about what constitutes "good cause" besides that set forth in the Act. However, we also believe that there are circumstances that are beyond a household's control and have amended the regulations at § 250.35(d) to specify that the State must have a definition of "good cause" in its State JOBS plan that at a minimum includes circumstances beyond the control of the participant.

Comment: Many commenters were concerned about the qualifying statement in the preamble on "good cause" that said that the State IV-A agency should determine if there are any other individuals in the home who are capable of providing the necessary child care in determining if good cause exists. Although there may be relatives or persons in the home who could be child care providers, the commenters raised serious concerns about a State forcing an unwilling or inappropriate household member into service as a child care provider with the recipient being sanctioned if she did not accept such care for her children.

Response: We believe that it is entirely appropriate for the State IV-A agency to discuss with the participant what care arrangements are available, as part of the assessment and employability plan. In general, the parent or caretaker makes the final decision about the necessity of care; however, if there are individuals in the assistance unit whose needs are met on the basis of their responsibility for caring for the child or they have legal responsibility for caring for the child, we would presume child care is not necessary.

Comment: One commenter asked if a waiver would be allowed of the age limit in the good cause provision found at § 250.35(a). This provision allows the

client to refuse employment requiring her to work more than 20 hours per week, if she is personally providing care for a child under six.

Response: Section 1115 of the Social Security Act governs the granting of waivers for demonstration projects. In part, it provides that the Secretary may waive compliance with any of the requirements of section 402 to the extent and for the period he finds necessary to enable the State to carry out a project that is likely to assist in promoting the objectives of part A of title IV. Demonstration projects under section 1115 of the Act must include an evaluation component. We would be willing to consider waiver requests that meet the statutory requirements.

Calculating Net Loss of Cash Income

"Net loss of cash income" means that work-related expenses which would otherwise not be incurred must be subtracted from the gross income to determine whether the resulting net income is at least equal to the cash assistance received at the time the employment is offered. "Gross income" includes, but is not limited to, earnings, unearned income, and cash assistance. The calculation of the amount of cash assistance to be counted in "gross income" must be based on the current determination including the application of the appropriate earned income disregards. The need for and amount of a "supplemental payment" must be computed each month and include application of the appropriate earned income disregard.

Certain categories of expenses would logically be deducted from the gross salary, e.g., mandatory payroll deductions. However, other necessary expenses related directly to work must also be deducted. The final regulations provide that the State must use actual, reasonable work-related expenses in determining whether a "net loss of cash income" will occur. This calculation must be figured on an individual basis.

Comment: There were many comments on the "net loss of cash income" provision. One of the main issues centered on the definition and determination of necessary work-related expenses. Several commenters recommended that the net loss of income computation exclude work-related expenses.

Response: The Statute and legislative history do not specify what expenses are to be included in the calculation. The language of the Statute implies that Congress intended that a recipient's "disposable" income should not decrease. Certain categories of expenditures would thus logically be

included in the work expense deduction. For example, for there to be "no net loss" mandatory payroll deductions must be deducted and net, disposable salary determined. However, there are other necessary, directly related work expenses that should be considered in the calculation. The State will be allowed to define these other expenses in its State JOBS plan.

Comment: One commenter recommended that States be allowed to define these expenses. Others asked that the work-related expenses be defined in the regulations and offered suggested definitions. These definitions ranged from limiting work-related expenses to standardized transportation costs and child care expenses (up to the local market rate) only for those individuals who would no longer receive AFDC benefits and not be eligible for transitional child care, to using standard disregards in lieu of actual expenses to reduce the administrative complexity of tracking actual expenses.

Response: We believe that a State is in the best position to define work-related expenses for its State and to determine the reasonableness of the expenses. Accordingly, we are not regulating in this area.

Comment: Another recommended that States be allowed to establish a flat rate work-expense standard with the client being able to document and receive reimbursement for actual expenses in excess of the standard.

Response: The use of actual expenses best serves the legislative purpose of ensuring that a participant who is required to accept a job is not penalized by having less income than was available while she was receiving assistance. The language of the Statute itself implies that the loss must be individually figured. This is also supported by the addition of the hearing process requirement, to the Senate version, to settle disputes. Disputes are most likely to arise when the permissible amount of expenses is debatable rather than when it is based on a reasonable allowance. In addition, the use of a flat-rate work-expense, while administratively simple, seems contrary to congressional intent insofar as Congress could have, but did not, specify such a flat rate work expense, as it did in section 402(a)(18)(A)(ii) of the Act.

Comment: One State asked for clarification on the inclusion of food stamp benefits as income for purposes of establishing net loss of cash income.

Response: Section 402(a)(19)(H) of the Act specifies that the State IV-A agency can require a participant to accept a job

only if that participant experiences "no net loss of cash income" (emphasis added). As the Act specifically notes "cash" income, we have interpreted that to mean any "in-kind" benefits, such as food stamps, are not to be considered as income in determining if a net loss of income has occurred.

Treatment of Supplemental Payments

Supplemental payments are treated as AFDC expenditures under sections 403(a)(1) or (2) of the Act. Families receiving such payments shall not be considered categorically eligible for AFDC and are not eligible for Medicaid as AFDC recipients.

Eligibility for extended Medicaid (or transitional benefits after April 1, 1990) will be determined as of the month the family becomes ineligible for AFDC as a result of increased hours of or earnings from employment, or the loss of the earned income disregards.

Comment: One commenter recommended that the language in the last sentence of the "Treatment of Supplemental Payments" subsection be changed to reflect that eligibility for extended medical benefits was not based solely on acceptance of employment, but also on increased hours of earnings or loss of earned income disregards.

Response: We agree, and the preamble has been revised to reflect this recommendation.

Comment: One State asked whether the supplemental payment should be considered a title IV-A or title IV-F expense.

Response: As stated above the supplemental payment is treated as an AFDC expenditure.

Application to Unemployed Parent Cases

The definition of "net loss of cash income" does not supersede the 100-hour rule as applied to unemployed parents (UPs). Since the Act does not allow for AFDC payments to two-parent families where deprivation does not exist (i.e., two-parent families where neither parent is incapacitated and in which the principal earner is working more than 100 hours per month), it follows that a supplemental cash payment may not be made to a UP family if the parent who is the principal earner is working more than 100 hours per month. Congress did recognize that the current definition of "unemployment" for the purposes of qualifying for aid under section 407 of the Act should be studied and authorized several demonstrations in which alternative definitions to the 100-hour rule could be tested.

Comment: Several commenters questioned the legal basis for not allowing supplemental payments to a principal earner working more than 100 hours per month. The Statute makes no distinction between AFDC families and AFDC-UP families in making the supplemental payment option available to States.

Response: Although the Statute does not make a distinction between AFDC and AFDC-UP families in providing a supplemental payment, a family whose principal earner is working over 100 hours, does not meet the definition of deprivation for purposes of AFDC eligibility. Similarly, a family that had no child that met the deprivation requirement would not be eligible for a supplemental payment. As the supplemental cash payment is considered an AFDC payment and deprivation does not exist, no such payment can be made.

Other Comments

Comment: One commenter suggested that the regulations make clear that it is up to the recipient to claim "good cause" upon her failure to participate in the program or refusal to accept employment. The State IV-A agency should be able to assume that there is no "good cause", unless otherwise informed by the recipient.

Response: The recipient is responsible for providing the necessary information so that a good cause determination can be made by the State IV-A agency. Without this information, the State IV-A agency is unable to determine that "good cause" exists.

Conciliation and Fair Hearings (§ 250.36 of the Final Regulations)

Conciliation

Prior to the Family Support Act, there was no statutory requirement for a conciliation process. However, Federal regulations at §§ 224.60, 224.62, and 224.63 outline procedures for dispute resolution and conciliation in the WIN Program.

Section 482(h) of the Act requires that a State IV-A agency establish a conciliation procedure for the resolution of disputes involving an individual's participation in the JOBS program. We believe that it was Congress' intent that the State have a conciliation procedure that is neither so short as to be meaningless nor so long as to undermine the mandatory nature of the program and the imposition of sanctions.

An effective conciliation process can resolve misunderstandings or disagreements before they get to the point of resulting in a sanction. For

example, a conciliation process could be used to resolve disagreements over the employability plan. It could also be used when a participant's attendance at an assigned activity has been irregular but not yet sanctionable. Even if it appears that the failure to participate or refusal to accept employment is clear, the conciliation process can prevent the need to go to a hearing.

We believe that an effective conciliation process has the following features. Either the recipient or the agency can request conciliation. At some point in the conciliation, the individual's rights and responsibilities under the program should be clearly explained, and she should be informed of the consequences of her continued failure to participate. The conciliation should be time-limited, and the individual should be made aware of this. We recommend that the period be no more than 30 calendar days. The agency should attempt to schedule at least one face-to-face meeting between the individual and a representative of the agency. It may be appropriate for a disinterested third-party to participate in such a meeting. If the agency initiates the conciliation process and, after reasonable efforts to schedule and hold a conciliation meeting, the individual does not appear for such meeting, the agency may end the conciliation process. The State's efforts at conciliation should be well-documented in the case file.

Comment: Several commenters asked us to require, rather than simply suggest, that certain features be included in any conciliation process. These suggestions included some or all of the features we describe above or components from the present WIN conciliation process. Some commenters supported mandating the 30-day procedure we suggest, while others supported a longer period, such as 60 days. Other suggestions included the establishment of a rebuttable presumption of good cause, mandatory arbitration, providing for alternative arrangements, and mandating participation by the case manager. Some supported establishing a shorter conciliation process in cases of subsequent non-compliance. One commenter believed our approach would allow a State to use one phone call as its conciliation procedure.

Response: We decline to mandate additional standards in this area. We believe that this is an area where State flexibility is warranted as the variety of the comments suggested a wide range of ideas about what constitutes conciliation. Each State must explain its procedure in its State JOBS plan. While

we suggest some or all of the above features, we realize different circumstances in States warrant variations among States. Use of a telephone could be reasonable if agreed to by both parties.

Comment: Some commenters asked that in components administered by a contractor, we explicitly allow the contractor to be responsible for conciliation.

Response: Section 250.10 of the final regulations provides that a State may contract out various services, including conciliation, as long as the entity under contract follows the rules and regulations established by the State IV-A agency. Although another entity may perform the conciliation, the State IV-A agency must make the determination of whether the individual had good cause. In addition, the State IV-A agency should assure that any conciliation performed by a contractor be fair and impartial.

Comment: Some commenters asked that we not require States to provide for conciliation before giving any notice of intent to sanction and withhold the AFDC grant. These commenters cited the burden this extra procedure would place on local social service agencies.

Response: Section 482(h) of the Act requires the State to establish a conciliation process. Furthermore, we believe that conciliation can resolve disputes in an amicable and informal fashion before commencement of the formal hearing process. In fact, conciliation is itself a way to notify the recipient that there is a potentially sanctionable problem that can be solved.

Comment: Several commenters asked that we require that notice be given before conciliation, and some suggested that the notice be in writing so it would be documented in the case of a hearing.

Response: Conciliation begins when the State IV-A agency (or a contractor) or the recipient contacts the other party. This is, in effect, notice. A State's process may then involve the scheduling of a meeting between the recipient and the JOBS worker. Written documentation, including a written notice of the dispute, is one of the features of a conciliation process that we suggest States adopt.

Comment: Some commenters asked if the fair hearings office can be used to conduct conciliation, or if the State must create another level of hearing officers.

Response: The State has the flexibility to use any reasonable entity to conduct conciliation. We do not require that an additional administrative structure be created. The State must describe its

conciliation process in its State JOBS plan.

Comment: Some commenters asked if a sanction can be lifted if the problem is resolved during conciliation or if the recipient cooperates during conciliation.

Response: Sanctions can not be instituted until after the conciliation process is complete. If conciliation solves the problem, sanctions will not be instituted, thereby making the issue of lifting them moot.

Comment: One State asked whether States have the option to stop a sanction from being applied if the client agrees to participate within the notice period provided in a notice of adverse action.

Response: Section 482(h) of the Act provides for a conciliation period during which an attempt is made to resolve any disputes. This is also the client's opportunity to try to resolve a dispute either by agreeing to cooperate or reaching some other solution. Once conciliation ends and the notice of adverse action has been issued, the individual may contest the proposed sanction through the fair hearing process. If she contests and loses, or does not contest, then a sanction will be imposed for the appropriate time period.

Fair Hearings

Under section 482(h) of the Act, the State IV-A agency must provide a hearing when the conciliation process does not resolve a dispute. The Act provides States with two options. The State may follow the hearing and notice procedures of § 205.10. As an alternative, the State may establish a separate hearing system. However, the State IV-A agency may not contract out the responsibility for providing a hearing to any other agency. An alternative hearing system could provide for a hearing only on the issues associated with JOBS disputes. It should be noted, however, that before an individual's grant could be reduced, suspended, discontinued, or terminated, she must be afforded an opportunity for a hearing that meets the standards of *Goldberg v. Kelly*, 397 U.S. 254 (1970).

Comment: Some commenters asked that a recipient be given notice prior to the imposition of a sanction, and that benefits not be terminated until after the hearing process is complete.

Response: *Goldberg v. Kelly* requires notice to clients prior to any action that would affect benefits and requires that clients be given an opportunity to request that benefits be continued until the hearing process is complete. Benefits can not be terminated during conciliation.

Comment: Some commenters suggested that we place an affirmative

duty on the State to ascertain whether the State worker erred in not finding a legitimate basis for good cause, as part of the conciliation and hearing process.

Response: The conciliation and fair hearings processes are the proper ways for the participant to pursue a claim that a State worker erred in not finding "good cause." We expect that in the course of operating any program a State would regularly review decisions about "good cause" to determine that the policy was implemented correctly.

Subpart E—Operation of State Jobs Program/Program Components

Providing Program Information to AFDC Applicants and Recipients (§ 250.40 of the Final Regulations)

Section 482(c) of the Social Security Act requires the State IV-A agency to provide all AFDC applicants and recipients with information on the JOBS program including education, training, and employment opportunities; available supportive services, including child care and transitional child care, for which they are eligible; the State IV-A agency's obligations; and the participant's responsibilities.

Although the Act only requires that this information cover the JOBS program, the Conference Report (H.R. Rep. No. 100-998, 100th Cong., 2d Sess. 132 (1988)) indicates that it is also important that the information cover child support responsibilities. Thus, this section of the final regulations requires that the State IV-A agency provide information on securing child support and establishing paternity as well as related requirements.

The purpose of providing program information on JOBS and child support is to ensure that all applicants and recipients are encouraged, assisted and required to fulfill their responsibilities to support their children by preparing for and obtaining employment and by ensuring their cooperation in the establishment of paternity and enforcement of child support obligations.

To provide a State IV-A agency with the flexibility to administer its programs to accommodate variations in local resources and needs, the final regulations permit a State IV-A agency to develop the processes and methods for providing this information consistent with timeframes for phasing in the JOBS program. As the JOBS program is phased in by geographical area, a State IV-A agency must provide this program information to applicants at the time of application and to recipients at the time of the first redetermination after

implementation. There is no requirement to provide this information in areas without a JOBS program.

According to section 482(c)(5) of the Act, after the State IV-A agency provides a recipient with the information described above, it must, within one month, notify the recipient of the opportunity to indicate her desire to participate in JOBS. The agency must provide a clear description of how to enter the program. The Act does not, however, provide specifics regarding this notification process. To allow the State IV-A agency latitude in providing such notification to applicants, except those assigned to job search, this section permits the State IV-A agency to make such notification within one month of eligibility determination. Thus the State IV-A agency does not have to provide information to all applicants, many of whom may never become eligible. Following the language of the conference report, the regulations indicate that such notification must be in writing. H.R. Rep. No. 998, 100th Cong., 2nd Sess. 132 (1988).

Because the idea of participant preference can be confusing as it applies to non-exempt recipients, the regulations clarify that an indication by a non-exempt individual that she does not want to participate does not prevent a State IV-A agency from requiring that individual to participate. Alternately, consistent with other due process guarantees, a State IV-A agency may not interpret a lack of response or indication of a preference not to participate in JOBS by a non-exempt individual to constitute, by itself, failure to participate. Also, a State IV-A agency must inform a non-exempt participant before she decides to voluntarily enter the program that she would be subject to sanction if she stops participating in the program without good cause.

Comment: Several commenters sought clarification as to whether the explanation of the JOBS program and the written notice must be repeated at each redetermination. Two organizations recommended that States be required to repeat the process at each redetermination. Most State commenters felt this would be administratively burdensome. One State recommended that recipients not be informed at all, as it might generate an overwhelming number of volunteers.

Response: To the extent applicants and recipients have been notified of the program and given the opportunity to volunteer, the Act does not require that the process be repeated. However, there may be situations in which an individual who had qualified as a dependent child becomes a parent and establishes her

own case or drops out of school and becomes a non-exempt participant. In such situations, the information and notice would have to be provided for those individuals, since the original explanation and opportunity to volunteer would have been given to her parent(s). We do, however, recommend that when the State IV-A agency reviews exemption status at redetermination, it use that opportunity to remind the recipient of the availability of JOBS services.

Comment: One commenter objected to combining information on securing child support with information on JOBS. Two others felt that the requirements to inform applicants and recipients of child care services and child support obligations should be moved to § 206.10, which addresses applications, determination of eligibility and furnishing assistance. One commenter thought the requirements under § 250.40 applied equally to the staff operating the JOBS program, if different from the title IV-A staff. As such, he felt it appropriate that should the JOBS staff discover relevant child support information, they should report it back to the income maintenance unit.

Response: The requirements under § 250.40 are responsibilities of the income maintenance unit insofar as they take place at application and redetermination of eligibility, and prior to participation in JOBS. On-going child support activities were not intended to be the responsibility of the JOBS program staff.

In regard to combining information on child support with information on JOBS, the discussion of child support obligations and cooperation at the time of application or redetermination is not new nor is a discussion of work programs or self-support. What is new is the intent of Congress to have both subjects discussed in the context of parental responsibility to support children. Although the means to achieve that end are embodied in two different programs, the purpose of each is to reinforce the notion of parental responsibility.

We do not believe that the requirements to provide information on child care and child support properly belong under § 206.10. The reason is technical rather than substantive. Section 206.10 relates to State plan requirements under title IV-A. Section 250.40 relates to State plan requirements under title IV-F, which we have incorporated in the final regulations at § 250.20. In any event, the requirements under both sections are binding on the State IV-A agency.

Comment: Three States wanted to do away with the written notice requirement found at § 250.40(c)(2). Another State wanted the timeframe for this requirement to extend to 45 days after the recipient is first informed of the JOBS program, rather than 30 days.

Response: Section 482(c)(5) of the Act requires the State IV-A agency to notify a recipient of the opportunity to indicate her desire to participate in the program and a description of how to enter the program "within one month" from the time the information is first provided to the recipient. Therefore, there is no basis for doing away with this provision of the regulations. Further, because the language specifies "one month," there is no basis for extending this period.

The conference report (H.R. Rep. No. 998, 100th Cong., 2nd Sess. 132 (1988)) indicates that it was the intent of Congress that the notice be in writing, and we believe that a "clear description" of how to enter the program can best be accomplished if it is in writing. Thus we have maintained the provision that the notice must be in writing.

Comment: One commenter said that the 30-day timeframe for the written notice represented a barrier to providing immediate service and asked that States be allowed to omit it.

Response: Section 250.40(c)(2) of the regulations states that the notice must be sent within one month of providing the information, meaning it can be sent anytime sooner than 30 days. Furthermore, § 250.40(c)(3) specifically provides that States are not prohibited from requiring non-exempt recipients, or applicants in the case of job search, from participating prior to the notice being sent.

Comment: One commenter recommended that a timetable be required for States to respond to a recipient's request to participate.

Response: While we feel that States should respond to such requests as expeditiously as possible, such a requirement would reduce State flexibility in operating programs. It will be in the State's best interest both in terms of running a credible program and serving interested participants to respond to positive inquiries in a timely manner.

Initial Assessment and Employability Plan (§ 250.41 of the Final Regulations)

Initial Assessment

The final regulations require the State IV-A agency to conduct an initial assessment of each participant's employability based on: (1) her

educational, child care and other supportive services needs; (2) the participant's proficiencies, skills deficiencies, and prior work experience; and (3) a review of the family circumstances, which may include the needs of any child of the participant.

The final regulations further provide that the initial assessment can be conducted through various methods including interviews, testing, counseling, and self-assessment instruments. Self-assessment instruments generally include check-off lists or survey forms designed to help the individual identify supportive service needs such as child care and transportation, and accomplishments such as educational level completed, prior work experience and skills acquired through employment, volunteer activities, or hobbies.

Appropriate assessment methodologies may vary among State IV-A and local programs due to differences in caseload size, program resources, and program philosophies. A State IV-A agency may also use different assessment methodologies to address individual recipient needs. For example, a State IV-A agency may find it cost-effective to do a limited, initial assessment for recipients, followed by a more in-depth assessment only as participant needs dictate. Since the Act does not provide specific details about assessment services and the conference report eliminated the requirement for testing literacy and reading skills, we believe Congress intended to give the State IV-A agency broad flexibility in this area.

We recommend that, where appropriate, State IV-A agencies use nationally recognized, standardized, or industry-developed tests to determine literacy levels and aptitude skills before assigning participants to specific educational and vocational training programs. Such testing may help the State IV-A agency assure that limited resources are used effectively and that participants are not placed in activities that are inappropriate for them.

The final regulations do not set forth timeframes (except for those individuals in job search pursuant to § 250.60) or establish a process for conducting the initial assessment. However, the final regulations provide that a State IV-A agency must conduct the initial assessment within a reasonable timeframe prior to participation.

Comment: Many commenters recommended that minimum standards be established for assessment. A few thought that periodic reassessments should be required. One commenter suggested different types of assessment, such as basic academic assessment,

vocational assessment or self-assessment.

Response: We believe that the final regulations do contain minimum standards for the factors the State IV-A agency must consider in performing an initial assessment. However, there is nothing in the Act to suggest that there is one preferred method of conducting assessments. We think it would limit State flexibility to mandate periodic reassessments, and, therefore, have elected not to do so in the final regulations.

Employability Plan

Section 482(b) of the Act requires that the State IV-A agency develop an employability plan in consultation with the JOBS participant based on the initial assessment. It further specifies that the employability plan must contain an employment goal, describe the supportive services to be provided, and the JOBS activities to be undertaken. The final regulations follow the requirements of the Act as to the basic content of the employability plan but leave design and administration of the actual employability plan to the State IV-A agency.

Congress was particularly concerned that employability plans reflect the availability of jobs in the local job market so that JOBS resources would be expended efficiently. This concern is discussed in more detail in the preamble to § 250.12 on coordination.

The employability plan may identify services to be provided to address the needs of a participant's child, such as drug education or life skills planning courses. Many services for children are generally available to low-income community residents at no cost through local educational programs or volunteer services.

The employability plan should reflect a direct path to available employment. States might consider including a schedule of activities that would lead to employment by a specified date to achieve this goal. The employability plan should include activities which are selected to achieve self-sufficiency in an expeditious manner.

Section 482(b)(1)(B) of the Act provides that the employability plan must also take into account participant preferences as much as possible within the limits of the State's JOBS program. We interpret this to mean that in developing an individual's employability plan, the State IV-A agency must consider the needs and preferences of the participant in the context of agency goals and constraints (including program resources, available services and local employment opportunities). The final

regulations specify that final determination of the contents of the employability plan rests with the State IV-A agency. This approval provision is particularly important in establishing the State IV-A agency's authority to determine the appropriateness of self-initiated activities as provided in § 250.48.

In developing employment goals and establishing appropriate participation requirements, the State IV-A agency should not limit a participant's options based upon traditional views of appropriate male and female roles. Such limitations would be inconsistent with the requirements on non-discrimination at section 484(a)(3) of the Act, and could contravene the self-sufficiency goals of the program.

Comment: Several commenters objected to the statement in the preamble that the employability plan should reflect a direct path to available employment. Some felt it undermined what they perceived to be the purpose of the Family Support Act, namely, the education, training and employment of recipients in order to avoid long-term dependency. Others felt the implication was to minimize training and emphasize low-paying, low-skill jobs.

Response: We do not think that suggesting that an employability plan reflect a direct path to available employment undermines the purpose of the Family Support Act. The statutory requirement that the employability plan contain an employment goal suggests that Congress expected that the education and training provided under JOBS would lead to employment. The final regulations define the content required for the employability plan. It should be based on an initial assessment and describe the supportive services to be provided and the JOBS activities to be undertaken. These are the real determinants of a participant's path to self-sufficiency.

Comment: Several commenters asked that we modify the requirement that the employment plan contain an employment goal. They said that, especially for young custodial parents who have not finished high school, establishing a specific employment goal in an employability plan would be premature.

Response: Section 482(b)(1)(B) of the Act requires that the employability plan "set forth an employment goal for the participant". We recognize that for the young custodial parent, this may not be a specific occupation. However, we do think that it is important that the participant understand that the ultimate goal is employment and that she can,

indeed, see a path to achieving that goal within a time certain. We further point out that the employment plan should not be a static document, and, particularly in the case of the young custodial parent, should be frequently reassessed to assure that it reflects the needs of the individual. We, therefore, decline to change the wording of the final regulation, in the belief that there is enough flexibility in the concept of an "employability plan" to allow for preliminary or tentative employment goals, especially for young participants.

Agency-Participant Agreement (§ 250.42 of the Final Regulations)

Section 482(b)(2) of the Act provides that, following the initial assessment and the development of the employability plan, the State IV-A agency may require the JOBS participant (or the adult caretaker in the family of which the participant is a member) to negotiate and enter into an agreement with the State IV-A agency.

This is not a new concept. Currently, some State IV-A agencies require WIN/WIN Demonstration participants to sign a written agreement or contract with the welfare agency. Usually, this agreement is included as part of the employability plan and specifies the actions the recipient will take to implement the plan and the agency services and resources to be made available to the recipient. Generally, the agreement or contract includes well-defined time lines and benchmarks for progress for both the recipient and the agency. Thus, the agency-participant agreement is viewed as the basic tool for outlining the mutual responsibilities, expectations and specific tasks of the recipient and the agency.

The final regulations follow the conference report and permit a State IV-A agency to consider the agreement a contract. H.R. Rep. No. 998, 100th Cong., 2nd Sess. 129 (1988). Such a contract is subject to applicable State laws and regulations.

This section of the regulations provides that the option need not be statewide. However, the State IV-A agency will be required to describe in its JOBS plan the types of participants for whom they will be used. Section § 250.21 contains the State JOBS plan content requirements.

Comment: Some commenters suggested that we require that participants sign any agreement under this section.

Response: We believe the States should retain flexibility as to whether to require participant signatures on agreements under this section, as they retain the flexibility to decide whether

to have such agreements at all. We may question the utility of agreements that are not signed, but we can also envision circumstances where States could use these agreements as a way of clarifying how the employability plan will be implemented. In such cases signatures may not be necessary. We also note that if a State chooses to regard these agreements as contracts, State contract law may address whether signatures are required. We do not want to supersede State contract law by regulating in this area.

Comment: Some commenters suggested that contracts in this area should be generic in nature and not include specifics such as the number of hours of participation per week or the length of participation, due to the fluctuating nature of these numbers.

Response: Employment goals and the path to self-sufficiency should be set out in the employability plan. There is no need to repeat them here. The Act establishes these agreements as a means to explicitly set out the specific responsibilities of each party, in a manner that is straightforward and easily understood by both parties. It can serve as a daily or weekly guideline of responsibilities for the client, as well as a listing of services to be expected from the State. Whereas the employability plan addresses long-term self-sufficiency, we read the Act as requiring the agreement or contract to set out what must be done by each party in the present.

Comment: One State believed that regarding such an agreement as a contract would put the State at a disadvantage since its staff would draft the contract without the aid of an attorney.

Response: If a State is concerned about this, it should not regard the agreement as a contract. The Act and regulations clearly specify that this is a State option.

Comment: Some commenters believed that the Act requires agreements under this section to be regarded as contracts. These commenters also believed that if an agreement is not considered a contract, there would be a dubious distinction between it and the employability plan.

Response: Section 482(b) of the Act uses the term "agreement," while the Conference Report accepts the Senate amendment, which uses the term "contract." We believe there is a subtle, but important, difference between the two terms. A contract is enforceable in court against both parties under State contract law. A mere agreement is not. We believe Congress, in using both terms and making them at the option of

the States, intended both to be State options. We also believe that an agreement that is not a contract can still be different from the employability plan. The employability plan contains long-term goals and could contain a sequence of several steps toward obtaining those goals. In more complex cases, States may wish to use agency-participant agreements to clearly spell out the mutual obligations of each step as it begins, without bringing on all the requirements of a legally-enforceable contract. States may also develop other uses for non-contractual agreements. We do not wish to limit States' options by requiring that all agreements be fully enforceable contracts.

Case Management (§ 250.43 of the Final Regulations)

Generally, a case management system is designed to support and strengthen the participant's capacity to become self-supporting and to help assure that participants and their families have access to the resources and opportunities required for self-support. Case management may be advocated on the grounds that the activities and services a recipient may need to progress to self-support are so scattered among programs and agencies that a case manager is needed so that progress is not delayed and frustrated.

Under the final regulations, a State IV-A agency that chooses to establish a case management system is given flexibility to design its case management services and procedures. Case management does not have to be offered in all political subdivisions that have a JOBS program. Section 250.21 provides that the State IV-A agency must describe in its JOBS plan its case management system, including how services will be delivered and by what entities and how the State will assign case managers to individuals.

Comment: Some commenters asked us to make case management a mandatory feature of a State's JOBS program. Some commenters also believed a State should not offer case management in only some areas or only to some individuals.

Response: We believe the Act is very clear on this matter. Case management is an option for the States and is not to be mandated. The Act also clearly provides that States may offer case management to some participants and not to others, as the State determines appropriate.

Comment: Some commenters, while recognizing that case management is optional, asked us to give States stronger encouragement to use it.

Response: We recognize that advocates of case management believe that it is a very effective tool for assisting participants to achieve self-sufficiency. However, we also realize that there are reasons that a State may not use case management or use it only in certain instances. Cost may be one such reason. We believe that each State can best decide the proper utilization of case management for the needs of that State.

Comment: Some commenters asked us to provide a detailed description of case management and noted the importance of training case managers in various skills. Some commenters offered detailed descriptions for us to adopt.

Response: We thank those commenters who provided an in-depth discussion of case management and urge them to share this information with the States. However, for the reasons stated above, we decline to mandate that specific features of case management be adopted or that case managers be required to receive specified training. We leave these matters to the discretion of the States.

Mandatory Components (§ 250.44 of the Final Regulations)

Education

Section 482(d)(1)(A)(i) of the Act provides that the required educational activities are: (1) high school education or its equivalent; (2) basic and remedial education to achieve a basic literacy level (our definition is discussed in § 250.1); and (3) education for individuals with limited English proficiency. The conference report (H.R. Rep. No. 998, 100th Cong., 2nd Sess. 142 (1988)) states that where enrollment in regular high school programs is deemed inappropriate, the State IV-A agency is expected to identify or develop alternative education activities to meet the needs of JOBS participants.

Many of the comments we received on the educational content of this section revolved around definitions of "basic literacy level" and "limited English proficiency" found in the regulations at § 250.1 and around the material in the preamble concerning those definitions. The definitions have been modified as indicated under § 250.1 and in the corresponding preamble. The regulations here have been revised in accordance with the changes made in the definitions. For example, the reference to education in English proficiency lists the same skills as are contained in the definition.

The regulations provide at § 250.32(b) that if a State requires participation in JOBS of an individual age 20 or over

who has not completed high school, it must include educational activities consistent with her employment goal. There are two exceptions: if the individual demonstrates a "basic literacy level," or if her long-term employment goal does not require a high school level of education. In responding to these two requirements in the Act, we note that levels of education between "basic" education and "high school" are not explicitly specified. Nonetheless, they are clearly allowable as JOBS educational activities. Section 250.44(a) provides that the educational activity may include any activity below the postsecondary level, which means that an intermediate educational goal between basic education and high school is acceptable if the State IV-A agency concludes that it corresponds to the individual's long-term employment goal.

Comment: A few groups suggested that § 250.44 be revised to emphasize that the education offered to the JOBS participant should be appropriate to the individual's "long-term employability goal," instead of being appropriate to the participant's "employment goal."

Response: We will retain the phrase "employment goal," since the term is the same one used in § 250.41, which describes initial assessment and the employability plan. In that section, the "employability plan" must contain the "employment goal" of the JOBS participant. These are the terms that are used in the Act.

Comment: Two literacy groups suggested that the final regulations specifically recognize the services of the voluntary literacy community as providers of basic literacy services for JOBS.

Response: The regulations discuss the kinds of services appropriate for JOBS participants but do not address the types of providers, either to include or exclude groups. State IV-A agencies may choose to employ the services of the voluntary literacy community if they are appropriate to meet participant needs.

Comment: One group stated that § 250.44 should mandate "adult special education" for those 22 years of age and older who lack the necessary comprehensive ability to grasp basic training skills and that the section also should provide for "entrepreneurship activities."

Response: Terms for the mandatory activities under this section follow those used in the Act. However, "adult special education" would not be precluded from the activities a State may offer under this section. "Entrepreneurship

activities" would fall under § 250.47 of these regulations.

Comment: A small number of commenters stated that they thought the list of the three educational activities included under § 250.44(a) (high school or equivalent, basic and remedial education, and education in English proficiency) was unnecessary or confusing. One of these entities said that the inclusion of "basic education" on the list, would, in view of our definition of "basic literacy level," mean that education not leading to completion of the eighth grade would not be eligible for JOBS funding.

Response: The three forms of education are listed because they are specifically listed in the Act as mandatory educational activities. We believe that the wording of § 250.44(a) clearly provides that all types of educational activities are covered under JOBS if they are less than the postsecondary level and if the State IV-A agency determines them to be appropriate to the participant's employment goal.

Comment: A research organization suggested that HHS encourage States to provide remedial education integrated into job skills training, rather than provide such activities sequentially.

Response: The regulations at § 250.44 provide that the States may combine several activities into a single program activity. We encourage the selection of activities that are appropriate to the individual's employability plan, whether they be integrated or sequential.

Work and Training Programs

The Family Support Act provides no definition for the required work and training programs. It does, however, require reporting of activities and of costs related to each selected program or activity. We, therefore, adopted functional definitions for the three remaining mandatory components of "job skills training," "job readiness activities," and "job development and placement."

We sought available definitions of these terms from the Department of Labor, principally with reference to definitions used by the State employment security agencies and the Job Training Partnership Act programs. Not all programs required by the Family Support Act, such as "job readiness activities," are defined in Department of Labor programs. Other programs or activities are defined differently, such as "job development" and "job placement", which are established in the Act as a single, combined, required program activity, but which are each defined

differently by JTPA and the Employment Service.

In a two-day meeting with selected State welfare agency directors and their work program directors, strong opinion was voiced that wherever possible, definitions of employment and training terms correspond with existing definitions used by the State agencies from whom State IV-A agencies would often be seeking both contracted and non-reimbursed services. While we have endeavored to be responsive to these State concerns in this regard, we had to choose between or combine definitions. We invited comment on the operational usefulness of the distinctions we proposed for such purposes as program design and data maintenance in case records. We received no comments in this area.

Job Readiness Activities

Under these regulations, "job readiness" centers on pre-employment preparation, and excludes activities that would readily fit within the scope of other defined components, such as vocational skills training. The Department of Labor advised us that "job readiness activities" are not defined by the Employment Service. However, employment security agencies define several closely related terms. Thus, a "non-job-ready" person is one who is deficient in work attitudes, behaviors or skills and is therefore unable to get and keep a job; a "job ready individual" is one who, among other things, has no physical, mental or job skill barriers that preclude employment; and "employability" is defined as, among other things, work behavior and attitudes that are necessary to compete successfully in the labor market. We agree with the Department of Labor observation, and in the regulations we provide that an activity related to removing such barriers would be defined as a job readiness activity.

Comment: One commenter thought the Act lacked a framework for the implementation and funding of critically needed job readiness activities.

Response: The Act and the regulations recognize the mandatory nature of job readiness activities. However, the regulations permit State flexibility in providing these services and encourage interagency cooperation in developing the JOBS program. State IV-A agencies should use available job readiness activities and seek appropriate advice on the development of additional activities when such resources do not already exist.

Job Skills Training

We adhere to what we believe is the commonly understood meaning of the term—pre-employment training in technical job skills. It would, for example, correspond approximately to what was understood in the WIN and WIN Demonstration programs as institutional training.

In order to assure that skills training offered through JOBS results in an increase in participants' skills and competencies, and that progress can be monitored by the State IV-A agency, we require that qualitative measures for "satisfactory progress" be developed for all skills training. Based upon the comments we received, we decided not to require measures of "satisfactory progress" in order to qualify a training program as a component activity under JOBS but to retain the concept with respect to reassessment and providing supportive services. This is discussed in more detail in § 250.1 in relation to the proposed definition of "making good or satisfactory progress in a training component."

Job Development and Job Placement

The final regulations define "job development and job placement" as agency activity on behalf of participants to create or discover openings, and to market participants for those openings. This is consistent with a longstanding approach in employment programs. We have followed that historical pattern as a means of distinguishing agency activity that is relatively intense on behalf of a participant, from a participant's intense activity in job search. Based on this distinction, we have excluded this component from the definition of "participation" found in § 250.78.

We also do not intend that this component should have any connection with the longstanding concept in employment security agencies of a "placement" as an outcome. The specialized meaning of this outcome measure for employment security agencies does not correspond to the requirements or expectations of JOBS.

Optional Components (§ 250.45 of the Final Regulations)

In addition to the four required components, the State IV-A agency must also offer at least two of the following four activities in its JOBS program:

- (1) Group and individual job search;
- (2) On-the-job training;
- (3) Work supplementation; and

(4) Community work experience, or other approved work experience program.

Except for on-the-job training, these optional components are generally based on existing law and program regulations. The Act provides for a few changes to programmatic aspects of these components which are discussed in Subpart G. Otherwise, we have adopted as much of the existing regulations as possible. Since the Act establishes common sanctions, eligibility criteria, FFP guidelines, target populations and service area coverage for the JOBS program, the regulations governing the optional components will no longer have specific language addressing these areas as there was when they were discrete IV-A work programs.

Like the required components, the optional components need not be operated uniformly throughout the State. However, the additional State options do provide an opportunity for the State IV-A agency to develop a program meeting specific needs of individuals while recognizing State economic and environmental factors. Congressional conferees (H. R. Rep. No. 100-998, 100th Cong., 2d Sess. 141 (1988)) stressed the desirability of programs that respond to varying circumstances, including changes in the unemployment rate and different needs that exist in rural and urban areas. Our regulations seek to reflect this congressional intent.

Postsecondary Education (§ 250.46 of the Final Regulations)

We define postsecondary education in § 250.1. We interpret the language of section 482(d)(1)(B)(i) of the Act to mean that the offering of postsecondary education is an entirely optional matter for the State IV-A agency to address in its JOBS plan, except that we have limited such education to that which is directly related to the attainment of an individual's employment goal, i.e., to obtain useful employment in a recognized occupation. Within this occupational limitation, the State IV-A agency must set forth in its State JOBS plan the bases upon which it will determine whether postsecondary education is appropriate.

We believe that the restriction of postsecondary education to education related to the goal of obtaining useful employment in a recognized occupation is consistent with the intent of the JOBS program. The program's aim to reduce long-term welfare dependence would not be served by permitting a JOBS participant to embrace the broader, more general educational goals that also

fall within postsecondary education but that have a less well-defined occupational connection.

While we do not prohibit the use of JOBS funds for this activity, we are concerned about the potential cost. Thus, we encourage States to use resources that are otherwise available to fund postsecondary education for JOBS participants. A State should consider the wide range of other, in some cases less well funded, components which must be included in its JOBS program when determining whether to fund postsecondary education as well as the fact that most welfare recipients are considerably more educationally needy and less able to support their families than those who are ready to enter postsecondary education. We will monitor State expenditures in this area for the purpose of determining the extent to which investment in postsecondary education for JOBS participants produces more beneficial returns, such as longer term self-sufficiency, than are produced by other levels of education or training.

We exclude the costs of such education, including tuition, books and fees, from coverage as special needs under § 233.20(a)(2)(v). Since the Act now provides funding for this activity and places a specific cap on the overall JOBS funding, we would be circumventing the Act were we to allow additional funding under special needs.

Comment: Although there were few comments regarding the definition of "postsecondary education," many groups, including a number of postsecondary institutions, commented upon the statement in the preamble that encouraged States to limit expenditures of JOBS funds on postsecondary education. They saw the statement as discouraging the placement of participants into postsecondary programs and objected to having that area singled out for special monitoring of JOBS expenditures. Therefore, they asked that the final regulations not appear to discourage States from placing JOBS participants into postsecondary education, since the reports of recent studies indicate that most of the new jobs being created will require postsecondary education. Objecting to our preference for short-term programs leading to employment over postsecondary education, the commenters stated their belief that postsecondary education is more likely than lower levels of education to produce returns of long-term self-sufficiency.

Response: In view of the availability of State, Federal, and private grants and loans for postsecondary education, we

do not believe that it is unreasonable to encourage States to take advantage of other means of support for postsecondary students who participate in JOBS. This will enable the program to serve more individuals and to use JOBS funds to bolster, where necessary, scarce resources needed to serve the great number of potential JOBS participants who are educationally disadvantaged through lack of basic and high school education, or those who can benefit from short-term programs designed to address job readiness, job skills, or training. Our discussion contained under § 250.32 points out the general consensus among those who commented that adequate resources are not available for those below the postsecondary level, particularly those for whom regular high school is not appropriate. While we encourage States to consider how they use limited resources and to serve as many individuals as possible under JOBS, the regulations do not prohibit States from placing JOBS participants into postsecondary educational programs.

Comment: Comments were mixed concerning the language that permits a State to refer a participant to postsecondary education when the education is linked to "meeting individual goals that are directly related to obtaining useful employment in a recognized occupation." Several groups stated their specific approval of the language, indicating that they saw the language as following the intent of the Statute. A couple of groups objected to relating such education "directly" to occupational goals. One of them said that the language would make States hesitant to use postsecondary education as a JOBS activity. Another said that the language of the Act is broad enough to offer a wide range of postsecondary educational activities that can improve employability. Some of the commenters observed that any kind of postsecondary education is relevant to employment.

Response: We are maintaining our original position that the relationship of postsecondary education to the participant's employment goal is consistent with the intent of JOBS. While we concur that broader, less job-related education can provide skills related to employability, we believe that a specific occupational linkage more readily assures that the postsecondary education will lead to the employment goal that the Act requires to be part of each participant's employability plan.

Comment: A few entities, including several States, did not approve of the exclusion of postsecondary education costs from FFP as special needs. Some

of them also mentioned exclusion of supportive services from special needs funding. Some of them sought an explicit statement that the costs of postsecondary education are covered through JOBS.

Response: We continue to believe that the exclusion from special needs funding of postsecondary educational expenses (along with the costs of other education resulting from participation in JOBS) constitutes the best reading of the Act, since it now provides JOBS funding to be used for educational activities except in the case of self-initiated education or training as treated in § 250.48. JOBS funding can be used for such expenses as tuition, books, and fees, except in the case of self-initiated education or training. Supportive services such as child care now are provided to JOBS participants and certain other categories of individuals through the supportive services provisions of the Act. However, we encourage States to take advantage of the other resources that are available to support the postsecondary educational activities of JOBS participants.

Other Education, Training, and Employment Activities (§ 250.47 of the Final Regulations)

Section 482(d)(1)(B)(ii) of the Act provides that the Secretary may approve additional components not specified in the Act. Because public service employment was specifically considered as a potential optional component and finally rejected by the conferees, we have expressly excluded public service employment from the acceptable possibilities. By public service employment we mean what that term meant under the WIN and CETA programs: a fully subsidized job in a public agency.

Comment: One commenter applauded our decision to bar public service employment, while one commenter said that we should leave it as an option to the States.

Response: We are persuaded by the fact that public service employment was specifically considered as a potential optional component and finally rejected by the conferees. Furthermore, we note that section 141(p) of the Job Training Partnership Act (Pub. Law 97-300) specifically bars funding for public service employment under JTPA.

We also point out that if an appropriate job is available in the public sector, and the State IV-A agency wants to place an individual in the slot, it could use the OJT component. While 100% funding would not be available, our regulations at § 250.61 on OJT do

allow States to vary the rate of reimbursement to employers so that a higher rate could be offered at the beginning of the OJT as long as it averaged 50% over the period of the contract.

Comment: Another commenter said that we should define public service employment in the regulations so that States could propose alternatives under § 250.47 if the job would lead to full-time employment.

Response: We have decided to modify our definition of public service employment and include it in the final regulations. The modification is that we have dropped the phrase that the job "is not expected to convert to unsubsidized employment." Whether a public service job will lead to unsubsidized employment is not the controlling factor. Rather it is that subsidizing any employer at 100% is not an effective use of limited resources.

We are also concerned that routine costs of State and local governments would be inappropriately shifted to the Federal government under such a program.

Self-Initiated Education or Training (§ 250.48 of the Final Regulations)

This section describes State options, in areas of the State where the JOBS program is available, with regard to individuals already engaged in education or training at the time they would otherwise commence participation in JOBS. In the NPRM, this section referred only to self-initiated education or training that met the requirements of section 402(a)(19)(F) of the Act. As a result of comments we received and our further review of the language of the Statute, we have amended § 250.48 by adding paragraph (b) to address another group of participants: individuals who live in areas of the State where there is a JOBS program and are enrolled in a self-initiated activity that does not meet the requirements of section 402(a)(19)(F) of the Act at the time they would commence participation in JOBS.

We have also identified a third category: AFDC applicants and recipients who live in non-JOBS areas and are engaged in education or training for whom the State may provide child care and other supportive services pursuant to the State's approved Supportive Services plan. However, such education or training in non-JOBS area is not part of the JOBS program, and, therefore, is not covered by this section of the regulations. Approval of education or training in non-JOBS areas for the purpose of providing child care and supportive services necessary for

participation is addressed in the preamble and regulations at §§ 255.1 and 255.2.

For purposes of this section, we will use the term "self-initiated education or training" to mean education or training that meets the requirements of section 402(a)(19)(F) of the Act, and which is described at § 250.48(a) of the final regulations. We will use the term "other education or training pursuant to § 250.48(b)" to mean a self-initiated activity that does not meet the requirements of section 402(a)(19)(F) of the Act but which the State may approve under the JOBS program. Finally, we will use the term "self-initiated activity" as a generic term to describe all such activities.

Self-Initiated Education or Training *under Section 402(a)(19)(F) of the Act*

Section 402(a)(19)(F) of the Act describes the circumstances in which the State IV-A agency may permit an individual who is in self-initiated education or training that meets certain requirements, at the time she would otherwise commence participation in JOBS, to continue such course of study. The final regulations at § 250.48(a) provide that: (1) the individual must be attending (in good standing) an institution of higher education (as defined by section 481(a) of the Higher Education Act of 1965, 20 U.S.C. 1088) or a school or course of vocational or technical training in a course of study that is consistent with her employment goals; (2) she must be attending at least half-time; (3) she must be making "satisfactory progress in such institution, school, or course"; and (4) she must meet the State's criteria for determining the appropriateness of the self-initiated education or training.

Comment: One commenter thought that we had narrowed the application of section 402(a)(19)(F) by referring to individuals who "would otherwise be required to commence participation" rather than using the statutory language "would otherwise commence participation." The commenter thought that such a provision would exclude persons not required to participate from being counted as participants.

Response: We did not intend this exclusion, and we have amended § 250.48(a) using the statutory language. Therefore, exempt and non-exempt individuals engaged in self-initiated education or training that meets the definition of section 402(a)(19)(F) are covered by § 250.48(a).

Half-time Attendance

While the wording of the Act could lead to an interpretation that the half-

time attendance provision of section 402(a)(19)(F) pertains only to the school or course of vocational or technical training, this would leave a question as to the amount of time the participant would have to be in attendance at an institution of higher education. We see no reason to distinguish an "institution of higher education" from a "school or course of vocational or technical training" in applying a minimum attendance requirement. Rather, we see the application of the half-time attendance requirement to higher education as serving three beneficial purposes. First, it provides guidance as to minimal expectations of participation. Second, it serves as an indicator associated with making satisfactory progress in the institution, as defined in § 250.1. Third, the half-time requirement is consistent with such requirements for half-time attendance contained in certain student financial aid programs operated under the Higher Education Act. For example, the Guaranteed Student Loan Program requires a student to be enrolled at least half-time in order to receive aid from that program.

Vocational or Technical Training

The meaning of the term "vocational or technical training" is incorporated into § 250.48(a). The term includes vocational or technical training offered by postsecondary institutions. As a result of comments we received, the definition has been expanded to include such training offered by other entities such as secondary schools, and public and private agencies and organizations that offer adult vocational or technical education. The term refers to training that both leads to useful employment in a recognized occupation and results in other than a baccalaureate or advanced degree.

Comment: Two organizations objected to the exclusion of secondary vocational education from this section.

Response: Secondary vocational education is not excluded from JOBS by virtue of the provision at § 250.44(a), which provides that any educational activity below the postsecondary level that the State determines to be appropriate to the participant's employability plan falls within the mandatory educational components of JOBS. However, we realize from comments we received that there might be instances in which such training is self-initiated within the meaning of section 402(a)(19)(F) of the Act. Therefore, we have refined our definition of the term "school or course of vocational or technical training" at

§ 250.48(a) to include such education at the secondary level.

Assessment of Self-Initiated Education or Training

In supplying definitional information, the Department of Education stated that one of its primary concerns was "whether welfare recipients who are enrolled in postsecondary schools have the ability to benefit from the programs in which they are enrolled. The Division of Adult Education believes that the State should perform an educational assessment of the ability to benefit of any JOBS participant * * * before enrollment is considered satisfactory participation * * *."

Other groups that we consulted in the regulations development process asserted that there is potential for abuse by some of the institutions cited in section 402(a)(19)(F) of the Act that would enroll welfare recipients as a means of securing indirect funding by means of student aid under the Higher Education Act. We believe that, in the case of this category of education or training which the State IV-A agency might find to be satisfactory for participation in the JOBS program, an educational assessment of the participant is crucial for the protection of both the participating student and Federal funds. Therefore, the regulations require an assessment and development of an employability plan before the State applies its criteria for determining the appropriateness of the individual's pre-existing education or training activity to her defined employment goal. In § 250.48(a) we now specifically refer to the State's criteria for determining appropriateness of self-initiated education or training, which were implicit in the NPRM.

Comment: There were a few commenters who did not approve of performing an assessment on an individual governed by § 250.48(a), or as full an assessment as would be performed on other individuals. They asked for State flexibility in assessing and preparing an employability plan for those in self-initiated education or training. Some of them stated that deference should be given to individual choice, since they believe that the person has taken considerable initiative in enrolling. They saw our concern with assessment of the individual's ability to benefit from the self-initiated education or training as demeaning the abilities and judgment of welfare recipients. A few commenters specifically stated their approval of the provision, however, fearing that the individual might have had an inadequate assessment by the

enrolling institution. Some commenters specifically approved of the State's having final authority over the employability plan as provided by § 250.41 of the regulations.

Response: We maintain our position that the IV-A agency must perform an assessment that will enable a judgment to be made regarding the suitability of the self-initiated education or training in which the individual is enrolled. Our reasoning is based upon comments we received prior to the development of these regulations and is reinforced by those who commented on the NPRM in support of the use of assessment for those enrolled in self-initiated education or training. Some States have already seen what they believe are inappropriate recruitment of welfare recipients by for-profit institutions seeking to bolster their enrollments. It is our desire to encourage States to take measures that ensure that JOBS participants are engaged in education or training from which the individual can benefit and move toward self-sufficiency. The Department of Education is currently confronted with high student loan default rates associated with some educational institutions, many of which are for-profit trade schools. These defaults can be the result of the student's not being able to obtain employment after completing or dropping out of educational programs in which they have been inappropriately enrolled.

Comment: One State asked if a person meets the "attending" requirement of this section if she has enrolled but has not started attending classes.

Response: The regulations provide that the State may permit an individual who is attending self-initiated education or training at the time she would otherwise commence participation in the JOBS program to continue to attend if she meets the requirements established in the regulations at § 250.48(a). The regulations apply as well to individuals who have enrolled in an activity, but have not yet attended class. In either case the State must make a determination of the appropriateness of the education or training before approving it under § 250.48(a). For purposes of counting as participation pursuant to the requirements of § 250.78, the activity must have started.

State Restrictions on Approvable Activities

In order to maintain consistency with the regulations on postsecondary education found at § 250.46, we provide in § 250.48 that the State IV-A agency may place restrictions upon the self-initiated postsecondary education or

training covered by section 402(a)(19)(F) of the Act. For example, the State IV-A agency might restrict such postsecondary education to a maximum of two years. Further, a State IV-A agency might choose to permit an individual who is within two years of completing a four-year program to complete it if the requirements of this section are otherwise fulfilled. We would encourage States in delineating restrictions to be mindful that the goal of self-initiated training should be to move the participant from welfare dependence within a reasonable time. Therefore, shorter programs leading to specific occupational goals are preferable to longer educational programs that may have far less specific employment goals.

Comment: A small number of commenters indicated that they did not support the statement in the preamble that encouraged States to restrict the length of self-initiated postsecondary education that would count towards participation in JOBS. One of them saw the preamble on this section encouraging even more stringent State restrictions on postsecondary education than the preamble on § 250.46, Postsecondary Education. One of them sought clarification as to whether self-initiated training could include the baccalaureate degree. Another State specifically supported having the authority to restrict such education.

Response: It is not our intention to suggest that the State's option to restrict self-initiated education should result in more stringent restrictions than it chooses to exercise regarding postsecondary education under § 250.46. The intent in both cases is to encourage the participant's attainment of an occupational goal within a reasonable period of time. The definitions associated with this section of the regulations do permit enrollment in a baccalaureate degree program if the program is offered by an "institution of higher education." However, in the case of such enrollment, the State could choose to restrict the period for which enrollment is approved and an individual is, therefore, eligible for supportive services.

Prohibition on FFP

Section 402(a)(19)(F) of the Act specifically states that the costs of "such school or training" shall not constitute federally reimbursable expenses under JOBS. The regulations on funding at § 250.75(a) define such costs to include tuition, books, fees, room, and board. The costs of necessary child care and other supportive services for participants in self-initiated education

or training are eligible for Federal reimbursement, as provided at § 255.4.

Comment: A few commenters said that self-initiated postsecondary education should be funded under JOBS. They noted that if it is not, the individual might decide to drop out of the educational program in order to re-enroll under JOBS.

Response: Section 402(a)(19)(F) of the Act states that the costs of such school or training shall not constitute federally reimbursable expenses under JOBS. Furthermore, in the preamble to these regulations, States are strongly urged in § 250.46, Postsecondary Education, to use resources other than JOBS funds to pay for a participant's postsecondary education. Also, supportive services under the Act are available to either category of student, self-initiated or State-assigned, as long as the activity is approved. Therefore, in many instances there should be no benefit in making such a change.

Comment: One State commented that the regulations restricting funding for self-initiated education would impede clients who will benefit from retraining offered by vocational rehabilitation.

Response: If the individual's vocational rehabilitation program meets the definitions applicable to paragraph (a), and if the other conditions of the paragraph are met, the individual could be considered a JOBS participant. The financial support for the individual's educational program, as is the case with support for other educational programs falling under the paragraph, would have to come from sources other than JOBS. It is also possible for the individual in self-initiated vocational rehabilitation to participate under components of JOBS as provided by paragraph (b) of this section. There appear to be no special problems associated with participation in a referral to vocational rehabilitation activities under JOBS.

Comment: A few groups objected to the exclusion of the use of special needs funds under § 233.20(a)(2)(v) to pay for supportive services for those in self-initiated activities. Some included books and fees as supportive services. One asked for clarification as to what supportive services were available under JOBS for this category of participants.

Response: Supportive services, such as child care and transportation, are otherwise available under title IV-A and JOBS respectively for this category of individuals, so these services are not available under special needs. As required by the Act, § 250.75 prohibits FFP for costs of self-initiated education or training, as provided at § 250.48(a). We define educational costs to include

tuition, books, fees, room and board; they include items which are directly connected to educational activities and traditionally funded as educational assistance. Thus, these educational costs are distinguishable from such adjunct items as transportation, which are matchable as supportive services.

Non-Interference

The regulations state that, consistent with the Act, the State IV-A agency must not permit other JOBS activities to interfere with approved self-initiated education or training. However, a State may require an individual to accept employment if the State IV-A agency has notified her at the time it first approves the self-initiated education or training that it may periodically review the approval and make such a change.

Comment: One State asked that a bona fide job offer not be considered to be an activity that interferes with education or training, so that the State could require the individual to accept the job.

Response: While the Act and implementing regulations prohibit interference by other JOBS activities with a self-initiated education or training, they do not prohibit the State IV-A agency from reviewing and revising the individual's employability plan based on changed circumstances, such as an improved job market. In addition, only interference by other JOBS program activities is precluded. Employment, other than through the work supplementation or OJT programs, is not a JOBS program activity. Thus, States could require the individual to accept a job.

In so doing, the State should consider such factors as whether the job has the potential for leading to long-term self-sufficiency and whether the individual will be left with an educational loan to repay that will impact upon her economic status. The regulations have been revised to clarify that, at the time of preparation of the initial employability plan, the State IV-A agency must make certain that the JOBS participant is aware that her plan is subject to this kind of review and revision.

Other Education or Training Pursuant to § 250.48(b)

We have renumbered § 250.48 to clearly acknowledge that there will be AFDC applicants and recipients who will be enrolled in self-initiated activity that does not meet the requirements of section 402(a)(19)(F) of the Act. For example, the individual might not be attending at least half-time or the institution might not be covered by

section 402(a)(19)(F) of the Act. Section 250.48(a) now refers to education or training that meets the requirements of section 402(a)(19)(F) of the Act, and § 250.48(b) refers to any other self-initiated activity that does not.

The State may approve other education or training pursuant to § 250.48(b) as a JOBS activity according to the regulations and State criteria applicable to similar JOBS component activities covered under §§ 250.44 through 250.47. The State must perform an assessment and develop an employability plan pursuant to § 250.41, as an individual is considered a JOBS participant if the State approves the activity. The costs of child care and of other supportive services for participants in approved other education or training pursuant to § 250.48(b) are eligible for Federal reimbursement pursuant to § 255.4.

Because other education or training pursuant to § 250.48(b) does not meet the requirements of section 402(a)(19)(F) of the Act, participants in such approved activities are not subject to the statutory provisions of that section. This means that such participants are not subject to the principle regarding non-interference with the self-initiated education or training that is contained in section 402(a)(19)(F)(iii) of the Act. However, it also means that the State may pay for other education or training pursuant to § 250.48(b), so long as the State approves the activity in accordance with the regulations and criteria that govern JOBS activities and observes the restrictions regarding non-supplantation and services otherwise available on a non-reimbursable basis.

Comment: One State asked if a person in self-initiated activity is considered to be in a JOBS component and also if such a person could be considered to be in a target population when the criteria are met.

Response: If the individual is participating in self-initiated education or training approved by the State IV-A agency, pursuant to § 250.48(a), she is considered to be in a JOBS component and in a target population if the criteria were met. Likewise an individual in approved other education or training pursuant to § 250.48(b) would be considered to be in a JOBS component and in a target population if the criteria were met. However, an individual in education or training in non-JOBS areas of the State is not a JOBS participant as there is no JOBS program (and title IV-F funds may not be expended on such education or training). Expenditures for supportive services for that individual, if she is in a target population, can be

included in the calculation of whether 55 percent of the State's expenditures was spent on the target populations.

Subpart G—Optional Components of State Jobs Programs

Job Search Program (§ 250.60 of the Final Regulations)

Section 482(g) of the Act provides for group and individual job search as an optional component under JOBS. Although we describe all mandatory and optional components in separate sections, we recognize that it will be appropriate for States to combine them for certain clients. Job search is an excellent example. While job search by itself is an appropriate activity for the job ready who have basic workplace skills, job search for those who are skills deficient should be coupled with other education and training activities.

The Act generally retains the provisions of the current law at section 402(a)(35) of the Act with some modifications. The first change is that Congress expressed its intent that job search be "intensive". We interpret this to mean that, in order to qualify as an optional component in which participation counts for the purposes of calculating participation rates pursuant to § 250.74, a job search program must be well-structured and include specific activities to be undertaken by the participant or the agency on behalf of the participant. Such activities must be described in the State JOBS plan.

Current law provides that a State IV-A agency may require an initial period of up to 8 consecutive weeks of job search which may begin at the time of application for aid. Some States have used this initial period to do a preliminary screening of the individual's employability prior to assessment and development of the employability plan. The Act amends this provision to provide that the State IV-A agency may not require an individual to participate in job search for longer than 3 weeks without performing an assessment as defined at § 250.41. The 3 weeks of job search prior to assessment count as part of the 16 weeks of job search that are allowable as a JOBS component during the application period and first year. If the employability plan that the State IV-A agency develops based on the assessment provides for an activity that is more appropriate for the individual, the job search activity must be terminated.

The Act also permits an additional 8 weeks of job search in any subsequent period of 12 consecutive months. We are adopting the existing interpretation of "an additional 8 weeks" to mean 8

weeks or its equivalent. For example, an equivalent would be one week a month for 8 months or one day a week for 40 weeks. Based on a comment, we are clarifying that after the additional 8-week period (or its equivalent) job search cannot be treated as a JOBS component for purposes of "participation".

The Act also provides that a State IV-A agency may require additional job search after the close of the 8-week period only as part of some other education, training or employment component which is designed to enhance the individual's employment prospects. For example, if a State IV-A agency requires an 8-week period of job search for a recipient and then assigns the individual to skills training, it is permissible to require her to engage in job search at the end of the training as part of the training.

Participation in job search as an activity under the program is not allowable for FFP or participation rates under the JOBS program if an individual has participated in job search for more than 4 months out of the 12 preceding months. We interpret "4 months" to be 4 months or its equivalent. For example, job search for one week a month for 8 months (after an initial 8 weeks of participation in a job search component) would be allowable.

Comment: One commenter recommended that a stronger emphasis be placed on job search activities, and suggested that the full-time "job" of every AFDC client should be looking for work. States should be encouraged to place all clients in job search upon completion of any other JOBS component if no employment has been obtained. Another commenter, however, proposed that only those individuals who have prior relevant work experience and usable job skills be assigned to job search. By assigning the "non-job-ready" to job search, job search becomes a "make-work" activity which does not promote self-sufficiency. Another commenter recommended that States be allowed greater flexibility in assigning participants to job search despite the time limitations imposed by the regulations.

Response: We agree that non-exempt AFDC applicants and recipients should be looking for work. However, we also agree that it is important for each State to have flexibility in designing its JOBS program to meet the specific needs of its clients and utilize those components that, in its judgment, will effectively promote self-sufficiency. Through JOBS, the client can be assisted to prepare for the occupation defined in her employability plan by participating in a

range of components. The time limits contained in the regulations are taken directly from section 482(g) of the Act.

Comment: One commenter felt the proposed regulations on how and when clients were to participate in job search were too complex. Tracking the participation of the clients in job search would be too complicated and would hamper the State's ability to contract and coordinate with other agencies. They suggested a simpler definition: States should receive FFP for up to 16 weeks of job search activity per participant. Another commenter supported the idea that 16 weeks of job search be allowed not only for the applicant during the first year but also for recipients in each period of 12 months.

Response: Section 482(g) of the Act is very explicit as to the participation requirements of the job search program. Moreover, there were few changes made to the existing job search regulations from the previous law. States have the flexibility to define "eight weeks of participation" for the recipient which could lead to less intense job search over a longer period of time. Also, additional job search beyond the 16 weeks initial period (first year) or 8-week period (later years) can be required if combined with other activities.

Comment: Several commenters asked whether if a family becomes ineligible for AFDC and reapplies the 16-week participation requirement (8 weeks of job search as an applicant and 8 weeks as a recipient) begins again.

Response: Upon the filing of a new application, the potential JOBS participant is eligible for a "new" 16-week job search requirement if assigned to that component.

Comment: Several commenters noted that § 250.60(a) (1) and (2) include the provision of counseling and training. One commenter asked if these activities were required to be included under job search. Another commenter was concerned that the term "training" be clarified to mean job-seeking skills training—not occupational or academic training.

Response: The description of "individual job search" has been clarified to say "job-seeking skills training" rather than simply "training." Although not mandated by the Act, counseling and training activities related to developing job-seeking skills, resume writing, and interviewing techniques are a major part of assisting the client as she conducts a job search. It is expected, but not required, that the

State would provide these types of activities for job search participants.

Comment: Several commenters indicated that the regulations leave unclear the relationship between the requirement of an assessment after three weeks, and the State's option to require up to eight weeks of job search at the time of application. They further state that the regulations do not mandate any action by the State based on the results of the assessment. They suggest that the job search should only continue after assessment if it is determined appropriate during the assessment.

Response: If the employability plan developed as a result of the assessment determines that another activity is more appropriate, the job search should be discontinued.

Comment: One State asked that the option be given to stretch the second eight week period of job search (after the initial applicant period of 8 weeks) over an extended period of time.

Response: Section 482(g) of the Act is clear that the second period of job search cannot exceed a total of 8 weeks in any period of 12 consecutive months. We continue the same interpretation of "an additional 8 weeks", as under prior regulations, to mean 8 weeks or its full-time equivalent. After that 8-week (or its equivalent) period, job search cannot count as "participation".

Comment: Several commenters asked for clarification on the limits imposed on job search participation and the additional job search that is permissible.

Response: Section 482(g)(2) of the Act limits participation in job search by an applicant to up to eight consecutive weeks from the time she files an application for AFDC. Following this initial period, an additional eight weeks (or its equivalent) of participation may be required in any period of 12 consecutive months. Once this period of job search has been completed, additional job search activities may be mandated only if performed as part of an educational, training, or employment component. These job search activities must be identified as activities of the component. For example, the client might be required to conduct an intensive job search following the completion of a skills training class, or to participate in a one day per week resume writing class while attending an eight-week business course. For participation purposes, the education, training, or employment component is considered the JOBS activity. For FFP purposes any expenditures directly related to the completion of the approved JOBS activity are allowable subject to the limitations at §§ 250.73, 250.75, and 250.77. Therefore, FFP is

available for the administrative and supportive service costs of the job search-related portion of the approved JOBS component.

Comment: One State asked for clarification of the date on which the initial eight weeks of job search begins for an applicant. The State recommended that the regulations specify that the eight weeks begin when the applicant is first assigned to, or becomes a participant in, the job search component.

Response: Section 482(g)(2)(A) of the Act clearly states that the initial eight week period of job search begins on the date the individual applies for AFDC.

On-The-Job Training (§ 250.61 of the Final Regulations)

Section 482(d)(1)(A)(ii)(II) of the Act provides for on-the-job training (OJT) as one of the four optional components in JOBS. Section 250.61 contains the regulations for OJT.

Our definition of OJT is based on the definition contained in WIN regulations at § 224.42(a) and information provided by the Department of Labor. JTPA regulations do not define OJT, although it is an allowable activity. There are a few basic principles that govern OJT. The participant is hired first by the employer. While engaged in productive work, she is provided training which gives her the knowledge or skills essential to the full and adequate performance of that job. She is compensated at a rate (including benefits) comparable to that of other employees performing the same or similar jobs, and the employer is reimbursed by the State IV-A agency or its agent for the extraordinary training and the additional supervision that is required. At the end of the OJT, the participant is retained as a regular employee.

In order to assure that OJT assignments offered through JOBS result in an increase in participants' skills and competencies, and that progress can be monitored by the State IV-A agency, we are requiring that qualitative measures for progress be developed for all OJT assignments that are included under JOBS. This is discussed in more detail in the definition of making good or satisfactory progress in a training component in § 250.1.

Comment: Several commenters expressed concern that the regulations did not prevent or discourage employers from recycling JOBS participants, i.e. using a participant until the OJT subsidy runs out and then discharging that participant and obtaining another.

Response: It is not our intention to allow employers to recycle JOBS

participants in OJT slots. Upon satisfactory completion of the OJT, the employer is expected to retain the employee. When a State develops OJT contracts with employers, provisions for retaining the OJT participant upon satisfactory completion of the OJT should be included.

Rate of Reimbursement

The rate of reimbursement to employers will be limited to no more than an average of 50 percent of the wages paid by the employer to the participant during the period of the OJT. The operational experience of the six federally-funded grant diversion demonstration projects in which subsidy levels ranged from 25 percent to 83 percent did not suggest that higher rates significantly increased job opportunities. Furthermore this limitation is consistent with JTPA policy. We believe that by adopting this comparable policy, we avoid fostering competition among programs as to the reimbursement levels they provide. Section 250.61(b) contains this provision.

Comment: One commenter suggested that to eliminate windfall profits for employers, the reimbursement should be limited to a flat 50 percent, rather than the average of 50 percent of the wages paid to the JOBS participant during the OJT.

Response: An average of 50 percent was chosen to be consistent with JTPA policy. This policy affords States flexibility to vary in setting reimbursement rates for the length of the contract for a particular individual.

Duration of OJT

We have decided against limiting the length of time an individual can spend in OJT because we believe that a State should have the flexibility to design the program that both meets the needs of the State and the individuals it plans to serve, especially if it uses OJT for target populations. While we permit State flexibility, we strongly recommend that the State IV-A agency take into account the guidance that is available, such as the Dictionary of Occupational Titles, in determining the appropriate length of training and that the State IV-A agency assure that training is only for as long as is reasonable to learn the necessary skills.

Eligibility for Services during Participation

Wages from OJT are considered to be earned income for any purpose of the law, which is consistent with current AFDC policy. A person who loses eligibility for AFDC because of earned

income in accordance with § 233.20 or because of the application of the 100-hour rule in the case of the principal earner in an unemployed parent case will continue to be considered a participant in JOBS for the duration of the OJT. This will allow the agency to make payments to the employer through the completion of the OJT. This is comparable to the WIN regulations at § 224.42 which provide that a person in an OJT is considered to be a WIN registrant for the duration of the OJT even if she is no longer receiving AFDC. It also means that the participant will be eligible for the supportive services available to other participants in JOBS even though she is not receiving an AFDC grant. However, since the participant will have earned income, we believe that the State IV-A agency, in determining the need for supportive services, should treat the participant as it would treat an individual who finds unsubsidized employment.

As a participant in JOBS, the individual will be eligible for child care as determined by the State IV-A agency to be necessary for participation for the duration of the OJT. We have considered how to handle child care when the OJT ends in the case of an individual who became ineligible for AFDC during the period of participation in the OJT. The following approach is defined in the regulations. Since the individual was not in receipt of AFDC in the previous month, she is not eligible for the twelve months of transitional child care when the OJT ends. However, if she would have been eligible for transitional care at the time that she lost eligibility for AFDC due to going into the OJT, she can receive transitional care for the number of months left in the 12-month eligibility period.

For example, an individual who goes into OJT loses eligibility for AFDC in January. The OJT continues until April during which time she receives child care as a participant. If she would have been eligible for transitional child care under Part 256 in February, she is eligible for the remaining 9 months (from May to January). She would, of course, have to meet the requirements of eligibility and would have to contribute to the cost of the child care in accordance with the State's sliding fee scale. Alternatively, a State IV-A agency may simply provide child care as transitional child care from the time the individual becomes ineligible for AFDC due to income from the OJT if she would otherwise qualify. This approach has the advantage of being fairly simple although those individuals who did not meet other eligibility criteria (for

example, did not receive AFDC benefits for the minimum 3 of the 6 preceding months) under Part 256 would not be eligible for the transitional care. However, these OJT participants could continue to receive child care under Part 255 for the duration of the OJT. We believe that our approach of providing up to 12 months of transitional child care to eligible OJT participants assures that individuals who enter employment through OJT are treated equitably regardless of whether the employment is unsubsidized or subsidized.

Comment: Several commenters raised concerns that those clients participating in OJT who become ineligible for AFDC due to earned income or the 100-hour rule in the case of an unemployed parent case, will not be deemed AFDC recipients during participation in OJT for purposes of establishing eligibility for transitional child care and Medicaid extensions. Several also suggested that the 12-month extended benefits should not begin until after the OJT had ended.

Response: Section 482 of the Act, which provides for OJT, does not provide for deeming eligibility for AFDC to a family which has lost eligibility for AFDC during the period of the OJT, for purposes of transitional child care or extended medical assistance. Furthermore, sections 302 and 303 of the Statute describe the eligibility requirements for transitional child care and extended medical assistance. Nothing in these sections allows those clients participating in OJT to be treated differently from other JOBS participants. We, therefore, do not believe that the Statute authorizes providing a full 12 months of transitional child care after the OJT period ends if the participant lost eligibility for AFDC during the period of the OJT.

Comment: One commenter asked if under § 250.61(f) a State must establish State policy on whether to implement the transitional child care provisions at the time AFDC eligibility is lost or at the end of the OJT. If the State chooses to treat all child care provided after an individual in an OJT loses eligibility for AFDC as transitional child care, does the individual who does not meet the minimum eligibility requirements receive no child care for the remainder of the OJT? The commenter felt the language in the preamble and the regulations appeared discrepant.

Response: A State does not need to establish one policy which it applies to all individuals who lose eligibility for AFDC while participating in OJT. A State can determine on a case-by-case basis which child care treatment will be of most benefit to the client who is no

longer AFDC eligible; i.e. whether the child care will be considered as transitional care at the point eligibility for AFDC is lost during the OJT or at the end of the OJT for the remaining months left in the 12-month eligibility period. However, pursuant to Part 255, the State must guarantee child care for a participant during her participation in OJT.

Comment: One commenter was concerned that if an OJT participant becomes ineligible for AFDC while in the OJT, continuation of supportive services appeared to be an option for the State.

Response: The State does not have an option whether to offer continuing supportive services for an OJT participant who has become ineligible for AFDC. The participant is eligible for supportive services if there is a need, and we have revised the regulations to reflect this policy. However, as the participant has earnings, the State IV-A agency, in determining the need for these supportive services, should treat the participant as it would any individual who finds employment.

Eligibility for Medicaid Extensions

Eligibility for Medicaid extensions is determined at the time the individual loses eligibility for AFDC. In other words, there is no provision, as there is under work supplementation, by which an OJT participant who is no longer an AFDC recipient may be eligible for Medicaid based on her status as a participant.

Differences Between OJT and Work Supplementation

Under JOBS, OJT and work supplementation are two of the four programs from which a State must choose its optional components. We carefully considered the differences between OJT and work supplementation under the Act. Since the Deficit Reduction Act of 1984 broadened the kinds of jobs that could be filled under work supplementation to include jobs in the private sector, many State IV-A agencies have used the existing work supplementation program authority to run what is essentially an OJT program. The diverted grants are used to pay for a portion of the training and supervision provided to the participant by the employer.

There have been many recommendations to make OJT and work supplementation as compatible as possible in our regulations so as to allow States maximum flexibility in program design. We have carefully considered all the arguments and

conclude that OJT and work supplementation must be considered separate components. We have two major reasons for reaching this conclusion.

The first is a new provision (section 484(c) of the Act) which specifically bars any participant in a work supplementation component from being assigned to "fill any established, unfilled position vacancy." The same prohibition has always existed in CWEP and is carried over to CWEP by the Statute. However, it is a new provision as it applies to work supplementation and limits the use of the work supplementation component to jobs that did not previously exist. A more complete discussion of this provision is contained in the preamble in § 250.62 on work supplementation.

The second reason is that the Act allows the State IV-A agency to apply special rules to participants in work supplementation jobs that are not available to persons in OJT. The State IV-A agency may reduce or extend earned income disregards as they apply to work supplementation participants (section 482(e)(2)(G) of the Act). The State IV-A agency may exempt work supplementation participants from retrospective budgeting requirements (section 482(e)(3)(D)). In addition, the State IV-A agency must extend Medicaid coverage to participants in work supplementation who would otherwise be eligible for AFDC under the State's plan if such State did not have a work supplementation program (section 482(e)(6) of the Act). There is no basis for extending any of these special rules to OJT participants and, if we did not make any distinction, there would be no way to determine which rules should apply to a given participant.

Furthermore, there is no compelling reason in OJT to invoke the special rules which are necessary to divert grants to a wage pool in work supplementation. Since, in OJT, JOBS funds are used for the training provided by the employer, the State IV-A agency, in its planning process, should calculate how many OJT training opportunities the State will develop and proceed accordingly.

For States which are concerned that diverted grants will not provide an adequate wage pool for their work supplementation component, we point out that they may earmark JOBS program monies at any time to add to the diverted grant money in the wage pool to ensure that sufficient funds are available for subsidy. This money could be unused OJT money, or any other JOBS program money. However, it is not permissible to use diverted AFDC grants in the OJT component.

Comment: Several commenters noted that the language in the proposed preamble and regulations contained references to "subsidies." It was recommended that the term "reimbursement" be used. This distinction clarifies that OJT slots are used for training with the employers being reimbursed for the training and additional supervision.

Response: We agree that this distinction is important and changes have been made in the preamble and regulations where appropriate.

Comment: One commenter asked whether the spouse of the principal earner would be allowed to continue in an OJT or job skills training component under JOBS if the principal earner was no longer AFDC eligible.

Response: As a JOBS participant, the second parent who is participating in an OJT or job skills training component under JOBS would be allowed to complete the activity, as provided in § 250.73(e).

Comment: One State asked if an individual can be considered a participant in an OJT component if she is in a JTPA placement and no JOBS funds are being expended.

Response: If an individual is placed in a JTPA OJT through a JOBS referral, it is appropriate to count the client as participating in a JOBS OJT even though no JOBS funds are being expended. With the limitations set by the JOBS funding cap it is expected that the State IV-A agency will coordinate with and utilize other agency services and activities to enhance its JOBS program components.

Work Supplementation Program (§ 250.62 of the Final Regulations)

Section 482(e) of the Act provides for a work supplementation program (WSP) as an optional component under the JOBS program. This component allows the State IV-A agency to pay, or "divert," all or part of the AFDC grant to an employer to cover part of the costs of the wages paid to an AFDC recipient who is participating in the program. The Family Support Act adopted most of the existing law. However, there were a few changes made to the work supplementation program by the Statute which are discussed below.

Under the prior law, only those individuals who would have been eligible for AFDC under a State IV-A plan as it was in effect in May 1981, or as modified thereafter as required by Federal law, could participate in work supplementation. The Act does not carry over this provision to the JOBS program.

Participation in the work supplementation program was

voluntary, i.e., the AFDC recipient could elect to participate in work supplementation by accepting an offer of work. However, once the individual entered the program, she became a mandatory participant to insure that the agreements with employers would be carried out. Under the Act, the State IV-A agency may require an individual who is not exempt to participate in any appropriate component, including work supplementation. We have clarified that the State may choose to operate WSP as a voluntary or mandatory program.

Comment: Several commenters questioned whether it is appropriate to apply the displacement language from CWEP to work supplementation and OJT programs as provided at § 250.62(b)(2). They point out that participation in these slots is an employment situation; thus, the protection needed for regular employees at a work experience site does not apply in work supplementation/OJT situations. In addition, several organizations and private businesses suggested that JOBS participants should be able to be placed in established, unfilled positions if the placement does not violate union agreements or affect union organizing, existing collective bargaining agreements, or other employer/employee policies.

Response: The provision at § 250.62(b)(2) prohibiting placement in established, unfilled position vacancies applies to work supplementation positions. It does not apply to OJTs under § 250.61. However, we believe that section 484(c) of the Act is clear in applying the prohibition to both work supplementation and CWEP.

The argument that the last two sentences of section 484(c) of the Act can be read together to allow CWEP and work supplementation placements in established, unfilled vacancies if the placements do not assist, promote, or deter union organizing is not persuasive. The first sentence refers to "[f]unds available to carry out the program under this part" not being used to assist, promote, or deter union organizing; it is not limited to funds for CWEP and work supplementation positions.

Comment: One commenter asked that "employee status" be defined. Is it limited to providing such things as insurance coverage, workmen's compensation, leave and other benefits, or, since wages are considered earned income, should Federal, State and FICA withholdings be deducted?

Response: Section 482(e)(5)(B) of the Act requires wages to be considered as earned income for any provision of law. This includes Federal and State

withholding for income tax, FICA withholding, advance Earned Income Tax Credit if requested, etc. Employee status confers the benefits available to regular employees of that employer.

Comment: One commenter was concerned that a WSP participant is not deemed an employee for 13 weeks. The commenter stated that this lack of employment status would negatively affect an individual's entitlement to unemployment compensation, workers' compensation and health benefits.

Response: Section 482(e)(5)(A) of the Act allows a State the option of not considering a WSP participant an employee during the first 13 weeks of participation. Any employer who wishes to treat her as an employee during that period may do so.

Comment: One commenter asked if FFP would be paid for any period past the nine-month limitation on participation if the agency established a longer period of participation.

Response: No, we are limited by the provisions of section 482(e)(4) of the Act.

Comment: One commenter asked that the OJT provisions for the same pay and benefits as similarly situated workers be made applicable to WSP also.

Response: Section 482(e)(5)(A) is clear that the State has the option of not considering a WSP participant an employee during the first 13 weeks of employment. If the State chooses not to grant "employee status," the provisions for the same pay and benefits as similarly situated employees or trainees cannot be applied.

Comment: One commenter asked that States be given the option of setting up WSP as either a mandatory or voluntary program.

Response: Section 482(e)(3)(A) of the Act gives the State authority to implement either a mandatory or voluntary program. We have specified this in the regulations at § 250.62(c)(2).

Retrospective Budgeting/Monthly Reporting

The Deficit Reduction Act of 1984 and interim final rules at § 233.36, published September 10, 1984, provide that the State IV-A agency must require monthly reports from those assistance units with earned income or recent work histories. Additionally, § 233.31(a) provides that all assistance units required to file monthly reports must have the amounts of their assistance payments determined retrospectively. Because work supplementation program participants have earned income, they have been subject to monthly reporting and retrospective budgeting rules. The State, however, had the option to request

waivers to exempt such participants from these two requirements.

The regulations at § 250.62(g) permit the State IV-A agency to exempt individuals who are participating in work supplementation from retrospective budgeting requirements and to determine their monthly payments prospectively. This means the amount of assistance payable to the participant's family for any month will be based on the income and other relevant circumstances in that month.

While the legislation does not specifically address the monthly reporting issue, we have decided to permit State IV-A agencies to exempt participants in supplemented jobs from monthly reporting without seeking a waiver. This policy is consistent with past practice. Furthermore, exemption from monthly reporting will allow the State to have one policy for all recipients whose payments are computed prospectively.

Calculating the Diverted Grant

The regulations at § 250.62(f) allows the State IV-A agency to "freeze" a participant's AFDC grant as an alternative to monthly recomputation. Under this procedure, upon taking a supplemented job, the participant's AFDC grant is recalculated considering her earnings from the job and any other sources. If her earnings and other income reduce her grant to zero, the entire amount of the former grant is "diverted" to a wage pool from which the employer is paid. If the earnings and other income do not cause the complete loss of the grant, she receives a "residual" payment. The difference between the former grant and the residual payment is diverted to a wage pool.

A wage pool is a mechanism which allows a State to pool (divert) AFDC grants not paid to the WSP participant and pay employers an amount for each WSP participant. From the Federal perspective, the pool is an account or listing for accumulating and tracking the diverted amounts so that FFP can be claimed when payments are made to employers.

The following example illustrates: The potential participant is a parent in a regular AFDC case receiving a monthly grant of \$450 with no other unearned income. A full-time supplemented job is found which would pay \$720 per month. The individual is currently eligible for the \$30 and $\frac{1}{2}$ and standard earned income disregards, and she has no other income. Child care is being provided at no cost, and no changes are foreseen in the family's needs, income, or resources.

Countable Income = \$720 - \$90 (work expense after 10/1/89) = \$630;
\$600 - ($\frac{1}{2}$ of \$600) = \$400
Residual Payment = \$450 (AFDC grant) - \$400 (countable income) = \$50
Diverted Grant = \$450 (AFDC grant) - \$50 (residual payment) = \$400

If a State elects to "freeze" a participant's residual payment, the State IV-A agency must determine at the time of placement what payment amount, if any, the participant will be eligible for while participating in a supplemented job, given the hours of work, wages and other circumstances. Once this initial payment is determined, the amount is "frozen," and the participant, if otherwise eligible, receives the same amount (residual payment) for each month of participation regardless of changes which occur during the participation. If a participant becomes otherwise ineligible for AFDC benefits, she can continue to participate in WSP, and the State can continue to receive FFP for payments to an employer on her behalf.

Although the basic concept of "frozen" grants is attractive, States may be concerned about their ability to make adjustments in certain limited circumstances (for example, when the household size changes). Therefore, the State IV-A agency is permitted to make limited adjustments to a participant's residual payment within a "frozen" grant policy. Under such a "partial" freeze, for example, one State might make adjustments only in cases where the State's need or payment standards change. Another State might make adjustments not only under those circumstances, but also where the family size changes. If a State chooses a partially frozen grant policy, it must be consistently applied. That is, if a State IV-A agency provides adjustments for factors which would increase the payment amount, it must also make downward adjustments if changes in those same factors would cause a decrease in payment amounts.

The use of the terms "frozen" and "partially frozen" grants is not new. This policy is retained from the previous work supplementation program because States feel that freezing grants eases administration of the program. It is also consistent with § 250.62(b)(2) which gives the State IV-A agency broad discretion in establishing the terms and conditions under which jobs, payments, wages, and the conditions of participation are defined.

If a participant becomes ineligible for AFDC for any reason other than

earnings from the supplemented job, the individual does not receive a residual payment. However, she may continue in the supplemented job. The amount of the residual payment is diverted to the wage pool. For example, if a family becomes ineligible because of the receipt of a lump sum payment, the family would no longer receive a residual payment, but participation in the supplemented job could continue.

Comment: One State asked what FFP would be paid for JOBS funds supplementing the wage pool.

Response: No FFP is available for any funds supplementing the wage pool until the funds are used to pay the employer. Section 482(e)(3)(A) of the Act states the payments to individuals or employers under WSP, i.e., the AFDC grant funds that are being transferred to the wage pool and subsequently paid to an employer, shall be treated as IV-A expenditures. However, if JOBS funds are used to supplement the wage pool, FFP would be paid at the FMAP or 60% rate, whichever is higher, when expended, as a program cost has been incurred. The State IV-A agency must be able to segregate and track these program costs in order to claim the higher match.

Comment: Although noted in the preamble, one State recommended that the final regulations should specify that JOBS program funds may be added to the wage pool to subsidize wages of the participants. In addition, the regulations should specify that title IV-F funds used for this purpose are to be treated as an administrative cost of the work supplementation program.

Response: We have chosen not to add this language to the final regulations as the preamble often provides discussion of operational issues that do not necessitate regulation. Title IV-F funds used to supplement a wage pool and paid to an employer, are considered a program cost and would receive the higher JOBS match rate.

Comment: One commenter asked how an AFDC grant would be computed for a client who is simultaneously participating in WSP and in OJT and how the budgeting would be done if two members of the same household were both participating in one or both of these components.

Response: As pointed out in the discussion of OJT, there are important distinctions between OJT and WSP. No one is allowed to be in both components at the same time. There is no difference in budgeting from any other case with earned income by one or more family members.

Wage Pool Sampling

Section 482(e)(2)(F) of the Act allows the State to use a sampling methodology to determine the amount of money available for the wage pool. By selecting a sample of work supplementation cases to determine available monies for the wage pool, the State IV-A agency will not need to track all grants diverted on an individual basis. Reconciliation of the wage pool for each participant served is eliminated. Reconciliation is still required based on the results of the sample.

The State IV-A agency will need to develop a method to select an unbiased sample of work supplementation cases of sufficient size to produce statistically valid results when applying this method across the universe of work supplementation participants. The method used by the State IV-A agency must be described in its JOBS plan.

Medicaid Eligibility

Currently, a State has the option to provide Medicaid to the participant and her family if they are otherwise eligible. Section 482(e)(6) of the Act requires that the State provide Medicaid coverage to the participant and family members who would be eligible for AFDC under a State's plan if such plan did not have a work supplementation program. The Health Care Financing Administration (HCFA) is responsible for issuing regulations to implement this section of the Statute.

Child Care Eligibility

In § 250.62(h) we allow the State IV-A agency to provide child care to work supplementation participants according to the same policy that we apply to OJT participants. A more complete explanation of this policy is contained in the preamble to § 250.61 on OJT.

Comment: One State commented that except for § 250.62(h) concerning transitional child care for WSP participants, the proposed regulations were silent on supportive services for WSP participants. It was recommended that the final regulations specify that WSP participants shall be eligible for those supportive services that are available to other JOBS participants.

Response: A WSP participant is eligible for supportive services as a participant in JOBS. However, as was discussed in the preamble to OJT, since the participant is working, she should be treated as any individual who finds employment. We have chosen not to address supportive services in each section on the mandatory and optional components as an individual who is participating in an approved JOBS

component is considered a JOBS participant and eligible for all supportive services provided under the State's Supportive Services plan.

Community Work Experience Program (§ 250.63 of the Final Regulations)

Section 482(f) of the Act provides for a community work experience program (CWEP). The new program generally retains the provisions in the prior law, with modification. The Act allows for training along with actual experience as ways to improve the employability of participants. We interpret this to mean that a State IV-A agency can include an element of training in a work experience position.

Under prior law, the maximum number of hours in any month that a participant may be required to work is that number which equals the amount of financial assistance payable to the assistance unit divided by the greater of the Federal or the applicable State minimum wage. The Statute modifies this calculation to clarify that the State IV-A agency must deduct any child support collected (except the \$50 pass-through) in making the calculation of maximum hours.

Reassessment

Section 482(f)(2) of the Act provides that after 6 months of an individual's participation in CWEP and at the conclusion of each work and/or training assignment, the State IV-A agency must provide a reassessment and revision, as appropriate, of the individual's employability plan.

Section 482(f)(1)(B)(ii) of the Act provides that after an individual is assigned to CWEP for 9 months, she may not be required to continue in the assignment unless the maximum number of hours of participation is no greater than the amount of the assistance payment (excluding child support collected but not the \$50 pass-through) divided by the highest of: (a) the Federal minimum wage; (b) the applicable State minimum wage; or (c) the rate of pay of individuals employed in the same or similar occupations by the same employer at the same site.

Comment: One commenter suggested that minimum standards be included in the regulations for the six-month reassessment process. The commenter proposed that in addition to requiring a face-to-face interview, a review would be conducted of the specific skills acquired during the past six months, and a determination made indicating whether extending CWEP participation would lead directly to employment or

acquiring additional skills needed for employment.

Response: It is expected that the State will use the six-month reassessment as a tool to determine the viability of the CWEP placement and the need for additional skill development for the participant. However, we believe that, as with the initial assessment, the State should have the flexibility to develop the method by which CWEP participants will be reassessed.

Excluding Child Support Collections

The provision requiring a State IV-A agency to exclude the amount of aid for which it is reimbursed by a child support collection from the calculation of the maximum hours an individual must participate is new, although several States have done so under past law. After considering several methods by which child support collections could be used to calculate CWEP hours excluding the child support collection, we have decided to allow each State to develop its own approach.

Comment: Several commenters were concerned about the exclusion of the \$50 pass-through from being treated as a child support collection in calculating the maximum hours for CWEP participation. They believed that section 482(f)(1)(B) of the Act says that any portion of the AFDC benefit for which the State is reimbursed by a child support payment shall be excluded from the CWEP calculation. If an absent parent pays \$300 in child support, the State has been reimbursed \$300, even though in a separate transaction, the State passes through \$50 of that amount to the family.

Response: Although the full amount of the child support collected from the absent parent is credited towards his child support obligation, the State does not retain all of the collected amount to reimburse the AFDC benefit; i.e. \$50 is distributed to the AFDC household. In the example cited in the "Comment," the absent parent is credited for having met his \$300 monthly child support obligation. However, in the distribution of the collection, \$250 of the \$300 is retained by the State and is considered a reimbursement for the AFDC benefit. The remaining \$50 is not considered a reimbursement to the State as it is not retained by the State; it is "passed-through" to the AFDC family. Therefore, the \$50 is deducted from the actual child support collected for purposes of calculating the maximum CWEP hours.

Comment: Several commenters made suggestions on procedures for treatment of child support in the calculation of the CWEP hours. These suggestions focused on how to calculate the CWEP hours if

the child support reimbursement is not received in the month for which the calculation of the CWEP hours is being made. One commenter suggested that when a case is subject to retrospective budgeting, the income and child support from the budget month should be used to establish the maximum hours of obligation for the payment month. If a case is subject to prospective budgeting, the State and family's best estimate of income and child support for the month should be used to establish the maximum hours of obligation. One State proposed that the amount of the court order be used in the monthly calculation to ease administrative burden.

Response: As several logical options were received on this subject, we have decided to allow the State IV-A agency to establish its own procedures to implement this provision.

Other Work Experience Programs

The Act allows a State to have other work experience programs. A State may offer such programs if they are described in the State JOBS plan and approved by the Secretary. An alternative work experience program could be modeled after the WIN work experience program in which a participant is assigned to a full-time, temporary position for a limited number of weeks. Such a program gives the participant the experience of working full-time and learning what the demands of full-time employment are, both on the job and at home. Alternative work experience programs offer States the opportunity to be more creative and may be less burdensome administratively. Any alternative work program is subject to the FFP limitations at § 250.63(j) and the general program standards contained in section 484 of the Act.

Comment: Several commenters questioned whether States should be permitted to combine AFDC and Food Stamp benefits when determining the maximum hours of the CWEP obligation for purposes of participating in JOBS.

Response: Upon further examination of this issue, we have decided to remove § 250.63(d)(2) which allowed States to include the value of Food Stamp benefits in computing the maximum number of hours that a Food Stamp recipient, who participates in a CWEP program under JOBS, is required to participate.

Comment: One commenter noted that section 482(f)(1)(A) of the Act provides that "[t]o the extent possible, the prior training, experience, and skills of a recipient shall be used in making appropriate work experience assignments" (emphasis added). The

comparable regulations at § 250.63(f) says: "To the extent possible, a State IV-A agency *should* take into account * * *" (emphasis added). The commenter suggested that the regulations reflect the Act as the term "shall" in legal construction is sometimes viewed as a stronger direction than "should."

Response: We agree. The appropriate change in the regulations has been made.

Comment: One State commented that since its inception CWEP has been portrayed as a training program intended to facilitate employment. However, the general perception of this program has been one of work in return for assistance as the hours of participation have been based on a wage standard. The State suggests that this perception is strengthened by the new regulations which provide that a participant's hours shall be based on the prevailing wage rate for that position if she is assigned to a work site for more than nine months. Therefore, the State believes that, in cases where an AFDC overpayment exists, States should be required to reduce the amount of the overpayment by calculating the value of the work performed by the CWEP participant using the formula of the hours worked times the applicable wage rate, instead of recouping the overpayment.

Response: Neither section 402(a)(22) of the Act nor § 233.20(a)(13) of the regulations permit recovery of overpayments by allowing a State to count hours of participation performed by an AFDC recipient in a CWEP site to reduce/recoup the overpayment. No additional language was added by the Statute allowing this method to recover overpayments.

Comment: Several commenters questioned how the CWEP differed from public service employment.

Response: The difference between CWEP and public service employment is that the participant is paid a wage in public service employment. A more complete discussion of public service employment is contained in the preamble and regulations at § 250.47.

Subpart H—Funding

JOBS Allocation Entitlement (§ 250.70 of the Final Regulations)

Federal funding for JOBS is provided as a capped entitlement. The regulations at § 250.70(b) implement the formula provided under section 403(k)(1) of the Act for determining the amount of Federal financial participation that is available to match expenditures by each

State with an approved JOBS plan. The amount established by the formula is the limit of Federal reimbursement for a State for a particular fiscal year. If a State is unable to claim up to its limit because the State did not make sufficient expenditures, funds not obligated by the end of the fiscal year cannot be carried over, as provided in the regulations at § 250.70(c).

Comment: Several States said that there is no language in the Family Support Act that prohibits a State from carrying over unobligated funds for use in the next fiscal year.

Response: We assume by the nature of the comment that these States believe that they should have available for use in a subsequent year funds that they did not obligate in the current year, in addition to the allocation provided for the subsequent year. However, the language at section 403(k)(1) of the Act provides that a State "shall be entitled to payments * * * of expenditures to carry out the program under part F" and that "such payments for any fiscal year in the case of any State may not exceed the limitation determined under paragraph (2) with respect to the State." Therefore, the Act establishes a limit not on JOBS funding for each State, but on the amount of the reimbursement that the State is "entitled" to for each year's JOBS expenditures. FFP is available for matching allowable costs paid for by the State. There is, therefore, no entitlement to funding if the State does not incur the costs.

Comment: One State recommended that funds unobligated by States be redistributed to other States for use in the JOBS program.

Response: The Family Support Act prescribes the formula for determining each State's limit of Federal reimbursement for JOBS. Any redistribution to another State would increase that State's limit for the fiscal year above the statutorily established limit and would, therefore, be impermissible.

Liquidation of Obligations

States will be required to liquidate all obligations incurred during a fiscal year within one year after the end of that fiscal year. The liquidation period for grant programs subject to the regulations at Part 92 is normally 90 days (§ 92.23(b)). However, we are permitting one year for liquidation in the regulations at § 250.70(d) for the JOBS program because we recognize that a State may need more flexibility in administering the JOBS program as many services are likely to be provided under contract.

Comment: One State strongly supported the regulations providing for a one year period to liquidate obligations. Another State maintained that a one year liquidation period was too short and recommended that the time period be in quarters following the final delivery of the service, i.e., within eight quarters after the completion of a course of study. Another State suggested that the JOBS program be treated like other entitlement programs under the Social Security Act and recommended that States be subject to the two year limit for the filing of claims in accordance with the regulations at Part 95 Subpart A.

Response: The recommendation of the second State would provide no defined period by which the Federal government would know the extent of outlays attributable to the JOBS program because such a method assigns a liquidation period according to the particular JOBS service or activity.

The suggestion of the third commenter cannot be adopted because the JOBS program cannot be treated in the same manner as the AFDC program. The Family Support Act, as explained previously, establishes an annual limit on JOBS funds. Funding for programs which are open-ended, such as the AFDC program, are not bound by yearly limits.

The timely filing requirements for claiming expenditures in the regulations at Part 95, Subpart A continue to apply to the JOBS program because the liquidation requirement is separate from the claiming requirement. For example, if a State obligates a document on September 30, 1989, and liquidates the obligation, i.e., makes the expenditures for this obligation, on September 30, 1990, then the State has until September 30, 1992 to claim the expenditures.

Comment: One State was concerned that the establishment of a one year liquidation period would require the State to audit contracts with service providers within one year of the closure of the contract and that such a requirement may be in conflict with State law.

Response: The liquidation period does not require a State to audit contracts within this one year period. The only auditing requirements that a State operating a JOBS program must meet are the auditing requirements of the Single Audit Act of 1984 as provided in the regulations at § 92.26. However, this does not mean that the State is not responsible, outside of the auditing process, for monitoring the activities, services, and expenditures conducted under contracts. The State must maintain ongoing monitoring of

contracted activities, services, and expenditures.

Allotment of JOBS Limit of Entitlement (§ 250.71 of the Final Regulations)

All States are required to have a JOBS program effective October 1, 1990. However, States may begin operating a JOBS program before that date. Fifteen States began implementation of their programs on July 1, 1989.

A State's JOBS limit of funding is proportional to the number of quarters that the program is in operation in the State in a given fiscal year as described in the regulations at § 250.71(a).

Comment: One State suggested that States that implemented the JOBS program on July 1 should have been allocated their annual share of the JOBS funding limit, rather than just a quarterly share of that limit.

Response: Section 204(b)(1)(B) of the Statute provides that for a State that implements the JOBS program prior to October 1, 1990, its JOBS funding limit for the fiscal year will be divided by 4 and multiplied by the number of quarters the program is in operation in the fiscal year. Therefore, under the formula in the Statute, States that began July 1 receive one quarter's limit.

Comment: This same State recommended that States receive an annual grant award for the JOBS program instead of quarterly grant awards.

Response: An annual grant award pilot test program was initiated several years ago as a result of the efforts of the Joint State/Federal Cash Management Reform Task Force. The pilot applies to seven States and four of the Department's public assistance programs, such as the AFDC and Medicaid programs. Section 608(e) of the Statute extended this pilot test program through December 31, 1989. The test program is to operate on the same terms and conditions that existed as of September 30, 1988. Thus, its application has not been expanded beyond the original seven States and four programs. At this time it is the general practice in the AFDC program to issue quarterly awards. Because we have decided that the JOBS program should be operated similarly to the AFDC program, with certain exceptions, we believe that quarterly grant awards should be issued for the JOBS program as well.

Allotments to the Territories

The JOBS limit of funding for Puerto Rico, Guam, the Virgin Islands, and American Samoa is not subject to the funding restrictions at section 1108 of the Social Security Act (see the

regulations at § 250.71(c)(1)). For these jurisdictions, the costs related to the provision of child care under Part 255 are subject to the JOBS limit of entitlement. This includes the costs of child care services and related administrative costs (see the regulations at § 250.71(c)(2)). The costs related to the provision of transitional child care services under Part 256, including the cost of the services and the related administrative costs, are eligible for FFP under section 1103 of the Act (see the regulations at § 250.71(c)(3)).

Funds Available to Indian Tribes and Alaska Native Organizations

The JOBS program provides direct funding to Indian Tribes and Alaska Native organizations. The Federal funds available to Tribes and Alaska Native organizations constitute a reduction to the allotment of the State in which the Tribe or organization is located. Regulations at § 250.71(b)(1) describe how the reduction is determined. The regulations at § 250.90 provide the specific requirements for Indian Tribe and Alaska Native organization participation in the JOBS program.

Maintenance of Effort (§ 250.72 of the Final Regulations)

Section 482(a)(3) of the Act specifies that "Federal funds made available to a State for purposes of the program shall not be used to supplant non-Federal funds for existing services and activities which promote the purpose of this part. State or local funds expended for such purpose shall be maintained at least at the level of such expenditures for the fiscal year 1986."

We believe that Congress intended to provide for new or increased levels of services under the JOBS program, rather than to subsidize or buy-out existing programs. We believe that Congress also intended that the JOBS program bring together and make maximum use of existing resources. The requirements of the maintenance of effort provisions of the Act, as well as language limiting funding for contracted services to services not otherwise available on a non-reimbursable basis, are tests of whether a State is, in fact, meeting these goals.

One test has two parts: JOBS funds must not be used to supplant State and local funds, and JOBS funds must not be used to pay for services available on a non-reimbursable basis. Another test is whether the State is maintaining the FY 1986 level of expenditures for programs which serve the same purpose as the JOBS program.

We received many comments regarding the maintenance of effort

provision of the NPRM. Based on the comments, we have reviewed these issues and reconsidered the language and legislative history of the Statute.

Non-Supplantation and Services Not Otherwise Available On a Non-Reimbursable Basis

The regulations at § 250.72(a), which prohibits the use of JOBS funds to supplant non-Federal funds for existing activities and services, is a general requirement of the JOBS program.

The regulations at § 250.72 (c) and (d) require that FFP not be provided for activities and services that are otherwise available to an AFDC recipient on a non-reimbursable basis. For program services, such as high school, which a State is required by law, regulation or other rule to provide to all residents without regard to availability of funding, FFP under JOBS would not be available. For other programs available to the general public, or to low-income residents in particular, but which may be permissibly limited by availability of State or local funds, FFP is available for the increase in expenditures attributable to JOBS participants.

The regulations at § 250.72(e) extends the requirements of § 250.72 (c) and (d) to services provided directly by the State IV-A agency.

Comment: Several States requested clarification regarding the requirement that a State not use JOBS funds for activities and services that are available on a non-reimbursable basis. One State asked for clarification on the availability of JOBS funds for a program which ordinarily provided services to AFDC recipients on a non-reimbursable basis, but whose funds were limited.

Response: The regulatory requirements regarding the use of JOBS funds for activities and services that are "not otherwise available on a non-reimbursable basis" fall into two categories. The first category, established at § 250.72(c), requires that providers under contract or agreement with a State IV-A agency maintain a level of service to AFDC applicants and recipients that is guaranteed to these individuals, regardless of the availability of JOBS funds. In this category, for example, we include the Job Training Partnership Act (JTPA) Program. Section 203(b)(3) of the JTPA provides that assistance under the JTPA program must be provided to AFDC recipients "on an equitable basis, taking into account their proportion of economically disadvantaged persons sixteen years of age or over in the area." Therefore, JOBS funds would be available for services and activities

provided by JTPA only insofar as they exceeded the level required by this section of JTPA.

The second category is covered in the regulations at § 250.72(d), which requires that providers under contract or agreement with the State IV-A agency certify that the services being provided with JOBS funds are not services that would have been available to AFDC applicants or recipients under a program providing general services to the community, including AFDC recipients. An example would be the cost of a State GED program. In this instance, JOBS funds would be available for the costs of a GED program established for AFDC recipients specifically for the purposes of the JOBS program which is in addition to the GED programs provided to the general community. This would be the case as long as AFDC recipients remained eligible for the programs available to the general community and were served under those programs to at least the same extent as they had been prior to JOBS, not just in absolute terms but also in proportionate terms. For example, if a State doubled its overall GED program level, JOBS would not pay for additional GED slots until the number of AFDC recipients in non-reimbursable GED also doubled. However, special circumstances such as the need for more intensive training might warrant additional or separate JOBS funding without regard to the level of regular GED slots. The essential test is that JOBS funding not be used to supplant services which the State would otherwise provide through other arrangements and sources of funds.

Comment: One State mentioned that its job development and placement activities were provided by the State employment security agency which has been Federally-funded under the Wagner-Peyser Act. It further stated that funding under the Wagner-Peyser Act has decreased considerably. The State was concerned that the regulations at § 250.72(c) would preclude use of JOBS funds to offset Wagner-Peyser funding for State employment services.

Response: If funds under the Wagner-Peyser Act, or any other program, are insufficient, then JOBS funds may be used to fund additional activities and services that are necessary for JOBS participants, but only if AFDC recipients continue to receive their proportionate share of the other program's funds.

Comment: Two organizations suggested that the final regulations clearly state that activities not otherwise available on a non-reimbursable basis are eligible for JOBS reimbursement and that these activities

should be delineated in each State's JOBS and Supportive Services plans.

Response: Section 250.21 of the final regulations requires a State to identify in its State JOBS plans the extent to which services to be provided through JOBS: are available on a non-reimbursable basis; are provided by the State IV-A agency; and are to be purchased. The plan also requires that the State identify other services which are available and appropriate for JOBS participants based on its efforts to coordinate with other agencies.

Comment: One State asked for a clear description of "certification from the provider." Another State asserted that the requirement that certification from the provider or IV-A agency that the services provided are not otherwise available on a non-reimbursable basis was very burdensome because it would require a certification on every service provided.

Response: "Certification from the provider" is defined as a written assurance from the provider that such service or activity or such groups of services or activities are not available from the provider on a non-reimbursable basis for the period of the contract or agreement. We do not believe that a certification from a provider regarding services it provides on a non-reimbursable basis is onerous.

Comment: One State said that our interpretation of the phrase "not otherwise available on a non-reimbursable basis" in the contract authority section of the Act was erroneous. It indicated that the provision meant that States must not enter into contractual arrangements for services to JOBS participants if such services "would be available for referral and assignment of JOBS participants in the absence of such contractual arrangements and without reimbursable expenditure."

Response: From this comment, we understand that the State interpreted this requirement to mean that a State could only contract for services that the State itself was not already making available, without reimbursement, to AFDC recipients. We do not share this interpretation. In considering the requirement that a State not use JOBS funds to supplant non-Federal funds for existing JOBS-like services and activities, we believe it necessary that the non-supplantation requirement be extended to services and activities provided under contract since many of these services and activities will commonly be provided under contract. Therefore, the regulations at §§ 250.72 (c) and (d) provide that JOBS funds can only be used for services that the

provider is not already required to provide AFDC recipients and for services that the provider has certified are not available to AFDC recipients on a non-reimbursable basis. In addition, the regulations at § 250.72(e) provides that a State, when providing services directly, must certify that such services are not otherwise available on a non-reimbursable basis.

Comment: Several commenters expressed confusion regarding the timeframe for establishing whether services and activities were not otherwise available on a non-reimbursable basis. Specifically, they asked whether this requirement pertained to services and activities currently available or available in past periods, particularly FY 1986.

Response: The regulatory provision regarding maintaining a level of expenditures for programs with the same purpose as the JOBS program refers to FY 1986; thus it requires retrospective consideration. The provision containing the requirement that a State not use JOBS funds for services and activities that are otherwise available on a non-reimbursable basis requires the State and its contractors to consider services and activities that are currently available to JOBS participants; thus it requires consideration of present conditions. We recognize that the proposed regulations on this issue were somewhat ambiguous. The regulations have been changed to clarify this point.

FY 86 Level of Expenditure

We recognize from the comments that some States were unsure whether they were required to maintain current levels of expenditures, or expenditures equal to the level of FY 1986. We want to be clear that the level of expenditures that a State must maintain each fiscal year for the JOBS program must at least equal State and local expenditures made in FY 1986 for programs with purposes similar to those of the JOBS program. It is this requirement that a State must meet in the form of total aggregate expenditures. This provision is retained at § 250.72(b).

In determining a State's FY 1986 level of expenditures for purposes of this requirement, a State must include State and local funds for title IV-A work programs and title IV-C (WIN and WIN Demo), including expenditures for those programs which were unmatched. A State must also include other State and local funds which were used for training, employment and education programs which had a defined purpose of preventing welfare dependency. For example, a specially-designed GED program for welfare or potential welfare

recipients would be included. However, the overall costs of the State's GED program would not be included, even if some of the program's participants are AFDC recipients, since such programs do not generally have the defined purpose of preventing welfare dependency.

In determining the level of expenditures for those programs included in the FY 1986 base, the State must include expenditures for supportive services, including child care, provided to individuals in these programs. Amounts related to in-kind contributions, to the extent that in-kind contributions were used as the State share of expenditures for programs in FY 1986, must also be included.

Comment: Several States asked whether in calculating the FY 1986 level of expenditures, they were required to include only State and local IV-A expenditures, or also expenditures made by other State or local agencies.

Response: For purposes of the maintenance of effort requirement, the State must include in the calculation other expenditures in addition to title IV-A expenditures. The Act requires that a State maintain FY 1986 expenditures that were made for the purpose of Part F. The purpose of Part F is "to assure that needy families with children obtain the education, training, and employment that will help them avoid long-term welfare dependence." The reference, therefore, is to a general list of activities and services, and there is no restriction to activities and services under only title IV-A.

Comment: Several commenters have suggested that the proposed regulations indicated that States had to base the FY 1986 maintenance of effort requirement on expenditures associated with separate component activities and services. They suggested that States should be required to maintain spending at the FY 1986 level based on total aggregate expenditures.

Response: Although the proposed regulations did not specifically address this issue, it was our intent that total aggregate costs be used to determine that a State had maintained its FY 1986 level of effort. This approach makes allowance for adjustments a State has made in spending for various activities and services since FY 86. We have included a provision regarding this issue in the regulations at § 250.72(b).

Comment: One State indicated that adult education agencies and other service providers do not determine whether persons who receive their services are AFDC applicants or recipients. The State would, therefore,

not have information available to determine the FY 1986 level of expenditures.

Response: The final regulations clarify which expenditures constitute a State's FY 1986 level of effort. As a result, we believe that the State will have the ability to identify those expenditures made for programs that are included for purposes of this requirement.

Matching Rates (§ 250.73 of the Final Regulations)

JOBS program activities are subject to three different rates of FFP.

Cost Matched at 90 Percent

The FFP rate for that part of a State's total JOBS funds that equals the State's WIN or WIN Demonstration allotment for FY 1987 is 90 percent. This rate may be applied toward any allowable cost of the JOBS program. A State's 10 percent share may be in the form of cash or in the form of in-kind contributions. Section 403(l)(1)(B) of the Act does not provide a definition of "in-kind"; it states only that it be fairly evaluated. Therefore, in order to provide flexibility in this area, we are permitting a State's share of in-kind to be State in-kind or third party in-kind contributions. This has been the practice for the WIN program and we are incorporating this practice in the JOBS program, but only for this portion of the funding for JOBS.

Comment: Several commenters asked if there were any restrictions for claiming JOBS costs at 90 percent.

Response: A State may claim Federal reimbursement at 90 percent for any allowable JOBS costs. In addition, expenditures at 90 percent need not be claimed at the beginning of the fiscal year. The State can designate costs to be matched at 90 percent throughout the fiscal year.

Costs Matched at the FMAP Rate with a 60 Percent Floor

Federal matching under the JOBS program is also available at a State's Medicaid matching rate (the FMAP) for certain costs of the program that exceed a State's WIN or WIN Demonstration allotment. For the purposes of the JOBS program, the minimum matching rate is 60 percent. We shall refer to this matching rate as the "higher rate" in the following discussion.

Costs eligible for matching at the higher rate are: (1) the personnel costs of full-time staff working full-time in any capacity in the JOBS program, and (2) all direct costs associated with providing JOBS program services to individuals, including assessment, development of the employability plan, case management, and JOBS component

activities. These costs include salaries and benefits of employees for the time and effort devoted specifically to these activities, whether they work on a full-time basis or not. In addition, costs of materials acquired or expended specifically for these activities, space, and other costs directly associated with the provision of these services are matched at the higher rate. For example, if a State contracts for a job club, the costs of staff, telephones used by participants, and the room used for the job club are matchable at the higher rate. Indirect costs are not matchable at this rate.

The definitions of "direct" and "indirect" costs are those definitions which are included in OMB Circular A-87, "Cost Principles for State and Local Governments." The term "full-time staff working in any capacity in the JOBS program" is defined as those individuals working a normal work week as defined by the State and who are working in the JOBS program only. A normal work week, however, cannot be based on a full-time equivalency measure.

The assessment of child care needs and referral to appropriate services for JOBS participants can be matched at the higher rate when these activities are provided as part of a JOBS assessment, development of an employability plan, or case management. Alternatively, these activities are available for match as child care administrative expenditures under title IV-A with an FFP rate of 50 percent.

Costs Matched at 50 Percent

Costs eligible for match at 50 percent are costs associated with the general administration of the JOBS program. In this category, we include: indirect personnel costs which are excluded from JOBS matching at the higher rate. Non-personal services costs associated with these indirect personnel costs are also matchable at 50 percent. These costs include space, travel, utilities, equipment, and supplies. Also matched at the 50 percent rate are: the costs of such items as JOBS program planning, monitoring, letting contracts, systems, title IV-F fair hearing activities, and other indirect costs of providing JOBS services and activities.

In addition, transportation, work-related expenses, and work-related supportive services are also available for match under the JOBS program at 50 percent. The requirements regarding these supportive services are at Part 255.

As a result of the clarification of policy regarding application of the different matching rates to program expenditures, it will not be necessary to

distinguish between types of costs in most contracts for the direct provision of JOBS services and activities to individuals. However, contracts which, for example, provide multiple services and activities, to the extent that they involve significant indirect costs, could continue to be subject to segregation of costs. For example, if a State IV-A agency contracts with a single provider to deliver several components, administrative costs not directly related to the delivery of services, such as the salary of the head of the agency, would have to be segregated. In addition, contracts for general administrative functions, e.g. payroll and accounting, would be at the 50 percent match rate. This is an area we expect to monitor closely, and should it be necessary, we will revise the regulations accordingly.

Comment: Many commenters asked that the higher rate be applicable for the costs of part-time staff involved in any capacity of the JOBS program.

Response: Section 403(l)(1)(A)(ii)(I) of the Act clearly stipulates that the higher rate applies to full-time staff employed in the operation of the JOBS program. Given this language, we conclude that the costs of part-time staff can be matched at the higher rate for the time they spend on the actual provision of activities and services, but that time spent on activities not matchable at the higher rate must be matched at 50 percent. For example, if an individual's work week is 20 hours, and she spends 10 hours running a job club and 10 hours doing administrative work, the 10 hours on job club is matched at the higher rate, but the rest is matched at 50 percent. However, the final regulations significantly increase the activities for which the higher rate applies so that all of a part-time individual's activities might be matchable at the higher rate.

Comment: Many commenters stated that activities such as assessment and case management should be available for match at the higher rate. Other commenters suggested that orientation activities be matched at the higher rate.

Response: The regulations now provide that this rate applies to the costs of assessment and case management activities. Costs of orientation can also be matched at the higher rate. As an alternative, costs of orientation can be matched as title IV-A expenditures, if provided by IV-A staff, as described in § 250.77.

Comment: Several commenters stated that any social service provided to remove barriers to participating in JOBS, such as assistance with housing, health and family problems and the costs of alcohol and drug abuse rehabilitation,

should be available for match at the higher rate.

Response: The services described in the comment are supportive services, matchable at 50 percent. Alcohol and drug abuse rehabilitation may be considered as supportive services, if the State so provides in its Supportive Services plan.

Use of JOBS funds for supportive services should be related to assisting the individual to participate in JOBS or to accept employment. As such, we believe that it is appropriate for JOBS staff to make referrals to appropriate providers for such needs as housing, health, and for family problems.

JOBS funds can be used for remedial medical services necessary for an individual to participate in a JOBS component or to accept employment. An item in this category might be a pair of glasses. However, JOBS funds for this supportive service would only be available if funding from other sources, such as Medicaid, were not available.

Comment: One State asked whether JOBS funds could be used for programs designed to serve at-risk youth, i.e., younger recipients, who are not young parents, and are not eligible for participation in the JOBS program. The State also suggested that matching for such programs should be at the higher rate.

Response: Programs designed to serve at-risk youth may be matched as supportive services under the JOBS program. Expenditures for these programs can therefore be matched only at 50 percent. In order to be matched, such programs must be included in a State's Supportive Services plan and must be designed to include activities and services which assist the family in achieving self-sufficiency and enable these children to avoid welfare dependency in their adult years.

Comment: One State asked if the costs of a first-line supervisor supervising staff directly involved in both the JOBS program and the Food Stamps employment and training program are available for match at the higher percent.

Response: The distinction regarding first-line supervisors has been deleted from the final regulations. If a supervisor is directly involved with an activity for which the higher rate is applicable, then that part of her time associated with this activity is available for match at this rate. However, the costs of that part of her time that is associated with the Food Stamps employment and training program cannot be claimed under the JOBS program.

Comment: One State mentioned that it was not clear whether a State would be

able to claim the higher match rate for full-time staff who are engaged in JOBS activities for only part of the time.

Response: If full-time staff are involved in non-JOBS activities in addition to JOBS activities, the higher rate is only available for that part of their time spent on activities matchable at the higher rate.

Other Matching Issues

A State's share of costs available for match at the higher rate or at 50 percent must be in cash. In-kind contributions, whether State in-kind or third party in-kind, cannot be used as the State's share.

State agencies are encouraged to seek financial support from private sources to develop and enhance JOBS program activities and other activities which help individuals to become self-sufficient. Funds donated from private sources for the JOBS program may be considered as a portion of a State's share of matching costs, a policy consistent with the use of such funds for the AFDC program. The conditions under which donated funds may be used as the State's share are set forth at § 235.66(b) and G-4000 of Part 5 of the Handbook of Public Assistance Administration. Thus, § 250.73(d)(2) provides that donated funds may be used for State match if such funds are transferred to the State IV-A agency and are under its administrative control, are donated without any restriction which would require use for a particular individual in the JOBS program or for a particular facility or institution involved in the JOBS program, and do not revert to the donor's facility or use. Donated funds may be used as the State share of JOBS expenditures for any of the three FFP rates.

Comment: Can JOBS funds be used to match the costs of services or activities provided to a JOBS participant after she is no longer an AFDC recipient, either because she has found unsubsidized employment or for other reasons? This question pertains to those activities or services other than those included in the child care or Medicaid transition benefit.

Response: If included in a State's JOBS and Supportive Services plans, the State may provide case management and supportive services for up to 90 days after a participant loses eligibility for AFDC. For JOBS component activities, if an individual loses AFDC eligibility after funds have been obligated or expended for such activities, FFP is available, regardless of the length of the activity. For example, if an individual is already participating in a course of vocational education which has been paid for, and the individual

loses AFDC eligibility before the activity ends, then she may complete the course. Language incorporating this policy has been added at § 250.73(e).

Comment: Two States asked that the regulations provide flexibility in permitting States to use State funds not under the administrative control of the IV-A agency but used for purposes of the JOBS program as part of the State's share of JOBS expenditures for matching purposes.

Response: We have included requirements at § 250.73(d)(1) for the use of public funds as the State share of match under the JOBS program. The State IV-A agency must have administrative control of such funds in order to request Federal matching, in order to satisfy the single State agency requirement at § 250.10.

Comment: Several commenters expressed concern regarding the requirement that contractors and vendors segregate costs according to different matching rates. One commenter noted that segregating costs was not compatible with performance-based contracting, which makes payments to contractors based on outcomes, such as job placements.

Response: Changes in the final regulations regarding matching rates will, for the most part, eliminate the need for segregation of costs in contracts. Contracts which include costs not matchable at the higher rate will require cost segregation. The State may use performance-based contracts which include such costs, if the State, in calculating the unit cost, estimates the percentage of costs matchable at each rate.

Comment: One State asked whether, if title IV-F funding is used for systems interface, such funds would be subject to the JOBS cap under title IV-F?

Response: Section 250.81 provides that the costs for interfacing with an existing or planned title IV-A system are matchable under title IV-A. However, a State may choose to use title IV-F funds for this purpose, subject to the State's limit of entitlement.

Comment: One State mentioned that related Federal programs are based on a forward funding policy whereby the allocation amount is available to local planners during the planning process and that a similar process for the JOBS program would be helpful in coordinating the planning of these programs.

Response: The basis for forward funding in other Federal programs, such as JTPA, is statutory. The Statute does not include such a provision for the JOBS program.

Although funding under the JOBS program is available only from the quarter the State implements the program, provided the State JOBS plan and Supportive Services plan have been approved, funding for planning for the JOBS program is available as an AFDC administrative cost matchable at 50 percent.

Comment: One State mentioned that the three matching rates for the JOBS program were administratively burdensome and that there should be an alternative of one matching rate.

Response: The three matching rates applicable in the JOBS program are specifically provided for in the Act.

Reduced Matching Rate (§ 250.74 of the Final Regulations)

Target Groups

For the JOBS program, the Act provides certain safeguards to assure that the increased Federal funding intended to assist individuals in avoiding long-term dependency is directed largely towards those individuals who are most in need of assistance. The regulations at § 250.74(a) provides that if, in any fiscal year, a State fails to expend 55 percent of its JOBS expenditures on members of the State's target population as defined in § 250.1, the Federal matching rate for all JOBS expenditures for that same year will be reduced to 50 percent. The Secretary, however, may waive this reduction if a State can satisfactorily demonstrate that the characteristics of the caseload in that State make it infeasible to meet the requirements of the regulations at § 250.74(a) and that the State is targeting other long-term or potential long-term recipients.

Comment: One commenter asked when a State would be required to demonstrate that the characteristics of its caseload make it infeasible to meet this requirement and target other long-term or potential long-term recipients.

Response: A State must include in its JOBS State plan, or in an amendment to the plan, its reasons for concluding that the characteristics of its caseload make it infeasible to meet the requirement, and must identify at the same time other long-term or potential long-term groups which it plans to target.

Comment: One State said that there was no indication in the regulations about how the reduction for failure to spend 55 percent of JOBS expenditures on the target population would be taken. It recommended that the reduction be a prospective reduction.

Response: Section 403(l)(2)(A) of the Act provides that the penalty for failure to meet this requirement, i.e., the

reduction to 50 percent, is applied to the year that the State fails to meet the requirement. The language is clearly different from the language regarding the participation rate penalty which specifically states that the penalty is to be applied prospectively.

Comment: One State asked whether the data collection requirements for determining if a State had spent 55 percent of JOBS expenditures on the target population could be waived if the State did not seek funding at the enhanced levels.

Response: In principle, we have no objection to waiving data collection requirements related to meeting the targeting standards where a State waives its entitlement to the higher matching rates. However, the same data are needed to meet some of the uniform data collection requirements contained in sections 203 and 606 of the Family Support Act. These sections do not specifically include the requirement for reduced funding if a State fails to spend 55 percent of its JOBS expenditures on the target population, but they do require data on the average amount spent per family in each JOBS component. Thus, a State would have to meet these latter data collection requirements even if it did not seek funding for JOBS at enhanced rates.

Comment: One State suggested that administrative costs not be included in the 55 percent target requirement.

Response: Section 403(l)(2) of the Act requires a State to spend 55 percent of its title IV-F expenditures on the target population in order to qualify for FFP at the rates specified in section 403(l)(1) of the Act. We have interpreted this to mean all JOBS expenditures because no category of costs was excepted. The regulations reflect this position.

Comment: One State suggested that if an individual is in a target group any time within the fiscal year but is moved out of the group within the fiscal year, the State should be allowed to count the individual as a participant in the target group for the entire year.

Response: A participant's target group status is established at the time of the initial assessment. Therefore, JOBS funds expended on behalf of this participant while she remains an AFDC recipient are counted as target group expenditures. A State may reassess target group status periodically as an individual may acquire target group status over time.

Participation Rates

Section 403(l)(3)(A) of the Act establishes participation rates that a State must meet for fiscal years 1990 through 1995 in order to qualify for

enhanced matching rates. The term "participation" is defined in the regulations at § 250.78, and § 250.74 contains the formula for calculating participation rates.

The participation rate for FY 1990 is 7 percent; however, a State is not subject to a reduction in the Federal matching rate for FY 1990. FY 1992 is the first year in which a State will be liable for reduction of FFP for failure to meet the participation rates (for FY 1991.) Failure to meet a State's participation rate for a fiscal year will result in a reduction of its matching rate to 50 percent in the subsequent fiscal year.

The Secretary may waive in full or in part any penalties applicable to a State for not meeting these participation rates. The regulations at § 250.74(b)(5) provide the conditions under which such a waiver may be granted.

Comment: Several commenters asked whether certain groups of participants would be deemed not required to participate and, therefore, not included in the calculation. The groups suggested were: those in a political subdivision in which the program is not offered; those who are exempted based on remoteness; and those who have "good cause" not to participate.

Response: We have amended the final regulations to clarify that the calculation of participation rates will exclude: (1) a person who is exempt, including for remoteness, (2) a person living in a political subdivision in which there is no JOBS program, and (3) a person determined by the State to have "good cause" not to participate, for each month in which the "good cause" finding pertains.

Comment: Another group of commenters suggested that it would unfairly penalize a State if the calculation were to include those who cannot participate because the State determines that it has insufficient resources.

Response: We interpret the term "insufficient resources" as used by the commenters to mean that the State IV-A agency does not have adequate State funds to match available federal resources, and we disagree with this suggested change for the following reason. We believe that participation rates that only require 20 percent of the mandatory population to participate by FY 1994 already consider lack of State resources. Furthermore, the Statute provides specific relief from meeting this requirement in section 403(l)(3)(E) of the Act.

Comment: Another group of commenters suggested that we exclude

from the calculation those for whom the State cannot guarantee child care.

Response: Section 402(a)(19)(B)(i)(I) of the Act provides that the State must guarantee child care if it requires an individual to participate. If it cannot guarantee child care, then the individual cannot be required to participate and is not counted in the calculation. The determination that a State cannot guarantee child care must be made on an individual basis for each participant.

Comment: Several commenters asked how the calculation would treat participants entering or leaving a component in mid-month.

Response: The definition of participation at § 250.79 and the minimally required data elements at § 250.82 have been amended to include the date of assignment to a component. We have not specified a methodology for counting activity that does not occur throughout a calendar month. We will include the methodology in an Action Transmittal.

Comment: Several commenters approved of the proposal that persons sanctioned from a component be excluded from the calculation. Conversely, other commenters suggested that a State be allowed to include such persons. They argued that the issue in any sanction is participation, that sanctions are never undertaken lightly, and that they represent a high level of agency investment in maintaining the integrity of the program and the agreements between the program and the participants.

Response: We do not agree that sanctioned individuals should be counted as participants. We agree that sanction activity tends to involve significant staff time and effort. A fair and effective sanctions system is important to the integrity of a program. However, sanction activity is not participation. The regulations continue to provide that a sanctioned person will not be included in the participation calculation for the month she is sanctioned and any subsequent months she is under sanction.

Comment: Several commenters suggested that the Department's methodology for the participation rate calculation be made available to the States, including indication of how automated records are sorted, the number of records received, and the reason(s) for our exclusion of any records.

Response: We intend to involve a joint State/Federal work group in the precise working out of the calculation. The procedures and definitions resulting from that effort will be issued in Action Transmittals.

Comment: One State said that measuring participation rates rather than program outcomes defied the intent of the Family Support Act.

Response: The Act specified the applicable participation rates for several fiscal years, the methodology for determining a State's ability to meet them, and the penalty to be assessed for failure to meet the applicable participation rate. The regulations restate these provisions.

AFDC-UP Participation Rates

Participation rates for the AFDC-Unemployed Parent (AFDC-UP) program have also been established by the Act and appear in the regulations at § 250.74(c)(1). AFDC-UP participation rate requirements go into effect in FY 1994, and the first penalty would be imposed in FY 1995.

While the statutory language refers to waiving the penalty for not meeting the participation rates, and sets the waiver criteria, the actual penalty is not defined in the Act. We believe it is appropriate that the penalty for failure to meet the AFDC-UP participation rates be a reduction to 50 percent in FFP. This penalty is identical to the penalty established in the Act for failure to meet the general participation rates. It is also consistent with the penalty established for failure to expend 55 percent of JOBS funds on targeted groups.

As an alternative, we considered applying the penalties cited under section 404 of the Social Security Act for failure to substantially comply with the provisions of section 402(a) of the Social Security Act. The appropriate penalties under this section include the withholding of all AFDC grant funds to a State or the withholding of certain funds limited to specific categories. However, we concluded that these penalties would be too harsh.

The Secretary may waive in full or in part any penalties applied to a State for not meeting the participation rates for the AFDC-UP program. The regulations at § 250.74(c)(3) provide the conditions under which a full or partial waiver may be granted.

Comment: One organization noted that section 403(1)(4)(D) of the Act provides for waiver of the penalty for failure to meet the applicable AFDC-UP participation standards if the State submits a proposal which is likely to achieve the required percentage of participants for the subsequent fiscal years. The commenter asked why the proposed regulations at § 250.74(c)(3)(iii), on the other hand, specified that the proposal must be for both the current and subsequent fiscal years.

Response: The penalty for failing to meet a particular participation rate is enforced prospectively, i.e., it results in reducing a State's match to 50 percent for the year following the year for which the rate is not met. The "following year" is what we interpret the term "current fiscal year" to mean because a decision regarding participation rates is only made after the end of a fiscal year. For the regular participation rate waivers, section 403(1)(3)(E) of the Act provides that a proposal in support of a waiver request must contain a plan to achieve the applicable participation rate "for the current fiscal year and the subsequent fiscal years * * *". In the "current fiscal year" the State is already subject to a requirement that it meet a higher participation rate for unemployed parents, so it is appropriate that a plan to meet the higher rates should cover not only subsequent years but also the year in which the State submits the proposal. Otherwise, the State may also fail to meet the requirement for the "current fiscal year" and thus be subject to new penalties. Thus, although the language of the Family Support Act did not include the term "current fiscal year" for the AFDC-UP program, we believe that it is correct to do so.

Activities Excluded from FFP (§ 250.75 of the Final Regulations)

There are certain activities for which Federal matching under the JOBS program is not available under any circumstance. These are identified in the regulations at § 250.75. In addition, there are certain costs unallowable for FFP that apply only to the community work experience program and alternative work experience programs included in an approved JOBS plan. The regulations at § 250.63(j) detail these prohibitions.

Union Dues

Comment: One commenter asked about the availability of FFP for union dues.

Response: Union dues may be matched as a JOBS supportive service if an individual, as a condition of her acceptance of unsubsidized employment, is required to pay such dues and if union dues are identified in a State's Supportive Services plan as allowable.

Self-initiated Education and Training

Comment: The regulations at § 250.75 provides that the costs of self-initiated education or training activities, specifically tuition, books, fees, room and board, are not available for Federal reimbursement. One State suggested that the Family Support Act only meant

for this prohibition to apply to tuition, but that FFP would be available for books, fees, room and board under JOBS, either as a component activity or a supportive service.

Response: Section 402(a)(19)(F)(iii) of the Act prohibits "the costs of such school or training * * *". We believe it reasonable to include tuition, books, fees, room and board in the definition of such "costs." Therefore, FFP is not available for the costs of these items for those individuals in approved self-initiated programs. Individuals in these programs, however, are eligible for child care, transportation, and other supportive services.

Comment: One State asked if FFP would be available for the costs of school or training for an individual in a self-initiated program for subsequent periods of enrollment, such as the next semester.

Response: We have reviewed the language of the Act and have determined that there is no flexibility regarding this issue. It does not provide for FFP for these costs at any time.

Comment: Several commenters recommended that the costs of self-initiated education or training be considered AFDC special needs and, therefore, be reimbursable under the AFDC program.

Response: The Family Support Act provides that such costs are not Federally reimbursable for purposes of section 403 of the Social Security Act. Section 403 contains the requirements for payments to States not just for the JOBS program, but for the entire AFDC program. Therefore, Federal reimbursement for these costs as AFDC special needs is also prohibited.

Comment: One State was concerned that the prohibition for Federal reimbursement for education and training activities under § 250.75 pertained to all JOBS participants enrolled in any education or training activity.

Response: The prohibition at § 250.75(a) pertains only to the costs of education and training for individuals in self-initiated programs. JOBS component activities may include education and training for which Federal reimbursement is available provided all other requirements of the program are met, e.g., that the educational activity is not already available on a non-reimbursable basis.

Comment: One State maintained that FFP for child care licensing fees for individuals in a child care related self-initiated training program should be available as a supportive service.

Response: Such a fee constitutes a one-time work related expense

necessary for accepting employment and therefore would be allowable as a supportive service under the JOBS program. However, we remind States that FFP is not generally allowable for child care licensing either under title IV-F or title IV-A as a child care administrative expenditure.

Construction

Comment: One State asked if the prohibition of FFP for construction included remodeling work. If so, it indicated that this would impose a hardship on States where building modifications are necessary to accommodate the increase in JOBS participants and increase in activities.

Response: The prohibition on construction does not pertain to costs for remodeling, rearranging, or altering facilities in order to make the area more appropriate for JOBS. However, under the provisions of OMB Circular A-87, Attachment B, Item C.2.c, "Rearrangements and alterations," such costs require approval of the Family Support Administration. OMB Circular A-87 is made applicable to the JOBS program under the regulations at 45 CFR 92.22.

Comment: One organization believed that the prohibition on the use of JOBS funds for construction extended to the costs of tools, equipment and materials used in training for construction trades jobs.

Response: JOBS funds may be used for expenses associated with a JOBS training activity. This provision prohibits the building of facilities only.

Financial Reports, Records, Statements and Audits (§ 250.76 of the Final Regulations)

Grants provided under the JOBS program of title IV-F are subject to the grant management regulations at Part 92. These regulations apply to federally-assisted programs that are not funded as open-ended entitlement programs, such as the AFDC program. (For the AFDC program, the grant regulations at Part 74 continue to apply.) The following provisions of Part 74 also apply to grants subject to Part 92: §§ 74.62(a), 74.173, 74.174(b), 74.304, 74.710, and 74.715.

In addition, all claims for Federal reimbursement must be supported by appropriate documentation. JOBS funds under title IV-F are subject to audit and financial and programmatic review. Claims for improper costs under the JOBS program will be subject to disallowance. Disallowance procedures for JOBS funds will be similar to the disallowance procedures for the AFDC program. States are reminded that expenditures of the JOBS program are

also subject to other HHS regulations, such as those at 45 CFR Part 95 and Part 16.

Costs Matchable as AFDC Payments (§ 250.77 of the Final Regulations)

Supplemental Payments to Avoid Net Loss of Cash Income

The Family Support Act specifies that costs incurred by the State for supplemental payments to families so that they do not experience a net loss of cash income, pursuant to § 250.35, shall be treated as title IV-A costs. However, they are not considered AFDC benefit payments for any purpose.

Payments to Employers Under the Work Supplementation Component

Payments to employers in the work supplementation program include part or all of an AFDC grant that has been diverted to cover part of the wages paid to an AFDC recipient participating in this program (see regulations at § 250.62(l)). Because these payments are AFDC benefit payments, they are available for Federal matching under the AFDC program.

Comment: One State noted that it currently made State-only supplemental payments to work supplementation program participants when the family would receive less disposable income than they would otherwise have received had they not participated in WSP. For example, a participant in WSP who is in retrospective budgeting has a permanent reduction in hours. Due to the time lag inherent in the retrospective budgeting system, a revised residual grant will not be issued until two months following the payment month. Therefore, a supplemental payment is also issued in the intervening months for the difference between the original residual and the revised residual. Would this supplemental payment now be eligible for FFP?

Response: The regulations at § 250.77(a) provides that supplemental AFDC payments can be made to a recipient's family so that the family does not experience a net loss of cash income from the recipient having been required by the State to accept a job. When such payments are made, a recipient may not claim good cause for not participating in the JOBS program.

The supplemental payments described by the commenter are of a different nature. They result from the State's application of the AFDC retrospective budgeting requirements. However, the regulations at § 250.62(g) permits a State to exempt from the retrospective requirements of Part 233 individuals who hold supplemented jobs. The State

should consider this option when determining AFDC payments to an individual participating in the work supplementation program.

Comment: For the unemployed parent program, this same State also issues supplemental payments in those cases where a principal earner, who is working more than 100 hours and whose wages normally exceed the maximum aid payment, is ill for one week and his wages drop below the maximum aid payment even though he continues to work more than 100 hours. Will these supplemental payments be eligible for match under the AFDC program?

Response: No. The current regulations at § 233.100 provide that an individual is eligible for AFDC-UP payments only if she is employed less than 100 hours a month. In the State's example, the supplemental payments would be made to an individual working more than 100 hours a month.

Comment: Several States indicated that they perceive some overlap between the activities of an AFDC eligibility or income maintenance worker in determining eligibility and informing a potential recipient or recipient of the requirements and opportunities under the JOBS program. They asked under what conditions FFP would be available under title IV-A for JOBS activities.

Response: We permit a State to claim under the AFDC program at 50 percent those costs related to JOBS orientation, determination of exemptions, and referral to the JOBS program when such activities are conducted by a title IV-A eligibility or income maintenance worker. The State may, of course, choose to claim these costs as title IV-F costs. However, when the activities of JOBS orientation and referral are conducted by JOBS staff, and not AFDC staff, these costs can only be claimed under title IV-F.

Definition of Participation for Enhanced FFP (§ 250.78 of the Final Regulations)

The NPRM included a definition of participation in § 250.1 that related only to participation requirements for qualifying for enhanced FFP under § 250.74(b). In the interest of avoiding any confusion with all other definitions of participation in this regulations, we have removed this material from § 250.1 and added a new § 250.78.

Participation Standard

Participation will be measured in terms of a 20 hour-per-week standard. However, we will not limit the number of individuals considered to be participating to those who are scheduled to participate in an activity for 20 or

more hours per week. Instead, we will consider as participants the largest number of individuals whose combined and averaged weekly hours equal or exceed 20. This means, for example, that an individual who participates in an activity for 30 hours per week will balance either one individual who participates for ten hours (counting as two participants), or two individuals who participate for 15 hours each (counting as three participants). This does not mean that four individuals each participating for five hours per week would be counted as one participant.

In terms of the overall requirement, we provide the following example. In 1995, when the participation standard will be 20 percent, there might be 1,000 non-exempt individuals in areas of the State covered by the JOBS program. At least 200 individuals must be satisfactorily participating in a given month, and their scheduled hours of participation must average 20 hours per week. If this standard were met, additional individuals participating in JOBS would not adversely affect the overall participation rate computation, even if their scheduled hours resulted in an overall average of less than 20 hours per week.

Activities Considered in Determining Participation Rates

In determining participation rates, activity will be counted for the number of hours scheduled. Activity in all components listed in the State JOBS plan, with the exception of Job Development and Job Placement, will qualify. In addition, participation in assessment and employability plan development will be counted, but only in one month for each period on AFDC.

We intend to develop a method to allow counting of participation for a portion of a calendar month. However, we have not yet determined the methodology for counting activity that does not occur throughout a calendar month. We considered a number of options, including prorating such activity, or converting partial month activity to a weekly average. These and other options would entail additional recordkeeping and reporting requirements. We have not included a specific methodology in the final regulations, but we intend to do so in an Action Transmittal.

Job entries will also be counted, in the following manner. For the month in which the job entry occurs, an individual will be considered to be participating for the number of hours required by the job. Hours of work will then be added to scheduled hours of

component activity, yielding an average weekly activity level for the individual. In addition, work in the following calendar month will also be counted. For either month, hours required by the job will be counted only to the extent the individual retains employment. Job entries will only be considered for those who were participating in a JOBS component, or receiving job development and job placement services during the month of the job entry, or the preceding calendar month.

Satisfactorily Participating

In setting the participation standard, we considered whether the 20 hour standard should be based on scheduled hours, or on hours of actual attendance. We have determined that for purposes of measuring participation rates, activity will be counted for the number of hours scheduled, if an individual has "satisfactorily participated." In determining whether an individual has satisfactorily participated, the State will apply the following standard: an individual who attends at least 75 percent of the scheduled hours of activity in a month will be counted for the number of hours scheduled; an individual who attends for less than 75 percent of scheduled hours will not be counted. This policy is included in the regulations at § 250.78(b)(5).

In establishing this policy, we considered many factors and weighed a number of options. Our primary goal was to reflect Congressional intent with regard to the participation rate requirement. At this point, the JOBS program does not require outcome measures or performance standards—the Statute requires the Department to recommend such standards by October, 1993. However, as a temporary measure of State performance, Congress did include the participation rate requirement, which expires after FY 1995. We continue to believe that Congress intended this interim participation measure to be meaningful, and therefore must go beyond mere assignment, and reflect actual participation in the assignment.

We were also concerned that measuring only assignments, rather than actual participation, would encourage States to emphasize assignment, with little monitoring of individual activity. There is some evidence from current work and training programs that where States do not monitor individual activity there is a significant no-show and drop-out rate. The JOBS program will be more likely to reduce dependency if individual participants actually attend component activity for which funds are

expended. The modest administrative costs should be more than offset by the improved effectiveness of the States' JOBS programs. In addition, States may be able to avoid situations where they are spending money to purchase slots for assignments which are then sporadically attended.

Further, we felt that States would choose to track individual activity for reasons other than the participation rate requirement. For example, attendance should be considered for purposes of determining whether an individual should be permitted to continue in an activity, or whether to continue to provide supportive services.

We were also concerned with the administrative burden on the State that tracking individual attendance for every participant would create, based on comment to the NPRM and discussions with State and local officials. We therefore did not set specific verification requirements, nor did we require that the State maintain a record of attendance for all participants. Instead, we require that attendance be verified for the cases sampled for purposes of the reporting requirements, as described in § 250.82 of the regulation. In practical terms, this means that States should require providers to maintain some record of attendance, in order to assure that individual participation will be credited in determining participation rates. However, records for all participants need not be kept by the IV-A agency. In addition, we will not require verification of attendance for individuals who enter employment. In order to receive credit for job entry, the State need only verify that an individual has remained employed until the end of the sample month.

We have purposely not included reference to excused absence, or good cause for failure to attend the assigned activity, in setting the 75 percent standard. While the States should consider such factors in providing continued services, and in determining whether an individual should be sanctioned, we believe that retaining records of excused or unexcused absence, or requiring providers to determine if good cause for failure to attend exists would be excessively burdensome.

For some component activities, providing attendance information will present no additional burden. For example, a participant assigned to attend high school will require no additional tracking, since attendance is regularly monitored. If such an individual case is sampled, the State would verify attendance with the school. However, for other activities, States will

need to negotiate with providers so that attendance records are maintained. For example, attendance records are often not kept for adult education classes, since this type of activity is typically voluntary. Although some providers may not agree to such requirements, others will react positively because they will be supportive of efforts to reduce the drop-out rate. We have therefore concluded that the benefits of tracking attendance outweigh the burdens.

We considered a number of other options in establishing the policy of satisfactorily participating. For example, we considered crediting only actual hours of attendance. We rejected this option for two reasons. First, it would require verification of actual attendance for all participants. Second, it could result in including individuals who were clearly not participating satisfactorily as participants. For example, an individual who attended only 10 hours per week of an assignment that called for 40 hours attendance could have been included as a participant.

We also considered requiring a higher percentage of attendance, or factoring in excused absences, in setting the 75 percent level. We believe that the 75 percent level is a good compromise between an unreasonably high standard, such as 100 percent, and a low standard that would negate the concept of meaningful participation.

We also considered permitting States to define satisfactorily participating. We did not choose this option because it would provide incentives to set low standards, and would not lead to uniform measurement of participation. A State with a strict definition of satisfactorily participating might be disadvantaged, and comparisons of State participation rates would be misleading.

Comment: Many commenters suggested that intake activities such as assessment, employability development planning, and orientation should be included, since these often involve significant client activity, and represent a front-end investment in barrier identification that is central to the goal of reducing long-term dependency. Some commenters suggested that these intake activities count without regard to duration; some suggested limits of one or two months; one suggested that a credit of 3 hours per client be permitted, such that 7 clients would count for the equivalent of one week of participation.

Response: We have carefully considered the arguments made by commenters and have decided to modify our definition of participation. These activities will count for the purposes of calculating participation rates for the

number of hours of the activity. However, because these are preliminary activities which lead to component participation, we will allow them to be counted for an individual in only one month for each period on AFDC.

Comment: Several commenters suggested inclusion of all component activities. This included counting Job Development and Placement, and removing the "full-time" requirement for OJT and Work Supplementation. The reasons offered included the complexity of tracking different hours requirements for different components. The full-time requirement for OJT and Work Supplementation might induce a State to not make a part-time assignment because of the hours requirement for participation.

Response: The final regulations remove the differing hours requirements among the various components, but we have not included job development and job placement in the participation calculation. We continue to believe that job development and placement is primarily an agency activity. Many commenters who wanted it counted as participation described activities that more properly fit under individual or group job search, one of the optional components. Such activities would count as participation if the State has individual and group job search as one of its optional components. However, entry to employment from job development and job placement counts as participation, as described § 250.78.

Comment: Many commenters suggested that the 20 hours per week requirement is unreasonable and unworkable since most component activities are not designed for that standard. Commenters suggested that a State would increase the cost of a component to raise it to the level of 20 hours instead of, say 16, thereby wasting training and child care resources. Other commenters suggested that States would feel compelled to assign "filler" activity to meet the 20 hours requirement, and that such assignments would similarly waste training, child care and transportation costs. Several commenters suggested that if an hours requirement were retained, it rely either on the Unemployed Parent requirement of 16 hours per week already in the Act, or on the Food Stamp requirement of 12 hours per month.

Response: We have amended the regulations to provide for the combining and averaging of the hours of those scheduled to participate. This provision will provide States with substantially greater flexibility, while assuring that States provide meaningful activities for

reducing long-term welfare dependency. The clear guidance of the legislative history is that participation should be significant and not be permitted to become a token effort.

Comment: Several commenters suggested that the difficulty of tracking actual attendance in lieu of hours scheduled would be both costly and a poor use of staff time.

Response: It was never our intention to require States to track actual attendance hours. Therefore, we have clarified the regulations to indicate that we will count hours scheduled as long as the individual is satisfactorily participating in the activity; however, States are required to verify attendance for cases in the sample, as described in § 250.80.

Comment: Several commenters suggested that in lieu of counting only those clients whose participation in a month was equivalent to 20 hours per week, we permit all participation in qualifying activity to be averaged to either the same 20 hour standard (one commenter) or to some lesser hour requirement (two other commenters).

Response: We are persuaded that a combined and averaging approach would provide States with greater flexibility in working with the broad range of recipients within their caseloads. We have, therefore, kept the 20 hours per week standard, amended as follows: at least the required percentage of the participants must average 20 hours per week of scheduled activity for the month. For example, for each person scheduled for 40 hours per week, the State could count an additional 5 persons who each had been scheduled for 16 hours per week, or an additional 2 persons who each had been scheduled for 10 hours per week. However, in no case can an individual with no hours of participation count as a participant because the Statute specifically prohibits counting mere registration as participation.

Comment: Several commenters suggested that we include activity in certain supportive services, particularly those related to drug and alcohol abuse and mental health services, in the definition of participation.

Response: We carefully considered this possibility for the NPRM. Although such services may be important in allowing certain individuals to become prepared to participate, we have not amended the regulations to include those receiving supportive services such as drug and alcohol abuse remediation, but not otherwise participating in a JOBS activity, in calculating participation rates. We do not believe that Congress intended such services to

constitute participation, since they are not mentioned in the Statute.

Comment: Several commenters suggested counting certain kinds of time that were not direct participation in a component as part of the hours requirement. Among these were transportation time, including time to transport children to and from child care.

Response: While we agree that time spent on a daily basis in commuting is necessary, it is not participation, just as commuting to and from work is not work.

Comment: Several commenters suggested counting educational activities on a year-round basis, or counting semester or quarter breaks, or counting summers even though courses were not being taken during the summer. Several commenters suggested providing for a "homework" allowance in addition to the actual scheduled hours in an educational component.

Response: We have amended the regulations to provide that educational activities count for the amount of time scheduled, without regard to the "making satisfactory progress" standard. We do not include a "homework" time allowance. While we recognize that some educational programs do assign homework, it would be too difficult to account for this administratively since there are so many different types of educational activities.

We do believe that scheduled breaks during the school year, including time between semesters, should be counted as participation, and the regulations now provide that an individual in an educational activity will be considered to be participating for her scheduled hours during scheduled breaks within the school year. We have also provided that if an individual is enrolled and attending high school for the last semester of a school year and is expected to return to high school for the next school year, then she shall be counted as a participant for the break between school years. The average number of hours per week for the break between school years shall be the scheduled average weekly attendance level for the participant in the previous school year. We make a distinction between attendance at high school and other kinds of educational activities (particularly postsecondary education) because other educational activities are often offered during the summer allowing the participant to continue the process of becoming self-sufficient.

Comment: Several commenters suggested the inclusion of a credit for job entry, on the ground that exclusion of such a credit inappropriately de-

emphasizes the goal of employment, and would induce a State to purposely defer job entry until the first of the succeeding month.

Response: We agree that certain job entries should be included in a State's count of participants. Therefore, we have amended the final regulations to count job entry from a component or activity either in the month participation in the component or activity ends or in the next calendar month. If the job entry occurs in the month component activity ends, we will average the scheduled hours of participation in the component for the portion of the month prior to job entry with the scheduled number of hours of employment for the remainder of the month. If job entry occurs in the subsequent month, we will count the average scheduled weekly hours of work as participation. For all job entries, we will count the average scheduled weekly hours of work for one additional month as participation. The final regulations provide participation credit for job entries from a component or through job development and job placement activities.

Comment: A few commenters suggested that participation credit be given for any recipient employed part-time, or employed more than 30 hours per week.

Response: We have not amended the regulations to accommodate this suggestion because the central issue is participation in the State's JOBS program. Job retention by AFDC recipients, whether part-time or full-time, is a desirable outcome, but the participation rate language of the Act does not contemplate the ongoing inclusion of persons no longer participating.

Comment: Some commenters suggested deleting all specific hours requirements, since they found no statutory basis for establishing such requirements.

Response: The Act provides, at section 403(l)(3)(D), that a State will establish requirements, "consistent with regulations of the Secretary." We continue to believe that it is well within the authority of the Secretary and the provisions of the Act for the regulations to define, in effect, an hours-based benchmark for significant participation. The fundamental basis for minimal standards is that the Secretary is required by the Act to allow or disallow enhanced FFP to States based on whether the participation rates established in the Act are met. We believe the absence of a federally set minimum would lead to non-comparable rates of participation among the States,

and to the inclusion of token activities as participation.

Comment: Several commenters suggested that the standard be based solely on each individual's employability plan.

Response: We continue to believe that participation should be significant, and that Congress so intended. We note in this regard the colloquy among Senators Dole, Bentsen and Moynihan (134 Cong. Rec. S7970-1) regarding congressional intent that participation in JOBS be meaningful. In the absence of a Federal standard, we believe that relying on the employability plan as the standard would allow States to include token activities as participation. Proposing disallowances on the basis of non-comparable data among the States is not evidently contemplated by the Act. Permitting a "least common denominator" definition of participation to emerge is not responsive to the congressional indication that participation be "significant."

Subpart I—Uniform Data Collection Requirements

Uniform Data Collection Requirements (§ 250.80 of the Final Regulations)

The Family Support Act imposes substantial reporting requirements related to the JOBS program and its attendant child care provisions. Section 487(b) of the Social Security Act contains a minimum set of uniform reporting requirements that may be augmented as the Secretary determines. Section 403(e) requires, among other data elements, that a State provide information on the use of child care by AFDC recipients.

Comment: Many commenters suggested that the reporting requirements were drastically expanded beyond the requirements of the Act creating excessive administrative burdens and diverting funds from provision of services to reporting.

Response: With the exception of data elements needed to determine if a State qualifies for enhanced FFP, commenters cited no particular data elements as being beyond the requirements of the Act. The final regulations contain some additional data elements and some changes to those initially proposed. Most of the required data elements are directly related to an explicit or implicit statutory requirement. The rationale for these is discussed below.

Implicit Data Requirements

Certain reporting requirements are implicit because enhanced FFP is based on meeting certain levels of participation and on spending at least 55

percent of the State's JOBS funds for specified target groups.

Comment: One commenter suggested that implicit reporting requirements to determine whether a State qualifies for enhanced FFP were beyond any provision of the Family Support Act.

Response: The language of section 487(b) expressly provides that the uniform reporting requirements may include " * * * such other matters as the Secretary may determine." We find reporting requirements implicit in the participation and target group provisions of the Act. We believe it would be unreasonable and infeasible to calculate a State's eligibility for enhanced FFP in the absence of data by which to make the percentage determinations required by the Act. We have not amended the regulations.

Required Reporting

The final regulations provide for three kinds of reporting. First, it requires that the State submit electronically on a monthly basis a sample of unaggregated case records of JOBS participants scheduled to participate in a component, actively engaged in assessment or employability planning, or who had a job entry in the sample month or the month previous to the sample month. The sample must include a minimal set of data as prescribed in § 250.82. The case records must be identified by a federally described, but State supplied, substitute for the Social Security Number. A State will be required to maintain in its files a link between the identifier and the Social Security Number.

The sample in a State must be of sufficient size to provide accurate data at the State level, plus or minus two percentage points for an 0.2 attribute, at a 95 percent confidence level. This results in a maximum sample size of 1,537 cases annually for a State with a large JOBS program.

Second, the State must submit aggregate reports on a quarterly basis of the number of non-exempt AFDC recipients in political subdivisions of the State in which JOBS is operated, plus any additional aggregate reports necessary to fulfill reporting requirements not met by the sample.

Third, in lieu of a cost tracking system that would identify all title IV-F funds spent on each individual member of the State's target population, a State may submit an annually updated table of average total unit cost per component. The total unit cost per component must include associated administrative and case management costs. The table must also include an aggregate unit cost for a precomponent activity (assessment and

related testing, and employability development planning) that includes associated administrative and case management costs. The State's sample of unaggregated case record data will be used in conjunction with the State's table of costs to determine whether the State has met the 55 percent requirement. In the same way we will develop the amounts spent per family by component and activity, as required by section 487(b) of the Act.

Sample Reporting

We developed this approach as an alternative to requiring periodic aggregate, hard-copy reporting. We require this sample in lieu of aggregate reporting because it will enable States and the Department to meet statutory reporting requirements, provide more useful information to Congress and the Executive Branch of the Federal government, and be less burdensome to States.

The regulations provide that any State may submit 100 percent of its unaggregated case records, rather than develop a sample that would approach the universe in order to achieve the required levels of precision.

Comment: Several commenters suggested that too large a sample would be required to meet the proposed precision and confidence levels, and contended that the workload involved in the proposed JOBS sample would be far in excess of the value of the precision obtained.

Response: We agree and have amended the regulations to require a sample that will yield a precision of plus-or-minus 2 percent for an 0.2 attribute at a 95 percent level of confidence. We note that this change should reduce a State's requisite sample size by a factor of six. On review, we concluded that a precision of plus-or-minus one percent would provide a larger sample of case records than is necessary.

Comment: Several States commented that their smaller AFDC populations made the option of submitting the universe in lieu of a sample attractive, and they requested that the option be retained in the final regulations.

Response: The regulations clarify and retain the option.

Comment: A few States commented that electronic submission of data would be difficult without significant systems support and technical assistance. Several other States commented that this would present no problem, and that they appreciated the option.

Response: We are providing systems support as described in § 250.81. We

will be providing both technical assistance and technology transfers as the circumstances warrant.

Comment: Several States commented that they would prefer to send hard-copy data in tables of federally prescribed format, rather than unaggregated case record data. They expressed concern about loss of control of use of the data, how the Department could use the data for unspecified purposes, and how they believed unaggregated data contravened congressional intent. Several other States commented that the submission of unaggregated case record data freed them from the tedious complexities of compiling derivative data and assembling reports in federally prescribed formats.

Response: We continue to believe that an electronically drawn sample of unaggregated case record data, transmitted to the Department by disk, tape or data transmission greatly reduces the burden on the States to meet the Federal reporting requirements. In addition, the data will enable us to provide much greater information to Congress and the Executive Branch. We anticipate being significantly more responsive to governmental needs and to enhance public understanding of the program.

Outcomes Data

Comment: Numerous commenters favored the addition of outcome data to the case record requirements, while two commenters opposed their inclusion at this time. The comments in favor of outcomes expressed three broad sentiments. One was a perceived excessive emphasis on participation, which would drive program operations towards the meeting of quotas not necessarily related to outcomes connected to client self-sufficiency. A second was the general belief that outcomes should be reported, either because they will be better indicators of program impact, or because the States anticipate there will ultimately be federally required outcome data, and States should have the benefit of being able to include the basic data elements in their automated systems now. The third was a small group of States that went beyond the general suggestion, and submitted extensive suggestions of particular outcome measures.

Response: We have amended the regulations at § 250.82 to require certain outcome data concerning job entry. We include these data since employment as a means to self-sufficiency and independence from welfare is the objective of the JOBS program. We also understand States' concern that they be

given sufficient indication at the program's inception to include outcome data in the design or modification of their automated systems, rather than face a future requirement for potentially costly and inconvenient systems modifications, and the possible necessity to reconstruct data on outcomes. However, we are not currently in a position to specify data elements that might relate to the performance standards specified in the Statute. Nevertheless, States are permitted to add data elements they deem appropriate for State functions as long as Federal data requirements are met.

Comment: Two commenters suggested that the potential for misinterpretation of outcomes data was so great that while the need was acknowledged, they argued for deferral. One State suggested deferral at least until Federal and State staffs can review and assess the results of the studies called for in section 203 of the Statute. Another State argued that gross outcomes would be inherently misleading, since the only meaningful measure of program impact is the amount of net impact from the program, as compared to the levels of outcomes that would have occurred without benefit of the program's interventions.

Response: We agree with the final comment and have decided to maintain the distinction between the tallying of outcomes—particularly gross outcomes, even when limited to those that follow directly from component participation—and the legislative mandate to develop performance standards and propose them to the appropriate committees of the Congress. Many of the suggested outcomes data were in fact proposals for performance measures rather than outcomes data. We will retain these suggestions for our later work on performance standards.

Comment: One commenter noted that the Statute, while requiring a good deal of specific data, is silent about any outcomes data requirement. Another commenter indicated that the Congress was fully aware of the extensive data reporting requirements that they placed in the Statute, yet suggested that were Congress to look favorably on any expansion of the specified data requirements, it would be in the area of outcomes.

Response: We have amended the regulations to require the inclusion of outcomes data related to job entry from or following participation, in the case record data. We have noted elsewhere that we will count the hours of work towards a State's participation rate if the job entry is directly from a component (including job development

or job placement) or follows component participation by no more than 31 calendar days. To be consistent, we are restricting the tally of job entries that will be regarded as outcomes of the program. Persons who are assigned to JOBS but are never involved in a component by the State JOBS program and find jobs on their own will not be included in the tally of "JOBS outcomes."

State Data Systems Options (§ 250.81 of the Final Regulations)

Given the large number of individuals who may participate in the JOBS program and the detailed nature of the subcategories of data required by the Statute, we believe that it is unlikely that a State can either operate its program effectively or meet the minimum requirements in the Statute without an automated client-based information system. Therefore, § 250.81 permits various rates of FFP for different parts of the system needed to operate the JOBS program effectively. For the sake of distinguishing this system from all others in a State's welfare data system, we refer here and in the definitions in § 250.1, to a State's JOBS Automated System, or JAS.

All requirements at § 95.601 *et seq.*, and § 205.35 through § 250.38 must be met with regard to any funding for a State's JAS.

Comment: Numerous commenters were concerned that the NPRM was silent on any phase-in period, and that States might consequently be held responsible for a fully functioning JAS at the time the State converted to JOBS.

Response: We have amended the regulations to indicate that States will have a phase-in period available until at least October 1, 1991. We have developed and submitted to OMB for clearance interim hard-copy reporting forms to meet the minimum reporting requirements for determining eligibility for enhanced FFP, and for the requirements of section 487(b) and 403(e) of the Act. These reports will apply for FY 1990 and FY 1991 and may be extended if the situation warrants.

Title IV-F funding at 50 percent FFP is available for a State's JAS. Title IV-A funding, also at 50 percent FFP, is available for the interface between a State's IV-A system and its JAS, if the State's IV-A system is a non-FAMIS system. For the interface between a State's JAS and a FAMIS IV-A system, title IV-A FFP is available at 90 percent. A State may, of course, use the portion of its JOBS entitlement which is matched at 90% (the WIN or WIN Demo

share based on FY 1987) for systems development.

Comment: Several commenters suggested that the exclusion of a State's JAS from 90 percent title IV-A funding was arbitrary and an abuse of discretion. Others commented that the JAS was fully as worthy of enhanced (i.e., 90 percent) funding as other systems that had qualified in the past. One State indicated it could not afford to develop a JAS without benefit of 90 percent funding.

Response: After careful review of the law and legislative history, we have not amended the regulations regarding enhanced FFP for a State's JAS, as there is no statutory authority for it. Enhanced FAMIS matching is only available pursuant to sections 403(a)(3)(B) and 402(a)(30) of the Act to develop title IV-A systems. We have allowed FAMIS funding for new or revised systems when they have met the functional requirement of section 402(a)(30) of the Act, for systems "under this part." This part is part A. The JOBS program is contained in part F. There is no mention in that part or anywhere in the Statute of enhanced funding for JOBS systems. Congress has specifically authorized enhanced funding for systems in other programs, and dealt with enhanced funding for IV-D systems in the Family Support Act itself.

We define the interface of an automated JOBS program with the title IV-A FAMIS system, for verification of eligibility and reconciliation of data, to include planning, development and implementation of title IV-A sub-systems to: (1) manage information on eligibility factors or target group membership; (2) effect notifications and referrals including non-cooperation; (3) check records of applicants and recipients on a periodic basis with other agencies to verify continued eligibility; and (4) notify appropriate officials when a recipient ceases to be eligible.

Comment: One State commented that the definitions of the terms used to describe the interface needed clarification.

Response: We agree that much clarification and elaboration will be required, but we do not agree that this should be attempted in regulations. We have met and will continue to meet with State staff on the development of design specifications for both JAS and the JAS interface with a State's FAMIS or other IV-A system. The products of that work will be provided to the States in Action Transmittals and technical manuals.

Required Case Record Data (§ 250.82 of the Final Regulations)

This section contains the minimum requirements for the case record that will permit us to derive much of the data required by the Statute and the Act as described in § 250.80. We specify this minimum, in part, to support the proposed submission of a sample of unaggregated case record data. However, we believe this approach will also assist States to record some of the minimum data necessary to operate the JOBS program effectively. States may add additional data elements they deem appropriate for these purposes as long as the Federal requirements are met.

In addition to the inclusion of limited outcomes data described in § 250.80, we have amended the content of the minimally required data where, upon analysis, we found that data required by provisions of the Statute could not be derived from the data set as originally described. For instance, we had not originally included the date of birth of the youngest child; this has been added to enable capturing one of the target group populations specified in the Act. We have also added an identifier to indicate that the individual satisfactorily participated in the JOBS program, as described in § 250.78(b)(5). The case record data section has been renumbered; the new identifier is at § 250.82(b)(12).

Comment: A few States commented that it seems infeasible to record the data only for the sample of cases, since it would not be known in advance which cases would be in the sample. These States suggested that the data be recorded for all cases.

Response: We agree that it will not be known in advance which cases will be in the sample, and that data should be recorded for all cases. However, the determination that an individual has satisfactorily participated for participation rate purposes, in accordance with § 250.78(b)(5), cannot be made until the end of the month, since the number of hours of actual attendance will not be known until the end of the month. Therefore, a State may choose to collect this data only on sample cases.

Comment: A number of commenters suggested additions or clarifications to the items proposed. These suggestions included: the addition of a code for applicant status and the addition of a code for sanction.

Response: Applicant status was a separate element in the NPRM and is included in program status in the final regulations. We have removed several proposed fields and added fields in

which to code the starting and ending dates for pre-component activity, component activity, and job entry. We have not included a data element for sanction since sanctioned individuals are not included in any calculation.

Comment: A few commenters suggested the addition of codes for various demographics.

Response: The regulations at § 250.82 require some demographic data to be coded as part of the case record data. We expect that any additional demographic data that from time to time may be required will be available from the IV-A data base if they are not part of a State's JOBS data base.

Comment: A few commenters requested clarification of whether the establishment of a literacy level, particularly through testing, was effectively required by the presence of a data element.

Response: We have clarified in the final regulations that testing is optional, but that where the State elects that option, the recording of the result in the case record is required.

Comment: Several commenters requested clarification of how to deal with persons entering a component in mid-month, and how to record persons scheduled for more than one component or activity at a time.

Response: We have amended the regulations to provide for the beginning and ending dates of participation in pre-component activity and components, which will allow for consideration of partial month participation. Once the methodology for computing credit for partial month participation is developed, it will be disseminated in an Action Transmittal.

Comment: Several States commented that both Federal and State interests in the JOBS program would be well served by State involvement in the development and refinement of the actual data element definitions and reporting instructions and manuals.

Response: We fully agree. We have initiated steps to form working groups both for design and content specifications for JAS modules, and for data element definitions and reporting instructions. We will also involve State staff in the design and specifications for electronic transfer of data from the States to the Department.

Child Care Reporting

We received a number of comments about the uniform reporting requirements for child care (found at § 255.6). We decided to answer them here because of the substantial overlap

between the JOBS and supportive services systems.

Comment: Two commenters requested clarification of specific child care data items, such as a definition of "length of time assisted." One suggested that "types" of family be defined to mean whether the family was receiving cash assistance or not.

Response: We do not believe it appropriate to specify the child care data reporting requirements in more detail under regulations. Because these requirements under the Statute are much less extensive and detailed than the JOBS requirements, we do not see the need for the same type of elaborate data collection system as is needed for meeting the JOBS requirements. Therefore, the regulations at Part 255 are much less detailed. Furthermore, the level of detail suggested by the commenters (i.e., in terms of precisely defining data elements) is more appropriate to include in reporting instructions, and we are taking these comments into consideration in developing instructions.

In specifying the types of families for which data will be collected, consistency with the JOBS reporting requirements and the potential burden on States will be primary considerations. However, by law, we must collect data that distinguish between recipients and non-recipients, as well as between those who have earnings and those who do not have earnings.

Comment: Two commenters wanted us to require States to report or document additional child care information, such as receipt of transitional benefits; reasons for non-receipt of child care or other services; dates when specific information was provided and specific services were received; numbers requesting or needing services; numbers not receiving services; number of children receiving care, by age of child and type of care; amounts spent by type; and methods used to provide care.

Response: We have amended the regulations at § 250.82 to include some of these data in the requirements for the JOBS case record. The additions include information on receipt of child care and other supportive services. The value of data on reason for non-receipt of care has been substantially reduced because of the changes to Part 255 regarding requirements to provide child care and supportive services. The Supportive Services plan will provide information on the methods used to provide services, and local market rates will provide information on costs for different types of child care.

Consistent with our approach under JOBS, and in the interest of limiting the reporting burden on States, we tried not to go substantially beyond the child care reporting requirements specified in the Statute. However, we did decide to add one additional item—"type of paid child care arrangements." This information will be especially helpful in showing how States are implementing the new child care provisions. The amendment is incorporated in § 255.6.

Comment: One State opposed the requirement for documentation of child care data in the case record because such data is not related to the AFDC budget. It argued that data sufficient to establish an audit trail should be sufficient.

Response: Information sufficient to establish an audit trail is required for financial purposes. However, that information does not address the specific uniform reporting requirements at section 403(e) of the Act. Also, the argument of relationship to the AFDC budget is not relevant. Normally, child care assistance information would not be part of the AFDC case record; rather, it would be part of the JOBS case record or separate IV-A records on child care.

Comment: Two States wanted us to delay reporting requirements. One suggested that individual-based data not be required immediately. Rather, it wanted States to be allowed to include in their Supportive Services plan a description of what data were available, together with its expectations about dates when all reporting requirements would be met.

Response: The Statute does not provide delayed effective dates for the reporting provisions. However, we recognize that many States will need time to set up automated systems which will be capable of providing detailed case record information. Therefore, we have developed interim reporting forms, based on specific statutory requirements, which will be in effect upon OMB approval until more elaborate systems can be put into place.

Comment: One commenter wanted us to specify that reporting of transitional child care assistance would cover only State contributions, and not recipient contributions.

Response: Assistance will be defined more specifically in the reporting instructions. Of course, our primary interest lies in child care assistance actually paid by the State IV-A agency. However, we also need information on recipient contributions paid directly to the State because such contributions could require adjustments to claims for Federal matching. Furthermore, as we indicate in our discussions about fee

payment systems in the preamble to Part 256, the State must monitor and enforce contributions due directly to providers. If our experience with these requirements indicates that such data would be necessary for the proper administration of the program, requirements may be established in the future.

Subpart J—Operation of Jobs Programs by Indian Tribes and Alaska Native Organizations

Scope and Purpose (§ 250.90 of the Final Regulations)

The Statute provides that Indian Tribes and Alaska Native organizations may apply to the Secretary by April 13, 1989 for direct funding to conduct a JOBS program. Tribal (refers to both Indian Tribes and Alaska Native organizations) groups had to apply by this date in order to receive direct JOBS funding in any future year.

The Department issued initial application guidelines (FSA-AT-89-11) on February 24, 1989, to officials of federally recognized Indian Tribes and Alaska Native organizations. Based on comments received from Tribal leaders, requesting that the April 13, 1989 application not be treated as a final document, and on the fact that we were still developing Federal policy at the time these guidelines were issued, we advised Tribal applicants that we would not disapprove their applications based on their initial submittal. We issued further guidelines (FSA-AT-89-14) on April 27, 1989 to specify final documentation required in order to permit Tribal grantees to begin their JOBS programs prior to the issuance of final regulations.

Eligible Indian Tribe and Alaska Native Organization Grantees (§ 250.91 of the Final Regulations)

The regulations clarify the general eligibility requirements of the Act concerning Indian Tribes. They reflect congressional intent that an Indian Tribe must be recognized by the Federal Government as eligible to receive services from the Bureau of Indian Affairs (BIA) in order to be eligible for the JOBS program. Specifically, Report 100-37 of the Senate Committee on Finance (p. 39) states that " * * * an Indian tribe is any tribe, band, nation, or other organized group or community of Indians * * * that is recognized by the Federal government as eligible for services from the Bureau of Indian Affairs and is located on a reservation * * *."

In addition, consortia or Tribal organizations representing eligible Tribes may operate a JOBS program if they meet certain conditions. These conditions provide that such consortia or organizations have the managerial and administrative capacity to operate the program and have received documented authority from the participating Tribes to conduct the program on their behalf.

Comment: Three commenters stated that a consortium should not be unnecessarily limited by "geographic proximity." They proposed that we should take into account similar governmental status, organizational structure, population characteristics and existing consortium arrangements. One State advised that it has Tribal consortia for Administration of Aging programs, WIC nutrition programs and JTPA that are not based on contiguous geographic boundaries and have a long history of operating very effectively.

Response: The regulations do not limit a consortium or Tribe to operating a JOBS program on behalf of eligible Tribes which are geographically contiguous to each other. We will take into account existing consortium arrangements. By requiring geographic proximity, we intend to preclude consortia from forming to serve Tribes that are scattered throughout the country.

Selection Criteria for Eligible Alaska Native Organizations (§ 250.92 of the Final Regulations)

The Act is very specific about the program eligibility of Alaska Native organizations. It limits Departmental approval to only one application from an Alaska Native organization for each of the 12 geographical regions. These regulations establish criteria which the Department will use to designate the Alaska Native organization grantee. The criteria are very similar to those used by JTPA in designating Native American grantees for its program. However, since under the JOBS program the Alaska Native grantee must serve all eligible Native Alaskans residing in the region in which the grantee is located, we have specifically required that the grantee demonstrate either that it has previous experience in operating regionwide programs or that it can establish the capability to effectively administer the program throughout the region.

Funding Formula (§ 250.93 of the Final Regulations)

The Act specifies that JOBS funding for an Indian Tribe is based on the number of adult members of the Tribe receiving AFDC compared to the total

number of adult AFDC recipients in the State. The formula for Alaska Native organizations is based on the number of adult Alaska Natives receiving AFDC who reside within the boundaries of the region which the Alaska Native organization represents compared to the total number of adult AFDC recipients in the State of Alaska.

Since the Act does not establish a designated geographical service area for Tribes, as it does for Alaska Native organizations, the regulations define such an area. The Tribe will receive JOBS funds based on the number of adult members of the Tribe receiving AFDC who reside in the designated service area as compared to the total number of adult AFDC recipients in the State. As defined, the designated area creates a manageable program service area which includes Tribal members who could realistically be served by the Tribe. The State IV-A agency will be expected to provide JOBS services to Tribal recipients outside of the designated area. A designated service area concept is used in various other programs such as JTPA, the Community Services Block Grant and those under the BIA.

The State IV-A agency and Tribes or organizations have a mutual responsibility to share all available information so a funding level can be calculated. Accordingly, the regulations specify that the State IV-A agency and the Tribe or organization must exchange available information on adult Tribal AFDC recipients needed to determine the estimated number of the eligible Tribal recipients and to define the designated service area, if other than the reservation or trust lands, as appropriate. This requirement reflects the fact that the State IV-A agency is the most appropriate source of data relating to AFDC recipient status. However, many State IV-A agencies cannot identify individuals in their caseload by Tribal affiliation and thus will probably need membership or residence information from Tribes or organizations to verify Tribal AFDC recipient status.

We recognize that the State IV-A agency and Indian Tribes or Alaska Native organizations may have difficulty developing data on adult Tribal AFDC recipients, especially using the definition of adult recipient contained in the Act (i.e., an individual other than a dependent child, including a minor custodial parent of another dependent child, who is receiving AFDC).

Because of these data deficiencies, we strongly encourage Indian Tribes or Alaska Native organizations and State IV-A agency to enter into agreements

which establish population estimates, as well as service area definitions, as appropriate. If a State IV-A agency and Tribe or organization cannot agree on the number of Tribal eligible recipients or the designated service area, the Department will, in consultation with the Tribe or organization and the State IV-A agency, make the final determination.

Non-Tribal recipients in a designated area are subject to the requirements of the State's JOBS program. However, a State IV-A agency may through contract (or other referral arrangement) authorize an Indian Tribe grantee to serve non-Tribal members residing in the designated service area. The State IV-A agency may only delegate to an Indian Tribe grantee those functions which do not involve agency discretionary judgment, as discussed in § 250.10 and related sections of the preamble.

Comment: Several commenters proposed that we use the current definition and procedures contained in the BIA regulations at 25 CFR 20.1(r) which define "near reservation." Another commenter asked that we define "reasonably accessible" as it is used in § 250.93(a)(1) which defines designated service area. In this regard, questions were raised as to whether a Tribe can exclude from the designated service area a portion of the reservation and whether Tribes can redefine the service area at a later date.

Response: We have amended the regulations to specify that the designated service area can not extend to areas or communities which are not designated by the Commissioner of Indian Affairs as "near reservation" as defined at 25 CFR 20.1(r). We chose this definition because the BIA service areas are well established and recognized by other Federal programs and States and Tribes, and we believe that it is an acceptable standard for JOBS purposes. We have further revised the regulations to allow a Tribe to exclude from its designated service area a portion of the reservation which is remote from that part of the reservation where JOBS services are provided. This will permit greater participation in JOBS by Tribal members living in the excluded area of the reservation to whom a State JOBS program is available. A Tribe may redefine the designated service area by submitting an amendment to the application as provided at § 250.97(d).

Comment: A number of commenters proposed that regulations at § 250.93(a)(1) which describe the JOBS funding formula be changed from "the number of adult members of the Indian Tribe" to "the number of Native

American adults." This would permit Tribes or organizations to serve all Indians receiving AFDC and living in the designated service area. One State that commented suggested that this would be better than contracting with the Tribe to serve non-Tribal members because of the necessity of running two different programs. Furthermore, it would be consistent with the approach taken by JTPA and BIA Tribally-contracted programs. Another commenter stated that there was nothing in the regulations which specifies that a State agency may contract with a Tribe to serve non-Tribal members.

Response: The Secretary has no authority to provide direct funding to a Tribe on behalf of an individual who is not a member of the Tribe. The statutory language and legislative history specify that the amount of funds provided to an Indian Tribe or Alaska Native organization is based on the "number of adult recipients of such tribe" receiving AFDC. However, we have defined Tribal member in the regulations at § 250.93(a)(3) to mean a person who is enrolled in, or certified as meeting the membership requirements by the designated official of, that Indian Tribe or Alaska Native organization. Under regulations at § 250.13, however, States may through contract (or other referral arrangement) authorize a Tribal grantee to provide services under JOBS to non-Tribal members living in the designated service area. Also, the Tribe can serve non-Tribal members on a voluntary basis.

Comment: One commenter asked whether AFDC applicants and recipients can be required as a condition of eligibility to provide Tribal status on their applications.

Response: We are amending § 250.93 to provide that a State in which there is a Tribal JOBS program in operation or a pending application may require applicants and recipients living in the designated service area to provide Tribal membership status as a condition of eligibility for AFDC under certain conditions.

There are programmatic reasons why this is necessary. However, in order that the State IV-A agency exercise care in requesting this information, Tribal status may only be required under the following conditions: (1) the information is necessary either to determine the number of adult members of an Indian Tribe or Alaska Native organization who receive AFDC, or to help determine whether such individual is to be served by a State or Tribal JOBS program; (2) upon requesting Tribal status, the State must explain the reason this information is requested and refer an individual who

is a Tribal member to the Tribal JOBS program for further information; and (3) such information is only requested in those areas in which there is a Tribal JOBS program or an application pending and where State JOBS programs are also in operation; and (4) the information requested must relate only to membership in those Indian Tribes or Alaska Native organizations operating or expected to operate a JOBS program in the area.

Comment: One commenter was concerned that if the State serves or contracts with the Tribe to serve non-Tribal members it would create the potential for inequitable treatment because of the variation in the two programs. The commenter asked whether the State would be liable for deficiencies if the State program requirements were not met.

Response: While the State may contract with the Tribe or organization to serve non-Tribal members, the State is not required to ensure identical services to non-Tribal members living in the designated service area. However, the State must assure that the services provided through the Tribal program are appropriate in terms of the assigned individual's assessment and employability plan. If a State contracts with the Tribe or organization to serve non-Tribal members, it may limit the contract to the same services as are provided for Tribal members but it must retain responsibility for ensuring that the Tribe or organization fulfill the terms of the contract. Any differences in program services should be identified in the State plan.

Comment: One commenter asked whether a member of a Tribe that administers a JOBS program is considered a non-Tribal member if the individual lives on a reservation with another Tribe. The commenter also asked whether, if a Tribe serves non-Tribal members, through a contract with the State or on a voluntary basis, the Tribe is required to report activities subject to Federal reporting requirements to the State.

Response: Section 250.93 of the regulations provides that a Tribal grantee's share of program funds is based on the "number of adult members of the Indian Tribe receiving AFDC who live in the designated service area." This means that a Tribe may not receive direct funding on behalf of an AFDC recipient who resides outside his or her Tribe's designated service area regardless of the fact that he or she lives on a reservation with another Tribe who has also implemented JOBS. If a Tribe agrees to serve non-Tribal members in its designated service area based on a

contract with the State, the Tribe will be required to report to the State information on activities subject to Federal reporting requirements.

Comment: Several commenters suggested that an Indian AFDC recipient living in areas served by both a State program and a Tribal program should be able to choose the program in which he or she will participate as is permitted in some other Federal programs. Two of the commenters proposed that if a Tribal member chooses a State JOBS program, the funding should transfer to the State. One commenter asked that we clarify whether a Tribal JOBS program has the power under § 250.93(a)(1) and § 250.95(e) to require all its Tribal members to be served only through its program rather than through a State program.

Response: When an Indian Tribe or Alaska Native organization opts to implement a JOBS program, the Tribal allocation of Federal funds, as specified in § 250.93(a)(1), is based on the number of adult members of the Tribe who are AFDC recipients residing in the Tribe's designated service area. This amount reduces the allotment of the State in which the Tribe or organization is located. The JOBS funding formula does not provide for funds to be diverted from the Tribe to the State where Tribal members' living in the designated service area participate in the State JOBS program. Therefore, a State is not required to provide services under JOBS to Tribal members living in the designated service area. While a State may serve Tribal members who wish to participate in a State program, using the State's share of JOBS funds, the Tribe may require that a Tribal member living in the designated service area participate in the Tribal JOBS program rather than the State program.

Comment: Several commenters supported the waiver of matching funds requirements for Tribal governments as a condition of receiving Federal JOBS funds. However, they believe this creates an inequity because funds provided to serve Indian JOBS participants will be based on a smaller per capita amount than non-Indian JOBS participants. They asked this inequity be resolved through enhanced Federal funds for Tribal JOBS programs. Other commenters stated that the allocation to the Tribe should not be in any way dependent upon the amount of funds appropriated by a State legislature.

Response: The funding formula is prescribed by Statute. Enhanced Federal funding for a Tribal JOBS program would be inconsistent with the Statute. Action by a State legislature has no

effect on the amount of funding for a Tribal JOBS program, since only Federal funds are involved.

Comment: One commenter proposed that the regulations should require that Tribes operating programs in a multi-State environment develop programs which will ensure that Tribal members living in a given State derive benefits and services in direct proportion to the funds granted to the Tribe from that State's allocation. This would avoid situations where multi-state funds granted to a Tribe are not spent equitably in various States.

Response: The funding formula established by the Statute does not require a Tribe or consortium operating a JOBS program in several States to target those funds proportionately. A regulatory provision to require proportionate spending would take flexibility away from a Tribe or consortium to design the most effective JOBS program for all of its members.

Comment: Some commenters suggested that § 250.80 and § 250.82 with respect to data collection are not necessarily the most appropriate for Tribal JOBS programs. They suggested that we work with Tribal groups to design reporting requirements and systems suitable for JOBS which build upon systems already in place for similar job training and social services activities such as JTPA. Several of the commenters suggested that we not require submission of participant information in electronic form as many Tribal systems are not currently designed to meet such a requirement, and the limited number of participants would make such electronic submission inappropriate for most, if not all, Tribal programs.

Response: We agree § 250.80 and § 250.82 relating to data collection are not necessarily appropriate for Tribal JOBS programs. Therefore, we are amending § 250.96 to include waivers of these provisions. We expect to issue an Action Transmittal following publication of these regulations which will address the reporting requirements for Tribal grantees.

Comment: Several commenters recommended that States modify their data systems to collect information on Indian recipients by reservation, Tribal affiliation, residence and county, since 127 Tribes and organizations have applied for direct funding nationwide.

Response: We do not anticipate that it will be necessary to require a State to collect information on Indian recipients by reservation, etc. Under § 250.93, a State has the option to require disclosure of Tribal membership as a condition of eligibility for AFDC. We

believe that Tribes and the State IV-A agency should be able to work out data collection under a cooperative agreement. We will revisit the issue if this becomes a problem.

Comment: Regulations at § 250.12(e) require a State to exchange certain information with an eligible Indian Tribe or Alaska Native organization interested in conducting a separate JOBS program. One commenter suggested that this provision should be revised to make clear States must coordinate and exchange information with all Tribes, not just those operating a program funded by HHS. Therefore, the commenter suggests that we delete "interested in conducting a separate JOBS program under § 250.91."

Response: Sections 250.12(e) and 250.93 require that the State IV-A agency and Indian Tribes or Alaska Native organizations exchange information pertaining to implementation of JOBS. The State is required to assure coordination of JOBS program services, including child care pursuant to § 255.3(h) of the regulations, with related services provided by other agencies, including Tribal agencies operating programs under Departments other than HHS. We have no authority to require a State to coordinate and exchange information with all Tribes for purposes other than JOBS.

Program Administration, Implementation and Operations (§ 250.94 of the Final Regulations)

Program Administration

Under the final regulations, the Tribe or organization must designate an administrative entity, such as the social services agency or the Tribal JTPA agency, to be responsible for the administration of the JOBS program. This responsibility for program administration includes all the requirements under the Act, unless waived under § 250.96, as well as applicable requirements under all other related Federal regulations. Such regulations include the general funding provisions under part 92 which are generally applicable to Tribal administration of Federal programs (as reflected in § 250.13 and § 250.77 of the regulations) and the joint Department of Health and Human Services/Department of Labor regulations at Part 251 which cover worker's issues such as working conditions and displacement.

The responsibility to administer JOBS means that the Tribe or organization must maintain overall responsibility for the design and operation of the program. However, final regulations at § 250.10 permit Tribes or organizations to

delegate some JOBS functions and activities which involve decision-making with regard to individual participants to entities other than the Tribal agency designated to operate JOBS, e.g., assessment, priority determinations, provision of component services, case management and conciliation. This is permissible so long as there are specific rules and regulations issued by the Tribal agency governing their implementation. Such entities must not have the authority to review, change, or otherwise substitute their judgment for that of the Tribal agency. Certain functions, such as determining exemption status, determining whether to sanction a participant, and holding hearings must be performed by the designated Tribal agency unless a waiver under § 250.96 is granted. However, final regulations clarify that certain other related functions, such as imposition of sanctions, are retained by the State IV-A agency based on its responsibility to administer the IV-A program. For instance, if the Tribe or organization determines that an individual has failed to meet participation requirements, the State IV-A agency is responsible for making the necessary AFDC payment changes, after the individual is afforded appropriate due process.

Part 255 requires that the State IV-A agency (which receives matching Federal funds under title III of the Statute to guarantee child care for JOBS participants) provide necessary child care for Tribal participants either directly or through contract with the Tribe or organization. Also, under Part 256 the State IV-A agency is responsible for transitional child care benefits. Because of these interrelated functions, we encourage the State IV-A agency and Tribal grantees to enter into agreements to develop the referral and operating procedures necessary for effective program implementation.

Comment: One commenter requested that the IV-A agency retain the responsibility for determining whether Tribal AFDC recipients are subject to participation in JOBS. Giving Tribal grantees the responsibility will require that Tribal JOBS programs set up and maintain a client tracking mechanism to determine when changes, such as birthdays, change in school attendance, birth of a child, etc., occur which would change status. While AFDC eligibility systems and procedures are currently set up to perform these functions, they are not set up to give notice to Tribes when such changes occur. Another commenter suggested that it will be extremely difficult to verify both IV-A

eligibility and JOBS participation when two organizations administer the program.

Response: Section 250.94(a)(3) specifies that the Tribal agency designated to administer JOBS may not delegate or contract out any functions which involve agency discretion, except as provided in § 250.10, such as program participation requirements and determining who should participate. Therefore, the Tribal agency must define exemption and participation criteria and must retain the final responsibility for determining whether, in fact, a Tribal AFDC recipient is subject to participation in the Tribal program. However, this does not preclude the Tribe or organization from arranging with the State to maintain a tracking mechanism for identifying status changes and to notify either the Tribe or organization or the Tribal AFDC recipients. We encourage States to alter their computer systems to provide such support. FFP will be available under title IV-F for that portion of the system. States need not, however, verify Tribal JOBS participation.

Comment: A commenter asked whether a Tribal member who is sanctioned for failure to participate may appeal the sanction to the State IV-A agency.

Response: No. It is the Tribal grantee's decision whether or not an individual should be sanctioned. This decision cannot be overturned by the State. However, the State IV-A agency retains the function of imposing the sanction and is responsible for making the necessary payment changes after the individual has been provided due process. The individual can appeal the amount of the reduction to the State IV-A agency.

Comment: A commenter suggested that we include in the final regulations a processing time for a State to impose a sanction following notification from the Tribe or organization. The commenter suggested that 45 days would be a reasonable processing time in order to provide time for notifying the AFDC recipient of the sanction.

Response: The State IV-A agency is responsible for imposing the sanction following notification by the Tribe or organization. We believe that we should not prescribe a specific timeframe for the State to effect the sanction. The State should have flexibility to establish a reasonable time limit.

Comment: Some commenters proposed that Tribes and Alaska Native organizations be permitted to use existing participant grievance procedures, such as JTPA, rather than be required to establish a separate process.

Another commenter asked that we permit simplified procedures suitable to the size of the Tribe's program to avoid placing excessive administrative burdens on small Tribes.

Response: Tribes or organizations may apply under § 250.96(b) for a waiver of the requirement that the Tribal JOBS agency conduct the hearing, in order to use existing participant grievance procedures. The Tribe or organization must document that it is inappropriate for the Tribal JOBS agency to conduct the hearing, given the size of the Tribal JOBS program, and that the alternative procedure to resolve JOBS disputes meets the due process requirements of *Goldberg v. Kelly*.

Implementation

The regulations permit the Tribe or organization to begin its JOBS program before the State implements its program. This provision reflects the sovereignty of the Tribe or organization to operate its program to the full extent allowable under the Act. The requirement at § 255.2(f) for the State IV-A agency to guarantee child care necessary for Tribal members' participation is not effective prior to the State implementation date. However, this section (§ 250.94) of the regulations provides options to permit a Tribe or organization to conduct its program prior to the State's implementation. During the period prior to the State's implementation of the program, these options permit the Tribe or organization to either guarantee necessary child care for its participants or to operate its program on an entirely voluntary basis. These provisions are discussed in detail in § 250.95 and accompanying preamble concerning supportive services.

Also, to provide sufficient opportunity for the Secretary's review and approval, the regulations and the initial application guidelines (FSA-AT-89-11 and 14) require that the Tribe or organization submit its application with final documentation to the Department at least 45 days prior to implementation. Similar to the requirements for the State IV-A agency at § 250.20(b), the regulations provide that the Tribe or organization may not begin its JOBS program prior to approval by the Secretary. Prior approval is necessary given the complexity of the program, the needed interface which must occur between the Tribal applicant and the IV-A agency, and the fact that Tribal programs represent a whole new direction for welfare work programs.

Comment: Two commenters suggested that Tribes should be given greater flexibility on start dates for Tribal programs. They should be allowed to

start their JOBS program on the first day of any month, and should not be limited to starting their programs on the first day of any quarter. Furthermore, the commenters stated that there should be flexibility for starting a JOBS program later than October 1, 1990 to allow for State/Tribal coordination, especially if a State does not intend to start the State JOBS program until October 1, 1990. Also, the commenters proposed that Tribes be given their entire fiscal year allocation regardless of the quarter in which they start and that they be permitted to carry over funds for two years such as is permitted with title IV-B programs and Indian Self-determination Act contracts.

Response: Section 204 of the Statute specifies that States must implement a JOBS program by October 1, 1990. The Statute also provides that should a State choose to implement JOBS sooner, it must do so on the first day of any calendar quarter prior to October 1, 1990. We read the Act, including this section, to apply to Tribal grantees as well. There is no basis for a waiver of this section. Furthermore, since section 204(b)(2) of the Statute requires that funding be proportional to the quarters the program is in operation in a given fiscal year, there is no basis for funding the JOBS program for the entire year when the program is in operation for less than four quarters. With regard to the comments on carrying over funds, see comments and responses under § 250.70.

Comment: Two commenters stated that Tribal governments should be able to use a Tribal council resolution of approval for the final JOBS application as an indication of community support for the program, consistent with the requirements for contract applications under the Indian Self-Determination Act. The commenters believe, for such small amounts of funds the regulations at § 250.94(d)(1)(ii), which require Tribes to hold extraordinary community comment procedures, are burdensome.

Response: Section 483(a)(2) of the Act specifies that the State JOBS plan be made available for public review and comment 60 days prior to submission to the Secretary. The regulations only require a 30-day comment period for Tribal grantees. We choose not to waive this requirement, because we believe that public participation is an important indication of community support. We do not believe that the comment procedures are burdensome inasmuch as the requirement can be satisfied through public announcements.

Comment: Several commenters contend that the regulations at

§§ 250.94(d)(3), (4), (5) and (6) require extensive consultation with other entities. They propose that rather than requiring documentation of such consultation, the Tribe or organization should be allowed to use a check-off form that indicates that there has been consultation with the appropriate entities. The commenters also suggested that the words "required to consult" be changed to "encouraged to consult," because consultation may not always be available given conflicting schedules. Furthermore, since Tribal and Navajo private industry councils that exist in Arizona are unique intergovernmental arrangements that do not exist in other States, regulatory language should be changed to permit alternate sources for obtaining required consultation.

Response: The regulations require extensive consultation in order to prevent duplication of services and to assure that other program services are available to JOBS participants. The regulations do not, however, require that the Tribal grantee submit formal documentation of each discussion it has with an organization identified in § 250.94(d) (4), (5), and (6). Section 250.94(d)(6) provides that the Tribal grantee must consult with private industry councils and Tribal Employment Rights Offices, as appropriate. Therefore, if such councils do not exist, Tribal grantees should consult with alternate sources.

Operations

This section of the regulations exempts Tribes and organizations from the requirements of § 250.12 in order to specify appropriate coordination requirements for Tribal grantees. Under this section, the Tribe or organization is required to provide its application to the State IV-A agency prior to its submittal to the Department. This is to ensure that necessary interface with the State IV-A agency has been established, including the development of agreements or methodologies, to assure that Tribal recipients receive equitable treatment under both the AFDC and JOBS programs.

The regulations also indicate the appropriate agencies and programs with which the Tribe or organization must coordinate. The coordination requirements reflect congressional concern that agencies administering JOBS identify available resources from other programs in order to prevent duplication of services, to assure that the maximum level of services is available to participants, and to ensure that costs of these other program services for which welfare recipients have been eligible are not shifted to the

JOBS program. This latter provision is closely related to the provisions on maintenance of effort, which are described in § 250.98 and preamble.

Furthermore, although Tribal grantees are subject to § 250.44, which covers mandatory components, they are not subject to § 250.45, which covers optional components. Instead, § 250.94(e) requires Tribal JOBS programs to include four mandatory components and at least one optional component. The following program design modification is expected to more realistically reflect the special circumstances and needs of Tribal grantees.

Because the four mandatory components cover basic education, training and employment activities, many of which should be available to Tribal participants through other program resources, we believe that most Tribal programs should be able to offer all four components. For example, many literacy programs should be available to Tribal recipients through the Office of Indian Education and, thus, would not be funded under JOBS.

The Tribal program need include only one optional component. Of the four options given to States, two components—community work experience program (CWEP) and the work supplementation program—are integrally linked with AFDC recipient grants. Thus, the final regulations require that adequate operational agreements be worked out between the State IV-A agency and Tribal grantee before the Department can approve these components.

A Tribe is permitted to include, as an optional component, a work experience program as approved by the Secretary or alternative education, training, and employment activities as approved by the Secretary. We would approve, for example, an alternative work experience program which generally meets the requirements of a CWEP, JTPA, or BIA work experience program. Tribes or organizations are cautioned that in order to receive approval of alternative education, training and employment activities, such approaches must be consistent with the purpose of the JOBS program to reduce welfare dependency and must serve only eligible AFDC recipients. Thus, if JOBS is linked with another program such as JTPA, a Tribal grantee must be able to validate that JOBS funds were used only to serve Tribal JOBS participants. These stipulations are necessary to protect the integrity of the program. Based on congressional concern as well as our careful consideration, the regulations

further require that JOBS funds not be used for public service employment or for allowances.

Comment: Two commenters proposed that job search activities should not be required for a minimum of 20 hours per week, because such activities are not appropriate in a situation where there are few employers and limited job openings. Many reservations are located in rural areas where there are few jobs available.

Response: The regulations at § 250.78, which define participation, were never intended to prevent States, or Tribes or organizations, from requiring job search for less than 20 hours per week. Furthermore, participation requirements are waived for Tribes or organizations under § 250.96(a)(13). Therefore, tribes or organizations may, require that a participant perform job search activities for less than 20 hours per week.

Comment: Most of the Tribal organizations that commented objected to the language at § 250.94(d)(1)(i), which requires the Tribe or organization to submit applications to the State IV-A agency for "review and comment." The commenters believed that this creates a negative precedent for State intervention in Tribal/Federal relations. The commenters proposed that the words "review and comment" be deleted and suggested that the words be replaced with "for purposes of exchanging information and achieving appropriate coordination." Another commenter objected to the use of the word "resolved" in the requirement at § 250.97(b) to submit plans to States and Tribal members for review and comment.

Response: We disagree that the use of the words, "review and comment" permits State intervention in Tribal/Federal relations. Nor is it our intent that the review and comment process impinge upon Tribal sovereignty or the government-to-government relationship between Tribes and the Federal government. The regulations at § 250.20(c)(2) also require the State IV-A agency to make the State JOBS plan available to members of federally-recognized Indian Tribes and Alaska Native organizations for review and comment. In both cases, this means that the State or Tribal grantee must consider the comments offered in the same way it considers comments from the public. Section 250.97(b) requires that the Tribe or organization resolve all comments received at the Tribal level in the same way that § 250.20(c)(2) provides that the State shall resolve all comments at the State level. This means only that the Tribe or organization

decides whether or not to change the application as a result of the comments.

Comment: Several commenters suggested that we allow Tribal programs to make incentive payments to JOBS participants as are currently used in connection with Tribal Work Experience Program (TWEP) participants. The commenters were concerned that JOBS participants would be treated inequitably relative to TWEP participants.

Response: There is no basis in the Statute or legislative history for making incentive payments using JOBS funds to AFDC recipients to participate in JOBS. Furthermore, any such payment made by a Tribal organization would have to be counted as income in determining the amount of the AFDC payment, i.e., the amount of the incentive payment would reduce the AFDC payment accordingly.

Comment: Regulations at § 250.94(d)(6) require a Tribe or organization to ensure that JOBS funds are used to provide training only for the types of jobs that are currently available or are likely to become available. Two commenters stated that since there are not always accurate labor market projections, the lack of such documentation should not be used as an obstacle to approving a JOBS application. They suggested that BIA labor force estimates, which do not indicate employment by type of jobs, be sufficient for planning purposes if no other data are available.

Response: The objective of the JOBS program is to provide training, education, job placement and employment to end welfare dependency. Therefore, it is important for Indian Tribes and Alaska Native organizations to consult with other organizations to identify and obtain advice on the types of jobs that are available within a reasonable distance of the reservation. When there are limited employment opportunities available, it is important that there be a plan as to how the education and training will make the JOBS participants self-sufficient. The labor force estimates published by BIA report the labor force status of Indians living on and adjacent to reservations, e.g., the number of Indians employed, unable to work, etc. This report does not provide any guidance as to types of jobs currently available or likely to become available. We will not disapprove an application solely on the basis that accurate projections or relevant statistical data are not available but will work with the Tribe or organization to assure that resources are expended consistent with the objectives of the program.

Comment: Section 250.94(e) states Tribal programs are not subject to the requirements of § 250.45, but paragraph (e)(2) specifies that Tribal programs must include at least one of the optional components unless a Tribe can provide justification that such activities are inappropriate. Two of the commenters found this misleading and suggested that it be reworded to say that Tribes "are not subject to requirements of § 250.45 but that Tribes may participate at their option."

Response: The commenter's interpretation of this point is incorrect. All of the optional components specified in § 250.45 for States are also included in § 250.94(e) for Tribes and organizations. However, the former requires that a State JOBS program include at least two of the components which are identified. Section 250.94(e)(2), on the other hand, specifies that Tribal programs are required only to include one optional component in their JOBS program and lists some alternatives in addition to those identified in § 250.45. Tribes or organizations must include one of the optional components or seek a waiver under § 250.96 on the basis that such activities are inappropriate.

Comment: One commenter proposed that the regulations at § 250.94(e)(2)(v)(B) be changed to permit JOBS funds to be used for public service employment as defined by the Tribal Government. Two other commenters suggested that we define "public service employment." Specifically, they wish to know what is the difference between non-allowable public service employment and allowable public sector placements for WSP and CWEP. They are concerned that the majority of reservation-based employment is through Tribal and Federal governments.

Response: By public service employment we mean a fully subsidized job in a public agency. The regulations do not preclude JOBS funds from being used to place Tribal members in jobs with Tribal, State, or Federal governments. What it does preclude is filling or establishing a job slot and fully reimbursing the employer for the salary paid to the JOBS participant.

Comment: Section 250.94(e)(3) provides that a Tribe or organization may operate WSP or CWEP only if adequate agreements with the State IV-A agency are implemented. Two commenters suggested that these agreements should be worked out using employer OJT contract formats currently used by Tribal JTPA and other programs. They proposed that the

regulations should not require a formal State/Tribal intergovernmental agreement nor should an agreement be required as part of the Tribal JOBS application. Another commenter, however, suggested that the scope of agreements should be broadened. The agreements should cover any program function that is interrelated between the State's IV-A program and a Tribe's JOBS program, e.g., eligibility notifications, dispute resolution and hearings, imposition of sanctions, etc. The commenter suggested we should not prescribe specific terms of such agreements but should permit them to be tailored to the needs of both the Tribes and local IV-A agency offices.

Response: Because the CWEP and WSP programs are integrally linked with the AFDC recipient grants, it is mandatory that adequate operational agreements be worked out between the State IV-A agency and the Tribal grantee. The regulations do not define the format nor do they require that the agreement be submitted as part of the application.

However, the Tribal grantee must assure that such agreements exist. We do not believe, however, that it is necessary to require operational agreements to cover all phases of State/Tribal interface. It is best left to the State and Tribes or organizations to decide when this is necessary.

Supportive Services (§ 250.95 of the Final Regulations)

Under the final regulations, the Tribal grantee must provide for the work-related supportive services, such as clothing or transportation, necessary to enable an individual to participate in the JOBS program. Tribes or organizations must follow the requirements regarding work-related supportive services under Part 255. The Tribal grantee is given flexibility to determine the types of supportive services and methods of delivery but must describe these services and methods in its application documentation pursuant to § 250.97(f)(6).

Since the State IV-A agency is required to provide child care under Part 255 of the regulations, this section requires that the Tribe or organization must ensure, based on a method which is acceptable to the Tribe or organization and the State, that necessary child care is available when requiring an individual to participate in its program. Since the State IV-A agency will be providing child care services and the Tribe or organization will be designating who participates, we strongly encourage Tribal grantee to develop with the State IV-A agency

appropriate referral mechanisms to ensure that Tribal participants receive necessary child care services. In addition, we encourage the State IV-A agency to contract with Tribal grantees for providing child care services for Tribal participants.

The regulations at § 255.2(f) are designed to ensure that the State provides sufficient funds to meet the child care needs of Tribal participants and that the State uses comparable and appropriate methods of providing child care for Tribal participants as it uses for non-Tribal participants in the State. The Tribe or organization may guarantee child care for its participants through other program sources.

If the Tribe or organization begins its JOBS program before the State IV-A agency, the Tribal grantee can operate an entirely voluntary program. However, after the State implements its JOBS program, the Tribe or organization may no longer operate an entirely voluntary program. This provision is consistent with congressional concern, as reflected by the participation and exemption requirements in § 250.30, that individuals who are reasonably able to participate in the program, and for whom guaranteed child care is available, should be required to participate.

Comment: Two commenters suggested that we should encourage the State IV-A agency to work with all Indian job training programs, including those operated by Indian community-based organizations in off-reservations areas under Title IV of JTPA, to insure that child care services are available to AFDC recipients in all such training programs.

Response: Title IV-A funds are available to provide child care for JOBS participants and for other AFDC recipients in approved education and training. We encourage all State IV-A agencies to work with all Indian job training programs to insure that child care services guaranteed under Part 255 are available. This, of course, would include child care for a JOBS participant who is assigned to an existing Tribal job training program.

Comment: Some commenters suggested that the Secretary should exercise waiver authority and allocate Federal child care funds directly to those Tribes that opt to implement Tribally-operated child care services. One commenter believed that this would provide greater flexibility for Tribes while reducing administrative costs for both States and Tribes. Another commenter suggested that States should receive FFP for services such as child care and other required functions

without a State matching requirement for the portion of Federal funds expended in services to Tribes and organizations operating JOBS. The commenter believes that this would be consistent with the intent of the Act which provides for a JOBS program and support services for Indian Tribes and organizations without requirement of matching share.

Response: While the Secretary has authority to waive requirements of section 402(a)(19) and title IV-F of the Act for Tribal programs, FFP for JOBS participants is not covered in these sections of the Act. There is no waiver authority under title IV-A to allocate Federal child care funds directly to Tribal grantees or to dispense with State matching requirements for the portion of Federal funds expended for Tribal services.

Comment: It appeared from the comments that some Tribal organizations were not clear as to responsibility for child support enforcement in relation to § 250.40(b).

Response: The requirement at § 250.40(b) has no effect on responsibility for enforcing child support orders.

Comment: One commenter stated that the definitions of "making good progress" and "making satisfactory progress" in both educational and training components refer only to standards approved by State or local agencies. The commenter proposed that the definition should be expanded to substitute approval by Tribal or Alaska Native organizations.

Response: We have revised the definition at § 250.1 to reflect this comment.

Waiver Authority (§ 250.96 of the Final Regulations)

This section indicates that certain requirements of the Act and of the regulations do not apply to Tribal grantees, as they are unique to State programs. These include provisions relating to State agency administration, the State's JOBS funding allotment and State matching requirements. Thus, these have been determined to be inappropriate for Tribal JOBS programs by the Secretary pursuant to his authority under the Act.

A Tribe or organization may also request waivers for any other requirements of section 402(a)(19) or Part F of the Act not specifically mentioned but must provide proper justification. The Secretary will consider the appropriateness of such waivers on a case-by-case basis.

Comment: Several commenters suggested that we add § 250.34 and

Parts 255 and 256 to the list of waivers which the Secretary considers inappropriate for Tribal JOBS programs.

Response: Parts 255 (Supportive Services) and 256 (Transitional Child Care) are not functions subject to waiver authority. Tribes and organizations do not need waiver authority as these provisions are State, and not Tribal, requirements. While many of the provisions of § 250.34 are also State and not Tribal requirements, it would be inappropriate to waive a Tribe's or organization's responsibility for determining that an individual failed to meet participation requirements.

Application Requirements and Documentation (§ 250.97 of the Final Regulations)

The Tribal application requirements generally follow State JOBS plan requirements, which are discussed in detail in §§ 250.20 and 250.21 and related preamble.

Under the Act, Tribes and organizations had to apply to the Department by April 13, 1989, in order to conduct a JOBS program. Since we were still developing JOBS policies at the time we released guidelines for Tribal applications, we advised Tribal groups in the application notice (FSA-AT-89-11) that their April 13 submissions would probably need to be supplemented. On April 27, 1989 we provided additional guidance (FSA-AT-89-14) specifying documentation needed to supplement Tribal applications if the Tribes or organizations intended to implement a JOBS program prior to issuance of these final regulations.

We believe that the application documentation specified in this section is necessary in order to provide the Secretary with a sufficient level of information upon which to base approval. We determined that this documentation was needed, based on our review of all the requirements reflected in the Act and those required for State JOBS programs. Because of the complexity of the JOBS program requirements and the degree of program flexibility we would like to provide Tribal grantees under our waiver authority, we do not think these application requirements impose an undue administrative burden upon Tribal grantees. The application must serve as the Department's primary vehicle for assessing whether a Tribal grantee is meeting the requirements of the Act and regulations.

Comment: Several commenters considered the application and documentation requirements specified at § 250.97 administratively burdensome

for the amount of funds available. They suggested that we allow Tribes to submit a simple application and allow cross-references to established administrative and program procedures and manuals without requiring these materials as attachments to their applications.

Response: We do not believe that the application and documentation requirements specified at § 250.97 are unduly burdensome. As we have indicated above, the application is the Department's vehicle for measuring whether a Tribal grantee is meeting the requirements of the Act and regulations. We do not need extensive documentation of existing administrative and program procedures. In most cases, cross references would probably satisfy the requirements. However, most of the documentation we require relates to administrative and program procedures which must be established in order to meet the requirements of JOBS.

Comment: Several commenters suggested that, if a Tribal JOBS application is disapproved, there be a process, including technical assistance, in place to assist the Tribes in addressing and correcting the deficiencies in its application. They stated further that initial disapproval should not forever disqualify a Tribe from operating a JOBS program even after October 1, 1990.

Response: We currently provide technical assistance to Tribal grantees and plan to continue to provide such assistance as necessary. The Statute provides that a Tribe or Alaska Native organization had to apply by April 13, 1989 to conduct a JOBS program and that a JOBS program may not be implemented later than October 1, 1990. We believe there is sufficient lead time for all Tribal grantees to develop and receive approval for an application to implement JOBS by that time. Therefore, Tribes or organizations that did not apply by April 13 or have not implemented a JOBS program by October 1, 1990 are ineligible to operate a JOBS program.

Maintenance of Effort for Indian Tribes and Alaska Native Organizations
(§ 250.98 of the Final Regulations)

Tribal grantees are not subject to the requirements in § 250.72. Section 250.98 sets out maintenance of effort provisions that are more appropriate for Tribal entities. The requirements on maintenance of effort reflect congressional concern that JOBS funding not be used to supplant existing funding for programs which have been available for welfare recipients.

This means that JOBS funds should be used only to provide educational, training and employment activities for Tribal participants which are in addition to those which would otherwise be available. For example, where a high school education has been available to Tribal members, JOBS funds must not be used to pay for this activity. Thus, the Tribal grantee may not contract for services which are otherwise available on a non-reimbursable basis pursuant to the regulations at § 250.13.

Comment: One commenter proposed that when the AFDC-UP program provision becomes effective, the Bureau of Indian Affairs should continue to provide general assistance under the maintenance of effort provisions of law.

Response: This Department has no authority to require BIA to continue to provide general assistance to recipients who become eligible for AFDC.

PART 255—CHILD CARE AND OTHER WORK-RELATED SUPPORTIVE SERVICES DURING PARTICIPATION IN EMPLOYMENT, EDUCATION, AND TRAINING

Purpose (§ 255.0 of the Final Regulations)

The purpose of these regulations is to implement section 301 of the Family Support Act of 1988.

State Plan Requirements (§ 255.1 of the Final Regulations)

Title III of the Statute adds section 402(g) to title IV-A of the Act. Thus, child care is not part of the title IV-A plan which is covered in section 402(a) of the Act. Neither is it included in the State JOBS plan under title IV-F, which is covered in section 482(a) of the Act. In fact, section 402(g) does not address whether a plan is needed regarding the provision of supportive services. However, services provided under sections 301 and 302 of the Statute must be covered by a separate plan submitted in accordance with these regulations. Further, the State Supportive Services plan covering services under section 301 of the Statute must be submitted at the same time as the JOBS plan to ensure appropriate public and Federal review. The approval process will follow that for the State JOBS plan which is specified in § 250.20.

The State Supportive Services plan must contain information about child care services, work-related supportive services, and work-related expenses necessary for an individual to participate in JOBS or in another approved education, training, or employment activity, including a description of those services. We also are requiring that the State IV-A agency

include a cross-reference to its State Supportive Services plan in its State JOBS plan to show the coordination between the two plans. The specific State Supportive Services plan requirements are contained at § 255.1. In States where Tribal entities are directly funded to operate a JOBS program, the State Supportive Services plan must include specific information on the State's provision of child care services for JOBS participants served by those Tribal entities.

Requiring a Separate Plan

Comment: We received general support for our regulations on this section. However, a few commenters suggested that we not require a separate Supportive Services plan, but require one plan which incorporated both the JOBS and Supportive Services provisions.

Response: We do not believe such an approach would be consistent with the statutory language at section 482(a)(1)(A) of the Act which requires that States establish a JOBS program under a plan which meets all the requirements of part F and section 402(a)(19), but does not mention 402(g). In a related matter, in paragraph (B) of section 482(a)(1), the Act establishes requirements for "a State plan for establishing and operating" the JOBS program. Nowhere does it provide for the inclusion of the supportive services provisions in this plan. Furthermore, while there is considerable overlap between the two plans, there are two important differences. First, except for the benefits provided in Puerto Rico, Guam, American Samoa, and the Virgin Islands under part 255, the child care benefits described under the Supportive Service plan are funded under a different source than JOBS. Secondly, eligibility for services under the Supportive Services plan extends substantially beyond JOBS participants. Thus, there are also programmatic reasons for requiring two plans.

At the same time, however, we agree with the comments about the close interrelationships between the two programs and the need for an integrated approach for dealing with them. On that basis, we require that the Supportive Services plan covering applicant and recipient services be transmitted together with the JOBS plan. Furthermore, in developing State plan preprints, we intend to develop one preprint package which would incorporate both the JOBS and Supportive Services plans. We will try to design the preprints so as to facilitate the integration of the two programs and

to minimize the burden on the States associated with completing two plans.

Comment: One State objected to the requirement for a Supportive Services plan, given the absence of specific statutory authority.

Response: Although the title III provisions of the Statute do not explicitly mention a State plan for Supportive Services, there are at least three specific bases for requiring such a plan. First, we believe that a Supportive Services plan is a necessary adjunct to the JOBS plan, as we cannot properly assess the acceptability of a JOBS plan without information on the nature and scope of supportive services to be provided. Secondly, supportive services are matchable under section 403 of the Act which provides that payments are made to the States under approved plans. Finally, section 1102 of the Act requires that the Secretary establish rules "necessary to the efficient administration of the functions" with which the Secretary is charged under the Act. We do not believe the Secretary could fulfill the statutory obligations under this section unless a State plan which specified how the State would meet the requirements of sections 301 and 302 of the Statute is required.

Plan Content

Comment: One commenter felt that our plan requirements were extensive and would require a lot of coordination.

Response: In drafting the plan requirements, we tried to limit the number of requirements so that they would not be too burdensome. At the same time, there was a certain minimal amount of information needed to determine whether statutory requirements were being met and to monitor the appropriateness of expenditures on supportive services.

To the extent that our requirements in this section or elsewhere entail substantial coordination with JOBS activities, the child care community and providers of related educational and supportive services, we believe they are justified, since a successful JOBS program depends on the successful provision of supportive services and the development of a coordinated, effective strategy for their delivery.

Comment: We received two comments suggesting that additional items be required in the plan—including a description of how transportation needs would be met (e.g., through advance payments or reimbursement) and more material related to the meeting of child care standards, coordination and parental access.

Response: A few of these suggested changes that would provide information

helpful in determining how program requirements are being met and in achieving greater compatibility with the JOBS plan. At the same time, because we are concerned about placing unnecessary administrative burdens on the State, we did not want to add too many requirements.

Under this framework, we have revised § 255.1 to add the following requirements: 1) the State must assure, in arranging care, that it takes the individual needs of the child into account; 2) the State must specify the methods it will use for providing transportation and other supportive services; 3) the State must describe criteria and procedures it will use for approving education, training and employment activities for which necessary child care and supportive services will be authorized for individuals who live in non-JOBS areas of the State; 4) the State must describe the nature of its efforts to coordinate child care and supportive services with groups specified at § 255.3(h); 5) the State must describe its procedures for ensuring that center-based care will be subject to State and local requirements designed to ensure basic health and safety, including fire safety, protections (or a plan for developing such procedures, if none exist); and 6) the State must specify its policy on transitional supportive services. The fourth requirement replaces an assurance requirement which was found at § 255.1(e)(2) of the NPRM.

Although we added a requirement for a description of State procedures on basic health and safety protections for center-based care, we did not alter the specific requirements for State assurances that all child care meet applicable State or local laws or that parents have access because those items affect eligibility for Federal matching funds. Therefore, we will be able to monitor State compliance as part of our review of State expenditures. Furthermore, in § 255.5, we have clarified that States will be required to report information, upon the request of the Secretary, on the applicable standards of State and local law, on health and safety requirements for center-based care, and on the development of guidelines for family day care.

As we indicate in the section of the preamble discussing § 255.4, we also added provisions for State specification of a statewide limit and local market rates for children with handicaps or special needs for care.

We also moved the assurance requirement (regarding hours of child care) previously found at § 255.1(l) to

§ 255.1(e), where the other assurance provisions are located.

Comment: We received comments that it was inappropriate for the State plan to include a description of the priorities to be applied in determining when needed care will be guaranteed (as required at § 255.1(d)). It was considered by some to be particularly inappropriate to talk about priorities for those entitled to transitional child care benefits.

Response: We agree that the language at § 255.1(d) of the proposed regulations confused the nature of the child care guarantee for JOBS participants and transitional cases, and we, therefore, have deleted it. (Additional discussion about the nature of the child care guarantee is contained in the response to the next comment and in subsequent sections of the preamble.)

Comment: Commenters also objected to the proposed regulatory language at § 255.1(j) where we required the State plan to describe "how the State will assure that sufficient child care will be available to meet the participation standards in 250.74." Many felt this language undermined the child care guarantee. At the same time, some States felt they should not be required to assure that sufficient child care be available to enable them to meet required participation levels. They argued that States were not absolutely required to meet the participation standards, but only as a condition of receiving JOBS funds at a higher matching rate.

Response: We recognize the problems with our proposed language and have deleted the provision that was at § 255.1(j) of the NPRM. In writing the NPRM, we wanted to make sure that States understood our expectation, and the expectation of Congress as well, that the number of individuals participating in education, work and training programs should increase under the JOBS program. For this to happen, child care and other supportive services necessary for JOBS participation would have to be provided. However, we acknowledge that participation concerns are more appropriately addressed within the context of the JOBS program.

Comment: One commenter did not want us to require States to specify monetary limits for expenditures on different types of supportive services.

Response: We believe such limits are important to include to ensure equitable treatment across the State and to ensure the proper and efficient administration of the program.

Comment: One commenter wanted us to revise the references to State and

local standards in § 255.1 to recognize Tribal standards, where applicable. Response: We made this revision and corresponding revisions to §§ 255.4(c)(2) and 255.5(a), which also refer to State and local standards.

Plan Schedule

Comment: One commenter objected to our requirements that the Supportive Services plan, especially the part dealing with transitional child care, be subject to the biennial update schedule.

Response: We require the Supportive Services plan to be submitted on the same schedule as the JOBS plan because the services provided under the two plans are so inextricably linked. To the extent a State is not changing its plan, the biennial update should not entail a major workload. At the same time, it provides a regular opportunity for the State to review its policies, assess the availability of child care services, ensure that care continues to meet applicable standards of State and local law, and update items like local market rates which need regular modifications.

Also, we did not separate the plan for transitional child care services since those services are subject to many of the same provisions as the care provided under part 255. Again, where changes are not indicated, the biennial update should not be overly burdensome.

In the interest of clarity, we did add a reference in § 255.1 of the regulations to the schedule requirements at § 250.20.

Eligibility (§ 255.2 of the Final Regulations)

Section 402(g) of the Act provides that the State IV-A agency must guarantee child care to the extent that the State determines necessary for an individual in a family with a dependent child to: (1) accept or maintain employment, or (2) participate in an education or training activity if the agency approves the activity and periodically determines that the individual is satisfactorily participating in the activity. (Such education and training is not limited to activities funded under JOBS.) Where child care is necessary, but not available, a State IV-A agency cannot require an individual to participate in an activity or to accept or maintain employment unless it guarantees child care.

Child Care Guarantee

The Statute requires the State to guarantee child care for: participants in a JOBS activity; individuals in other approved education or training activities; and employed individuals. We, therefore, believe that the State is obligated to guarantee care even if it has

not required an individual to participate or accept employment. This is a change from the approach taken in the proposed regulations, particularly with respect to the treatment of volunteers, and will be discussed further in the comment section.

The State IV-A agency must guarantee needed care to recipients who are working at the time the State implements JOBS as well as to recipients who begin working at a later date. It must also guarantee care to an individual who finds employment through JOBS or on her own if the care is necessary for her to accept or retain employment. However, the State does have flexibility in determining how child care needs will be met. For example, the State may select the disregard as the method for providing care for employed individuals.

In areas where child care of the appropriate type cannot be located by JOBS participants, the State must be prepared to assist these individuals in locating care. Such assistance may take the form of referral to existing child care resource and referral services, or direct assistance based upon information gathered through the State agency's own consultation, coordination, and research efforts. In addition, the State may provide assistance to other AFDC applicants and recipients in locating such care. However, the State is not required to provide child care directly or to otherwise create child care services. Where child care cannot be located, an individual cannot be required to participate, or to accept or retain employment.

For approved JOBS activities and employment, the State is obligated to guarantee care even if it has not required an individual to participate or accept employment. However, just as State resources and budgetary constraints may indirectly affect the provision of child care for those assigned to activities under JOBS (whether exempt or non-exempt), those in self-initiated activities may also be indirectly affected by State budgetary constraints since the State has broad discretion in deciding whether to approve such activities. This discretion is discussed further in response to the comments that follow.

Comment: Although some commenters supported our linkage of the child care guarantee to the availability of resources, JOBS participation rates, State appropriation ceilings, the availability of other services, and agency requirements, many did not. They felt the language undermined the guarantee for working recipients and for volunteers participating in JOBS.

Commenters also suggested that the language seemed to contravene the requirement in the JOBS program that volunteers from target groups receive priority for JOBS services.

Response: Based on these comments and further review of the statutory language, we reconsidered our position and decided to make changes to both the regulations and the preamble. We have deleted any reference to a State's determining who would be provided child care based on the availability of resources and the requirement to describe how sufficient child care would be made available to meet the participation rates described in § 250.74. A more detailed discussion of the child care guarantee is contained in the preamble and response to comments.

Comment: One State wanted us to clarify that States were not obligated to provide services to those in self-initiated activities. Another asked us to clarify that States would not be required to provide child care services in non-JOBS areas.

Response: The Statute allows a State to treat self-initiated education or training which meets the requirements at section 402(a)(19)(F) of the Act as JOBS participation and to provide associated supportive services, including child care, if the State approves the activity. The State has further discretion to decide the criteria under which other education or training would be approved under JOBS, and discretion whether to approve education or training for child care and supportive services in non-JOBS areas of the State. However, we do wish to clarify that, at State option, child care and supportive services are allowable for those in education and training in non-JOBS areas as long as the State IV-A agency has approved the activity, and the individual is making satisfactory progress.

Comment: Two commenters wanted us to clarify that provision of child care and supportive services for clients in non-JOBS training is a State option and is not required before implementation of the JOBS program.

Response: The provisions authorizing child care and other supportive services for those engaged in any kind of education or training activity do not become effective for a State until its JOBS program under title IV-F is implemented. At that point, the State has broad discretion in the criteria used for determining whether education or training would be approved.

Informal Care

Consistent with our philosophy on parental choice (discussed later), we want to ensure that Federal and State policies support parental preference. In many cases, informal care provided by trusted friends or family members is the parent's preferred source of care. Therefore, we want to make clear that care provided in this manner is acceptable and must be included as one of the types of care to which families have access.

Comment: Several commenters expressed concern that informal care provided by relatives or family friends with no obligation to provide care was too tentative and unreliable. They felt it was counterproductive to rely on such services, especially when care would be needed on a regular basis over an extended period of time. (In fact, one commenter wanted the regulations to state the advantages of formal care.) Others were concerned that we were expecting care to be provided for free by persons with no legal responsibility for a child, that we were not giving adequate consideration to the needs of the child and that we were undermining parental choice by allowing States to limit families to informal, at-home care.

Response: The section on informal care in the preamble of the NPRM caused much confusion. We have rewritten the preamble to clarify the principal reason for our original language—to validate informal care as one of the types of care to which families should have access. We were not attempting to limit families to informal, at-home care but merely to ensure that families have the choice of such care. The one exception to this provision is the situation where there is another adult in the home who is responsible for the care of the child (as discussed below).

Comment: Two commenters wanted us to require that a State agency accept the caretaker's assessment that no one at home was capable of providing necessary child care. In a related comment, it was suggested that individuals be allowed to determine if informal care was acceptable.

Response: We expect the State IV-A agency and the caretaker to work closely together to determine when child care is necessary. However, the ultimate decision about whether care is necessary rests with the individual except for a few limited situations. The State may determine child care is unnecessary in situations where: (1) the hours of employment or participation fall within the child's school hours; (2) there are individuals in the assistance

unit whose needs are met on the basis of their responsibility for caring for the child (e.g., a parent, caretaker or essential person); or (3) there is another legally responsible adult in the home (e.g., an ineligible parent or a legal guardian). Exceptions to the latter two situations would be allowed, on a case-by-case basis, if the family provided information to the State agency indicating that the "responsible" individual could not provide appropriate care. Examples of reasons for exceptions would include cases where the other parent was bedridden or the child was at risk because of suspected abuse.

Under all other circumstances, (including the use of older siblings, aunts, or grandparents in the home), the individual may choose informal care as her preferred choice of care but may not be required to do so.

By Statute, responsibility for determining the necessity of supportive services resides with the State IV-A agency. This position is incorporated in § 255.2(c).

Eligible Children

In the final regulations at § 255.2(a), we have limited the guarantee of child care to those families with dependent children under 13, and those children who are either physically or mentally incapable of caring for themselves or subject to court supervision, when such care is necessary. Limiting child care to these situations is a reasonable policy, consistent with the limits enacted for the Dependent Child Care Tax Credit by section 703(a) of the Family Support Act, and, which will apply to taxable years beginning after December 31, 1988. These limits reflect widely-held views (reflected in a variety of laws and legislative proposals) on appropriate governmental participation in expenditures for child care services.

Comment: A substantial number of commenters opposed our limitation of the child care guarantee in this manner. They pointed out that many States and other programs had higher age limits or no age limits at all. At least one commenter felt the age standard should be replaced by the "need for supervision." A number wanted States to have general discretion in setting an age limit. Some were more supportive of the age 13 as a general rule for coverage, but wanted greater State discretion to cover children over the age of 12. Many were particularly concerned about covering older children who needed special supervision, either because of individual circumstances or because they lived in neighborhoods which had drug, crime, or related problems.

Response: We have determined that it is appropriate to retain the limit on child care guaranteed under title IV-A to children under 13 and to retain the exceptions for children over 13 who are mentally or physically unable to care for themselves. However, we have added an additional exception which would cover care for children aged 13 and over who are subject to court supervision. We decided to add the additional exception because we recognized that such children had an officially established need for special supervision. We did not feel that an exception was justified for all those over 13 needing supervision. Such an exception would be too broad and too difficult to define; in some States, it would act to obviate the age 13 limit.

Comment: We also received a few comments on our proposal to require the State IV-A agency to guarantee care for children who would be required to be in the assistance unit if it were not for the receipt of SSI under title XVI or foster care payments under title IV-E. Commenters wanted this guarantee to be broadened to cover other children in the household who were not on AFDC (such as undocumented alien children) and incapacitated older individuals.

Response: We decided not to expand the guarantee of child care to these categories of individuals or to otherwise cover the costs of their care. The statutory language covering the guarantee refers to families "with a dependent child requiring such care" and therefore suggests no broader eligibility than we proposed. We included children who would be AFDC recipients except for their receipt of IV-E foster care or SSI since such children are considered dependent children for other purposes of law; however, they are excluded under the Act from the assistance unit because of the receipt of needs-based, Federally-supported benefits.

We recognize the apparent inconsistency between the statutory language covering the guarantee and the "good cause" language at section 402(a)(19)(G)(iv)(II) of the Act which provides that individuals would have good cause for not participating or accepting employment if child care or day care for any incapacitated individual living in the same home as the dependent child is necessary, but is not available and not provided. However, it is possible to rationally and fully satisfy both statutory provisions. The revised language following subparagraph (D) of section 403(a)(3) of the Act, which limits Federal matching for child care expenditures to those

made pursuant to section 402(g), also identifies the class of individuals for whom IV-A expenditures may be made. These are those identified in the guarantee and include only dependent children. It is, therefore, narrower than the class of individuals whose need for care may affect JOBS participation or employment. With the narrower guarantee language, the State must devote IV-A funds to AFDC dependent children; where broader care needs are identified, the State would have to exempt the individual from participation or pursue alternative sources of care. For example, necessary day care for incapacitated adults may be provided as a JOBS supportive service.

Comment: A few commenters questioned the appropriateness of our reference to the verification requirements at § 250.30(b)(3) in determining whether a child aged 13 or over was physically or mentally incapable of caring for himself. They suggested other medical evidence, eligibility for handicapped or special education programs, and worker determinations as alternatives.

Response: We understand why the reference to § 250.30(b)(3) raised some question since entry into the labor force is not relevant. The point we wanted to make is that the determination of the handicapping condition had to be made by a physician, or a licensed or certified psychologist. It is the condition, notwithstanding the child's age, that creates a need for extended care and supervision. We have made changes in §§ 255.2(a) and 256.2(a) to reflect this position. We decided not to extend the determination further because we felt the determination should be specific to this purpose and should be made by someone professionally qualified to make it.

Child Care for Tribal Programs

The State IV-A agency must provide child care to AFDC applicants and recipients who are served by a Tribal JOBS program. Such services shall be available to the same extent that they are available to eligible participants in the State's JOBS program. The State IV-A agency must provide an equitable level of services for Tribal members, and they must provide the same range of methods or arrangements, unless certain methods would not be feasible because of the nature of child care services available in Tribal service areas.

Other Supportive Services

The Act requires that the State IV-A agency pay for or reimburse the costs of transportation and other work-related expenses, including work-related

supportive services, if the State IV-A agency determines they are necessary for an individual to participate in JOBS. For individuals in JOBS components such as education and training, these expenses include both ongoing and one-time special expenses. In addition, we concluded that such services may include one-time, special work-related expenses which would enable individuals to accept or maintain employment. These are discussed in more detail under "Work-Related Expenses." On-going expenses related to employment are already covered by the work expense disregard (which was raised to \$90 effective October 1, 1989); therefore, no provision for such expenses has been made under section 301 of the Statute or these regulations.

The State IV-A agency must define work-related supportive services and work-related expenses in its Supportive Services plan. It must also describe methods of providing other supportive services, specify monetary limits for each type, and indicate the basis for determining the need for the type of service.

Comment: One commenter wanted us to be more explicit about the State's duty to provide transportation.

Response: The regulations already specify that the State agency must pay for or reimburse transportation and other work-related supportive services for individuals in approved activities. We do not see the need to elaborate further.

Comment: One commenter wanted us to require that transportation support systems be funded through existing coordinated systems.

Response: Under this program, we will be funding the transportation needs of individuals. We will not be funding transportation systems. Nevertheless, in the interest of improved coordination, we have amended the regulations at §§ 250.12 and 255.3(h) to clarify that the State IV-A agency is expected to coordinate with other agencies providing related supportive services. Furthermore, we expect State policies on reimbursement to take into account existing transportation systems.

Comment: Two commenters were concerned about an apparent inconsistency with the preamble language on the requirement to provide other supportive services to participants and the regulatory language at § 255.2(c) which limited the requirement to services "necessary to enable an individual to participate as required * * *."

Response: Volunteers in approved activities have the same rights to services as mandatory participants.

Therefore, we deleted the phrase "as required" from § 255.2(c).

Comment: In general, commenters agreed with the flexibility provided States under the proposed regulations to define supportive services and work-related expenses. However, two commenters suggested that the final regulations specify the types of supportive services (other than transportation and child care) that could be provided. Specific suggestions included medical expenses which were not covered under the Medicaid program, counseling, and substance abuse remediation.

Response: We did not list the types of services which were allowable under this section. We were concerned that we could not foresee all appropriate types of services that States would want to consider, and we did not want to preclude items at this point. In our discussion about one-time work-related expenses, we gave some examples of items that could be included. States could also include services for at-risk youth (as discussed in the preamble to the employability plan at § 250.41), counseling, medical and dental services, stand-alone courses in parenting or life skills training, day care for incapacitated adults, and substance abuse remediation. To be covered as JOBS expenditures, such services must be specified in an approved Supportive Services plan, necessary for the individual to participate in, or prepare for, a work, education or training activity, and not otherwise available on a non-reimbursable basis.

We also require that a State indicate in its Supportive Services plan the basis for determining need for covered supportive services. Here, the State would include additional factors or procedures employed by the State to determine the necessity of services. For example, a State might specify that it would authorize car repairs on a one-time basis only when public transportation was not available, or it might specify that it would authorize day care for incapacitated adults only upon written medical verification of such a need.

Comment: One commenter wanted us to require an assessment of transportation needs.

Response: The regulations at § 250.41(a)(1)(i) already requires that an initial JOBS assessment include "the individual's educational, child care, and other supportive services needs." Further, since JOBS participants are the only individuals for whom transportation must be provided (with the State having the option to approve

necessary transportation and services for individuals in non-JOBS areas of the State), it did not seem necessary to regulate further in this area.

Work-related Expenses

Although the Act requires that child care be guaranteed so that an individual may accept or maintain employment, it is silent on whether the State IV-A agency can pay for work-related expenses in order for the same individual to accept or maintain a job.

We have concluded that payment of such expenses is consistent with the intent of the JOBS program to help individuals obtain employment and avoid long-term welfare dependency. Therefore, such expenses are matchable as a JOBS expenditures for a JOBS participant who finds employment (whether as part of that participation or on her own), as well as for any individual who finds employment (including, at State option, an individual in non-JOBS areas).

In addition, the State IV-A agency may make one-time payments for reasonable work-related expenses to an applicant or recipient so that she can accept or maintain employment, if the State IV-A agency so provides in its Supportive Services plan. Such expenses might include a uniform, a set of tools, a pair of eyeglasses (if not available elsewhere), or the fee for a driver's license.

Comment: One commenter wanted to know if States could define work-related expenses.

Response: Consistent with our policy to provide State flexibility, we are not defining what items could be covered by a State as one-time work-related expenses. However, at § 255.1(h), we do require the State to include a definition in its Supportive Services plan.

Comment: The same commenter asked how supportive services, including one-time work-related expenses, would be covered in non-JOBS areas, i.e., would they be matchable as IV-A expenses.

Response: As discussed earlier, the Statute makes specific provision for supportive services expenditures to be made from JOBS funds in support of self-initiated education or training. Through amendments to section 403(a)(3) of the Act, it precludes child care, transportation, and work-related expenses as title IV-A administrative costs. For the reasons given later in the discussion of Special Needs, we believe such expenses are matchable only through JOBS funding. We allow the State to set up procedures under which IV-A staff could authorize such expenditures in non-JOBS areas. We have revised the regulations at § 255.2(c)

(2) to recognize this option (and related State plan requirements at § 255.1(d)).

Comment: One commenter objected to the NPRM preamble language which restricted one-time work-related expenses related to the acceptance or maintenance of employment to participants in activities like job search and work supplementation, but did not provide them for participants in other components like training who might also locate employment and face such expenses.

Response: We agree that the restriction was not appropriate, and we have deleted the referenced preamble language. The regulatory language at § 255.2(g) would accommodate such expenses related to acceptance or maintenance of employment from any component.

Comment: Two commenters expressed concern that our NPRM would not accommodate work-related expenses necessary for participation in component activities, but only those related to employment.

Response: It was never our intention to preclude matching for work-related expenses for participants in a JOBS component. We were only trying to establish that in addition to these on-going work-related expenses, the State could also receive matching for one-time expenses (such as uniforms, tools, or fees for a driver's license) related to the acceptance or maintenance of employment.

Comment: One commenter felt we should remove the one-time restriction for employment-related expenses since they could recur or new expenses could develop while an individual was working.

Response: We left the one-time restriction in the regulations. The Act provides a work-expense disregard for meeting on-going expenses (the amount of that disregard increased to \$90 effective October 1, 1989), and we do not want to authorize duplicate payments or subvert the statutory limit of the disregard. We intend that the one-time restriction not be a lifetime restriction, but be a restriction per job. For example, if a State gave an individual funds for a car repair to get to one job, she could at some later date get funds for a uniform needed at a subsequent job.

Approval of Supportive Services

Child care, transportation, and other supportive services necessary for an individual to participate in JOBS, and, at State option, other approved education or training in non-JOBS areas, are eligible for FFP. In order to approve such services, the State IV-A agency must determine that the activity is consistent

with an appropriate employment goal, that the individual is making satisfactory progress, and the activity otherwise meets the State's approval criteria. In JOBS areas, these determinations would be made through the JOBS program.

If a State elects to approve education or training activities for child care and supportive services in non-JOBS areas, its approval criteria should be consistent with those used in JOBS areas. The criteria can follow the standards for approval of self-initiated activities under § 250.48(a) or encompass broader approval criteria used for approving JOBS education and training activities. We have amended the regulations at § 255.1 to require that the State Supportive Services plan specify the State's criteria for approving education or training for child care and supportive services in non-JOBS areas.

Comment: Many commenters were concerned about the provisions in the proposed regulations which would require that an employability plan be developed for those in outside education and training, that participants in these activities would be considered to be JOBS participants, and that supportive services other than child care would be approved through the JOBS program. They were concerned about their ability to authorize services in areas not covered by JOBS (both before the October, 1992, deadline for statewide implementation and after), the administrative burden associated with setting up additional JOBS offices and doing full JOBS orientations, assessments, and employability plans.

Response: In response to these concerns, we have revised the final regulations to allow the State IV-A agency to approve education or training for child care and supportive services in non-JOBS areas of the State outside of the JOBS program procedures. The State agency retains the responsibility for determining the appropriateness of an individual's employment goals, but it does not have to provide for a full JOBS orientation, assessment, or employability plan. Approval of education or training for child care and supportive services can be done by IV-A staff in a non-JOBS area.

However, in areas of the State with a JOBS program, individuals who are engaged in any self-initiated activity as provided in § 250.48 are JOBS participants, and approval must be done by JOBS staff in accordance with JOBS procedures.

Verification of Participation in Education or Training Activities

The agency must periodically (based on the ability of the program to report) determine that a recipient is making satisfactory progress, as defined at § 250.1. Child care services (or other supportive services) provided to individuals who are not attending could be considered payments for ineligible individuals and might be subject to disallowances, even if the State were monitoring progress on a regular basis.

Comment: Several commenters objected to the proposed disallowance if a participant is not making satisfactory progress. They objected to preamble language which indicated that States which followed a standard reviewing progress on a 3-month basis could be subject to disallowances. They raised questions about whether this policy would apply equally: 1) to JOBS participants and individuals approved for child care and supportive services in non-JOBS areas; and 2) in cases where an individual was not attending and where an individual was not making progress. One commenter suggested that disallowances should not be taken when payments were correctly paid based on the circumstances at the time of payment.

Response: The Statute provides that individuals in any education and training activities must be satisfactorily participating in order to be eligible for child care services. Consistent with the proper and efficient administration of Parts A and F, we are extending this requirement to other supportive services, and we are interpreting this requirement to mean making satisfactory progress as defined in § 250.1. If individuals are not making progress in activities, the value of their participation is questionable, and continued support should be re-evaluated. We expect a State to incorporate this concept into the criteria it uses for approving activities under JOBS and for approving education or training in non-JOBS areas.

As we indicated earlier, in discussing the definition of "making satisfactory progress" at § 250.1, we allow adjustments to institutional standards of progress to reflect the special needs of AFDC recipients, probationary periods, and consideration of mitigating circumstances in satisfactory progress determinations.

In response to the comments, we removed our reference to a three-month monitoring standard from both the regulations and preamble. However, we do expect regular monitoring, based on the program's ability to report progress.

We recognize that the State may have difficulty determining, on a three-month or shorter schedule, whether satisfactory progress is being made because education and training institutions may not make determinations that frequently. As long as an individual is attending the activity, we would not anticipate taking disallowances for expenditures made to cover a period when the State could not know an individual's progress. During such a period, the State can presume an individual is making satisfactory progress, as long as the individual is attending the activity and available reports for prior periods are not negative (or there are sufficient mitigating circumstances for lack of attendance or unsatisfactory progress). We do expect the State to monitor attendance on a regular basis (with the individual or institution), and we indicated that we may take disallowances for child care or supportive services expenditures which cover periods of non-attendance.

This policy is related to the provision requiring that the Supportive Services plan include an assurance that child care claimed for reimbursement be reasonably related to the hours of participation or employment. In both situations, we want to ensure that expenditures are necessary for and directly related to participation or employment.

Services During Gaps in Participation

The State IV-A agency may provide child care and other necessary supportive services for up to two weeks for families in which an individual is waiting to enter approved education or training activities or to begin a component. In addition, the State may provide services for up to one month, on an exception basis, when child care arrangements would otherwise be disrupted and participation in a JOBS activity or employment is scheduled to begin during that period. This provision is included to ensure that child care services (or other service arrangements) are not lost and continuity of care is provided so that an individual can continue the employability process.

Comment: Several commenters disagreed with the provision in the NPRM which only allowed for up to one two-week period of services during gaps in participation. Commenters asked for greater flexibility to cover the provision of services during gaps in JOBS participation or immediately following a loss in employment. Suggested alternatives included: (1) full State discretion; (2) at least one month or 30 days; (3) retain two weeks but allow for exceptions in cases where child care

would otherwise be lost, the child would have to be moved, a placement was imminent, school breaks, or when no more than 30 additional days of care would be required; and (4) various combinations thereof. Some suggested that States be allowed to provide transitional benefits beyond the Federal standards under an approved State plan.

Response: We have revised the final regulations at § 255.2(d) to allow services for up to one month, on an exception basis. This approach provides additional State flexibility while protecting against expenditures which do not further the purposes of the JOBS program. It allows the State to address situations where the goals of participation, employment, and continuity of care would be positively served by extension of services beyond a two-week period. The State IV-A agency must describe its policies on interim services in its Supportive Services plan, as required under § 255.1(g).

Comment: One commenter asked about the ability to pay transportation costs after termination of AFDC eligibility.

Response: We would allow such costs as JOBS expenditures consistent with the policy specified at § 250.73.

Services for Applicants

We were faced with the question of whether Congress intended that child care be available to recipients of AFDC only, or to applicants as well. In considering this issue, we concluded that child care should be available, as it was under prior law, when the agency requires an applicant to participate in job search. Temporary child care should also be available for other activities necessary to prepare an individual for participation in the program, such as orientation. States had told us that the lack of such child care during orientation results in a very high absenteeism rate.

However, we did not consider it to be proper use of resources to provide services to applicants who were not likely to be determined eligible. A State IV-A agency could provide services to certain individuals (e.g., those in job search or needing services to accept employment) whose eligibility has not been determined, as long as it has no reason to believe that the individual would not likely qualify for benefits. In addition, we did not believe it to be proper or efficient use of resources to provide child care or other supportive services to applicants in education or training activities, until their eligibility was determined.

Comment: Some commenters objected to the distinction we made in the proposed regulations between the eligibility of volunteers for services, compared to those required to participate. Under the proposed regulations, we provided for supportive services for those required to participate in job search, but not for those participating on a voluntary basis.

Response: As discussed previously, we decided that the distinction was inappropriate; it is not based on statutory language, and it acts to contravene the JOBS targeting provisions. Therefore, we have revised the regulatory language at § 255.2(e) to eliminate references to participation requirements. We also clarified that services are available to applicants both for job search and for other approved activities to prepare them for JOBS participation.

Comment: Another commenter wanted us to clarify that, like applicants, recipients were entitled to child care and other services necessary to participate in activities which prepare them for JOBS.

Response: In response to this comment, in our amendments to § 255.2(e), we also clarified that recipients participating in approved pre-component activities are entitled to such services.

Comment: One commenter wanted it clarified that applicants who were unlikely to qualify for AFDC eligibility should not be required to participate.

Response: When we stated that we did not consider it proper to provide services to individuals who appeared unlikely to qualify for AFDC, we meant to cover not just supportive services, but JOBS services as well, including job search, assessment, employability planning, and case management. For example, if a State agency has information (perhaps not yet verified) that a family applying for AFDC has excess resources or that deprivation does not exist, it should not refer that family for IV-A or IV-F services on either a mandatory or voluntary basis. Payments made for services provided to a family referred under such circumstances would be subject to disallowance.

Comment: One commenter had questions about the States' responsibility for documenting the availability of applicant services.

Response: Applicant services generally would be subject to the same documentation requirements as recipient services. A unique aspect of applicant services is that questions about allowability could arise if there were evidence that services were

provided after the State agency had information indicating that the individual was unlikely to qualify for AFDC. In the absence of such information, we would presume that applicant services were allowable.

Methods of Providing Child Care and Other Supportive Services (§ 255.3 of the Final Regulations)

The Act provided a number of methods to guarantee child care, including measures not specifically listed but methods identified and deemed appropriate by the State. Based on that language, the State IV-A agency may:

- (1) Provide the care itself;
- (2) Arrange care through public or private providers by use of contracts or vouchers;
- (3) Provide cash or vouchers in advance to the caretaker relative so that the child care costs may be pre-paid;
- (4) Reimburse the caretaker relative for child care expenses incurred;
- (5) Arrange with other agencies and community volunteer groups for non-reimbursed care;
- (6) Use the earned income disregard; or
- (7) Adopt such other measures as the State IV-A agency deems appropriate.

The State IV-A agency must describe which of these methods it will use in its Supportive Services plan.

Comment: One commenter wanted us to allow a State to use a combination of methods of providing care for a single family.

Response: This is allowable. In fact a State could use a combination of methods for providing care to an individual child. For example, a State could reimburse a caretaker for in-home care before a child went to school and provide a voucher for the child's after-school care at a center.

Comment: One commenter thought we should require States to make child care payments up front.

Response: The Statute specifically allows for reimbursement of expenses; thus, a State clearly has the authority to make child care payments after costs have been incurred.

Direct Provision of Child Care

Historically, State IV-A agencies have not provided child care directly except in a few instances. However, we can foresee a situation in which a State IV-A agency might provide child care services within the agency, for example, while a parent is in a JOBS orientation session. Where care is provided directly, Federal matching is subject to the same limits on costs as would be applied for outside child care; the State IV-A

agency cannot charge its direct and overhead costs for providing care without regard to the limits established pursuant to § 255.4(a).

Vouchers

Vouchers have become a very popular method of providing care as they may give parents great freedom of choice. Many States are using voucher systems, also referred to as purchase-of-care mechanisms, for child care delivery. If a State IV-A agency wishes to institute such a system, the Department can provide referrals to agencies with expertise in establishing one.

Voluntary Providers

In planning to meet the child care demands related to the Statute, there may be an opportunity for communities to mobilize volunteer resources to expand existing programs. For example, there is a growing need for before and after school care for school-age children. Volunteers under the supervision of professional caregivers could be a tremendous addition to the staff necessary for such programs. Many communities are also recruiting retired citizens to help fill personnel shortages in day care centers by creating staff positions for aides which can be filled by volunteers.

Comment: Although we received general support for the flexibility in methods we provided, one commenter wanted us to eliminate care by volunteers, or any non-reimbursed care, as an option.

Response: We disagree. To eliminate these options would unduly restrict parental choice on care. In particular, we disagree with the assumption that all care provided on this basis is inferior, and we will not preempt parental decisions based on this assumption.

Direct Payments to the Caretaker Relative

The State IV-A agency may pay the caretaker relative directly either by providing payment in advance or by reimbursing the caretaker relative who has already paid for the care. In these situations, the family member cannot receive the earned income disregard for child care specified at § 233.20(a)(11)(i), and the determination of eligibility and payment amount must be determined without considering child care costs or payments.

Income Disregards

The State IV-A agency may use the existing child care disregards as provided at § 233.20(a)(11)(i). Although the child care disregard is not

specifically listed among the methods in the Act, Congress demonstrated its intent that the disregard continue when it raised the amount of the child care disregard in title IV of the Statute effective October 1, 1989.

Inclusion of the disregard as a method for guaranteeing child care under this Part does not mean that the provisions of this Part supersede existing provisions regarding the child care disregard. Thus, the disregard remains limited by the amount specified in section 402(a)(8)(A)(iii) of the Act, it remains available for expenditures on children aged 13 and over, and it is not limited by the local market rate.

The State IV-A agency may make supplemental payments for child care costs that exceed the disregard amounts but are within the limits established under this Part. Under § 255.3(f), in cases subject to retrospective budgeting, the State IV-A agency may modify their budgeting procedures to provide for child care costs in the first one or two months of employment. This option is discussed in more detail later.

Comment: In general, commenters liked the flexibility we provided. However, one commenter objected to the use of the disregard as a method—apparently because they considered the disregard levels to be too low.

Response: We do not believe this objection merits a change. First, the Statute specifically allows a State to set the limit of child care expenses at the level of the disregards, and it would be inappropriate for us to try to undermine that flexibility here. Since States are given the option to use the disregard levels for payment of child care services, regardless of the method used, eliminating the disregard as a method does not in any way assure that higher child care payments will be available. Secondly, we allow States to supplement the disregard. Thus, inclusion of the disregard as a method of providing child care services does not necessarily result in lower child care payments for those receiving benefits under this Part.

Comment: One commenter supported our position stated in the preamble to the NPRM that these new child care provisions do not supersede the existing provisions in the Social Security Act for the disregard of actual child care costs. At the same time, other commenters questioned whether our regulations at § 233.20 needed revisions to reflect the options available under the Family Support Act for payment of child care costs, or to cross-reference the Supportive Services plan.

Response: We did not feel it was appropriate to amend § 233.20 to

incorporate other methods of providing child care since this section deals specifically with the disregard of income under AFDC, and other methods would not involve a disregard. Further, we intend to include a reference to the disregard regulation in the Supportive Services plan. We do not believe that the disregard regulation would also need to cross-reference the Supportive Services plan.

Because the disregard regulations provide for a disregard only of actual costs, it should clearly be understood that the State would not disregard child care costs which were otherwise being met under Part 255. Child care costs being paid by the agency are not "expenditures for care" by the family and therefore are not eligible to be disregarded.

However, even where the State is paying for child care under Part 255, a family could be incurring its own child care expenses if the State payment level is less than the total cost of care. Where the cost of the care exceeds the local market rate, but is within the disregard limits at section 402(a)(8)(iii), the family could receive a disregard for the share of costs it incurs itself. For example, suppose child care costs under Part 255 were limited by the local market rate to \$150 in a particular case, and the family needing child care would otherwise be eligible for the child care disregard of \$175. The family may choose to continue its child care arrangement costing \$175, and the State may choose whatever method it wants to pay the \$150 for care allowed under Part 255. The family would then incur child care expenses of \$25, which could be disregarded. (Alternatively, at State option, the full \$175 amount could be met through the disregard.)

The disregard and other methods of paying for care under Part 255 may not be combined in order to duplicate assistance under the two provisions. The amount available in combination may not exceed the higher of the appropriate disregard limit at section 402(a)(8)(A)(iii) of the Act or the applicable limit under Part 255. For example, in the above case, a family could not secure child care costing \$325 with the expectation of getting \$150 in assistance under Part 255 and an additional \$175 to be covered by the disregard amount. This would constitute duplication of benefits and would violate the intent of the statutory limits for both the disregard and the Part 255 provisions.

Comment: Two commenters suggested that States should be required to continue the disregard as a method of paying for child care expenses.

Response: We agree that the child care disregard authorized under section 402(a)(8) of the Act must remain available to eligible applicants and recipients when appropriate. However, we decided not to require States to include it as a method of guaranteeing care under these new provisions. We believe the statutory language requires State flexibility in this area because the Statute does not directly mention the disregard as a method by which States would guarantee care.

Comment: Another commenter wanted us to eliminate the inconsistency between the scope of the two sets of provisions; in particular, the new provisions cover only child care, while the disregard provisions cover dependent care.

Response: We recognize the inconsistency but have not made a change since the difference is due to differences in statutory language. The new provisions specifically refer to a guarantee of "child care," and (as discussed elsewhere) to families with a dependent child "requiring such care," while the disregard provisions in section 402(a)(8) of the Act specifically cover expenditures for a "dependent child, or an incapacitated individual living in the same home as the dependent child." Thus, the scope of the disregard language is broader. (In earned income cases, families with expenditures on care for individuals in the home who are not dependent children could have those costs covered through the disregard even though the guarantee under section 402(g) of the Act does not extend to such individuals. However, these costs could not be supplemented if care is more than the disregard amount because there was no statutory change made to the disregard provisions to allow such supplementation.)

Supplementing the Disregard

Comment: One commenter felt that States should be required to issue a supplement when the disregard amount was less than the amount which would be available if a direct payment were made. A second commenter inquired whether the States would be obligated to make supplemental payments in these cases. He felt that perhaps the State should not be required to make a supplemental payment if there were adequate care available and the State could arrange care within the disregard limits.

Response: We proposed these supplements as an option for States, rather than a requirement, because the child care provisions under title III of the Statute did not supersede the

existing child care disregards. In fact, in title IV of the Act, Congress specifically amended the statutory limit on the disregard amount, without any reference to the other child care provisions. We believe that requiring supplementation of the disregard would subvert congressional intent by essentially invalidating the new disregard limits otherwise provided in the Family Support Act. Therefore, we have not amended our policy.

Disadvantaging the Family by a Change in Method

The Statute prohibits a State IV-A agency from disadvantaging any family receiving AFDC on October 13, 1988, through a change in its method of reimbursing the cost of child care. The only method for reimbursing child care costs for recipients with earnings on that date was the earned income disregard; for participants in education or training programs, special needs was an available method. Families receiving benefits under either method could be disadvantaged if the State changed to a method of direct payment. At § 255.3(e), we require that, for recipients who received AFDC payments on October 13, 1988, determined by using the child care disregard at § 233.20(a)(11)(i) or special needs payments, the State IV-A agency must determine current AFDC eligibility and payments based on the continued application of the disregard or special needs payments in order to find out if the family would be disadvantaged. If the family would be disadvantaged, we require the State to determine the family's AFDC eligibility and benefit (including child care needs) as if the method applicable on October 13, 1988, were still in effect.

Comment: Two commenters pointed out that families whose child care was provided as a special need as of October 13, 1988 could also be disadvantaged if a different method was used which provided or paid for child care directly.

Response: We have revised the preamble and regulations at § 255.3(e)(2) to recognize this additional group. We also revised the regulations and preamble language to indicate that the State must determine the family's AFDC eligibility and benefit (including child care needs) as if the October 13, 1988, method were being used; however, we do not directly require that the same method be used since, in the case of special needs, the method is no longer available.

Comment: Two commenters questioned the requirement for the disregard to be applied as of October 13, 1988.

Response: We retained the requirement because we believe that families who were not eligible for child care benefits at the earlier time cannot be disadvantaged by a change in method.

Comment: Another commenter asked that we expand upon how States would determine if a family was disadvantaged.

Response: When a family needs child care benefits for employment or for participation, the State would determine if the family received child care benefits in the form of a disregard or as special needs in October 1988. If not, the State need not worry about disadvantaging the family under this provision. However, if the family received the disregard or special needs in October 1988 and is now eligible for child care, but the State is considering another method of providing care, the State must check to determine that the family is not worse off as a result of applying the new method. If the family received the disregard in October 1988, the State must calculate eligibility and benefits as if the disregard were its method, to determine if the family would otherwise be disadvantaged. If the family's child care was provided as a special need, then the State must determine the family's AFDC eligibility and benefit as if special needs were its method of providing child care, to determine if the family would be otherwise disadvantaged.

In determining if the family would be disadvantaged, the State should look for two types of circumstances. The first is where the provision of direct services would make the family ineligible (for example, under the "185 percent gross-income test"), but the family would retain eligibility if the costs of care would be covered through a disregard or special needs. These methods would allow the family to retain AFDC eligibility with a higher income level. The second circumstance is where the amount available to cover costs under the method applied in October 1988 would be higher than under the method now under consideration. This could happen if the disregard level and actual costs for care are both higher than the local market rate. Since the disregard and special needs were not limited to the local market rate, the family would receive more money under the prior method. Under either of these circumstances, the family would be disadvantaged by a change in the State's method of providing care. Therefore, the State would be required to determine the family's AFDC eligibility and payment as if the October

1988 method (and the payment amount under that method) were in effect.

Meeting Child Care Costs Under Retrospective Budgeting

Recipients who need child care before beginning employment often lack sufficient funds to pay for such care before receiving their paychecks. If a State IV-A agency uses a two-month retrospective budgeting cycle and meets child care needs through the disregard at § 233.20(a)(11), for the first four months of employment, a family only receives recognition of child care costs for two of those four months. For example, under current rules, if a recipient becomes employed in January and has child care costs in January, February, March and April, the child care disregard will not offset income in determining the amount of the payment until March and April. If a State IV-A agency decides to provide child care for the first and second month of employment, as a start-up cost, the State IV-A agency could not use the disregard to offset income used to determine March and April's payment because the recipient did not actually meet the cost of child care in January and/or February.

We will allow the State IV-A agency to provide start-up costs for child care for the initial one or two months of employment and to apply the disregard for the third and fourth months as if such costs had been paid by the recipient. However, in order to prevent duplication of benefits, if a State IV-A agency elects to do this, it may not apply the disregard to income used to determine the payment for the month(s) following the month in which child care ceases. The State IV-A agency may meet the start-up costs by making direct payments to the provider or by reimbursing the recipient. Any reimbursement for child care would not be counted as income or resources for any month.

Comment: Commenters generally supported our policy to allow adjustments to retrospective budgeting (and for our disregard of supportive services payments). However, one commenter felt that States should be required to modify the retrospective budgeting process.

Response: We have not changed our proposal in response to this comment. We believe such a requirement would unduly limit State flexibility and could result in a very significant new administrative burden on State agencies that currently provide child care benefits largely through the disregard. Furthermore, the child care provisions of

the Statute do not supersede the related provisions for disregard of child care expenses at section 402(a)(8) of the Act. Under the existing provisions, retrospective budgeting procedures remain in effect. Therefore, we do not believe States could be required to modify their retrospective budgeting procedures.

Comment: Two commenters objected to our requirement that States that modified the retrospective budgeting process had to discontinue application of the disregard after the recipient ceased receiving child care. They thought it was unfair to reduce AFDC benefits at the same time that individuals who lost their jobs were losing income.

Response: We do not believe a change in policy is indicated. We proposed this policy in order to prevent duplication of benefits. As written, the recipient would receive child care payments for the same period of time as they were incurring child care costs. Thus, those receiving payments through this method would be treated comparably to those who received child care benefits or vouchers directly. If we took the commenters' suggestion, these individuals would receive an extra one or two months of child care benefits. This kind of differential treatment would not be justified. Further, such a policy would seem to be inconsistent with the statutory language that recipients be paid no more than actual child care costs.

Comment: One commenter requested that we clarify the regulations at § 255.3(f) concerning the State's option to modify the retrospective budgeting process.

Response: We have revised the regulations to clarify that the State may directly pay for child care costs incurred during the initial one or two months but subsequently apply the child care disregard in determining payments for the corresponding payment months.

Comment: One commenter asked about the obligation of the State agency, in cases subject to the normal retrospective budgeting procedures, to cover full child care costs by paying for costs after the individual goes off the AFDC rolls. They also asked for clarification of the effective date of transitional coverage in this situation.

Response: We do not believe the State should be required to pay for child care expenditures after AFDC recipients who received the child care disregard leave the rolls. As stated elsewhere, we took the position that the existing disregard provisions under law were not superseded by the Family Support Act. Consistent with this position and our

policy to provide State flexibility in determining appropriate methods of providing care, we have decided not to require the State to pay individuals who received the child care disregard any additional child care benefits under Part 255 after they are no longer eligible for AFDC.

This policy does not affect the length of time a family would be eligible for transitional benefits under Part 256, which cover child care expenses from the first month after a family becomes ineligible through the twelfth month after a family loses eligibility. Child care benefits under Part 255 cover the period before a family loses eligibility; payments for that period, even if made after the family is off the AFDC rolls, do not affect eligibility under Part 256.

Parental Choice

The regulations at §§ 255.3(c) and 255.3(d) reflect our desire to allow the caretaker relative to choose the type of child care (center, group family day care, family day care or in-home care), if more than one type is available. This is consistent with section 482 of the Act which requires the State IV-A agency to provide information to individuals about child care, including what assistance is available to help the participant select appropriate child care services.

The regulations at § 255.3(d) also provide that an individual who is required to participate under Part 250 may not refuse appropriate care unless she can arrange other care or demonstrate that such refusal will not prevent or interfere with participation. Thus, an individual's choice is not constrained by the methods or types of care which the State IV-A agency has elected to provide under its Supportive Services plan. The State IV-A agency is required to pay for the child care services arranged by the individual, even if that would require that it set up an alternative mechanism for payment of such services. Such payment would still be subject to the limits established by this Part.

Comment: One commenter wanted us to require that States allow a reasonable time for individuals to arrange care by themselves.

Response: We did not see the need to regulate in this area. We believe that individuals would have the ability on an ongoing basis to develop alternative child care arrangements. Further, in cases where the hours of participation would be minimal and the care arrangements temporary, such as for an orientation or assessment, we believe the State agency should have the ability to make temporary arrangements which would provide care needed during one-

time or intermittent appointments for discussions with caretakers about JOBS participation.

Comment: States generally supported our conclusion that unlicensed care was permissible. However, several commenters objected to any requirements that States facilitate the use of unlicensed care and asked for broader State discretion on paying for unlicensed or unregulated care. Among their concerns were conflicts with existing State laws about the ability to make payments to unlicensed providers, cost and other complications related to minimum wage requirements for unrelated in-home providers, and interference with State efforts to upgrade child care quality.

Response: We understand these concerns, but consistent with the position of President Bush, we believe that parents should be able to make informed choices about who provides care for their children. In order to assist parents in making these decisions, the State agency is free to provide information on the advantages of different types of child care, and identify licensed providers who are conveniently located for participants and who otherwise meet their needs.

Informal care may be more problematic in some States when the State agency makes direct payments to providers. For years, States have been paying for informal care through the disregard, and the State might minimize its problems if it continues to use the disregard or otherwise make advance payments to participants who would be responsible for making the payments to providers. As a point of clarification, when we stated in the preamble that the State agency had to pay for this kind of care, we did not mean that the State agency must make direct payments to the providers of such care.

Comment: Two commenters wanted us to clarify that self-arranged care had to meet applicable standards of State and local law. In related comments, one commenter asked about the obligation of a State to pay for self-arranged care out of State funds: 1) if the care were substandard and therefore did not qualify for Federal matching; or 2) where a license was required, but never applied for or denied. The same commenter asked for clarification of the meaning of "applicable standards" for out-of-home care when there were no such standards.

Response: Payments for self-arranged care are subject to the requirements established under this Part. Thus, to qualify for Federal matching, any self-arranged child care has to meet

applicable standards of State and local law. States are not required to pay for self-arranged care that does not meet the requirements for Federal matching at § 255.4(c). However, depending on the situation, unlicensed care could meet these requirements. For example, a church-affiliated child care center, a family day care provider caring for only one or two children, or an in-home provider could be exempt from State licensing requirements; in such cases licensing requirements would not apply, and by default, the care would meet the "applicable standards" of State law. On the other hand, if a child care center was subject to State licensing requirements, but had not applied, or was not qualified, care provided at that center would not be eligible for Federal matching, and the State would not have to pay for such care.

Comment: One commenter felt that, in offering a choice among available types of providers, States should be required to include licensed or regulated care.

Response: We do not feel the need to further regulate in this area. At § 255.3(c), we already require the State to offer a choice "if more than one type of care is available, e.g., center, group family, family day care, or in-home care." These choices would normally include licensed or regulated care. In some cases, licensed or regulated care might not be available; we cannot require the State to offer choices which are not available.

Comment: One commenter raised questions about care provided at religious institutions or at centers affiliated with religious institutions. It cited constitutional issues which could arise under purchase-of-service contracts or voucher programs concerning the separation of church and State—based upon religious effects of the care, hiring, and funding practices of the centers and other factors. It also raised concerns about recipients being required to choose care at centers with religious affiliations.

Response: A State may not require any individual to accept care at a center which has a religious affiliation. However, for those individuals choosing a center with religious affiliation, the State must develop payment mechanisms which can accommodate such a choice. Consistent with constitutional requirements, a State must ensure that its programs do not create an excessive entanglement between the government and religious institutions.

Comment: One commenter said we should require States to provide individuals a full choice of payment methods and inform them that direct

payments were available. Another suggested that those using self-arranged care be afforded the full range of methods of payment.

Response: We believe the Statute gives States discretion in deciding which child care methods to use. Individuals are not necessarily entitled to direct payments or any other method of provision. Therefore, we have not incorporated such a requirement.

Needs of the Child

The Act and the regulations at § 255.3(b) require that the State IV-A agency must take into account the needs of the child if it arranges the care. This means that care must be available during the hours needed, including before or after school (or both) as well as care for the entire day. The care must be reasonably accessible so that neither the child nor the caregiver must travel distances beyond what is normally acceptable in the community.

Special attention should be given to children with special needs. There are a variety of programs funded at the Federal and the State level for children with special needs. Often, there is little or no coordination between these programs and other dependent care. We encourage the State IV-A agency to make a concerted effort to identify programs such as Head Start that might benefit JOBS participants and their children and to coordinate with these programs.

There are many materials already developed by the Department, the States, and the private sector that contain information on the types of care and selection of appropriate care. The State IV-A agency may find it cost effective to use local child care resource and referral (CCR&R) agencies to provide this information. Child care resource and referral agencies exist throughout the country as a public/private venture to serve the community. They keep data on available resources (including openings and providers), often listing not only name, address, and cost of care, but information on curriculum and special programs.

Comment: One commenter requested that we include the language about reasonable accessibility based upon normally acceptable community standards in the regulations.

Response: We revised the regulations at § 255.3(b) in response to this comment. However, we also allow the State to establish a uniform standard which would apply across the State. To require all States to establish standards based on individual community patterns raised serious concerns about intra-state equity and the potential administrative

burden on States that hundreds of such determinations would entail.

Comment: Several commenters asked us to clarify the regulations at § 255.3(b) where we indicate that "[i]n arranging for child care, the State agency must take into account the needs of the child, including * * * the appropriateness of the care to the age and special needs of the child." The specific concern was the implication that the State agency was solely responsible for the determination of appropriateness. The commenters felt that the caretakers should be able to determine whether child care was appropriate.

Response: The State agency is not solely responsible for determinations of appropriateness of child care. When the State agency arranges for child care, then the agency must take into account the needs of the child (as required by statutory language at section 402(g)(1)(B)) and make an initial determination of the appropriateness of care. If a child care recipient is concerned about the appropriateness of care arranged by the State, she has several alternatives, including requesting assistance from the State in identifying alternative care, arranging alternative care, or requesting a hearing, pursuant to § 255.2(h).

Methods of Providing Other Supportive Services

Under § 255.3(g), the State IV-A agency may provide transportation or other supportive services either directly or through payment or reimbursement. This policy is consistent with current Federal policy and State practices under existing work program options. The Supportive Services plan must specify the methods by which supportive services would be provided; this requirement is incorporated in § 255.1(c).

Coordination

Under the Act and final regulations at § 255.3(h), the State IV-A agency must coordinate its child care activities with existing early childhood education programs in the State, including Head Start and preschool programs funded under Chapter 1 of the Education Consolidation and Improvement Act. The State IV-A agency should build upon existing resources to expand the range of services available to JOBS participants.

We recognize that helping a mother set up a stable child care plan, especially if it involves more than one provider, can be difficult. However, we also know how important a well-developed plan is; poorly thought-out arrangements break down, causing

disruption to training and employment. We believe that the provision of services for a brief interim period may prevent the disruption of such carefully planned arrangements and allow continuity of care.

Comment: One commenter thought we should be more explicit regarding the form in which we expected States to coordinate and the results which we expected.

Response: Although we believe very strongly in the importance of coordination, we do not believe it would be fruitful for us to regulate in this area. Successful coordination depends upon items such as open, informed communication; the identification of mutual interests; and reductions in institutional and territorial barriers. These areas are difficult to regulate. We could lay out specific coordination activities which we would like the State to undertake, such as requirements to share its Supportive Services plan, to participate on boards, and to attend meetings, but those would not ensure successful coordination. Also, we do not want a State agency which has made valiant attempts to coordinate to be at risk when outside parties thwart its coordination efforts.

However, our regulations do touch upon our expectations of the results of coordination where we require the State Supportive Services plan to include an assessment of the availability of child care services provided on a non-reimbursable basis by other Federal, State, and local services. Further, as discussed under § 255.1, we have amended the State plan requirements to include a description of the nature of coordination with appropriate public and private agencies.

Comment: Two commenters thought we should require coordination with existing child care resource and referral agencies.

Response: We agree that such coordination would be beneficial. It would help the State agency identify potential resources and minimize duplication of efforts. Therefore, we have added resource and referral agencies to the list for State IV-A agency coordination.

Comment: One commenter suggested that State agencies should be required to consult with Indian Tribes and Alaska Native organizations about the child care methods that would be available. A couple of other commenters wanted States and Tribes to have the flexibility to work out mutually acceptable methods of providing care, which could include intergovernmental agreements for Tribes to provide services or systems for Tribal issuance of child care

payments to JOBS participants. Another commenter thought that we should require States to develop their payment methods in consultation with the Tribes.

Response: The JOBS regulations at § 250.12(e)(2) already require coordination between the State agency and Tribal grantees about the services provided under Part 255. As part of this required coordination, we would expect the State and Indian Tribes or Alaska Native organizations to discuss such issues as methods of providing child care, criteria and procedures for approving and paying for care, and Tribal child care standards. However, we did not believe that it would be appropriate to issue specific regulatory requirements on the scope of consultation because we expect so much variation among the States with respect to State/Tribal child care issues.

Comment: One commenter suggested that State agencies be required to coordinate with JTPA agencies to ensure that there will not be duplication of supportive services.

Response: We have revised the regulations at §§ 250.12 and 255.3(h) to provide that the State IV-A agency must coordinate with agencies providing related supportive services. The NPRM only mentioned coordination with respect to child care, but not other supportive services.

Allowable Costs and Matching Rates (§ 255.4 of the Final Regulations)

Statewide Limit

Section 402(g)(1)(C) of the Act and § 255.4(a) of the regulations provide that FFP is available for payments for the actual cost of child care up to the statewide limit chosen by the State IV-A agency. The statewide limit may be the disregard level at § 233.20(a)(11)(i), or some higher figure. In no case is FFP available for payments which exceed the applicable local market rate.

An example may help to explain this provision. Suppose a State IV-A agency sets a statewide limit (\$250), which is higher than the child care disregard, for the purpose of calculating the amount of child care costs that it will pay for or reimburse. In City A, the applicable local market rate is also \$250. Thus the State IV-A agency can pay for the actual cost up to \$250. In City B, the applicable local market rate is \$225. Thus even if the care cost \$250 in City B, FFP would only be available for \$225. In City C, the applicable local market rate is \$275. FFP would be available for only \$250 (the statewide limit) or, if less than \$250, the actual cost of care.

Comment: We received several comments opposing the requirement that

States set a statewide limit for Federal matching of child care costs. Some commented that such a limit would not reflect local needs.

Response: We interpret the statutory language, which specifies that payments be limited by the disregard level or "an amount established by the State," to mean that if the State chooses to pay an amount higher than the disregard, it must establish a statewide limit. This amount is distinct in the Statute from local market rates. Further, we do not believe that setting a statewide limit precludes a State from reflecting local needs in its payment levels. For example, the State could set its statewide limit at the highest local market rate in the State. Payments would then be based on the actual cost of care up to the local market rate and the statewide amount would not be a limiting factor.

The statewide limit may be different for children under two and children aged two and over, consistent with the amendment to the child care disregard provision under the Statute effective October 1, 1989.

Comment: One commenter opposed allowing the AFDC disregard amount to be used as the statewide limit.

Response: The option for a State to use the disregard amount as its limit is specifically included in the Statute.

Comment: One commenter suggested allowing the State to use the statewide limit as the rate for a locality where the local market rate is very close to it.

Response: The Statute limits costs to the local market rate, and we cannot allow States to substitute a higher limit.

Local Market Rates

Each State IV-A agency must establish local market rates, and the State Supportive Services plan must explain the methodology used to establish them. We do not propose to impose any statistical formula to be used uniformly. However, in § 255.4(a)(2), we set a few requirements which the State IV-A agency must follow in establishing those rates. Furthermore, we intend to issue an Action Transmittal within six months which would specify criteria to be used in evaluating State sampling methodologies.

First, the State IV-A agency must base the rates on a representative sample of providers, obtained in a survey by the State IV-A agency or under an outside survey. Secondly, local market rates must be set at the 75th percentile. This level was selected because it represents a reasonable balance between concerns about fiscal

accountability and accessibility to services. Finally, local market rates must be determined by type of care such as center care, group family day care, family day care, and in-home care. Rates should be differentiated by care for infants, toddlers, preschool and school children and whether there are different rates for full-time and part-time care. Where appropriate, rates should reflect reductions in the cost of care for additional children from the same family.

State IV-A agencies have had some experience in determining local market rates when preparing State budgets and calculating the allowable title XX rate for child care. Also, studies are available to a State IV-A agency if help is needed in establishing local market rates. Many States rely on information provided by the local child care resource and referral agencies such as the studies done in 1987 and 1988 by the California Child Care Resource and Referral Network that gave costs of care, licensed capacity, enrollment, open slots, wait lists, hours of care, transportation, and types of regulated providers.

Collecting data on unregulated caregivers providing care in the home of the child may be more difficult and demand a different approach. We are aware of this difficulty, and we would allow a State to develop a procedure for determining the appropriate adjustment to apply to the rates for regulated care which it determined using the prescribed methodology.

Comment: Numerous commenters objected to an additional guideline we included in the NPRM which required that local market rates be determined for areas no greater than political subdivisions. Their concern was based in large part on the administrative difficulty of determining hundreds of rates and on the inconsistency of these requirements with other State systems. Most commenters supported greater flexibility in this area, but a few offered specific options such as the use of regional data; sub-State data grouped by similar geographic, economic or demographic conditions; or rural versus urban groupings.

Response: We have changed our regulations to delete the requirement that local market rates be determined for all political subdivisions. Instead, we allow the State to determine these rates for broader geographical regions in the State or for groups of small areas which reflect similar geographic, economic, or demographic conditions. This approach represents the best balance of our interests in minimizing the administrative burden on States and

ensuring that rates reflect actual expected costs.

Comment: A number of commenters had general objections to the basic approach we used. They felt our approach was too complex and administratively burdensome. They also wanted greater flexibility so that other methods in the State could be adopted.

Response: Our decision to eliminate the requirement to produce local market rates for all political subdivisions addresses this concern and greatly reduces the administrative burden on the State.

Comment: We received one comment suggesting that establishing local market rates be made optional.

Response: The law states that "[t]he State agency may not reimburse the cost of child care provided with respect to a family in an amount that is greater than the applicable local market rate (as determined by the State in accordance with regulations issued by the Secretary)." Therefore, the State must establish a local market rate. However, we did make some changes to the proposed guidelines for establishing the local market rate as discussed.

Comment: Numerous commenters opposed our basing the local market rate on the 75th percentile cost of such types of care in the local areas. Most commenters were concerned that this methodology might limit them from purchasing appropriate care in an area or care which provided special developmental programs, transportation, or medical services especially needed by children of AFDC recipients. Others felt that this would severely restrict access in rural areas. Some suggested that the computation of market rate cutoffs or percentiles should be based on the number of slots of care rather than the number of providers; if larger providers are more expensive, the 75th percentile would cover less than 75 percent of the slots.

Response: It is not our intention to restrict a State's ability to purchase appropriate quality child care in an area or care which has developmental programs or special services. However, we must have some method for controlling Federal financial participation in the cost of care which is exceptionally high for the State or locality. Therefore, we have decided to leave the 75th percentile requirement in the regulations. However, we will allow it to be based on child care slots instead of providers; this could increase the amount of child care available within the established cost limits. Further, by allowing the State broader discretion in defining local market areas, we believe we have alleviated some of the concerns

of rural areas that our approach would arbitrarily exclude certain providers.

It was clear from the comments that there was considerable misunderstanding about what the term the 75th percentile means. Therefore, we decided it would be helpful to explain how the 75th percentile is derived.

Percentiles are derived from ranked data and separate the lowest values from the highest values, based on a percentage point cutoff. A common use of percentiles is in standardized educational tests, where a percentile score is typically given to indicate what percent of the nation's students are below the score reported. In the case of child care rates, a percentile score would identify the percentage of child care providers (or slots) in the sample whose rates were lower. Contrary to what some commenters thought, it does not indicate the percent of an average (or the highest) market rate. Thus, the 75th percentile does not mean that we would allow States to pay only 75 percent of the local market rate.

To determine the 75th percentile for a sample of a particular type of child care, it is first necessary to rank all of the sample child care rates from lowest to highest. Once this is done, you would go three-quarters of the way up the list. The number separating the 75 percent of providers (or slots) with the lowest rates from the 25 percent who are most expensive is the 75th percentile. Following is an example. In a local market area, a State develops a representative sample of child care rates for center-based care as follows: \$120, \$100, \$110, \$125, \$95, \$150, \$120, and \$135 (per week). Ranked from lowest to highest the rates are: \$95, \$100, \$110, \$120, \$120, \$125, \$135, and \$150. Here, \$125 is the sixth value in a list of eight rates, and it represents the 75th percentile. Therefore, the local market rate would be established at \$125.

One additional step must be taken if the size of the sample is not a multiple of four because, in those cases, a State may not be able to precisely determine the 75th percentile. Modifying the earlier example, suppose rates of \$130 and \$140 were also included in the sample. Here, the ranked rates would be as follows: \$95, \$100, \$110, \$120, \$120, \$125, \$130, \$135, \$140 and \$150. In this case, \$130 represents the 70th percentile (i.e., 70 percent of the rates are at or below \$130), and \$135 represents the 80th percentile. Thus, any rate of \$130 or less is clearly within the 75th percentile, and any rate of \$135 or more is clearly above the 75th percentile. The State has discretion as to how to treat rates between \$130 and \$135; an obvious

option would be to consider \$132.50 to be the 75th percentile because it is halfway between the 70th and 80th percentile figures.

In addition, in response to concerns that the 75th percentile excludes care, especially in rural areas, where there are only one or two providers of a particular type of care in a local market area, we would allow the State to set the local market rate at the 100th percentile (to include the one or two providers).

Comment: One commenter suggested that States should be free to use the market rates for regulated care as the limit for informal care.

Response: It would not be appropriate to apply the rate for center-based, or regulated care, to other types of care which are likely to cost different amounts. However, we do recognize that it might be difficult to draw an adequate representative sample of providers for unregulated forms of care. Therefore, in such cases, we would allow the State to develop a procedure for determining the appropriate adjustment to apply to the rates for regulated care which it determines using the prescribed methodology. For example, it could use other surveys or other State programs to determine the appropriate differentials among rates for center-based, group family, family day, and in-home care and apply those differentials to the center-based rate that it determined under our standard guidelines. A State which plans to use this type of estimating procedure must describe its approach as part of its methodology description required in the Supportive Services plan at § 255.1(i).

Comment: A few commenters objected to the types of child care for which we required distinct market rates. A couple identified additional categories which might be appropriate, including night care or hourly care where care requirements exceeded the standard time available in a daily fee. Other commenters felt there were too many types specified. One specific objection was the reduction in cost associated with care provided to multiple members from one family.

Response: We identified these categories based on discussions with experts on child care services, indicating that the market for child care services typically was differentiated in this manner. At the same time, for certain types of differentiations, we used the terms "where applicable" and "if applicable" because we recognized the possibility that there could be local markets where such distinctions did not exist. In these cases, the State would have the flexibility not to develop

separate rates. However, now that we allow the State to develop consolidated market areas which include a substantial number of political subdivisions, this is less likely to happen. We also recognize that it is not a universal practice among child care providers to make adjustments in fees when more than one family member uses a facility; therefore, our regulations only require States to "consider" this factor. Where such reductions are not standard, we do not expect States to make adjustments.

The types of differentiation specified in the regulations represent a minimum set of categories for which local market rates would be developed. Where the market for child care in an area, or State, is differentiated in additional ways, the State is free to develop more categories of local market rates. However, in response to concerns about the administrative burden of determining these rates, with the exception of creating a category for special needs, we did not want to add more Federal requirements in this area.

Comment: One commenter questioned the phrase "if applicable" in § 255.4(a)(3)(ii).

Response: We included this phrase to accommodate local markets for child care which were less differentiated. However, unless a State computes rates for all political subdivisions, we expect these categories to be generally applicable.

Comment: A few commenters expressed the desire to keep the special need option as a way of meeting the higher costs for care of handicapped children or children with other special needs, because that was not addressed in the instruction on local market rate and statewide limit.

Response: We recognize the need for making higher child care payments for certain children who are handicapped or who have other special needs. Therefore, we have added this as a category for determining local market rates. A State may also set a separate statewide limit for child care for children with special needs for such care. However, separate local market rates or statewide limits would not be allowed to cover special educational or other services not directly related to child care. For example, the State could not set special rates to cover costs of protective services or educational enrichment programs. However, this does not preclude a State from funding a Head Start grantee, for example, for costs (within the established limits) for child care provided during hours before or after the Head Start program.

Comment: Several commenters suggested that States update their local market rates periodically (i.e., every one or two years). Another commenter suggested that local market rates be increased, subject to cost-of-living changes for the services sector.

Response: Our regulations at § 255.1(i) already included a requirement for periodic updates, at least biennially. We decided to keep this requirement. A biennial requirement would be consistent with the plan submittal schedule and keep the rates reasonably up-to-date. At the same time, it would not force a State to spend a disproportionate share of its resources on this aspect of program administration, and it should allow sufficient flexibility to allow coordination of updates with other State programs. Our regulations allow more frequent updates by States where appropriate.

Also, we did not feel that it would be appropriate to require States to update based on outside cost-of-living indices. The system we established for determining local market rates should produce more accurate information on changes to child care costs at the local level than outside cost-of-living indices.

Applicable Standards For Child Care

The Statute requires that FFP be available for child care only if it meets applicable standards of State and local law and requires that parents be allowed access to the child care services. The requirement for parental access would cover custodial parents and non-custodial parents consistent with court orders governing such matters.

The State IV-A agency must also establish procedures to ensure that center-based care will be subject to State and local requirements designed to ensure basic health and safety, including fire safety, protections. (Comments we received on this point are discussed at § 255.5.)

The State must also endeavor to develop guidelines for family day care if it does not already have them. We do not believe, however, that Congress intended to limit child care only to care that is specifically regulated by current State or local law. Other care, even if it is unregulated at the State or local level, is reimbursable under the Act. For example, some States exempt from their standards any center care that is under the auspices of a religious organization. Some States do not have licensing or registration standards for family day care. Other States do not require licensing or registration for family day

care until they serve more than a specified number of children.

It should be noted that there are few laws covering in-home care, i.e., care of a child in that child's own home. Appropriate individuals may be paid as in-home caregivers. FFP is available for child care provided in the child's home by a relative who is not part of the assistance unit, such as a grandparent, aunt, or older sibling. FFP also is available for care by a relative outside of the home if care by that relative meets any applicable standards.

Comment: A few commenters wanted it clarified that relatives who were not part of the filing unit, or older siblings who were part of the filing unit, could be paid for child care services.

Response: FFP is available for child care provided by relatives who are not part of the assistance unit. However, as noted in the preamble of the proposed regulations, we preclude payment to any members of the assistance unit for providing child care services. Child care payments are made to offset direct financial costs to the assistance unit for child care services. When child care is provided by a member of the assistance unit, for example, an older sibling watching a younger child, there is no direct cost to that unit for child care. Even if the parent chooses to pay the older sibling, there is only an exchange of funds within the unit, not a direct financial cost to the assistance unit.

We have amended the regulation at § 255.4(f) to include the prohibition against FFP for payments made for care provided by parents or legal guardians, or by members of the assistance unit (including essential persons).

Comment: One commenter wanted us to clarify what would be required of States regarding the requirement that they endeavor to develop guidelines for family day care.

Response: We decided not to regulate specific requirements in this area. First, the vast majority of States have guidelines or stronger requirements already, and therefore regulating in this area would have limited effect. Secondly, the statutory provisions requiring that States report on such guidelines means that we will have much better information in the future on which to base any requirements (or otherwise judge State efforts). Finally, the availability of grant funds for fiscal years 1990 and 1991 to improve States' licensing and registration requirements means that changes in State guidelines or standards are expected, and regulatory requirements could easily become obsolete.

Comment: One commenter wanted the regulations at § 255.5 to incorporate the requirement for parental access.

Response: The regulations at §§ 255.1(e)(3) and 255.4(c)(1) already incorporate this requirement. Consistent with the Statute, we provide that FFP is available only if the entity providing care allows parental access. We also require the State to assure in the Supportive Services plan that entities providing care will allow parental access. We believe that these two provisions adequately address the statutory requirements on parental access.

Comment: One commenter wanted us to clarify that parental access meant access to all parts of a child care facility utilized by children at all times without prior notice.

Response: We decided not to regulate in this area. As we indicate elsewhere, the legislative history clearly establishes congressional intent not to create new Federal requirements for child care standards. Because parental access is such a closely related issue, we believe a consistent approach should be used. Although the commenter's definition looks reasonable, we would defer to States to define what parental access means.

Comment: One commenter wanted us to require States to establish standards on several specified items for all types of care (including exempt care); guidelines were not considered sufficient. Another wanted us to establish Federal requirements for informal care to ensure quality and safety.

Response: The conference report, [H. Rep. 100-998, 100th Cong., 2nd Sess. (at page 163)], specifically says: "The conference agreement does not give the Secretary the authority to establish Federal day care standards. It is not the intent of Congress to stipulate specific day care standards." On this basis, we have not created Federal requirements for child care standards, and this position received support from a number of commenters. In the case of family day care, the specific statutory requirement is that the State "endeavor to develop guidelines for family day care." Consistent with the principle of not creating Federal requirements, we are neither requiring standards in place of guidelines nor the development of guidelines in place of steps to endeavor to develop guidelines.

Comment: Several commenters wanted us to regulate all centers.

Response: Because Congress did not intend for us to regulate Federal child care standards, we have not created specific requirements. However, as

discussed later, we have amended § 255.5 to require States to establish procedures to ensure that center-based care is subject to requirements designed to ensure basic health and safety, including fire safety, protections.

Applicable Tribal Standards

FFP is available for child care on Indian reservations if that care meets applicable State or Tribal standards. When both State and Tribal standards exist, the Tribal standards are the applicable standard. As required under the regulatory provision at § 255.5(a), State procedures to ensure that center-based care is subject to applicable health and safety requirements must cover center-based care provided on Indian reservations.

Comment: One commenter was concerned that two different child care standards would apply to a single household if there were an individual in the household subject to the State JOBS program and one subject to a Tribal program.

Response: There could be two different standards, but the existence of that situation would depend upon the location of appropriate child care services, not the nature of the participant's JOBS program. Either participant, working with the State, could seek child care on or off the reservation, depending upon her needs and the needs of her child.

Comment: One commenter asked whether State standards apply if there are no Tribal standards. Another commenter expressed concern about the State IV-A agency's being responsible for requiring that State licensing standards be met on Tribal lands.

Response: In the absence of Tribal standards, State standards would apply unless Tribal areas were excepted under State law. If State laws are applicable, those laws must be met in order for child care on a reservation to qualify for Federal matching.

Comment: One State asked about the ability of a State to pay for unlicensed providers through Indian Tribes.

Response: Depending on State and Tribal law, child care provided on a reservation may or may not be subject to State licensing requirements. It could also be subject to Tribal requirements. Whatever the situation, care on a reservation must meet any "applicable" standards to be eligible for payment under this Part, and we have revised the regulations at § 255.4(c)(2) to reference applicable Tribal law.

Matchable Administrative Costs

Many State and local agencies have indicated concern that adequate child care resources will not be available. However, the conference report does not support an interpretation that Congress intended to provide funds for activities such as resource development, recruitment and training under this program. Therefore, the regulations at § 255.4(f) specify that administrative costs for such activities as recruitment and training of providers, licensing, or resource development would not be considered allowable IV-A costs.

Under the Statute, Congress authorized a separate appropriation of \$13,000,000 for fiscal years 1990 and 1991 for the Secretary to make grants to the States to improve licensing and registration requirements and procedures, and to monitor child care provided to children who receive aid under the State IV-A plan. State grants would reflect the State's proportion of the number of children in the State receiving aid under the State IV-A plan compared to the national total. The State would have to provide matching funds for these funds for an amount that is not less than 10 percent of the amount of the grant.

Comment: Although two commenters supported this position in part, many commenters wanted us to provide Federal matching for resource development and a broad range of other administrative activities. The suggested inclusions were numerous—matching of services, services information systems, counseling, staff development and training, coordination with other child care systems, joint resource and referral activities, establishing market rates, development and implementation of sliding fee scales, establishing payment or reimbursement systems, provider recruitment, provider training on State and local law, enforcement of child care standards and monitoring, development of after-school programs, provision of provider liability insurance, arranging purchase-of-service contracts (including development of requests for proposals and provider selection), creation or expansion of resource and referral systems, upgrading of providers/bringing unlicensed providers into the regulated system/providing technical assistance to providers who wish to be licensed, construction of child care facilities, advertising and recruiting providers to accept AFDC children, and ensuring that providers comply with State and local law. Commenters argued that Federal matching was necessary for these activities so that States could: (1) fulfill their responsibilities in

guaranteeing care, counseling individuals and assisting them to locate care; and (2) assure child care expenditures would meet the conditions necessary to be eligible for Federal matching.

Response: Some of the items mentioned by commenters clearly fall within the definition of allowable administrative costs and would be matchable since they are necessary for the proper and efficient administration of the program. These include: matching of recipients to available child care services, services information systems, counseling about child care services, State IV-A agency staff development and training, coordinating with other child care delivery systems, establishing local market rates, developing and implementing sliding fee scales, establishing payment or reimbursement systems (as well as systems to collect fees, determine payment accuracy, recoup overpayments, and conduct hearings), and arranging purchase-of-service contracts (if this is a method the State has elected for providing care).

When we indicated that funds would not be available for resource development, we were not talking about the costs of matching recipient needs to available services or the costs of other coordination or consultation activities necessary for agencies to properly assist recipients in locating services. We were talking about resource development in the broader sense—those activities designed to increase or to upgrade the overall capacity of the child care delivery system. As one commenter pointed out, the conferees dropped a House provision that would have provided open-ended Federal matching funds for the development of new child care resources in the State. We must therefore conclude that Congress did not intend to provide such funding. On that basis we shall not allow Federal matching for general State expenditures on: provider recruitment, provider training (including training on State and local law), State programs to provide liability insurance, upgrading of providers (e.g., to bring unlicensed providers into the regulated system), or providing technical assistance to providers who wish to be licensed. We recognize that, in the process of developing information on providers or working out payment agreements, the State agency may provide incidental technical assistance to providers in some of these areas. This is acceptable, but IV-A funds may not be expended upon general resource development activities which serve to benefit a much broader community than this program.

State agency expenditures on coordinating with other programs to develop after-school programs which would serve AFDC recipients would be matchable, as would the costs of after-school care. However, IV-A funds could not be used for activities such as the recruitment or training of staff for after-school programs or for modification of existing facilities or programs. Construction costs are not matchable under a Comptroller General opinion which prohibits Federal funding of construction costs under programs unless specific statutory authority exists.

Federal matching would be available for the development of a resource and referral system for the IV-A program or for an appropriate share of the costs incurred in setting up or maintaining a resource and referral system which jointly benefits the IV-A program and other users. Where a resource and referral system already exists, Federal matching could cover the costs of expansion or modification necessary to serve the needs of the IV-A program. Federal matching could also cover fees for obtaining information from existing systems. However, Federal matching would not be available for expenditures on child care resource and referral services if they were otherwise available on a non-reimbursable basis. Likewise in the area of monitoring and enforcement of State and local standards for child care, we would match activities which are directly connected with IV-A program requirements. Specifically, we will provide Federal matching funds for the development of procedures to ensure that center-based care will be subject to applicable health and safety protections, including fire safety. However, we will not pay for implementation of such procedures or their ongoing application. Enforcement of State and local laws is a State and local responsibility, and we do not expect to provide Federal funds for State and local government expenditures in meeting their general responsibilities.

Since proper administration of the program includes activities necessary for ensuring that expenditures are proper, Federal matching funds will be available for State agency activities necessary to ensure that child care meets applicable standards of State and local law and that parents have access to child care providers. However, State agency activities in this area should build upon existing monitoring systems. We do not expect, and will not pay for, activities which: (1) duplicate monitoring activities of other State and

local agencies which have general responsibilities in this area; or (2) are general in nature and not directly connected with the provision of services under Parts 255 or 256.

Matching Rates

The costs of providing transportation, work-related expenses, and other work-related supportive services are matched at 50 percent and are under the JOBS cap.

FFP is available for child care benefits at the Federal medical assistance percentage and is not subject to the funding cap for JOBS for any State IV-A agency other than Puerto Rico, the Virgin Islands, Guam and American Samoa. For these jurisdictions, treatment of child care costs incurred is described at § 250.71(c).

Although the Statute does not directly address child care administrative costs, such costs are matchable at the administrative matching rate for AFDC as expenditures necessary for the proper and efficient administration of the program. As discussed in the previous section on "Matchable Administrative Costs," matchable administrative expenditures would include costs such as staff, supplies and overhead associated with the determination of eligibility for benefits, computation and issuance of benefit payments, review of payment accuracy, hearings, program referrals, program planning and management, and data collection and reporting.

Comment: One commenter wanted us to authorize the payment of one-time application or service fees to child care providers as administrative expenditures.

Response: We will allow these costs as IV-A administrative costs. We do not anticipate that these fees will be extremely costly since they are intended only to cover the one-time cost of processing the individual's application for child care. When a State agency arranges care at a facility which imposes these fees, the State would be required to pay for them. Where an individual arranges her own care or initiates an application without prior approval by the State, the State would have discretion whether to pay for the costs of any application or processing fees.

Comment: One State was concerned that expenses on rate-setting activities prior to JOBS implementation would not be matchable.

Response: We would match them as necessary and proper for the administration of the IV-A plan.

Comment: A few commenters felt that certain expenditures other than

payments for child care services—such as expenditures related to connecting individuals with child care services, counseling, information systems, coordination, and resource and referral—should be matched as program, rather than administrative, expenditures.

Response: Title III of the Statute provides matching at the FMAP rate only for "amounts expended for child care." It does not provide it for information and referral activities. In fact, it does not directly address costs for any activities related to the administration of the child care assistance provisions. (Child care information and referral activities under JOBS are discussed in section 482(c)(3) of the Act.) However, we decided that such expenditures could be matched as necessary for the proper and efficient administration of the child care benefits. On that basis, they qualify as IV-A administrative costs and are matchable at the 50 percent rate.

Comment: One commenter wanted us to clarify that child care services provided by full-time JOBS staff and staff providing services such as determining eligibility, computing and issuing benefits, and making referrals would be matched under JOBS at the higher rates.

Response: When child care information and referral services are provided for JOBS participants and child care is approved through the JOBS program, costs associated with providing those services may be charged to the JOBS program. Such costs would be subject to JOBS matching regulations, as provided at § 250.73. Thus, the costs of staff who work full-time providing JOBS-related child care information or services (or full-time on these activities and other JOBS functions), are eligible for the higher JOBS match rate. In addition, when the assessment of child care needs and referral to appropriate services are provided as part of a JOBS assessment, development of an employability plan, or case management, those costs can be matched at the higher rate. If child care services are not matchable at the higher rate, then the State can charge the portion of time spent providing JOBS-related child care to JOBS at the 50 percent rate. Costs of providing these services are also allowable as IV-A administrative costs.

If IV-A staff provide child care for employed individuals and former recipients (eligible for transitional child care), and for JOBS participants, then only the costs of providing services for JOBS participants are matchable as IV-F costs, subject to the rules

described above. The costs of providing child care services to individuals other than JOBS participants are matched as IV-A administrative costs.

Regardless of how costs associated with JOBS-related child care are charged, costs associated with providing transitional child care benefits must be charged as IV-A administrative costs. Further, expenditures on transitional child care benefits are chargeable only to IV-A (and not IV-F). As discussed elsewhere, costs associated with administering supportive services other than child care are generally matchable only under IV-F; however, where IV-A staff in non-JOBS areas are authorized to approve education or training for child care and supportive services, staff costs may be charged to title IV-A as administrative costs.

Comment: Another commenter wanted us to clarify that IV-A administrative match was available for administration of the child care provisions.

Response: As discussed above, IV-A administrative match is available for such administrative costs.

Fraud And Abuse

Although the Statute does not explicitly extend safeguarding against fraud and abuse to the supportive services authorized under the Statute, we believe that it is in the best interest of the Federal government and the State IV-A agency to require the State IV-A agency to do so. We have incorporated such a requirement at § 255.4(h). The State IV-A agency may use any method it deems reasonable to insure that charges are properly claimed and paid, and that they cover services actually received. Financial reviews to identify costs not eligible for FFP will be an important part of Federal oversight.

Comment: One commenter indicated that we should clarify what we meant by the requirement at § 255.4(h) that States take reasonable precautions against fraud and abuse or require that State child care programs be subject to the provisions of § 235.110.

Response: We believe that, consistent with the requirements at § 235.110, States should have methods available for identifying potentially fraudulent child care payments (to beneficiaries or child care providers), procedures for appropriate law enforcement referrals consistent with due process requirements, and designation of responsible officials. Therefore, we have amended the regulations at § 255.4(h) to make an appropriate reference to the requirements at § 235.110.

Comment: We also received a question about whether States would be required to recoup fraudulent child care payments for those receiving benefits under both Parts 255 and 256.

Response: Yes, for the child care benefits program, we are establishing recoupment rules similar to those in effect for the AFDC program. Our recoupment policies are discussed in more detail in "The Nature of Child Care Payments," section which follows.

Special Needs

In the past, many supportive services, especially for persons participating in employment and training programs, have been allowed as special needs. With the enactment of JOBS and the new child care provisions, Congress established specific programs for funding for such services and eliminated the need to treat such costs as special needs. Furthermore, for education and training activities and supportive services other than child care, it established an overall cap on the amount of Federal funds for these purposes. Therefore, the State IV-A agency may not pay for child care or for other supportive services that may be provided under JOBS, as special needs.

Comment: One commenter raised the issue of whether States who currently have a special need item covering training-related needs could eliminate such an item from their standard (as required by our NPRM) and still comply with the requirement of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100-360, which prohibits lowering their AFDC payment levels below the levels in effect on May 1, 1988.

Response: Yes, they could. Based on the legislative history of the Medicare legislation, we have concluded that Congress intended to include only basic needs and not special needs in this maintenance of effort provision.

Comment: A number of commenters objected to the elimination of the option of providing payment for child care and supportive services (including fees and books for education) through special needs. Some commenters wanted the special need option at § 233.20(a)(2)(v) left unchanged, thus allowing the payment method throughout the State. Others wanted the special need option left for areas of the State that do not have a JOBS program so that self-initiated training and employment could be supported. Still others wanted the special needs left for non-JOBS participants in both areas of the State (JOBS and non-JOBS).

Response: For the reasons already stated, we have decided not to restore the special need item for child care and

other supportive services for employment and training related to JOBS. However, in response to the concerns which were raised about the feasibility of approving all services through the JOBS program, we have decided to allow alternative approval procedures. For non-JOBS areas of the State, education or training activities may be approved for child care and supportive services by IV-A staff. The IV-A staff may also authorize one-time work-related expenses to accept or maintain employment if provided for in the State Supportive Services plan. Child care services would be covered by the payment of child care under title IV-A. Other supportive services and one-time work-related expenses would be charged to the JOBS program. We maintain, as stated in the preamble to the NPRM, that congressional intent was to fund these supportive services under the JOBS cap. Child care and supportive services needed for employment, education or training in non-JOBS areas of the State must meet State and Federal approval criteria (e.g., consistency with an appropriate employment goal and satisfactory progress). However, a streamlined approval process, which could be done by an AFDC eligibility worker as an adjunct to the normal IV-A eligibility functions, would be acceptable.

Nature Of Child Care Payments

Section 402(g)(3)(A) of the Act provides that child care payments are funded under section 403(a) of the Act. However, they are not IV-A assistance payments as such. Thus, (1) they are covered under a Supportive Services plan, rather than the State IV-A plan; (2) their receipt does not provide categorical Medicaid eligibility; (3) there is no entitlement to direct payment of benefits; (4) they are not subject to disallowance under the AFDC quality control system; and (5) they are not treated as assistance payments for the purposes of child support enforcement. At the same time, however, these child care benefits are funded on the same basis as AFDC, as an open-ended entitlement program, and they are administered by the same agency. Thus, for ease of administration, we are providing at § 255.4(i) that they be subject to many of the same administrative and financial rules as AFDC. For example, child care payments are subject to similar financial reporting requirements, similar procedures apply with respect to issues like the appeal of disallowances and the treatment of cancelled and uncashed checks, and grants to States are subject to the same basic administrative rules.

As indicated earlier, child care expenditures are not subject to disallowance under the AFDC Quality Control (QC) system. It appears that the QC system would not be an effective or proper vehicle for this purpose. However, consistent with the efficient administration of the program, we may use the existing QC process as a means of sampling cases to gather information on the correctness of child care payments. Using sample cases from the QC system, we would take disallowances following the procedures currently used for AFDC administrative costs.

Comment: A few commenters expressed concerns about the references to the QC system and wanted clarification of our plans.

Response: As we indicated in the NPRM preamble, child care payments under Parts 255 and 256 are not considered assistance payments for the purposes of Quality Control (e.g., for the purpose of §§ 205.40 or 205.44). However, as a point of clarification, child care expenses which are covered through the disregard will continue to be included under the QC system because they are part of the assistance payment. Since the child care disregard is subject to QC review, we would take no separate disallowances on those cases. Separate reviews would be limited to payment of child care costs through other methods—such as direct reimbursement, vouchers, etc.

We may use the QC system to draw samples of cases with child care payments for review. However, we recognize that any sample drawn through the QC system may need to be supplemented to include cases receiving transitional benefits and perhaps additional cases receiving benefits under Part 255 if we are to comprehensively review a State's child care payments.

We would expect financial reviews to cover such areas as the accuracy of payment levels. We would look at whether payment levels were within the limits established by law (no more than actual costs, the statewide limit, or local market rates). To the extent that payments did not meet Federal requirements, they would be subject to potential disallowances. We will issue an Action Transmittal within ninety days establishing the recordkeeping requirements that States will need to follow in order to qualify for Federal matching.

Similar disallowance procedures would be applied to improper claims for expenditures on supportive services made under title IV-F. However, these

reviews would focus more heavily on consistency of expenditures with the approved State plan, since Federal rules in this area are minimal.

Comment: One commenter wanted us to clarify whether QC reviewers would be used to review child care payments.

Response: We have not yet determined the circumstances under which QC reviewers would be used to review child care payments and to make recommendations about whether disallowance are appropriate.

Comment: One commenter wanted us to clarify that disallowances for payments under Part 256 would also be excluded from the AFDC Quality Control system.

Response: This is the case. The regulations at § 256.4(b) indicate that the provisions at § 255.4 on disallowances also apply to Part 256.

Comment: One commenter wanted us to clarify the circumstances under which we would take disallowances for child care administration.

Response: Claims of administrative expenditures would be disallowed if the expenditures were not used for the purposes of this program or were otherwise unallowable under this program. For example, we could not pay costs associated with providing child care to Food Stamp-only or General Assistance recipients, for the construction of child care facilities, or for activities excluded under § 255.4(f).

Comment: A few commenters asked that we clarify child care overpayment and recoupment policies. As stated earlier, one commenter asked specifically about the requirement to recover fraudulent payments.

Response: We believe it would be appropriate for States to employ policies on overpayment and recoupment which are similar to those used under the AFDC program. We expect State agencies to promptly take any actions necessary to correct underpayment and overpayment. Payments made to adjust for underpayment would be disregarded in determining eligibility for AFDC, like other child care payments.

For those who received prior overpayments but are no longer receiving child care payments, recovery would normally be made by appropriate action under State law against the income or resources of the individual or family. For those who received prior overpayments and are still receiving child care payments, recovery would normally be made either through repayment by the recipient or by reducing future child care payments.

Overpayment recovery must be attempted in all cases involving current recipients of child care benefits, in all

cases of fraud, and in all cases where the overpayment amount would equal or exceed the costs of recovery.

Overpayment recovery should usually be attempted from the recipient of the child care payment regardless of whether the recipient of the child care payment is a provider of child care services or a recipient of child care benefits. However, based on the nature of the agreement between the State agency and providers, there may be cases where the State is obligated to pay an amount to the provider in excess of the amount which would be eligible for FFP. In these cases, the State agency need not attempt overpayment recovery, but it cannot receive Federal matching funds for such an overpayment. Examples of such situations include cases where the State purchases a number of child care slots, but does not fully utilize them, and cases where the State agrees to pay more than the allowable local market rate. In other cases where an individual receives child care services, which may have been approved by the State, but were not eligible for Federal matching (e.g., they did not meet applicable standards of State and local law; the child was not eligible under §§ 255.2(a) or 256.2(a); or the family was not eligible at the time under § 256.2(b)), it may also not be possible to collect the overpayment from the provider. Depending upon the individual case circumstances, it might be appropriate for the State to attempt recovery of these latter types of overpayments from the individual or family receiving child care benefits (e.g., where a family kept a child in child care after participation ceased or where they were no longer employed).

In § 255.4(j), we are incorporating these principles and related aspects of the AFDC recoupment process, derived from § 233.20(a)(13) where appropriate.

We decided not to impose the 90 percent rule (which applies to AFDC overpayments) for the recoupment of child care overpayments because it is not a statutory requirement for this program and it seemed inappropriate to impose such a rule when recoupment could be coming from provider payments rather than recipient benefits. However, when recovering an overpayment from an individual still receiving child care benefits, the recovery shall result in the family retaining, for any month, from the combined aid, financial assistance, income and liquid resources of the family, a reasonable amount of funds, consistent with preventing the unnecessary disruption of existing child care services and with the continued requirement to guarantee child care.

Any child care overpayments may be recovered from other IV-A child care payments. Recovery of child care overpayments may not be made from AFDC grants, except on a voluntary basis.

Recovery of overpayments of supportive services paid under IV-F would follow similar standards. Such recoveries could only be made from subsequent IV-F supportive services payments, not from AFDC or IV-A child care payments.

Due Process

Due process requirements (using the JOBS or IV-A hearing process, as appropriate) would apply to child care services. However, except in situations where a change in the method of payment affects AFDC benefit levels, requirements for timely notice would not apply to disputes about the method of payment. Under this Part, the State IV-A agency has discretion about the method of payment to be used; unlike the AFDC program, recipients are not necessarily entitled to assistance in any particular form.

If disputes arise about the provision of child care benefits under this part or the State IV-A agency proposes to deny, discontinue, terminate or reduce child care benefits, the individual is entitled to a hearing, but is not entitled to a continuation of child care benefits in the same amount or form pending that hearing. Consistent with the requirements of § 205.10, however, the individual's AFDC payment may not be reduced because of sanctions under § 250.34 or because of changes in the method of guaranteeing an individual's child care benefits while a hearing is pending. For example, in cases where a recipient's participation in a JOBS activity or in education or training ceased in non-JOBS areas (e.g., due to illness or termination due to unsatisfactory progress), the State IV-A agency would cease providing child care benefits. The individual could appeal that State IV-A agency decision, but child care benefits would not be provided during conciliation or while a hearing was pending. In the meantime, the recipient might be prevented from continuing (or resuming) participation because of the termination of child care benefits. She could not have her AFDC benefits reduced for non-participation while a hearing was pending, and the termination of child care benefits would be considered in determining whether she had good cause for non-participation during that period.

Comment: A number of commenters felt the proposed regulations violated

due process requirements and the requirements of the Family Support Act regarding the applicability of *Goldberg v. Kelly*. They objected to our position that recipients of child care under Part 255 would not be eligible for continuation of benefits pending a hearing. Other concerns included the consistency in treatment between the two classes of child care beneficiaries (those on AFDC receiving benefits and those receiving transitional child care) and the potential for unnecessary losses of child care arrangements.

Response: To help ensure that due process requirements are met, we have changed the proposed regulations at § 255.2(g) to add requirements that the State IV-A agency inform families about their rights and responsibilities and respond to requests for assistance within a reasonable period of time. However, we decided not to change our position on hearings and aid paid pending. First, the Family Support Act provision on *Goldberg v. Kelly* applies only to disputes related to JOBS participation; it does not apply to general disputes on child care. Secondly, the standards under the *Goldberg v. Kelly* decision would not require aid paid pending a hearing under these circumstances. In this decision, the Court recognized a distinction between welfare assistance, which provides "the means to obtain essential food, clothing, housing, and medical care," and other kinds of assistance which do not provide "the very means by which to live." "The extent to which procedural due process must be afforded the recipient is influenced by the extent to which he may be 'condemned to suffer grievous loss.'" Thus, under *Goldberg v. Kelly*, the loss of child care benefits should not be held to the same due process requirements as the loss of financial assistance because it does not touch "the means by which to live" in the same manner. By requiring continuation of financial assistance, unless declined, pending a hearing, our regulations meet due process requirements.

As stated earlier, we saw a distinction between child care benefits provided to a recipient and the transitional benefits provided to a former recipient (where we do require aid paid pending). In short, in the case of an AFDC recipient, we know that her basic needs are being met through AFDC until a hearing is held; further, a JOBS participant would not be subject to participation requirements if necessary care was not being guaranteed; and, for an employed recipient, the disregard would be available to prevent the loss of a job or

income until a hearing is held. Since a recipient of transitional care typically has earned income as her basic means of support, we reasoned that the loss of that care could result in the loss of her basic means of support and, therefore, we believe that requiring aid be paid pending a hearing in such cases is reasonable.

Comment: Several States wanted to know if Federal matching is available for child care benefits paid pending a hearing.

Response: In the case of transitional benefits, where aid must be paid pending a hearing, Federal matching would be available for such assistance. Nevertheless, if the hearing decision is adverse to the recipient, such aid must be recovered. For child care benefits under Part 255, we would not provide Federal matching for aid paid pending a hearing.

Comment: A couple of commenters objected to the language at § 255.2(h), that changes in the manner of payment were not subject to timely notice requirements. Some expressed concerns about the continuity of care; one suggested that timely (ten-day) notices should be required when a change in method would affect the family's contribution.

A couple of commenters wanted us to distinguish between changes in the manner of child care payment and changes in the type of care. They thought our language implied that timely notice requirements would apply to changes in the type of child care arrangements and wanted us to clarify that position.

Response: We do not believe that timely notices should always be required when the manner of payment is changed. The Statute clearly gives the State the authority to select the methods of providing care; individuals are not entitled to receive care under any particular method. The authority for the State to change the manner of payment would be a simple extension of the authority of the State to select a method of providing care.

However, we do recognize that changes in the method of provision of care could disrupt child care arrangements or otherwise negatively affect the individual's child care benefits. In such cases, timely notice should be provided, and we have revised the regulations at §§ 255.2(h) and 256.4(d) accordingly. Specifically, if a change in the method of providing child care (i.e., a change in the manner of payment) would involve a discontinuation, suspension, reduction, or termination of benefits, or force a

change in child care arrangements, the State must provide timely notice. Timely notice requirements would not apply if the change in method of providing child care did not have one of these effects.

Comment: One State had questions about how States would take into account changes in the statewide payment levels, market rates, and standards, particularly as they would affect vendors.

Response: If a change is made to the statewide payment levels, market rates, or applicable standards of State and local law, child care being provided at the time of the change is subject to the change. There is no statutory authority for States to phase-in such a change by grandfathering existing child care arrangements. States should be aware of this requirement when entering into arrangements or contracts with child care providers. A State might choose to include provisions for modification or cancellation in order to avoid questions about the availability of Federal matching.

Child Care Standards (§ 255.5 of the Final Regulations)

The language of the Act reflects Congress' intent to ensure the health and well-being of the children for whom child care is provided. Child care must meet current applicable standards of State and local law; however, States are not required to develop new standards. Consistent with congressional intent, we are not creating Federal requirements in this area. At § 255.1(e), we require that the State Supportive Services plan include an assurance that the State will meet the appropriate standards of State and local law (and/or Tribal law, where applicable). The State must make the standards available to the Family Support Administration, upon request, for the purposes of program reviews, payment reviews and audits.

The regulations incorporate the requirements in the Statute that the State provide the Secretary, upon request, with a description of State and local requirements for center-based care designed to ensure basic health and safety, including fire safety, protections and endeavor to develop guidelines for family day care. The Secretary shall report to the Congress on the nature and content of State and local standards for health and safety by October 1, 1992. We will be sending an Action Transmittal to the State IV-A agencies at a future date requesting the information necessary to meet these requirements. For the purpose of the one-time report to Congress, it would be helpful if the State IV-A agency

describes the procedures that both have been and will be established. The State also must endeavor to develop guidelines for family day care if such guidelines do not already exist.

We have revised the regulations at § 255.5 to provide that the State will have to make available, upon request of the Secretary, information on the applicable standards of State and local law, as well as on its basic health and safety requirements for center-based care. This change reflects our changes to the requirements on States regarding center-based care, discussed in response to the following comment, and it makes the regulations consistent with the language in the NPRM. The revised regulations also indicate that the Secretary may require information on the development of guidelines for family day care. The guidelines information is not addressed in the Supportive Services plan, but is subject to reporting under the Statute.

Comment: Several commenters objected to the language at § 255.2(a), where we said that States had to have procedures to ensure that center-based child care would be subject to "applicable" standards of State and local law including those designed to ensure basic health and safety protection, and fire safety. Some commenters felt this language was inconsistent with our preamble language and the statutory language. Some wanted the regulatory language revised to correspond to the preamble language, which more directly reflected the Statute.

Response: We have revised the regulations at § 255.5(a) to require that the State establish procedures to ensure that center-based child care will be subject to State and local requirements designed to ensure basic health and safety, including fire safety, protections. This language more closely follows the Statute.

Uniform Reporting Requirements for Child Care (§ 255.6 of the Final Regulations)

Consistent with the requirements of section 606 of the Statute, the State IV-A agency is required to report information on child care to ensure that the provisions of the Statute are effectively implemented. These requirements are addressed in § 255.6 of the regulations. We also have included a requirement that the State IV-A agency report the number of children for whom care is provided, by type of care, under both Parts 255 and 256. As in any other fiscal expenditure, adequate information

must be in the case record documenting these expenditures.

We have addressed specific comments on uniform reporting requirements for child care under the general section on uniform reporting.

PART 256—TRANSITIONAL CHILD CARE

Purpose (§ 256.0 of the Final Regulations)

The purpose of this part is to implement section 302 of the Family Support Act of 1988.

State Plan Requirements (§ 256.1 of the Final Regulations)

The State Supportive Services plan must include the methods available to provide extended child care. We suggest that the State IV-A agency use the same methods, except for the income disregard, that it has in place for providing child care to AFDC recipients during employment, education and training activities, including activities under JOBS.

The State Supportive Services plan must also contain the sliding fee scale under which the family will contribute to the cost of the child care.

As in the case of the initial JOBS plan, we expect the State IV-A agency to submit a Supportive Services plan for transitional child care 45 days before the April 1, 1990 effective date. If a State IV-A agency has not previously submitted a Supportive Services plan because it has not implemented its JOBS program, the Supportive Services plan for transitional child care must contain both the provisions discussed here and any provisions described at § 255.1 that apply to transitional care. For example, the transitional plan must include necessary assurances on procedures and information on local market rates.

As discussed in the preamble to § 256.2, we have added a requirement that the State include in its Supportive Services plan a description of its application requirements for transitional benefits.

Eligibility (§ 256.2 of the Final Regulations)

Basic Eligibility Requirements

Effective April 1, 1990, certain AFDC recipients will, upon loss of eligibility for AFDC because of employment, become eligible for 12 consecutive months of child care. To be eligible for this benefit, the former recipient must have received AFDC (or been considered a recipient under § 233.20(a)(3)(viii)(D)) for 3 of the prior 6 months. We define the first month of the period of eligibility as the month the individual becomes ineligible for AFDC

because of one of the following three events:

- (1) any increase in earned income;
- (2) the loss of the \$30 + 1/3 or the \$30 disregard because of the expiration of the time limits on their use; or
- (3) for AFDC-UP cases only, an increase in the number of hours worked by the principal earner to 100 hours or more per month.

Comment: One commenter suggested that we clarify that eligibility based on an increase in the hours of work would result only from an increase in hours by the principal wage earner.

Response: Although a clarification may not be necessary, since hours of employment do not directly affect AFDC eligibility except in the case of the principal earner, we revised the preceding preamble language on eligibility to clarify that only an increase in the hours worked by the principal earner would cause eligibility.

Comment: One commenter was concerned about the eligibility requirements for transitional benefits not being parallel to existing programs using title XX.

Response: We realize these eligibility requirements may differ from requirements in other programs, but the requirements are statutory, and we cannot revise them. There may be greater opportunity for achieving consistency by modifying requirements in other programs. In particular, eligibility requirements for title XX child care benefits are not set by Federal law, but are determined by the individual States.

Comment: A few commenters objected to the requirement of receiving AFDC in 3 of the preceding 6 months. They felt that it penalized new recipients who receive AFDC for periods of less than 3 months, as well as those States that are able to quickly assist AFDC recipients in finding employment. Furthermore, they raised concern over a possible incentive to AFDC recipients to remain on AFDC for at least 3 months before securing employment so that they could be eligible for transitional child care benefits.

Response: The requirement that former recipients received AFDC for 3 out of preceding 6 months was set in the Statute. It is consistent with prior transitional benefit provisions.

Comment: One commenter requested that recipient declaration be allowed in determining whether the family received AFDC benefits during 3 of the preceding 6 months in cases where families received AFDC in another State.

Response: In cases where the State does not have direct access to data on

prior AFDC receipt, recipient declaration would be allowed, but States are expected to develop and follow appropriate verification procedures.

Comment: One commenter wanted us to clarify that non-JOBS participants are eligible for transitional child care benefits.

Response: The regulations at § 256.2(b), which specifies the basic conditions under which families are eligible for transitional child care, includes no reference to JOBS. Therefore, all AFDC recipients are eligible for benefits, provided they meet all eligibility requirements discussed above.

Comment: One commenter wanted us to revise our regulations because they did not cover child care related to acceptance of a job under the guarantee.

Response: We have revised § 256.2 so that the guarantee covers care needed to accept and retain employment.

Application for Benefits

We will allow the State to establish its own requirements for determining eligibility for transitional child care benefits. These requirements must be included in the Supportive Services plan. The requirements could vary depending on the need of the State for eligibility and payment information. For example, a State that has current information about recipients might approve transitional child care and establish fees through a recertification process. In other cases, where the State does not have current information (e.g., where the individual's arrangements with a relative for unpaid care are discontinued and she begins needing child care benefits 6 months after she leaves AFDC), the same State might require a full application.

Comment: While two commenters supported the written application requirement contained in the NPRM as an administrative necessity, many commenters opposed it. Most were opposed to it because of the burden that it would place on agencies and clients, and because of the gap in child care that could result. A few commenters also noted that this sort of application is not required for extended Medicaid benefits and, therefore, should not be required for transitional child care benefits either.

A few commenters suggested that there be no requirement at all; some wanted automatic eligibility—at least for those who cooperated in establishing their eligibility before they become ineligible for AFDC or for those who were already receiving child care benefits under JOBS. Other suggestions

included: (1) requiring that an application be filed: (a) based on the need to know; (b) if at least one month had elapsed since termination from AFDC; (c) only in situations where there has been a break in the period of State-supplemented day care and the break was at the household's request; and (2) giving States the option to require applications: (a) under any circumstance; (b) when at least one month had elapsed since leaving AFDC; or (c) if the client had a break in eligibility. In place of a written application, a few commenters suggested these alternatives: (1) recertification with minimum data asked and prompt approval; (2) recertification except in cases where factors have already been documented in the case file and there is no expectation of change; and (3) oral applications or other application methods, short of a formal, written application.

Response: We have changed the regulations and will no longer require a written application. The revised language at § 256.2(b) indicates that the family must request transitional child care benefits and meet appropriate application requirements established by the State. These requirements could vary depending on the need of the State for eligibility and payment information.

In light of the flexibility we provided in this area, we felt it was important to know the nature of the requirements established by the State. Therefore, we amended § 256.1 to add an additional item to the Supportive Services plan which would describe State application requirements.

Comment: We received similar objections to our policy denying retroactive benefits.

Response: We have decided to change our policy and require the provision of retroactive benefits. Therefore, we have deleted the language which was at § 256.2(b)(3) of the NPRM indicating that there was no eligibility for benefits prior to the month of application. We have also deleted preamble language saying that individuals should be clearly informed about the loss of transitional child care benefits for any month prior to the month of application if they fail to apply.

Comment: One commenter wanted us to include a reasonable time period for taking action on applications in the regulations. The commenter suggested that we set a 15-day time limit for acting on an application that is submitted just before the family becomes ineligible for AFDC and a 45-day limit when there has been a gap of one month or longer in AFDC eligibility.

Response: Since we deleted the mandatory application requirement, we expect State requirements, and the circumstances under which application is made, to vary considerably. Therefore, we do not feel that we should prescribe such standards. Nevertheless, we expect States to act upon requests for child care benefits—under this Part and Part 255—within a reasonable time period.

Comment: One commenter wanted clarification on the criteria that should be used in reviewing applications for approval or rejection.

Response: We do not want to regulate unnecessarily in this area, because we anticipate substantial variation in application requirements among and within States. Obviously, approval of benefits should be based on sound, documented and complete information. There should also be a specific request for benefits. Applications should be disapproved when information indicates ineligibility or when information is insufficient to determine eligibility or fees. If an application is disapproved, the State should send a notice which includes the reason for the disapproval. The State also must inform an applicant of the opportunity to have a hearing if she wants to appeal a disapproval of benefits.

The regulations at § 256.2(b)(3) have been revised to indicate that families must request transitional benefits, must provide the information necessary for the State to determine their eligibility and fees, and meet appropriate application requirements of the State.

Notifications

The State has the responsibility of informing the recipient that the transitional child care benefits are available. Such notification should take place at the time the State provides the program information required at § 250.40 and be repeated at the time of termination of the individual's AFDC benefits. Section 256.4(c) requires that recipients be notified of their potential eligibility for transitional child care when they become ineligible for AFDC and that they be informed of the steps they need to take to ensure that they request and receive all benefits for which they would be eligible.

Comment: One commenter wanted us to require States to develop procedures for clients to access child care after they find employment.

Response: We decided not to create regulatory requirements in this area. First, they would unduly interfere with the State's flexibility to establish the methods by which individuals would

receive benefits under this part. Secondly, they would violate our general principle not to regulate procedural matters unnecessarily. Further, the statutory language does not support such requirements. In the context of the JOBS program, the Statute establishes certain expectations about State agency assistance in helping individuals access child care; it does not establish similar expectations for State agency assistance to individuals seeking transitional benefits. Thus, we concluded that no requirements were intended here.

Comment: One commenter suggested that the notification should cover penalties for quitting a job or failing to cooperate with the child support enforcement program.

Response: We agree that it is important that recipients are aware of these responsibilities and penalties. However, they should be informed of all their rights and responsibilities under the program. We therefore added a requirement in §§ 255.2(g)(1) and 256.4(c) to specify this State responsibility.

Comment: A couple of commenters felt the transitional notice should be separate from the notice of AFDC termination and recommended that notices be made by personal contact.

Response: We did not feel changes here were necessary. Under the proposed regulations, we already required that the notification be given "in writing, and orally as appropriate." We also required that individuals first receive information about these benefits under the JOBS orientation. To impose further notice requirements would seem unnecessarily onerous on States and would be contrary to our general philosophy not to unnecessarily regulate State notification procedures. Furthermore, we did not feel that a separate notice was necessarily preferable from the recipient's point of view. A well-designed single notice—or single mailing—could be more effective than separate notices.

Comment: One commenter thought that notices should cover the methods of providing transitional versus recipient care.

Response: Such information might be covered under the JOBS orientation or under the new rights and responsibilities requirement that we added in response to another comment. We do not believe a specific requirement is indicated. As we discussed elsewhere, under the JOBS program, there are detailed informational requirements regarding the provision of child care services. The Statute does not create similar informational requirements for

transitional care, and it makes no provision for the administration of those benefits. Therefore, we do not believe extensive requirements in this area were intended.

Effective Date

We considered when the first month of ineligibility must occur to qualify a former recipient for this benefit. We decided that the first month of ineligibility for AFDC—and the concomitant first month of eligibility for transitional child care—must be April, 1990, or later, because April 1, 1990, is the effective date for the transitional child care provisions. Therefore, to receive transitional child care for April, 1990, the last month of AFDC benefits must have been in March, 1990, and March would be one of the three months with receipt of AFDC benefits required during the six-month period following September which are necessary for eligibility.

Comment: One commenter wanted clarification on which month is the first month of eligibility—the effective month of AFDC discontinuance or the month when AFDC should have been discontinued if an error is made.

Response: Eligibility for transitional child care benefits begins when AFDC should have been discontinued; that is when the family becomes ineligible for AFDC. The statutory language refers to the period when a family "ceases to receive aid to families with dependent children." We do not consider payments made in error to be such aid. Rather, we consider only aid paid while the family is eligible to be "aid to families with dependent children." Thus, the fact that a State continues to make AFDC payments erroneously does not affect the eligibility period for transitional child care.

Comment: A few commenters wanted us to interpret the April 1, 1990, effective date differently so that more individuals would be eligible. Some suggested that we extend the benefit to those already receiving such a benefit under a State program, provided that all other eligibility requirements were met at the time they became ineligible for AFDC and during the period before April 1, 1990. Another commenter wanted participants in States that had JOBS in place before April 1, 1990, who became employed and subsequently ineligible for AFDC prior to April 1, 1990, to be eligible for benefits for the remainder of their 12-month transition.

Response: We do not believe a change in policy is indicated. We believe the policy in the proposed regulations represents the best interpretation of the April 1, 1990, effective date for this

provision. It is consistent with the interpretation used in implementing prior transitional benefit provisions under the Social Security Act.

Comment: One commenter suggested that the final regulations include the provision that the first month of AFDC ineligibility be on or after April 1, 1990, in order for the family to be eligible for this benefit.

Response: We have added this provision to the final regulations at § 256.2(b)(4).

Period of Eligibility

Based on the intent that families have help with their child care needs for 12 months after losing their AFDC benefits, the regulations provide that families who do not need child care immediately after such loss of AFDC may begin to receive child care in any month during the 12-month eligibility period for the remaining balance of the 12-month period. For example, a family that does not need child care until five months after going off AFDC would qualify for that month and the remaining six months of the 12-month eligibility period.

States must keep case records open for 12 months after the individual, who loses AFDC eligibility, becomes eligible for the transitional child care.

Comment: One commenter opposed the 12-month limit on benefits.

Response: The 12-month eligibility period was set by Congress in the Statute.

Comment: One commenter wanted everyone to receive 12 months of benefits regardless of when employment was found or the reason they lost eligibility for AFDC.

Response: The eligibility for and timing of the transitional child care benefits is set by the Act. The 12-month eligibility period begins when the family loses AFDC eligibility because of increased hours of or countable income from employment, not when a member of the family finds employment. For example, an AFDC recipient could be employed, but still be eligible for AFDC. If a few months later she gets a raise and becomes ineligible for AFDC because her income is now too high, she is eligible for 12 months of transitional child care from that point. If, however, a family loses AFDC eligibility for a reason other than the employment-related ones specified in the Act, it cannot receive transitional child care benefits, even if a member finds a job during the 12-month period after the family loses AFDC eligibility.

Comment: One commenter wanted to know whether those in the AFDC-UP

program were eligible for the full 12 months of benefit if the State currently limits receipt of AFDC benefits to 6 months and they find a job after this 6-month benefit ends.

Response: In this situation, the family became ineligible for AFDC because of the time-limitation on UP benefits. The family is ineligible for transitional child care benefits because it does not meet the statutory eligibility requirement that the family become ineligible for AFDC because of employment.

Good Cause

The Act provides that a family is ineligible for transitional child care if the caretaker relative, who is a member of the AFDC family, terminates employment without good cause or fails to cooperate in establishing paternity and enforcing child support. Cooperation in establishing paternity and enforcing child support is discussed at § 232.12.

If the caretaker relative loses a job (with good cause as defined at § 250.35), and then (prior to re-establishing eligibility for AFDC) finds another, the family would qualify for the remaining portion of the 12-month eligibility period. Also, if the caretaker relative loses a job and the family goes back on AFDC, that family could again become eligible for a full 12 months of transitional child care as long as it meets the eligibility requirements discussed above.

Comment: One commenter opposed penalties for terminating employment without good cause.

Response: The Statute provides that a family is ineligible for benefits if a caretaker relative who is a member of the family terminates employment without good cause.

Comment: One commenter wanted us to clarify the regulations about provision of a new, full 12-month period of eligibility when the participant loses or quits her job with good cause, goes back on AFDC, and then finds another job.

Response: We have done so at § 256.2(e) in the final regulations.

Comment: One commenter questioned whether our reference to § 250.35 was appropriate. The particular concern was that § 250.35 did not necessarily cover the loss of a job which was beyond the recipient's control.

Response: Loss of eligibility only occurs when an individual terminates her employment. Thus, ineligibility would only occur when the individual takes an action which precipitates the loss of the job. Furthermore, the regulations at § 250.35 have been amended to include situations beyond the individual's control. We therefore

believe the reference to § 250.35 is appropriate and adequate.

Comment: One commenter suggested that we require appropriate notification of the potential sanctions for non-cooperation.

Response: As discussed elsewhere, we believe that the State should provide recipients this information, and we have made appropriate changes to the regulations.

Comment: One commenter asked that we make the references in the regulations to "member" and "caretaker relative" in §§ 256.2(a), 256.2(d), and 256.2(e) consistent.

Response: We have not made these changes in the body of the final regulations because there are statutory differences between the two terms. Furthermore, if we change each of the named references to "member," we broaden the base for penalty. That is, a family could become ineligible for benefits based on the actions of any family member instead of the actions of a caretaker relative alone. Conversely, if we change each of the references to "caretaker relative," we limit the scope of the guarantee available to the family. The family could only receive transitional child care if it was necessary to keep a caretaker relative employed. Child care needed for the employment of family members other than the caretaker would be excluded.

Fee Requirement (§ 256.3 of the Final Regulations)

Section 402(g)(3)(A)(vii) of the Act requires the State IV-A agency to establish a sliding fee scale for the purpose of calculating a family's contribution for transitional child care.

The final regulations provide States flexibility in determining the formula for calculating these fees. The only regulatory requirement is that all recipients of benefits under this Part must make some contribution.

Comment: In the NPRM, we asked for suggestions for Federal rules on imposing specific limits on the fee scales determined by States. Most of the comments we received suggested that we give States flexibility and allow them to use existing formulas developed for other child care programs in the State. The following are some of the specific suggestions: (1) allow States to use their own formulas, which would be included in the Supportive Services plan; (2) require payment by the family of 100 percent of the cost of care if family income exceeds 185 percent of the poverty level; (3) do not require a payment of any amount from families below the poverty level; and (4) make the sliding fee scale optional.

Response: The Statute explicitly requires that the State establish sliding fee scales, and we cannot make it optional. However, in response to the strong support for State flexibility in this area, in the absence of similar requirements across States, and in the interest of reducing administrative hurdles to program coordination, we have decided to allow State flexibility in determining the formula for calculating fees. The only requirement we decided to impose at this time is a requirement that all recipients of benefits under this Part make some contribution, however minimal. We believe such a requirement would not create serious compatibility problems and we consider it essential to establish the transitional nature of these benefits and develop recipient responsibility for self-support. We are not setting Federal requirements on the significance of that contribution, and we recognize that the contribution expected from those with the lowest income levels might be no more than a token amount (and contributions might be subject to a different payment schedule).

Although we have decided not to regulate substantially in this area, we are still concerned that States establish scales which require meaningful contributions from families able to pay. We will monitor the State practices in this area over the coming few years and will reconsider our regulatory approach if it appears Congressional intent is not being met in this area.

Comment: Other commenters wanted clarification about how to determine family income; one commenter suggested counting all income normally counted plus income of dependent children. Commenters also asked whether they could add in other factors (e.g., expense of care) besides ability to pay in establishing their fee structures.

Response: The State may determine income using AFDC rules for counting and verifying income (at §§ 233.20 and 233.36), or it may use income rules established by other State child care programs. Also, it may consider factors besides income in setting fees as long as those factors directly affect the family's ability to pay. For example, the State could consider the number of children requiring child care services.

Comment: One commenter wanted the States to have flexibility in the method of payment and the setting of their fees. The commenter suggested that States have the option to develop a sliding scale which establishes the State's obligation for payment rather than setting recipient fees. One consequence of the proposed approach would be that

recipients incur the full costs of more expensive care.

Response: Although we provide States flexibility in establishing payment methods, fee amounts, and fee collection procedures, we do not think this commenter's approach is consistent with congressional intent. It would not have the same effect on the recipient as a traditional sliding fee scale system, and recipient fees would not fully reflect the recipient's ability to pay. We are particularly concerned that this approach could work to discriminate against recipients based on their geographic location or the needs of the child, and that it would unduly restrict parental choice.

Collection of Fees

States may set different periods of payment collection for differing levels of payment. For example, it may not be cost-effective to collect and record very low fees every month. Data will be required in the case record concerning the fee schedule and the collection of the fee.

Under the regulations at § 256.3(e), the State IV-A agency must take appropriate action if a family does not pay its fee. If a family does not cooperate in paying its fee, it would become ineligible for continued transitional benefits, and it would remain ineligible for so long as back fees were owed, unless satisfactory arrangements have been made to make full payment. However, transitional child care benefits would not be discontinued without due process, and benefits would be continued pending a hearing, if requested. Unless the fee requirements are taken seriously by States and recipients of benefits, the program will not be effective in providing a transition towards self-sufficiency.

Under the regulations at § 256.1(e) the State plan must specify the methods and procedures the State IV-A agency shall use to ensure that fees are collected.

Comment: Several commenters on this section wanted the fee to be paid to the provider directly. Some suggested that payment to the provider be made a requirement, but a few suggested allowing a State the option. One commenter requested flexibility for the States to develop their own fee collection system.

Response: In order to ensure some State flexibility and ease administration, we have decided not to require State agencies to collect fees directly. States have at least three options: (1) require the fee to be paid to the State; (2) require the fee to be paid directly to the provider and have the State pay the

provider for the difference; or (3) pay the recipient the State's contribution and require her to pay the provider in full.

Comment: One commenter wanted to know if the fee is used to offset the expense of child care.

Response: The fees collected should be used to offset the expense of child care (like AFDC overpayment collections are treated). They are considered program income which should be handled like a "deduction," as described in § 74.42(c).

Comment: One commenter suggested that we allow States flexibility to develop arrangements with providers to cover costs of uncollected fees.

Response: Some flexibility is allowable, as long as the State does not abdicate its responsibility to see that fees are collected. Recipients should be responsible for contributing to the cost of their child care, and any arrangements between the State agency and providers should be consistent with this goal.

Comment: Several commenters did not want the State to be obligated to monitor or enforce payments to providers.

Response: As long as the State is paying for part of the child care, we believe the State is obligated to make sure the provider is getting paid. Unless fees are paid, States may end up incurring higher child care costs or losing potential child care slots because of disgruntled, unpaid providers. This situation increases the potential for a lapse in care or a lack of child care slots. Therefore, the State must monitor and enforce payments to providers.

Comment: A couple of commenters were opposed to the denial of benefits to non-paying families.

Response: The Statute requires that families "shall contribute" to the cost of child care benefits based on their ability to pay. We decided to make such contributions a condition of eligibility in order to give the requirement meaning. Otherwise, those who failed to meet their fee obligations would be better off than those who were fulfilling their responsibilities. Furthermore, the provision creates some consistency between how cooperation in paying fees is treated and how other forms of cooperation (e.g., in meeting child support requirements) are met. This consistency will make the provision easier to administer and more understandable to recipients and agency staff.

Comment: One commenter had a question about whether a family is required to pay what it owes in full before benefits are restored.

Response: A family need not pay in full before benefits can be restored. However, arrangements must be made to ensure that it will meet its obligation. These arrangements could take the form of an agreement upon a payment plan or some plan for recoupment.

Comment: One commenter wanted a definition of "satisfactory arrangements."

Response: We decided not to include a definition in our regulations because we wanted to provide States with sufficient flexibility to handle individual family situations.

Comment: One commenter had a question about the effect the failure to pay the transitional child care fee has on the family's AFDC grant.

Response: If the family loses its job and goes back on AFDC while owing back child care payments, such payments could be recouped from future child care payments or may be paid back directly by the family, but the State could not recoup child care payments from the AFDC grant.

Other Provisions (§ 256.4 of the Final Regulations)

In part because the transitional child care provisions of the Statute have distinct beginning and ending dates separate from the other child care provisions of the Statute, we have included them as a separate part in these regulations. However, most of the provisions in Part 255 apply to this part. For example, the provisions of § 255.3(a) regarding the methods of providing child care generally apply to transitional child care although the income disregard is not an option in these cases. The other provisions in Part 255 that pertain to allowable costs, matching rates, standards, disallowance procedures, and uniform reporting also apply.

One minor exception to this general rule relates to the funding of Puerto Rico, Guam, the Virgin Islands and American Samoa. The exception reflects the fact that child care costs under Part 255 for these jurisdictions are covered under the JOBS funding cap, while their transitional child care costs fall under the section 1108 limits.

Another exception is that transitional child care benefits cannot be suspended, reduced, discontinued or terminated until a decision is rendered after a hearing requested within a timely notice period. We make this distinction because recipients of transitional child care benefits under this part do not have the same protection of the "means by which to live" (in terms of continuation of AFDC benefits and the option to cease participation) as is available to

individuals receiving child care under part 255.

Comment: One commenter asked that we make the regulatory cites in § 256.4(a) correspond to the text that follows.

Response: At § 256.4(a) in the NPRM, we state that the State IV-A agency providing transitional child care must meet the following requirements:

- § 255.3(a): which addresses the use of methods for guaranteeing care (paragraphs 1-7)
- § 255.3(b): which requires taking into account individual needs of the child
- § 255.3(c): which governs parental choice
- § 255.3(f): which covers cases that are subject to retrospective budgeting
- § 255.5: which covers child care standards
- § 255.6: which covers uniform reporting requirements

We go on to suggest those cites correspond to the following subjects:

- Methods of providing child care
- Child care standards
- Disallowances
- Coordination
- Services to Indians and Alaska Natives
- Uniform reporting requirements

Unfortunately, the two lists do not correspond. We therefore have revised § 256.4 to indicate that the following provisions of part 255 also apply to part 256:

- § 255.3(a), paragraphs 1-5 and 7—regarding available methods
- § 255.3(b) regarding consideration of the individual needs of the child
- § 255.3(c)-(d) regarding parental choice
- § 255.3(h) regarding coordination
- § 255.4(a) regarding FFP limits
- § 255.4(b)(1) regarding matching rates
- § 255.4(c) regarding requirements for FFP
- § 255.4(f) regarding no matching for resource development
- § 255.4(g) regarding matching for administrative costs
- § 255.4(h) regarding fraud
- § 255.4(i) regarding disallowances and fiscal requirements
- § 255.4(j) regarding recovery of overpayments
- § 255.5 regarding standards
- § 255.6 regarding uniform reporting

Technical and Conforming Amendments (§§ 205.50, 224.0, 233.20, 233.90, 233.100, 234.60, 238.01, 239.01 and 240.01 of the Final Regulations)

Section 202 of the Family Support Act, Public Law 100-485, contains the technical and conforming amendments to title IV-A of the Social Security Act which are required by the enactment of the Statute.

Until October 1, 1990, we cannot remove existing Federal regulations which have been amended by the

Statute because the existing regulations will continue to govern State IV-A agencies until they have approved JOBS plans. Therefore, in amending the Federal regulations, we have either incorporated JOBS provisions in the existing regulations (for example, § 205.50 on safeguarding of information) or added a provision specific to States with JOBS programs (for example, treatment of earned income at § 233.20(a)(11)(v)).

Sections 202 and 204 of the Statute repeal the following statutory provisions of title IV of the Act as of October 1, 1990: Part C (WIN); Section 409 of Part A (community work experience program (CWEP)); Section 402(a)(35) of Part A (employment search); and Section 414 of Part A (work supplementation). For States which implement JOBS prior to October 1, 1990, the Federal regulations governing WIN (Part 224), CWEP (Part 238), work supplementation (Part 239), and employment search (Part 240) will no longer apply. Therefore, we have added a provision to each of these existing regulations clarifying that the current regulations do not apply to States with approved JOBS plans and will be repealed for all States as of October 1, 1990. The final regulations which distinguish the applicability of the current regulations are found at §§ 224.0(c) (WIN), 238.01(b) (CWEP), 239.01(b) (work supplementation), and 240.01(b) (employment search).

Safeguarding of Information

Section 202 of the Statute amends section 402(a)(9)(A) of the Act to include programs under Part F for which the State IV-A agency must also provide safeguards which restrict the use or disclosure of information concerning applicants or recipients. In accordance with these amendments, we have amended § 205.50(a)(1)(i)(A) to cover programs under Part F under our safeguarding regulations.

Treatment of Earned Income

Section 202 of the Statute also amends section 402(a)(8)(A)(iv) of the Act regarding the treatment of earned income to remove special treatment afforded earned income from public service employment and incentive payments for institutional training under the Work Incentive program. In lieu of amending § 233.20(a)(11)(iv) which governs treatment of earned income under WIN, we have added a new provision at § 233.20(a)(11)(v) that governs the treatment of earned income and expenses in States with approved JOBS plans. For regular employment or OJT, the disregards in §§ 233.20(a)(11)(i) and (a)(11)(ii)(B) apply. For earned

income from a job under work supplementation, the same disregards apply unless a State IV-A agency has elected to provide differently in its State JOBS plan in accordance with § 250.62 (j) and (k). Section 233.20(a)(11)(v)(C) provides that any advance payment or reimbursement to the JOBS participant for child care, transportation, work-related expenses, or work-related supportive services is to be disregarded. Section 233.20(a)(11)(v)(D) provides that payment for or reimbursement of child care pursuant to part 255 for employed individuals who are not JOBS participants is disregarded.

Changes to Section 407

Definition of "quarter of work". In the NPRM, we proposed to revise the definition of "quarter of work" based on section 202(b)(10) of the Statute, which amended section 407(d)(1) of the Act. Upon additional examination, we have determined that a technical amendment in the Technical and Miscellaneous Revenue Act of 1988 (P.L. 100-647) repealed section 202(b)(10) of the Statute. Therefore, we have deleted this proposed change from the final regulations. The definition of "quarter of work" is not changed by title II of the Family Support Act. It is changed by title IV of the Family Support Act and is not effective until October 1, 1990.

Participation Requirements for Unemployed Parents

Under current law, a principal earner in an AFDC-Unemployed Parent case must be registered with WIN or, if exempt because of remoteness, with a public employment office as a condition of eligibility for aid. In addition, there is a requirement that the principal earner be certified to participate in WIN within 30 days after receipt of AFDC. Certification means that the necessary support services are available so that recipients can participate in training or employment. Additionally, Federal financial participation is not available if, after the 30 days, the State IV-A agency has not taken action to certify the principal earner to WIN.

The Statute amends the current law to provide that aid will be denied if the parent, unless exempt under the new section 402(a)(19)(C)(vii), is not currently participating or available for participation in a JOBS program, or, if exempt due to remoteness, is not registered with the State public employment office. We have amended § 233.100(a)(5)(i) to add this provision for States with approved JOBS plans.

The Statute further amends section 407(c) of the Act to provide that within

30 days after receiving aid, the parent must participate or apply for participation in the JOBS program, unless the program is not available in the area where the parent is living. We have amended § 233.100(a)(6) to add this provision for States with approved JOBS plans.

The Statute also amends section 407(c) of the Act to provide that FFP will not be available to the State IV-A agency for any period beginning with the 31st day after the individual receives aid, if the State has not taken appropriate steps directed towards the participation of the parent in a JOBS program. We have amended § 233.100(c)(2)(iii) to add this provision for States with approved JOBS plans.

Comment: Several commenters objected to the statutory provisions requiring unemployed parents to be available or participating in JOBS within 30 days of receiving AFDC and denying FFP to a State if it had not taken "appropriate steps directed toward the participation of such parent in a program under part F." One State asked what expenditures did the prohibition on FFP apply to?

Response: These are statutory provisions. The final regulations give States maximum flexibility within the statutory provisions to implement these provisions. FFP would not be available for expenditures for the benefits paid to a family eligible under section 407 of the Act if appropriate steps had not been taken toward the participation of the parent in that family in a program under Part F.

Comment: Some commenters asked for clarification about what the participation requirements in this section mean. One was concerned about phase-in of the JOBS program and how this provision affected it. One said that independent job search should be required of unemployed parents prior to enrollment in JOBS as many unemployed parents find jobs in the first few months anyhow.

Response: Although the amendments to the Act specify some timeframes within which either the State or the individual must act, they do not specifically define what those activities are. We believe that the State is in the best position to determine what activities would both conform to the requirements of the law and meet the needs of unemployed parents in the State. For example, as the commenter suggested, independent job search might be an appropriate approach. Independent job search is a JOBS component if the State so defines in its State Plan. It would not be staff intensive or costly, yet would meet the

requirements of this provision. However, since the law refers to "appropriate steps directed toward participation" and that the participant must be participating (or available for participation), we believe that preparatory activities such as an initial assessment to determine availability would satisfy the requirements of the Act. Furthermore, we do not believe that such an activity would be a burden even in States that are phasing in the JOBS program.

Loss of Eligibility for Failure to Attend School or Make Satisfactory Progress

Comment: In the NPRM, we proposed to remove the provision at § 233.90(b)(2) which states that an otherwise eligible child under age 18 may not be denied aid if he fails to attend school or make satisfactory grades. Several States questioned our authority to make this change. They doubted whether the Statute intended to permit States to require satisfactory school attendance of all children in order to receive aid.

Response: In lieu of removing § 233.90(b)(2) entirely, we have revised it to provide that if an individual under the age of 18 is required to participate in JOBS and her assignment is to educational activities, then she is subject to the mandatory participation requirements of JOBS and may be sanctioned by the loss of her AFDC benefits as prescribed in section 402(a)(19)(G) for non-attendance at school as that would constitute non-participation in JOBS. We have not changed the provision that prohibits denial of AFDC benefits for failing to make satisfactory grades.

Vendor Payments

The Statute also amends section 402(a)(19)(G) of the Act to extend to the JOBS program the requirement that the State IV-A agency make vendor or protective payments in the event the caretaker relative is sanctioned for failure to participate. Therefore, we have revised § 234.60(a)(12) to add JOBS to the list of programs for which imposing a sanction requires a State IV-A agency to provide protective or vendor payments.

Special Needs

Finally, we have amended § 233.20(a)(2)(v) to prohibit the use of special needs for certain costs related to participation in JOBS or other educational or training activities. We have added the phrase "or other educational or training activities" to clarify that the prohibition applies to all educational or training activities, including those in areas which do not

have a JOBS program and those which are self-initiated. Such costs are eligible for matching under JOBS or, in the case of self-initiated education or training, are not matchable pursuant to § 250.48. The additional language clarifies this. A more complete discussion of special needs is contained in the preamble to § 255.4.

Comment: Several commenters pointed out that the language of § 233.20(a)(2)(v) as contained in the proposed regulations did not appear to contain the prohibition on use of special needs for educational costs provided in § 250.46.

Response: The commenters are correct in pointing out this oversight. We have amended the final regulations to incorporate specific language about the costs of educational activities (including tuition, books, and fees) not being allowable as special needs.

Other Provisions

All conforming amendments and other changes to chapter II necessitated by the Family Support Act will be handled in another regulatory package.

(Catalog of Federal Domestic Assistance Programs 13.780, Assistance Payments Maintenance Assistance, 13.781 Job Opportunities and Basic Skills Training)

List of Subjects

45 CFR Part 205

Computer technology, Grant programs-social programs, Privacy, Public assistance programs, Reporting and recordkeeping requirements, Wages.

45 CFR Part 224

Administrative practice and procedure, Grant programs-social programs, Reporting and recordkeeping requirements, Work Incentive (WIN) Programs.

45 CFR Part 233

Aliens, Grant programs-social programs, Public assistance programs, Reporting and recordkeeping requirements.

45 CFR Part 234

Grant programs-social programs, Health care, Public assistance programs, Rent subsidies.

45 CFR Part 238

Aid to Families with Dependent Children, Grant programs-social programs, Manpower training programs.

45 CFR Part 239

Aid to Families with Dependent Children, Employment, Grant programs-social programs.

45 CFR Part 240

Aid to Families with Dependent Children, Employment, Grant programs-social programs.

45 CFR Part 250

Aid to Families with Dependent Children, Grant programs-social programs, Employment, education and training.

45 CFR Part 255

Aid to Families with Dependent Children, Grant programs-social programs, Employment, education and training, Day care.

45 CFR Part 256

Aid to Families with Dependent Children, Grant programs-social programs, Employment, education and training, Day care.

Dated: September 11, 1989.

Catherine Bertini,

Acting Assistant Secretary for Family Support.

Approved: September 14, 1989.

Louis W. Sullivan,

Secretary, Department of Health and Human Services.

Accordingly, Chapter II, Title 45, Code of Federal Regulations is amended as set forth below:

**PART 205—GENERAL
ADMINISTRATION—PUBLIC
ASSISTANCE PROGRAMS**

1. The authority citation for Part 205 is revised to read as follows:

Authority: Secs. 402, 403, 406, 411, 1102, and 1106(a), Social Security Act (42 U.S.C. 602, 603, 606, 611, 1302, and 1306(a)); sec. 9101, Pub. L. 99-509, 100 Stat. 1972; sec. 202, Pub. L. 100-485, 102 Stat. 2377.

2. Section 205.50 is amended by revising paragraph (a)(1)(i)(A) to read as follows:

§ 205.50 Safeguarding information for the financial assistance programs.

- (a) * * *
- (1) * * *
- (i) * * *

(A) The administration of the plan of the State approved under title IV-A, the plan or program of the State under title IV-B, IV-C, IV-D, or IV-F or under title I, X, XIV, XVI (AABD), XIX or XX or the supplemental security income (SSI) program established by title XVI. Such purposes include establishing eligibility, determining amount of assistance, and

providing services for applicants and recipients.

**PART 224—WORK INCENTIVE
PROGRAMS FOR AFDC RECIPIENTS
UNDER TITLE IV OF THE SOCIAL
SECURITY ACT**

1. The authority citation for Part 224 is revised to read as set forth below and the authority citations following all the sections in Part 224 are removed:

Authority: Secs. 402(a)(19), 430-444 and 1102, Social Security Act (42 U.S.C. 602(a)(19), 630-644, and 1302); secs. 202 and 204, Pub. L. 100-485, 102 Stat. 2377, 2381.

2. In § 224.0, paragraph (c) is added to read as follows:

§ 224.0 Purpose and scope.

(c) The provisions of this part do not apply to any State IV-A agency which has an approved JOBS plan under § 250.20. A list of State IV-A agencies with approved JOBS plans is available from the Family Support Administration, Office of Family Assistance, 370 L'Enfant Promenade, SW., Washington, DC 20447. For all State IV-A agencies the provisions of this Part are repealed as of October 1, 1990.

**PART 233—COVERAGE AND
CONDITIONS OF ELIGIBILITY IN
FINANCIAL ASSISTANCE PROGRAMS**

1. The authority citation for Part 233 is revised to read as follows:

Authority: Secs. 1, 402, 406, 407, 1002, 1102, 1402, and 1602, Social Security Act (42 U.S.C. 301, 602, 606, 607, 1202, 1302, 1602, and 1382 note); and sec. 6, Pub. L. 94-114, 89 Stat. 579 and Part XXIII of Pub. L. 97-35, 95 Stat. 843, and Pub. L. 97-248, 96 Stat. 324, and Pub. L. 99-603, 100 Stat. 3359, sec. 221, Pub. L. 98-181, as amended by sec. 102, Pub. L. 98-479 (42 U.S.C. 602 note) and sec. 202, Pub. L. 100-485, 102 Stat. 2377.

2. In § 233.20, paragraph (a)(2)(v) is revised, paragraphs (a)(11)(v) and (a)(11)(vi) are redesignated as paragraphs (a)(11)(vi) and (a)(11)(vii) respectively and a new paragraph (a)(11)(v) is added to read as follows:

§ 233.20 Need and amount of assistance.

- (a) * * *
- (2) * * *

(v) If the State IV-A agency includes special need items in its standard:

(A) Describe those that will be recognized and the circumstances under which they will be included, and

(B) Provide that they will be considered for all applicants and recipients requiring them; except that:

(1) Under AFDC, work expenses and child care (or care of incapacitated

adults living in the same home and receiving AFDC) resulting from employment or participation in either a CWEP or an employment search program cannot be special needs, and

(2) In a State which has a JOBS program under Part 250, child care, transportation, work-related expenses, other work-related supportive services, and the costs of education (including tuition, books, and fees) resulting from participation in JOBS (including participation pursuant to §§ 250.46, 250.47, and 250.48) or any other education or training activity cannot be special needs.

(11) * * *

(v) The treatment of earned income and expenses under JOBS is as follows:

(A) For earned income from regular employment or on-the-job training, as described at § 250.61, the disregards in paragraphs (a)(11)(i) and (a)(11)(ii)(B) shall apply.

(B) For earned income from a job under the work supplementation component, as described at § 250.62, the disregards in paragraphs (a)(11)(i) and (a)(11)(ii)(B) shall apply unless the State IV-A agency in its State JOBS plan, has elected to provide otherwise under § 250.62(j) and § 250.62(k).

(C) For all activities under JOBS and self-initiated education and training in non-JOBS areas, advance payment or reimbursement to the individual for child care, transportation, work-related expenses, or work-related supportive services is disregarded.

(D) Payment or reimbursement of child care pursuant to Part 255 for employed individuals who are not JOBS participants and one-time work-related expenses for individuals who are not JOBS participants pursuant to Part 255 are disregarded.

3. Section 233.90 is amended by revising paragraph (b)(2) to read as follows:

§ 233.90 Factors specific to AFDC.

(b) * * *

(2) An otherwise eligible child who is under the age of 18 years may not be denied AFDC, regardless of whether she attends school (unless she is required to participate in the JOBS program pursuant to § 250.30 and she is assigned to educational activities) or makes satisfactory grades.

4. Section 233.100 is amended by revising paragraphs (a)(5)(i); (a)(6); and (c)(2)(iii) to read as follows:

§ 233.100 Dependent children of unemployed parents.

(a) * * *

(5) * * *

(i) If and for so long as such child's parent, unless exempt under § 224.20, is not currently registered for the work incentive program or if exempt under § 224.20(b)(6), is not currently registered with a public employment office in the State, except that in a State with an approved JOBS plan under § 250.20, such child's parent, unless exempt under § 250.30(b), must be currently participating (or available for participation) in a program under Part 250, or, if he is exempt under § 250.30(b)(5), must be registered with a public employment office in the State, and

* * *

(6) Provide that within 30 days after the receipt of such aid, unemployed principal earners will be certified for participation in the Work Incentive program under Part 224 or, if the State IV-A agency has an approved JOBS plan pursuant to § 250.20, will participate or apply for participation in a program under Part 250 unless the program is not available in the area where the parent is living.

* * *

(c) * * *

(2) * * *

(iii) For any period beginning with the 31st day after receipt of aid, if and for as long as no action is taken during the period to certify the parent for participation in the Work Incentive program under Part 224, or if the State IV-A agency has an approved JOBS plan pursuant to § 250.20, no action is taken during the period to undertake appropriate steps directed toward the participation of such parent in a program under Part 250; and

* * *

PART 234—FINANCIAL ASSISTANCE TO INDIVIDUALS

1. The authority citation for Part 234 is revised to read as set forth below and the authority citations following all the sections in Part 234 are removed:

Authority: Secs. 402, 403, 406 and 1102 of the Social Security Act (42 U.S.C. 602, 603, 606, and 1302); Section 201 of Pub. L. 100-485, 102 Stat. 2359.

2. Section 234.60 is amended by revising the first sentence of paragraph (a)(12) to read as follows:

§ 234.60 Protective, vendor and two-party payments for dependent children.

(a) * * *

(12) In cases where an individual is sanctioned for failure to participate in

WIN, employment search, CWEP, or JOBS, the State plan must provide that when protective or vendor payments are made pursuant to § 224.52(a)(1), § 238.22, § 240.22(a)(1), § 240.22(b)(1) and § 250.34(d) of this chapter, only paragraphs (a)(7), (a)(9)(ii), and (a)(11)(i) and (ii) of this section will be applicable. * * *

* * *

PART 238—COMMUNITY WORK EXPERIENCE PROGRAM

1. The authority citation for part 238 is revised to read as set forth below and the authority citations following all the sections in part 238 are removed:

Authority: Section 409 and 1102 of the Social Security Act (42 U.S.C. 609 and 1302); Sections 202 and 204 of Pub. L. 100-485, 102 Stat. 2378, 2381.

2. Section 238.01 is revised to read as follows:

§ 238.01 Scope of this part.

(a) *General.* State IV-A agencies may operate community work experience programs (CWEP) which serve a useful public purpose, and require AFDC recipients to participate in them as a condition of AFDC eligibility. The purpose of these CWEP programs is to provide work experience for AFDC recipients. CWEP projects must meet appropriate standards for health and safety and may not displace persons currently employed or fill established unfilled vacancies. Subject to the conditions specified at § 238.16, State IV-A agencies must provide necessary transportation, day care, and other related services or reimburse CWEP participants for costs directly related to participation in the program. Allowable costs to operate CWEP (see Subpart D) are matched by the Federal government at the AFDC administrative match level (50 percent).

(b) *Applicability.* The provisions of this part do not apply to any State IV-A agency which has an approved JOBS plan under § 250.20. A list of State IV-A agencies with approved JOBS plans is available from the Family Support Administration, Office of Family Assistance, 370 L'Enfant Promenade, SW., Washington, D.C. 20447. For all State IV-A agencies, the provisions of this part are repealed as of October 1, 1990.

PART 239—WORK SUPPLEMENTATION PROGRAM

1. The authority citation for Part 239 is revised to read as set forth below and the authority citations following all the sections in Part 239 are removed:

Authority: Sections 414 and 1102 of the Social Security Act (42 U.S.C. 614 and 1302); Sections 202 and 204 of Pub. L. 100-485, 102 Stat. 2378, 2381.

2. Section 239.01 is revised to read as follows:

§ 239.01 Scope of this part.

(a) *General.* Under the work supplementation program, State IV-A agencies may use AFDC funds to develop and subsidize work for AFDC recipients as an alternative to aid provided to AFDC recipients. The work supplementation program may be implemented notwithstanding the definitions contained in section 406 of the Social Security Act or any other provision of law. Under this program AFDC recipients may choose, on a voluntary basis, to accept an offer of work to the extent such jobs are made available. In order to pay for the costs of developing and subsidizing these jobs, a State IV-A agency may reduce the need standard in effect for selected categories of recipients on the basis of their ability to participate in the work supplementation program. The reduction of the need standard may be made for either the entire State or for selected geographical areas. The total amount of Federal financial participation for operation of a State IV-A agency's work supplementation program is limited as provided in subpart D of this part.

(b) *Applicability.* The provisions of this part do not apply to any State IV-A agency which has an approved JOBS plan under § 250.20. A list of State IV-A agencies with approved JOBS plans is available from the Family Support Administration, Office of Family Assistance, 370 L'Enfant Promenade, SW., Washington, DC 20447. For all State IV-A agencies, the provisions of this Part are repealed as of October 1, 1990.

PART 240—EMPLOYMENT SEARCH PROGRAM

1. The authority citation for Part 240 is revised to read as set forth below and the authority citations following all the sections in Part 240 are removed:

Authority: Sections 402(a) and 1102 of the Social Security Act (42 U.S.C. 602(a) and 1302); Sections 202 and 204 of Pub. L. 100-485, 102 Stat. 2377, 2381.

2. Section 240.01 is revised to read as follows:

§ 240.01 Scope of this part.

(a) *General.* Each State with a plan approved under title IV-A of the Social Security Act may establish a program of employment search in accordance with

the requirements in this Part. The single State agency designated in the State plan to administer or supervise the AFDC program must administer the employment search program.

(b) *Applicability.* The provisions of this Part do not apply to any State IV-A agency which has an approved JOBS plan under § 250.20. A list of State IV-A agencies with approved JOBS plans is available from the Family Support Administration, Office of Family Assistance, 370 L'Enfant Promenade, SW., Washington, DC 20447. For all State IV-A agencies, the provisions of this Part are repealed as of October 1, 1990.

Title 45, chapter II, Code of Federal Regulations is amended by adding a new part 250 to read as follows:

PART 250—JOB OPPORTUNITIES AND BASIC SKILLS TRAINING PROGRAM

Subpart A—Purpose and Definitions

- Sec.
- 250.0 Purpose.
- 250.1 Definitions.

Subpart B—Administration

- 250.10 State IV-A agency administration.
- 250.11 Requirement for a statewide program.
- 250.12 Coordination and consultation.
- 250.13 Contracting authority.

Subpart C—State Plan Requirements and Content

- 250.20 Requirement for a State JOBS plan.
- 250.21 State plan content.

Subpart D—Participation Requirements, Exemptions and Sanctions

- 250.30 Requirements for individual participation and exemptions.
- 250.31 Volunteers.
- 250.32 Participation requirements for education.
- 250.33 Participation requirements for unemployed parents.
- 250.34 Sanctions.
- 250.35 Good cause.
- 250.36 Conciliation and fair hearings.

Subpart E—Operation of State JOBS Programs/Program Components

- 250.40 Providing information to AFDC applicants and recipients.
- 250.41 Initial assessment and employability plan.
- 250.42 Agency-participant agreement.
- 250.43 Case management.
- 250.44 Mandatory components.
- 250.45 Optional components.
- 250.46 Postsecondary education.
- 250.47 Other education, training and employment activities.
- 250.48 Self-initiated education or training.

Subpart F—[Reserved]

Subpart G—Optional Components of State JOBS Programs

- 250.60 Job search program.
- 250.61 On-the-job training.

- 250.62 Work supplementation program.
- 250.63 Community work experience program.

Subpart H—Funding

- 250.70 JOBS allocation entitlement.
- 250.71 Allotment of JOBS limit of entitlement.
- 250.72 Maintenance of effort.
- 250.73 Matching rates.
- 250.74 Reduced matching rate.
- 250.75 Activities excluded from FFP.
- 250.76 Financial reports, records, statements and audits.
- 250.77 Costs matchable as AFDC payments.
- 250.78 Definition of participation for enhanced FFP.

Subpart I—Uniform Data Collection Requirements

- 250.80 Uniform data collection requirements.
- 250.81 State data systems options.
- 250.82 Required case record data.

Subpart J—Operation of JOBS Programs by Indian Tribes and Alaska Native Organizations

- 250.90 Scope and purpose.
- 250.91 Eligible Indian Tribe and Alaska Native organization grantees.
- 250.92 Selection criteria for eligible Alaska Native organizations.
- 250.93 Funding formula.
- 250.94 Program administration, implementation and operations.
- 250.95 Supportive services.
- 250.96 Waiver authority.
- 250.97 Application requirements and documentation.
- 250.98 Maintenance of effort for Indian Tribes and Alaska Native organizations.

Authority: Sections 402, 403, 481, 481 note, 482, 483, 484, 485, 486, 487, and 1102 of the Social Security Act as amended (42 U.S.C. 602, 603, 681, 682, 682 note, 683, 684, 685, 686, 687, and 1302); Section 204(b) of Pub. L. 100-485, 102 Stat. 2381.

Subpart A—Purpose and Definitions

§ 250.0 Purpose.

(a) The purpose of the Job Opportunities and Basic Skills Training (JOBS) program under titles IV-A and IV-F of the Social Security Act is to assure that needy families with children obtain the education, training and employment that will help avoid long-term welfare dependence. To accomplish this purpose, the JOBS program is intended to;

(1) Encourage, assist, and require applicants for and recipients of AFDC to fulfill their responsibilities to support their children by preparing for, accepting, and retaining employment;

(2) Provide individuals with the opportunity to acquire the education and skills necessary to qualify for employment;

(3) Provide necessary supportive services, including transitional child care and medical assistance, so that

individuals can participate in JOBS and accept employment;

(4) Promote coordination of services at all levels of government in order to make a wide range of services available, especially for individuals at risk of long-term welfare dependency, and to maximize the use of existing resources; and

(5) Emphasize accountability for both participants and service providers.

(b) This part provides that a State IV-A agency, as a condition of participation in the AFDC program, must operate a JOBS program. In addition, these regulations require that States provide child care and other supportive services for participants in the JOBS program, as well as certain other individuals, pursuant to parts 255 and 256. This part contains the policies, rules and regulations pertaining to the Job Opportunities and Basic Skills Training (JOBS) program.

(c) This part is applicable to States with approved JOBS programs pursuant to § 250.20, and to all States as of October 1, 1990.

§ 250.1 Definitions.

Except to the extent otherwise specified in this section, terms used in part 250 shall have the same meaning otherwise applicable to the Aid to Families with Dependent Children (AFDC) program.

Adult recipient means an individual other than a dependent child (unless such child is the minor custodial parent of another dependent child) whose needs are met (in whole or in part) with payments of Aid to Families with Dependent Children.

Basic literacy level means a literacy level that allows a person to function at a level equivalent to at least grade 8.9.

Component means any of the services or activities available under the provisions of § 250.44 through § 250.48.

CWEP means the community work experience program authorized in § 250.45 and § 250.63.

Department means the U.S. Department of Health and Human Services.

FFP means Federal financial participation in expenditures made by a State.

Institution of higher education means any institution determined by the Secretary of Education to meet:

(1) The definition of such term contained in either section 1201(a) or section 481(a) of the Higher Education Act of 1965 (20 U.S.C. 1001 *et seq.*), as amended; or

(2) The definitions of "proprietary institution of higher education" or

"postsecondary vocational institution," which are defined at sections 481 (b) and (c) of that Act.

Intensive job search is, for purposes of § 250.74(c), job search by a parent in an unemployed parent case that is either group or individual job search for a monthly average equivalent to 20 hours per week.

JAS means a JOBS Automated System authorized under § 250.81 for a State to support its operation of the JOBS program.

JOBS is the Job Opportunities and Basic Skills Training program required by section 402(a)(19) of the Social Security Act, as amended by section 201(a) of the Family Support Act of 1988 (Pub. L. 100-485) and set forth in part F of title IV of the Social Security Act, as added by section 201(b) of the Family Support Act.

JOBS plan means the statewide operational plan for JOBS.

Limited English proficiency means limited ability in speaking, reading, writing, or understanding the English language by a person whose native language is a language other than English or by a person who lives in a family or community environment where a language other than English is the dominant language.

Make good progress and *Making satisfactory progress* in an educational component mean that the participant in any educational activity is meeting, on a periodically measured basis of less than one year, such as a term or quarter, a consistent standard of progress based upon a written policy that was: developed by the educational institution or program in which she is enrolled; and approved by the appropriate State or local education agency and by the State welfare agency or Indian Tribe or Alaska Native organization. Such standard includes both a qualitative measure of a participant's progress, such as a grade point average, and a quantitative measure, such as a reasonable time limit by which a student is expected to complete her studies. Upon review and approval by the State or local education agency and the State IV-A agency or Indian Tribe or Alaska Native organization, the standard may provide that a student who does not meet the institution's or program's progress standard is nonetheless making satisfactory progress during a probationary period, or shall be deemed to be making satisfactory progress because of mitigating circumstances. *Make good progress* and *Making satisfactory progress* in a training component (i.e., OJT and skills training) mean that the participant is meeting, on a periodically measured basis of less

than one year, such as quarterly, a consistent standard of progress based upon a written policy that was: developed by the training provider, and approved by the State IV-A agency or Indian Tribe or Alaska Native organization. Such standard includes both a qualitative measure of a participant's progress, such as competency gains or proficiency level, and a quantitative measure, such as a reasonable time limit for completion of the training program. Standards for making good or satisfactory progress in a training program must be employed by October 1, 1992, but should be used at an earlier time if available.

MSA means Metropolitan Statistical Area, a system of geographical areas defined and maintained by the Executive Office of the President, Office of Management and Budget.

OJT means on-the-job training as authorized in § 250.45 and § 250.61.

Postsecondary education means a program of postsecondary instruction offered by:

(1) An institution of higher education determined by the Secretary of Education to meet section 1201(a), or section 481 (a), (b), or (c) of the Higher Education Act of 1965, as amended;

(2) An institution of higher education or a vocational school determined by the Secretary of Education to meet section 435(b) or section 435(c) of the Higher Education Act of 1965, as amended; or

(3) A public institution that is legally authorized by the State to provide such a program within the State.

Secretary means the Secretary of Health and Human Services.

Target population means that group composed of each individual who:

(1) Is receiving AFDC, and who has received such aid for any 36 of the preceding 60 months;

(2) Makes application for AFDC, and has received such aid for any 36 of the 60 months immediately preceding the most recent month for which application has been made;

(3) Is a custodial parent under the age of 24 who:

(i) Has not completed a high school education and, at the time of application for AFDC, is not enrolled in high school (or a high school equivalency course of instruction); or

(ii) Had little or no work experience in the preceding year; or

(4) Is a member of a family in which the youngest child is within 2 years of being ineligible for AFDC because of age.

For a particular State, this term will include, in lieu of individuals listed, such alternative groups of long-term or

potential long-term recipients as the State has demonstrated to the satisfaction of the Secretary are feasible target populations in that State's caseload.

UP means Unemployed Parent and refers to the program authorized in section 407 of the Social Security Act which provides aid to a dependent child who is deprived of parental support or care by reason of the unemployment of the parent who is the principal earner.

Subpart B—Administration

§ 250.10 State IV-A agency administration.

(a) The State agency responsible for the administration or supervision of the State's title IV-A plan is responsible for the administration or supervision of the JOBS program.

(b) Except as provided in paragraph (c)(2), JOBS activities which involve decision-making with regard to individual participants may be performed by an entity other than the State IV-A agency according to the policies, rules, and regulations of the State IV-A agency. In doing so, such entity must not have the authority to review, change, or disapprove any administrative decision of the State IV-A agency, or otherwise substitute its judgment for that of the State IV-A agency as to the application of policies, rules, and regulations promulgated by the State IV-A agency.

(c) JOBS activities may be delegated or contracted with the exception of the following:

(1) Overall program administration, including:

(i) Establishment of optional provisions and components of the program;

(ii) Responsibility for program planning, design of program, and determining who should participate;

(iii) Establishment of program participation requirements;

(iv) Development of a definition of good cause for failing to participate; and

(v) The issuance of other policies, rules, and regulations governing the program.

(2) Actions involving individuals, including:

(i) Determination of exemption status;

(ii) Determination of good cause for failure or refusal to participate;

(iii) Determination and application of sanctions;

(iv) Providing notice of case actions; and

(v) Fair hearings.

§ 250.11 Requirement for a statewide program.

(a) Not later than October 1, 1992 the State must make the JOBS program available on a statewide basis. This means that the JOBS program, including all components described in § 250.44 and two of the components in § 250.45, must be available in each political subdivision of the State, unless the State determines that it is not feasible to do so.

(b) Although all required and at least two optional components, as described in §§ 250.44 and 250.45, must be included in a State JOBS program, the components need not be operated in the same manner in each political subdivision, nor must the State operate the same optional components, as listed in § 250.45, in each political subdivision.

(c)(1) If the State IV-A agency concludes that a statewide program is not feasible, appropriate justification must be submitted to the Secretary for review and approval as part of its JOBS plan, unless the following criteria are met:

(i) A minimal JOBS program is available in a number of political subdivisions in which 95 percent of the State's adult recipients reside; and

(ii) A complete JOBS program is available in all Metropolitan Statistical Areas in the State, and in a number of political subdivisions in which 75 percent of the State's adult recipients reside.

(iii) A minimal program includes high school or equivalent education, as specified in § 250.44, one optional component from among those specified at § 250.45, and information and referral to available non-JOBS employment services. A complete program includes all mandatory components as well as any two optional components.

(iv) In determining the percentages of adult recipients residing in political subdivisions of a State, for purposes of this section, adult members of Indian Tribes and Alaska Native organizations who reside within the service area of a Tribal JOBS program, pursuant to § 250.90, will not be counted.

(2) The justification must include the following:

(i) The number of adult recipients that would be excluded and a comparison of:

(A) The estimated average annual unit cost per participant were the JOBS program extended to excluded areas with

(B) The estimated average annual unit cost per JOBS participant in the included areas;

(ii) A description of the local economic conditions that make

operation of the program in such areas infeasible; and

(iii) Whether the State expects to expend all of its limit of entitlement, pursuant to § 250.70, for the period covered by the JOBS plan.

§ 250.12 Coordination and consultation.

State IV-A agencies are required to assure coordination of JOBS program services, including child care and supportive services pursuant to § 255.3(h) of the regulations, with related services provided by other agencies.

(a) The Governor shall assure that JOBS program activities are coordinated with programs under the Job Training Partnership Act (JTPA) and with any other relevant employment, training, and education programs available within the State. At a minimum, this means that the appropriate job training and preparation components of the State JOBS plan shall be consistent with the coordination criteria specified in the Governor's coordination and special services plan required under section 121 of the JTPA.

(b) In developing the JOBS plan and carrying out the JOBS program, including the supportive services provisions, the State IV-A agency must consult and coordinate with other providers, including those specified in paragraph (c) of this section, to identify existing resources to prevent duplication of services, assure that other program services are available to enable participants to achieve self-sufficiency, and assure that costs for these other services for which welfare recipients have been eligible are not incurred by the JOBS program pursuant to § 250.72.

(c) At a minimum, the State IV-A agency must consult and coordinate with:

(1) The State agency responsible for JTPA;

(2) The State agency responsible for the Employment Service;

(3) The State education agency for programs under the Adult Education Act (20 U.S.C. 1201 *et seq.*) and Carl D. Perkins Vocational Education Act (20 U.S.C. 2301 *et seq.*);

(4) The State agencies responsible for child care activities as described in § 255.3(h); and

(5) The State agencies responsible for public housing.

(d) The State IV-A agency and local welfare agencies, as appropriate, must consult with the private industry councils (as established under section 102 of the JTPA):

(1) On the development of arrangements and contracts under JOBS, as described in § 250.13, and under the JTPA; and

(2) To identify and obtain advice on the types of jobs available, or likely to become available, in the area. The State IV-A agency must ensure that JOBS provides training for the types of jobs which are, or are likely to become, available in the area, and that resources are not expended on training for jobs that are not likely to become available.

(e) The State IV-A agency must exchange information with an eligible Indian Tribe or Alaska Native organization which submitted an application to the Department by April 13, 1989 to operate a separate JOBS program under § 250.91.

(1) This information includes available data on adult Tribal or Alaska Native organization AFDC recipients necessary to determine a Tribe or organization's JOBS funding level and designated service area, as appropriate, as described in § 250.93(b). State and Tribal and Alaska Native organization representatives receiving such AFDC recipient data must follow comparable standards of confidentiality as described in § 250.93(b).

(2) Since the State IV-A agency maintains responsibility for providing basic AFDC program services, such as eligibility notifications, and child care funds or services to participants in a Tribal JOBS program, the State and such grantee must coordinate interrelated activities as described in § 250.94(a) and part 255.

§ 250.13 Contracting authority.

The State IV-A agency shall carry out the JOBS program directly or through arrangements or under contracts with administrative entities under section 4(2) of the Job Training Partnership Act (JTPA), with State and local educational agencies, and with other public agencies, Indian Tribes or Alaska Native organizations or private organizations (including community-based organizations as defined in section 4(5) of the JTPA).

(a) Arrangements and contracts entered into under this section may cover any service or activity (including outreach, information and referral) to be made available under the JOBS program. Such contracted service or activity must be consistent with the requirements under § 250.10 and must not otherwise be available on a nonreimbursable basis, as specified in § 250.72(c).

(b) The State IV-A agency must consult with the private industry councils on the development of arrangements and contracts under JOBS pursuant to § 250.12.

(c) In selecting service providers, the State IV-A agency must take into

account appropriate factors which may include past performance in providing similar services, demonstrated effectiveness, fiscal accountability, cost efficiency, ability to meet performance standards, and such other factors as the State IV-A agency may determine to be appropriate.

(d) For purposes of claiming FFP, the State IV-A agency must segregate costs by the applicable matching rates, as defined at § 250.73(b)(1), in any arrangement or contract entered into under this section.

(e) Services contracted under JOBS are subject to the requirements of part 92, excluding the provisions at § 92.30(d)(4).

Subpart C—State Plan Requirements and Content

§ 250.20 Requirement for a State JOBS plan.

(a) As a condition of participation in the AFDC program, the agency responsible for administering or supervising the administration of the IV-A plan must:

(1) No later than October 1, 1990, establish and operate a JOBS program under a JOBS plan that has been approved by the Secretary before implementation and that meets the requirements of this Part;

(2) Submit its initial JOBS plan to the Secretary for review and action at least 45 days prior to the anticipated implementation date; and

(3) Submit its initial Supportive Services plan, in accordance with §§ 255.1 and 256.1 concurrent with the initial JOBS plan, except that a State which has not submitted a JOBS plan prior to April 1, 1990, must submit a Supportive Services plan for transitional child care in accordance with § 256.1 at least 45 days prior to implementation.

(b) The initial JOBS plan and Supportive Services plan will be subject to prior approval by the Secretary. FFP will only be available for expenditures incurred after approval by the Secretary.

(c) A State JOBS plan and Supportive Services plan must be submitted to:

(1) The Governor for review and comment; and

(2) The State Job Training Coordinating Council (SJTCC) and the State education agency for review and comment at least 60 days prior to submittal to the Secretary. The plan shall be published and otherwise made reasonably available through local news facilities and public announcements, to the general public, including members of federally-recognized Tribes and Alaska Native organizations in the State, for review and comment, concurrent with

submittal to the SJTCC and the State education agency. Comments received shall be resolved by the State.

(d)(1) State JOBS plans and Supportive Services plans submitted to the Secretary prior to the issuance of the JOBS and Supportive Services plan preprints shall be considered interim plans.

(2)(i) A State operating a JOBS program and providing supportive services under interim plans shall submit a new JOBS plan and a new Supportive Services plan for approval within 90 days of the date that JOBS and Supportive Services plan preprints are issued by the Secretary.

(ii) The new JOBS and Supportive Services plans must be submitted for public review and comment pursuant to the provisions of paragraph (c) no later than 30 days prior to submittal to the Secretary, if substantial changes to the interim plans have been made.

(iii) Interim plans shall remain in force until formal action on the new plans is taken (i.e., approval or disapproval) by the Secretary.

(e)(1) The State must submit an update of its JOBS and Supportive Services plans to the Secretary for approval not less than every two years. The update shall be considered a new JOBS plan and Supportive Services plan, and shall be submitted to the Secretary for approval at least 90 days prior to beginning of the next biennial period. The State must follow the public review and comment provisions in paragraph (c).

(2) The update must consist of:

(i) Assurances regarding those parts of the State JOBS Plan and Supportive Services plan that remain unchanged;

(ii) A description of any changes in program operations including but not limited to changes in components and target populations served;

(iii) An estimate of the number of persons to be served by the program during the next biennium and the availability of services provided by the State IV-A agency as well as other providers; and

(iv) An assurance that the State JOBS plan is consistent with the coordination criteria specified in the current Governor's Coordination and Special Services Plan required under section 121 of the JTPA.

(3)(i) For all States the first biennial update must be submitted by July 1, 1992, for the period beginning October 1, 1992. As an alternative, a State may submit its first biennial update by April 1, 1992 for the period beginning July 1, 1992. A State which elects to submit its biennial update on April 1, 1992 for the period beginning July 1, 1992 must show

in the update that it will have a Statewide program by October 1, 1992.

(ii) A State JOBS plan and Supportive Services plan approved pursuant to paragraph (d)(2) shall remain in force until formal action is taken (i.e., approval or disapproval) by the Secretary on the first biennial update.

(iii) Each approved biennial update shall remain in force until formal action is taken (i.e., approval or disapproval) by the Secretary on the update for the following biennial period.

(f)(1) The State shall submit proposed amendments to approved plans as necessary and they shall be reviewed according to the process described at §§ 201.3(f) and 201.3(g).

(2) A plan amendment is necessary if the State makes changes which affect eligibility for services or requirements to participate, or makes changes in program design that alter the nature of the program.

(g) A State that submits a plan, an amendment to an existing plan, or a biennial update that is not approvable will be given the opportunity to make revisions before formal disapproval; upon formal disapproval, a State may request a hearing pursuant to the process set forth in § 201.4 and part 213.

§ 250.21 State plan content.

A State's JOBS plan must contain the following:

(a) Assurances that:

(1) The title IV-A agency will, upon approval of the JOBS plan by the Secretary, have in effect and operation:

(i) A JOBS program that meets the requirements of section 402(a)(19) and title IV-F of the Act; and

(ii) A program for providing child care and other supportive services consistent with the requirements of the Act and with the State's separate Supportive Services plan, pursuant to §§ 255.1 and 256.1;

(2) The JOBS program will meet all statutory and regulatory requirements;

(3) To the extent that the program is available in a political subdivision of a State and the State's resources otherwise permit, the State will require non-exempt recipients for whom the State guarantees child care in accordance with § 255.2(a) to participate;

(4) Individuals are not discriminated against on the basis of race, sex, national origin, religion, age, or handicapping condition in assignment to training and education developed under the JOBS program;

(5) In assigning participants to any JOBS program activity the State agency

will comply with the provisions of section 484(a) of the Act;

(6) Benefits and services provided under the programs in part A, part D, and part F of title IV of the Act are furnished in an integrated manner;

(7) Services provided by the State IV-A agency are not otherwise available on a non-reimbursable basis, as required by § 250.72(e);

(8) All applicants for and recipients of aid are encouraged, assisted, and required to fulfill their responsibilities to support their children by preparing for, accepting, and retaining such employment as they are capable of performing;

(9) State and local funds expended for such purpose shall be maintained at least at the level of such expenditures for the FY 1986. The FY 1986 level must be identified;

(10) Federal funds made available to a State for purposes of the program shall not be used to supplant non-Federal funds for existing services and activities which promote the purpose of part F of title IV of the Act.

(b) Information about overall implementation of the State's JOBS program:

(1) A statement of the goals and objectives of the State JOBS program, and a description of how the State intends to implement the program during the biennium to support those goals and objectives;

(2) A description of the administrative structure for the JOBS program;

(3) A description of the contracting process that will be used to deliver services for the State IV-A agency, pursuant to § 250.13, including:

(i) Types of services to be provided under contract;

(ii) Types of contracts used;

(iii) Types of providers;

(4) If the State program is less than statewide, identification of subdivisions to be included or excluded. For any period after September 30, 1992, for which the State does not meet the criteria at § 250.11(c)(1), justification as described at § 250.11(c)(2);

(5) If the State proposes to serve target populations other than those described at § 250.1,

(i) The characteristics of the caseload in the State that make it infeasible to meet the requirements of § 250.74(a)(1); and

(ii) The long-term or potential long-term recipients that the State is targeting instead of those described at § 250.1.

(6) A description of the State's dispute resolution process including:

(i) A description of the conciliation process including:

(A) Length of conciliation; and

(B) The entity responsible for conciliation;

(ii) A description of an alternative fair hearing process the State uses for the JOBS program, if any;

(iii) A description of the grievance procedure for resolving complaints by regular employees pursuant to section 484(d) of the Act.

(c) The options for participation which the State elects including:

(1) Lowering the age of the youngest child (but no less than one) for the exemption pursuant to § 250.30(b)(9)(i);

(2) Making exemptions in § 250.30(b)(9)(i) and (b)(9)(ii) inapplicable to both parents and requiring their participation if child care is guaranteed in accordance with part 255;

(3) Limiting exemptions in § 250.30(b)(9)(i) and (b)(9)(ii) to the parent who is not the principal earner;

(4) Establishing minimum standards for work that qualifies an individual for the exemption at § 250.30(b)(7);

(5) Making supplemental payments if a family would experience a net loss of cash income resulting from acceptance of a job, pursuant to § 250.35(c). A State must describe what necessary and reasonable expenses it uses to calculate "net loss of cash income;"

(6) Allowing a parent under age 25 who has not completed high school or an equivalent course of education to meet the unemployed parent program 16-hour work requirement by participating in educational activities.

(d) A description of program operations to include the following:

(1) A description of the client flow process;

(2) For each required component and each optional component a State elects (including all components in §§ 250.46, 250.47, and 250.48):

(i) A description of the services to be provided in the component;

(ii) The extent to which such services will be:

(A) Available on a non-reimbursable basis;

(B) Provided directly or funded by the State IV-A agency;

(iii) The extent to which such services will be provided in each political subdivision covered by the State JOBS program;

(3) If the State elects to use a case management system pursuant to § 250.43, a description of the case management system to include:

(i) How case management services will be delivered and by what entities; and

(ii) If not used statewide, description of methods by which individuals will be assigned a case manager;

(4) If the State elects to use agreements or contracts with participants, pursuant to § 250.42, a description of how they will be used, including, if not used statewide, how the State will determine for whom they will be used;

(5) If the State elects to offer an alternative work experience component pursuant to § 250.63, a description of potential sponsors, types of activities, the hours and duration of participation that will be required, target populations, and how the program differs from CWEP;

(6) If the State elects to design a work program for unemployed parents, pursuant to § 250.33, a description of the program including an assurance that the State has not substituted education or training activities for the work requirement;

(7) If the State elects to operate a work supplementation component pursuant to § 250.62, which of the following options it elects and, if appropriate, what the policy is with respect to:

(i) Exempting individuals holding supplemented jobs from the retrospective budgeting requirements at Part 233 and monthly reporting;

(ii) Varying the standard of need by subdivision in which the work supplementation component is in operation;

(iii) Varying the standard of need for different categories of recipients on the basis of ability to participate in the program;

(iv) Making any other adjustment in the amount of aid paid under the title IV-A plan to different categories of recipients pursuant to § 250.62(i)(3);

(v) Reducing or eliminating the amount of earned income to be disregarded from participation in a supplemented job;

(vi) Varying the number of months (up to nine) the State applies the \$30 and one-third or the \$30 disregard;

(vii) Using a sampling methodology to determine the amounts to be reserved and used for providing and subsidizing jobs pursuant to § 250.62(m);

(8) Description of any State limits or restrictions upon postsecondary educational services, with respect to the subject matter of the education or training offered, length of program, characteristics of the institution, and length of coverage under JOBS (if different from length of program), for:

(i) Postsecondary education to which the State refers a JOBS participant under § 250.46.

(ii) Self-initiated education or training under § 250.48(a) for which the State

provides child care or supportive services.

(9) Criteria established for:

(i) Determining the inappropriateness of educational activities for custodial parents aged 18 or 19 who are to be placed in training or work activities in lieu of educational activities under § 250.32(a)(3);

(ii) Assigning an individual aged 20 or over who does not have a high school diploma or the equivalent to educational activities under § 250.32(b);

(iii) Approving postsecondary educational activities under § 250.46, if the State elects to refer participants to such education; and

(iv) Approving self-initiated education or training under § 250.48(a).

(10) If the State elects to excuse custodial parents under 18 years of age from educational activities, the criteria in accordance with § 250.32;

(11) If the State elects to define "basic literacy level" as higher than the grade 8.9 floor defined at § 250.1, the State's definition;

(12) The State's definition of other "good cause" for failure to participate in accordance with § 250.35(d). At a minimum this must include circumstances that are beyond a household's control;

(13) If a State elects to provide case management services to an individual who loses eligibility for AFDC after she accepts employment, the length of time up to 90 days for which services will be provided;

(e) A description of the nature of coordination with public and private agencies and organizations as described at § 250.12. This must include:

(1) Identification of specific existing resources that are available and appropriate for participants in the State JOBS program;

(2) A description of coordination and consultation in the development of the State JOBS plan;

(3) A description of how the State JOBS plan is consistent with the coordination criteria specified in the Governor's coordination and special services plan, pursuant to § 250.12(a);

(4) The results of consultation with private industry councils to assure that training and educational activities under JOBS are directed toward jobs that are available or likely to become available;

(f) Annual estimates of the numbers of persons to be served on a monthly basis during the biennium covered by the plan, and;

(g) Other information needed to clarify how the State has chosen to implement its JOBS program in accordance with title II of the Family

Support Act of 1988 and implementing regulations.

Subpart D—Participation Requirements, Exemptions and Sanctions

§ 250.30 Requirements for individual participation and exemptions.

A State JOBS plan must provide that:

(a) Where State resources otherwise permit, all recipients of AFDC who live in a subdivision covered by a JOBS program and for whom the State IV-A agency has guaranteed child care in accordance with Part 255 shall be required to participate in JOBS except as provided under paragraph (b) of this section.

(b) An individual shall be considered exempt and not be required to participate if she:

(1) Is a child who—

(i) Is under age 16, or

(ii) Attends, full-time, an elementary, secondary, vocational or technical school (except that such school attendance as a required JOBS activity for a child who loses this exemption will not requalify the child for the exemption);

(2) Is ill, when determined by the State on the basis of medical evidence or another sound basis that the illness or injury is serious enough to temporarily prevent entry into employment or training;

(3) Is incapacitated, when verified by the State that a physical or mental impairment, determined by a physician or a licensed or certified psychologist, prevents the individual from engaging in employment or training under JOBS. This may include a period of recuperation after childbirth if prescribed by a woman's physician;

(4) Is 60 years of age or older;

(5) Resides in a subdivision of the State where the JOBS program is available, but in a location which is so remote from a JOBS program or activity that effective participation is precluded. The individual shall be considered remote if a round trip of more than 2 hours by reasonably available public or private transportation, exclusive of time necessary to transport children to and from a child care facility, would be required for a normal work or training day. However, if normal round trip commuting time in the area is more than 2 hours, then the round trip commuting time shall not exceed the generally accepted community standards;

(6) Is needed in the home because another member of the household requires the individual's presence due to illness or incapacity as determined by a physician or a licensed or certified

psychologist, and no other appropriate member of the household is available to provide the needed care;

(7) Is working 30 or more hours a week. The State IV-A agency may establish minimum standards in its JOBS plan for work that qualifies an individual for this exemption;

(8) Is pregnant, and it has been medically verified that the child is expected to be born in the month in which participation would be required or within the following six-month period;

(9)(i) Subject to paragraph (b)(9)(iv), is the parent or other relative of a child under 3 years of age (or an age less than 3 but not less than 1, if the State plan so provides) who is personally providing care for the child; or

(ii) Subject to paragraph (b)(9)(iv), is the parent or other relative personally providing care for a child under 6 years of age, unless the State IV-A agency assures that child care will be guaranteed and that participation in the program by the parent or relative will not be required for more than 20 hours per week.

(iii) Only one parent or other relative in a case may be exempt under paragraph (b)(9)(i) or paragraph (b)(9)(ii) of this section.

(iv) In the case of a family eligible for AFDC by reason of the unemployment of the parent who is the principal earner, only one parent may be exempt under paragraph (b)(9)(i) or paragraph (b)(9)(ii) of this section. The State IV-A agency may:

(A) Limit the exemptions in paragraph (b)(9)(i) and paragraph (b)(9)(ii) of this section to the parent who is not the principal earner;

(B) Make the exemptions in paragraph (b)(9)(i) and paragraph (b)(9)(ii) of this section inapplicable to both parents and require their participation in the program if child care in accordance with Part 255 is guaranteed with respect to the family; or

(10) Is a full-time volunteer serving under the Volunteers In Service To America (VISTA) program, pursuant to Title I of the Domestic Volunteer Service Act of 1973;

(c)(1) The State IV-A agency shall reevaluate any exemption at such time as the condition is expected to terminate but no less frequently than at each redetermination of AFDC eligibility;

(2) The State IV-A agency shall promptly notify the recipient and any appropriate service providers of any change in the recipient's exemption status.

§ 250.31 Volunteers.

The State IV-A agency must provide that applicants for and recipients of AFDC who are exempt under § 250.30 from participation in the program or who are not otherwise required by the State IV-A agency to participate will be allowed to do so on a voluntary basis to the extent that the program is available in the applicable political subdivision and State resources otherwise permit.

(a) The State IV-A agency shall give first consideration to applicants for or recipients of AFDC who volunteer to participate in determining the priority of participation within the target populations described at § 250.1.

(b) When an individual who volunteers to participate stops participating in the program without good cause as defined at § 250.35,

(1) If she has been determined to be exempt pursuant to § 250.30, she shall not be given priority to participate so long as other individuals are actively seeking to participate.

(2) If she has been determined not to be exempt pursuant to § 250.30, she shall be subject to sanction as described at § 250.34.

§ 250.32 Participation requirements for education.

(a) To the extent that the program is available in the political subdivision involved and State resources otherwise permit, in the case of a custodial parent who is not yet 20 years of age, has not completed a high school education (or its equivalent) and is not exempt from participation under § 250.30(b), the State shall require such a parent to participate in educational activities as described in § 250.44(a)(1). For purposes of this section, custodial parent means the parent who lives with the child, including custodial parents who would otherwise be exempt under § 250.30(b)(9) because of the age of the youngest child.

(1) The State IV-A agency may require full-time participation (as defined by the educational provider) in educational activities directed toward the attainment of a high school diploma or its equivalent. This includes individuals who would otherwise only have to participate on a part-time basis because their youngest child is under 6 years of age.

(2) The State IV-A agency may excuse a custodial parent who is under age 18 from the school attendance requirement if such parent is determined to be beyond the State's compulsory attendance requirements and if the State's JOBS plan contains criteria for making this determination. The State's criteria must:

(i) Provide that each determination is based upon an individual assessment of the parent rather than upon the application of categorical exemptions;

(ii) Not rely solely upon grade completion; and

(iii) Provide for participation in another educational activity as defined under § 250.44(a) or in skills training activities under § 250.44(b) that are combined with education.

(3) The State IV-A agency may require a custodial parent who is age 18 or 19, and required to participate in JOBS under this section, to participate in training or work activities (subject to the 20-hour limit in § 250.30(b)(9)(ii)) instead of educational activities described at § 250.44(a) if one of the following conditions is met:

(i) Such parent fails to make good progress in successfully completing educational activities, or

(ii) Prior to any assignment of the individual to such educational activities it is determined, based on an educational assessment and the employment goal established in the individual's employability plan, that participation in educational activities is inappropriate for such parent.

(b) If a State IV-A agency requires an individual who has attained the age of 20 years and has not earned a high school diploma (or its equivalent) to participate in JOBS, the State agency shall include educational activities consistent with her employment goals as a component in the individual's employability plan. Any other services or activities may not be permitted to interfere with her participation in appropriate educational activities under § 250.44. However, a State IV-A agency may elect not to require an individual to participate in educational activities if:

(1) The individual demonstrates a basic literacy level; or

(2) The long-term employment goal of the individual, as identified by the State IV-A agency in her employability plan, does not require a high school diploma (or equivalent).

§ 250.33 Participation requirements for unemployed parents.

(a) The State IV-A agency shall require that at least one parent, in any family eligible for AFDC by reason of the unemployment of the parent who is the principal earner, participate for a total of at least 16 hours a week in a work supplementation program, a community work experience program, or other work experience program, on-the-job training, or a State-designed work program described in the State JOBS plan and approved by the Secretary. A State-designed work program may not

substitute education or training activities for the work requirement.

(b) In the case of a parent under age 25 who has not completed high school or an equivalent course of education, the State IV-A agency may require the individual to participate in educational activities as defined at § 250.44(a) in lieu of one or more of the programs specified in paragraph (a). An individual meets the participation requirements of this section if he or she is making satisfactory progress as defined at § 250.1.

(c) An individual participating in a community work experience program under § 250.63 shall be considered to have met the participation requirement in paragraph (a) if the individual participates for the maximum number of hours in any month calculated in accordance with § 250.63(d)(1).

§ 250.34 Sanctions.

(a)(1) When an AFDC recipient who is required to participate in the JOBS program, including those individuals required to participate because the State IV-A agency exercised its option under § 250.30(b)(9)(iii), fails to comply (i.e., fails without good cause to participate in the program, refuses without good cause to accept employment, or terminates employment or reduces earnings without good cause), the sanctions in paragraph (c) of this section shall apply during the following periods:

(i) For the first such failure to comply, until the failure to comply ceases;

(ii) For the second such failure to comply, until the failure to comply ceases, or 3 months, whichever is longer; and

(iii) For any subsequent failure to comply, until the failure to comply ceases, or 6 months, whichever is longer.

(2) Failure to participate in the program includes failure to meet State IV-A agency requirements for orientation, assessment, employability development planning, or case management.

(b) For the purpose of determining that an individual's failure to comply has ceased, a State IV-A agency may require the individual to participate in the activity to which she was previously assigned or an activity designed by the State to lead to full participation for a period of up to two weeks before terminating the sanction. During such participation, the individual shall be eligible for child care and support services which the State determines are necessary for participation. If she successfully participates in such activities, the sanction will be considered to have terminated as of the

day she agreed to participate. If no such activity is available, the sanction will terminate on the day she agrees to participate.

(c) During the sanction period:

(1) The State IV-A agency will not take into account the individual's needs in determining the family's need for assistance and the amount of the assistance payment.

(2) If the individual is a parent whose family is eligible in accordance with § 233.100, the State IV-A agency will not take into account the needs of the second parent in determining the family's need for assistance and the amount of the assistance payment unless the second parent is participating in the JOBS program.

(3) If the individual is the only dependent child, the State IV-A agency will not take into account the individual's needs in determining the family's need for assistance and the amount of the assistance payment.

(d) If such individual is a parent or other caretaker relative, payments for the remaining members of the assistance unit will be in the form of protective or vendor payments in accordance with § 234.60(a)(12). However, if after making reasonable efforts the State IV-A agency is unable to locate an appropriate individual to whom protective payments can be made, the State may continue to make payments on behalf of the remaining members of the assistance unit to the sanctioned caretaker relative.

(e) The State IV-A agency will promptly remind in writing any individual whose failure or refusal has continued for 3 months of the individual's option to end the sanction. The notice shall advise that:

(1) She may immediately terminate the first or second sanction by participating in the program or accepting employment; and

(2) She may terminate any subsequent sanction after six months have elapsed by participating in the program or accepting employment.

§ 250.35 Good cause.

For the purposes of § 250.34(a), good cause for failure to participate in the program or refusal to accept employment shall be found if:

(a) The individual is the parent or other relative personally providing care for a child under age 6 and the employment would require such individual to work more than 20 hours per week;

(b) Child care (or day care for any incapacitated individual living in the same home as a dependent child) is necessary for an individual to

participate or continue participation in the program or accept employment and such care is not available and the State agency fails to provide such care;

(c)(1) The employment would result in the family of the participant experiencing a net loss of cash income. A participant may not claim good cause under this paragraph if the State IV-A agency assures that the family will not experience a net loss of cash income by making a supplemental payment;

(2) Net loss of cash income results if the family's gross income less necessary work-related expenses is less than the cash assistance the individual was receiving at the time the offer of employment is made. Gross income includes, but is not limited to, earnings, unearned income and cash assistance; or

(d) The individual meets other grounds for good cause set forth by the State IV-A agency in its JOBS plan. At a minimum, the State must describe what circumstances beyond the household's control will constitute "good cause."

§ 250.36 Conciliation and fair hearings.

(a) Each State IV-A agency shall establish a conciliation procedure to resolve disputes related to an individual's participation in the JOBS Program.

(b) Once conciliation ends and the notice of adverse action has been issued, the individual may contest the proposed sanction. If she contests and loses, or does not contest, then a sanction will be imposed for the appropriate time period.

(c) If a dispute is not resolved through conciliation, the State shall provide the individual with an opportunity for a hearing. The hearing process may follow the provisions of § 205.10. Alternatively, the hearing process may be established for the JOBS program. However, assistance may not be suspended, reduced, discontinued, or terminated as a result of a dispute involving an individual's participation in JOBS unless the hearing meets the due process standards set forth by the U.S. Supreme Court in *Goldberg v. Kelly*, 397 U.S. 254 (1970).

Subpart E—Operation of State JOBS Programs/Program Components

§ 250.40 Providing program information to AFDC applicants and recipients.

(a) The State IV-A agency must at the time of application or redetermination inform all AFDC applicants and recipients, in writing and orally as appropriate, of the availability of the program activities and the supportive services for which they are eligible, and

agency and participant responsibilities, including:

(1) Education, employment, and training opportunities available under the JOBS plan;

(2) Supportive services, including, but not limited to, child care during participation, transitional child care, health coverage transition options pursuant to section 1925 of the Act, and transportation and other work-related supportive services provided under the JOBS plan;

(3) The obligations of the State IV-A agency including the program and supportive services to be provided, as described in paragraphs (a) (1) and (2) of this section;

(4) The rights, responsibilities, and obligations of participants in the program, including but not limited to, the grounds for exemptions from participation and the consequences for refusing or failing to participate (including the effect on volunteers as described in § 250.31);

(5)(i) The types and locations of child care services reasonably accessible to participants in the program. Such information may be provided directly or through arrangement with others such as the appropriate human services or resource and referral agency;

(ii) The assistance that is available to help participants select appropriate child care services; and

(iii) The assistance available, on request, to help participants obtain child care services.

(b) The agency must also inform applicants and recipients of their responsibility to cooperate in establishing paternity and enforcing child support obligations, as described in Part 232, and must assist individuals in obtaining the paternity establishment and child support services for which they may be eligible.

(c)(1) After the State IV-A agency gives an AFDC applicant the information described in paragraphs (a) and (b) of this section, the State IV-A agency must notify the individual, in writing, within one month of the determination of eligibility, of the opportunity to indicate her desire to participate in the program and provide a clear description of how to enter the program.

(2) After the State IV-A agency gives an AFDC recipient the information described in paragraphs (a) and (b) of this section, the State IV-A agency must notify the individual, in writing, within one month of providing that information, of the opportunity to indicate her desire to participate in the program, and

provide a clear description of how to enter the program.

(3) The notification provision in paragraphs (c)(1) and (c)(2) of this section does not prohibit the State IV-A agency from requiring non-exempt recipients, or applicants in the case of job search, to participate in the JOBS program prior to the one-month notice.

(4) If a non-exempt individual indicates a preference not to participate, in response to such notification under paragraphs (c)(1) or (c)(2) of this section, such a preference does not prevent the State IV-A agency from otherwise requiring participation in JOBS.

§ 250.41 Initial assessment and employability plan.

(a)(1) Within a reasonable time period prior to participation the State IV-A agency must make an initial assessment of employability based on:

- (i) The individual's educational, child care, and other supportive services needs;
- (ii) The individual's proficiencies, skills deficiencies, and prior work experience;
- (iii) A review of the family circumstances, which may include the needs of any child of the individual; and
- (iv) Other factors that the State IV-A agency determines are relevant in developing the employability plan, as described in paragraph (b) of this section.

(2) The State IV-A agency may conduct the initial assessment through various methods such as interviews, testing, counseling and self-assessment instruments.

(b) On the basis of the assessment described in paragraph (a) of this section, the State IV-A agency must develop an employability plan in consultation with the participant, including a participant in a self-initiated activity pursuant to § 250.48 of this Part.

(1) The employability plan must:

- (i) Contain an employment goal for the participant;
- (ii) Describe the services to be provided by the State IV-A agency, including child care and other supportive services pursuant to Part 255;
- (iii) Describe the JOBS activities, as provided in Subpart E of this Part, that will be undertaken by the participant to achieve the employment goal; and
- (iv) Describe any other needs of the family, pursuant to paragraph (a)(1)(iii), that might be met by JOBS, such as participation by a child in drug education or in life skills planning sessions.

(2) The employability plan shall take into account:

- (i) Available program resources;

(ii) The participant's supportive services needs;

(iii) The participant's skills level and aptitudes;

(iv) Local employment opportunities; and

(v) To the maximum extent possible the preferences of the participant.

(3) The employability plan shall not be considered a contract.

(4) Final approval of the plan rests with the State IV-A agency.

§ 250.42 Agency-participant agreement.

(a) Following the initial assessment and the development of the employability plan as described in § 250.41, the State IV-A agency may require the participant (or the adult caretaker in the family of which the participant is a member) to negotiate and enter into an agreement with the State IV-A agency.

(1) Such agreement should indicate at a minimum:

- (i) The purpose of the agreement;
- (ii) The participant's obligations under the program;
- (iii) The length of participation in the program, including the number of hours of participation per week; and
- (iv) The educational, training and employment activities, and the supportive services, including child care, to be provided by the agency during the period of participation.

(2) If the State IV-A agency elects this option, it must give the participant such assistance as she may need to review and understand the agreement.

(3) This agreement may be considered a contract between the State IV-A agency and the JOBS participant, pursuant to applicable State laws and regulations.

(b) If the State IV-A agency elects to use agreements or contracts, it does not have to use them in all political subdivisions having JOBS programs. The State IV-A agency, however, must apply this provision to participants on an equitable basis.

§ 250.43 Case management.

(a) The State IV-A agency may assign a case manager to a participant and the participant's family. The decision to assign a case manager may be made on a case-by-case basis.

(b) The case manager must be responsible for assisting the family to obtain any services that may be needed to assure effective participation in the program.

§ 250.44 Mandatory components.

A State's JOBS program must include the following four services and activities. The State IV-A agency need

not make each service or activity a discrete offering, but may combine several into a single program activity, provided that the State IV-A agency can adequately distinguish the principal components for the purpose of Federal reporting requirements. The required services and activities are:

(a) Any educational activity below the postsecondary level that the State IV-A agency determines to be appropriate to the participant's employment goal. Such activities may be combined with training that the State IV-A agency determines is needed in relation to the participant's employability plan. The educational activities that must be made available include, but are not limited to:

(1) High school education or education designed to prepare a person to qualify for a high school equivalency certificate;

(2) Basic and remedial education that will provide an individual with a basic literacy level, equivalent to at least grade 8.9; and

(3) Education in English proficiency for an individual who is not sufficiently competent to understand, speak, read, or write the English language to allow employment commensurate with her employment goal;

(b) Job skills training, which includes vocational training for a participant in technical job skills and equivalent knowledge and abilities in a specific occupational area;

(c) Job readiness activities that help prepare participants for work by assuring that participants are familiar with general workplace expectations and exhibit work behavior and attitudes necessary to compete successfully in the labor market; and

(d) Job development and job placement activity by the agency, in soliciting a public or private employer's unsubsidized job opening or in discovering such job openings, and the marketing of participants, and securing job interviews for participants.

§ 250.45 Optional components.

A State JOBS program must include, but is not limited to, at least two of the following four components:

(a) Group and individual job search, as described in § 250.60;

(b) On-the-job training, as described in § 250.61;

(c) Work supplementation, as described in § 250.62; and

(d) Community work experience program, or other approved work experience program, as described in § 250.63.

§ 250.46 Postsecondary education.

A State's JOBS program may include referral of a participant to postsecondary education, as determined necessary to meet any individual goals that are directly related to obtaining useful employment in a recognized occupation, within limits established by the State IV-A agency and reflected in the State JOBS plan. In accordance with § 233.20(a)(2)(v), the costs of such education, including tuition, books and fees, do not qualify for FFP as special needs.

§ 250.47 Other education, training, and employment activities.

(a) A State's JOBS program may include education, training, and employment activities other than those described in §§ 250.44 through 250.46, but which are included in the approved State JOBS plan.

(b) In no event will a State program of public service employment be approved under JOBS. Public service employment is fully-subsidized employment in a public agency.

§ 250.48 Self-initiated education or training.

(a) The State IV-A agency may allow a parent or other caretaker relative or any dependent child in the family who is attending in good standing an institution of higher education (as defined in section 481(a) of the Higher Education Act of 1965), or a school or other entity offering a course of vocational or technical training, at the time she would otherwise commence participation in the JOBS program, to continue to attend. Vocational or technical training leads to useful employment in a recognized occupation. It includes postsecondary education, as defined in § 250.1, that results in other than a baccalaureate or advanced degree, and such training offered by other entities such as public secondary schools and public and private entities that offer adult vocational education.

(1) Self-initiated activity qualifies as "self-initiated education or training" under this paragraph if:

- (i) The participant is attending at least half-time as defined by the institution;
- (ii) The participant is making satisfactory progress in such institution, school, or course;
- (iii) The course of study is consistent with the individual's employment goal; and

(iv) The participant meets the State's criteria for determining the appropriateness of the self-initiated education or training.

(2)(i) The State IV-A agency must conduct an assessment and develop an

employability plan, as provided at § 250.41, so that the State IV-A agency may determine the appropriateness of the education or training in accordance with the criteria it has established.

(ii) If the State IV-A agency approves the self-initiated education or training, any other JOBS activities in which such individual participates may not be permitted to interfere with the education or training activity. However, an individual may be required to accept employment after a review of her employability plan, if the State IV-A agency has informed her at the time it first approves the self-initiated activity that it could perform such a review and reassignment.

(3) The costs of self-initiated education or training under this paragraph shall not constitute federally reimbursable expenses under JOBS.

(4) A State IV-A agency may restrict postsecondary education or training in its State JOBS plan.

(5) The costs of child care, transportation, and other supportive services necessary for approved self-initiated education or training under this paragraph are eligible for Federal reimbursement pursuant to § 255.4.

(b) If an individual in a JOBS area is enrolled in a self-initiated activity that does not meet the requirements of paragraph (a) of this section, the State may approve such activity as a JOBS activity according to the regulations and State criteria applicable to JOBS component activities covered under §§ 250.44 through 250.47. Eligibility for child care, transportation and other supportive services shall be in accordance with § 255.2.

Subpart F—[Reserved]**Subpart G—Optional Components of State JOBS Programs****§ 250.60 Job search program.**

(a) A State IV-A agency may operate a job search program as a component of its JOBS program. A job search program may serve participants in either group or individual job-seeking activities.

(1) Individual job search includes the provision of counseling, job-seeking skills training, information dissemination and support on a one-to-one basis.

(2) Group job search includes the provision of counseling and training in a group setting where applicants or recipients are taught job-seeking skills, and may include a phone bank from which participants contact potential employers.

(b) In addition to non-exempt recipients, a State IV-A agency may

require an individual applying for AFDC to participate in a job search component unless she is exempt under § 250.30(b).

(c) A State IV-A agency may require an individual to participate in a job search component from the date she files an application for aid for an initial period of up to eight consecutive weeks. Following this initial period (which may extend beyond the date when eligibility is determined), the State IV-A agency may require additional participation in a job search component not in excess of eight weeks (or its equivalent) in any period of 12 consecutive months. The first such period of 12 consecutive months shall begin at any time following the close of the initial period.

(1) A State IV-A agency may not delay the processing of an individual's application for aid because of her participation in job search.

(2) In no event may an individual be required to participate in job search for more than 3 weeks before the State IV-A agency conducts an assessment as provided at § 250.41. If the State IV-A agency determines based on the assessment that another JOBS activity is more appropriate, or is required by Part 250, the State IV-A agency shall terminate the job search requirement.

(d) Additional job search activities beyond those required in paragraph (c) may be required only as part of another educational, training, or employment component designed to improve the individual's employment prospects.

(e) Job search by an individual under this section shall in no event be treated, for any purpose, as an activity under JOBS if the individual has participated in such job search for 4 months (or its equivalent) out of the preceding 12 months.

§ 250.61 On-the-job training.

(a) A State IV-A agency may operate an on-the-job training (OJT) program as a component of its JOBS program. Under OJT a participant is hired by a private or public employer and while engaged in productive work receives training that provides knowledge or skills essential to the full and adequate performance of that job. The State IV-A agency or its agent shall enter into a contract with the OJT employer to reimburse the employer for providing training and additional supervision to the participant.

(b) Payments to an employer for on-the-job training shall not exceed an average of 50 percent of the wages paid by the employer to the participant during the period of such training.

(c) A participant in OJT shall be compensated by the employer at the same rates, including benefits and

periodic increases, as similarly situated employees or trainees and in accordance with applicable law, but in no event less than the higher of the Federal minimum wage or applicable State or local minimum wage law.

(d) Wages paid to participants in OJT will be considered to be earned income for purposes of any provision.

(e) If a participant in OJT becomes ineligible for AFDC pursuant to the rules applicable to earned income at § 233.20, or pursuant to the 100-hour rule at § 233.100 in the case of a principal earner in an unemployed parent case, she shall remain a JOBS participant for the duration of the OJT and shall be eligible for supportive services under Part 255 available to other JOBS participants similarly situated.

(f) If the individual would have been eligible for transitional child care pursuant to Part 256 at the time the ineligibility for AFDC occurred, she shall be eligible for transitional child care after the OJT ends for the number of months that remain in the 12-month period following the month in which she became ineligible for AFDC after OJT ended. As an alternative, the State IV-A agency may treat all child care provided after an individual in an OJT job loses eligibility for AFDC as transitional child care if the individual meets the requirements at Part 256.

(g) The State IV-A agency must develop qualitative measures for making good or satisfactory progress, pursuant to § 250.1, in order for OJT to qualify as a component activity under JOBS.

§ 250.62 Work supplementation program.

(a) A State IV-A agency may operate a work supplementation program as a component of its JOBS program. Under the work supplementation program, a State IV-A agency may use AFDC funds to develop and subsidize jobs for AFDC recipients as an alternative to aid.

(b) A "supplemented job" is a job provided under this section to an eligible individual by the State or local agency administering the State IV-A plan or by any other employer for which all or part of the wages are paid by such State or local IV-A agency.

(1) The State IV-A agency may use whatever means it determines appropriate to provide or to subsidize jobs for participants.

(2) The State IV-A agency may provide or subsidize any type of job. It may determine the length of time the position is to be provided or subsidized, the amount of wages to be paid to the recipient, the amount of subsidy to be provided by the State or local IV-A agency, and the conditions of participation, except that no participant

may be assigned to fill any established, unfilled position vacancy in accordance with section 484 of the Act.

(c)(1) An eligible individual is an individual who is in a category which the State IV-A agency determines should be eligible to participate in the work supplementation program, and who would, at the time of placement in the supplemented job, be eligible for AFDC if the State IV-A agency did not have a work supplementation program in effect. For the purpose of this section, time of placement is defined as the date on which the State IV-A agency and the employer reach agreement on the terms of the placement and the specific individual to be placed.

(2) The State may establish a work supplementation program as either a mandatory or voluntary program.

(d) A State or local IV-A agency administering the State plan is not required to provide employee status to any eligible individual to whom it provides a job position or with respect to whom it subsidizes all or part of the wages paid to such individual by another entity under this program, nor is it required to provide that eligible individuals filling job positions provided by other entities under such program be provided employee status by such entity during the first 13 weeks in which they fill such position.

(e) Participants in supplemented jobs will be paid wages which shall be considered to be earned income for purposes of any provision of law.

(f) The State IV-A agency may elect to calculate the amount of an eligible individual's residual (direct AFDC) grant, if any, at the time of placement in the supplemented job and base the amount of the residual grant (the AFDC grant minus earnings and other countable income) for the duration of the individual's participation in the supplemented job (in whole or part) on that calculation. Such a policy is known as "freezing the grant." If the individual becomes otherwise ineligible for AFDC benefits, the State IV-A agency may allow the individual to continue in the supplemented job and divert the AFDC grant to the wage pool, but the State IV-A agency shall not pay a residual grant to the individual.

(g) At State option, individuals who hold supplemented jobs may be exempt from the retrospective budgeting requirements at Part 233 and monthly reporting, and the amount of the aid which is payable to the family of any such individual for any month, or which would be so payable but for the individual's participation in a supplemented job, shall be determined

on the basis of the income and other relevant circumstances in that month.

(h) If an individual in a supplemented job would have been eligible for transitional child care pursuant to Part 256 at the time the ineligibility for AFDC occurred, she shall be eligible for transitional child care after her supplemented job ends for the number of months that remain in the 12-month period following the month in which she became ineligible. In the alternative, the State IV-A agency may treat all child care provided after an individual in a supplemented job loses eligibility for AFDC as transitional child care if the individual meets the requirements at Part 256.

(i) A State IV-A agency may adjust the standard of need under the State IV-A plan as the State determines to be necessary and appropriate to carry out a work supplementation program. Such changes in the need standard may be made notwithstanding § 233.20.

(1) The standard of need in effect in those subdivisions of the State in which such program is in operation may be different from the need standard in effect in subdivisions in which such program is not available.

(2) The standard of need for categories of recipients of aid may vary among such categories as the State IV-A agency determines to be appropriate on the basis of ability to participate in the work supplementation program.

(3) A State IV-A agency may make further adjustments in the amount of aid paid under the title IV-A plan to different categories of recipients in order to offset increases in benefits from other government-provided, needs-related programs as the State IV-A agency deems necessary and appropriate to further the purpose of the work supplementation program.

(j) A State IV-A agency may reduce or eliminate the amount of earned income to be disregarded from participation in a supplemented job.

(k) Notwithstanding the time limitations on the \$30 and one-third and the \$30 disregard in § 233.20(a)(11), a State IV-A agency may allow a participant employed in a supplemented job to receive the \$30 and one-third or the \$30 disregards for one or more of the first nine months of such employment.

(l) Payments by the State IV-A agency to individuals or to entities providing jobs for recipients under the work supplementation program shall be expenditures incurred by the State IV-A agency for AFDC and shall not exceed the amount that would otherwise be payable under the title IV-A plan if the family of each individual employed in

the program had received the maximum amount of aid payable to such a family with no income for a period of either 9 months or the length of the individual's employment in the program, whichever is less. (This amount is determined without regard to any adjustments made under paragraphs (i), (j), and (k), and for each month of participation, may be based upon the maximum amount that would otherwise have been payable for a month at the time of placement in the program).

(m) A State IV-A agency may determine the amounts to be reserved and used for providing and subsidizing jobs under this section by using a sampling methodology. The State IV-A agency must describe its sampling methodology in its JOBS plan.

§ 250.63 Community work experience program.

(a) A State IV-A agency may operate a community work experience program (CWEP) as a component of its JOBS program. The purpose of CWEP is to improve the employability of individuals not otherwise able to obtain employment by providing work experience and training to assist them to move promptly into regular public or private employment.

(b) The State IV-A agency shall provide coordination among a community work experience program, any program of job search, and the other employment-related activities under the JOBS program to insure that job placement will have priority over participation in CWEP, and that individuals eligible to participate in more than one program under JOBS are not denied AFDC on the grounds of failure to participate in one such program if they are actively and satisfactorily participating in another. The State IV-A agency may provide that part-time participation in more than one such program may be required where appropriate.

(c) Community work experience programs shall be limited to projects which serve a useful public purpose in fields such as health, social service, environmental protection, education, urban and rural development and redevelopment, welfare, recreation, public facilities, public safety, and day care.

(d)(1) The maximum number of hours that an individual may be required to work or undergo training (or both) in CWEP is the number of hours which would result from dividing the family's monthly grant amount by the greater of the Federal or the applicable State minimum wage.

(2) The portion of a recipient's aid for which the State is reimbursed by a child support collection (except for the \$50 pass-through) shall be excluded in determining the maximum number of hours that she is required to work.

(e) Nothing contained in this section shall be construed as authorizing the payment of AFDC as compensation for work performed, nor shall a participant be entitled to a salary or to any work or training expense provided under any other provision of law by reason of her participation in a CWEP program.

(f) To the extent possible, a State IV-A agency shall take into account the prior training, experience and skills of a recipient in making appropriate work assignments.

(1) After each six months of an individual's participation in a community work experience program and at the conclusion of each assignment under such a program the State IV-A agency must provide a reassessment and revision, as appropriate, of the individual's employability plan.

(2) After an individual has been assigned to a position for a total of nine months, such individual may not be required to continue in that assignment unless the maximum number of hours of participation is no greater than the family's grant divided by the highest of:

- (i) The Federal minimum wage; or
- (ii) The applicable State minimum wage; or
- (iii) The rate of pay for individuals employed in the same or similar occupations by the same employer at the same site.

The portion of a recipient's aid for which the State is reimbursed by a child support collection (not including the \$50 pass-through) shall continue to be excluded in determining the number of hours that such individual may be required to work.

(g) Participants in CWEP may perform work in the public interest (which otherwise meets the requirements of this section) for a Federal office or agency with its consent, and, notwithstanding 31 U.S.C. 1342, or any other provision of law, such agency may accept such services, but such participants shall not be considered to be Federal employees for any purpose.

(h) Nothing in this section or in any State plan approved under § 250.20 shall be construed to prevent a State IV-A agency from operating (on such terms and conditions and in such cases as the State IV-A agency may find to be necessary or appropriate) a community work experience program.

(i) CWEP participants must not fill established, unfilled position vacancies

in accordance with section 484 of the Act.

(j) FFP is not available for:

(1) Capital expenditures, depreciation or use allowances in connection with a CWEP;

(2) The cost of making or acquiring materials or equipment in connection with participation in a project; or

(3) The cost of supervision of participants.

(k) The State IV-A agency may offer any other work experience program which is described in the JOBS plan and approved by the Secretary.

(1) The program narrative for such a program should include a description of the potential sponsors, the type of activities, the hours or length of participation required, target group(s), and how the program is different from CWEP.

(2) The limitations on FFP for CWEP in paragraph (j) apply to all State work experience programs.

(3) Any other work experience program must meet the general program standards at section 484 of the Act.

Subpart H—Funding

§ 250.70 JOBS allocation entitlement.

(a) Federal matching for JOBS program expenditures is limited to a national total equal to the amounts established for each fiscal year in section 403(k)(3) of the Act.

(b) A State IV-A agency with an approved JOBS plan shall be entitled to payments from this annual limit. The maximum annual payment for a State will be the sum of two amounts:

(1) An amount equal to the State's WIN or WIN Demonstration allotment for fiscal year 1987; and

(2) An amount allocated from the balance of the annual national limitation on the basis of each State's relative average monthly number of adult recipients as defined at § 250.1.

(c) In accordance with § 92.23, JOBS funds allocated to a State IV-A agency for a given Federal fiscal year are for use during that fiscal year and must be obligated by the State no later than the end of the fiscal year. Carry forward of an unobligated balance of Federal funds to a succeeding Federal fiscal year is not permitted. An unobligated Federal fund balance at the close of a Federal fiscal year will be returned to the Federal government through the issuance of a negative grant award by the Department following receipt of the final quarterly expenditure report for the fiscal year.

(d) A State must liquidate all obligations incurred under the title IV-F grant awards not later than one year

after the end of the fiscal year for which the funds were awarded and obligated. The Federal share of unliquidated obligations will be returned to the Federal government.

§ 250.71 Allotment of JOBS limit of entitlement.

(a) For a State IV-A agency that implements JOBS in a quarter of a fiscal year prior to October 1, 1990, the State's allotment from its JOBS limit of entitlement for that period will be proportional to the number of such quarters that JOBS is operational in that State in that fiscal year.

(b) An Indian Tribe or Alaska Native organization which receives the Secretary's approval to conduct a JOBS program shall receive a direct payment for operation of its JOBS program, without the requirement for a non-Federal share, pursuant to § 250.93.

(1) The amount of any such direct payment will be deducted from the amount of the State's allotment, and will be proportional to the Tribe's or organization's proportion of the State's adult AFDC recipient population, as established pursuant to § 250.93.

(2) The remaining allocation to a State IV-A agency shall be subject to the regulations governing FFP at § 250.73.

(c) The following rules apply to Puerto Rico, Guam, the Virgin Islands and American Samoa which are subject to the provisions of section 1108 of the Act:

(1) The limitations on payments contained in section 1108 do not apply to a State's annual limit of entitlement for the JOBS program as described in § 250.70(b).

(2) The availability of FFP for child care under Part 255 and the related appropriate FFP rates are described at § 255.4(b)(2) and § 255.4(g).

(3) The availability of FFP for transitional child care under Part 256 and the related appropriate FFP rates are described at § 256.4(b).

§ 250.72 Maintenance of effort.

(a) Federal JOBS funds shall not be used to supplant non-Federal funds for services and activities that promote the purposes of the JOBS program.

(b) States must spend no less than the total of State and local expenditures incurred in fiscal year 1986 for training, employment and education programs which had a defined purpose of preventing welfare dependency or potential welfare dependency. This requirement includes State and local funds expended for title IV-A and title IV-C work programs, including expenditures on those programs which were unmatched, and other State and local funds expended for this purpose,

with or without benefit of Federal matching funds. This requirement also applies to expenditures for supportive services, including child care, expended for this purpose. In determining that State and local fiscal year expenditures are no less than fiscal year 1986 expenditures, States may use total aggregate expenditures.

(c) State IV-A agency contracts and arrangements may be made for services only to the extent that they are not otherwise available on a non-reimbursable basis. "Not otherwise available" here means that if the services are available to AFDC applicants and recipients by a provider, the provider must maintain that level of service before the State IV-A agency may contract for additional services of the same sort from that provider.

(d) Any State IV-A agency arrangement or contract must contain a certification from the provider that the services being contracted for are not otherwise available from that provider on a non-reimbursable basis. Services provided on a "non-reimbursable basis" are those services that a State makes available to most eligible residents or to the low income population, including AFDC applicants and recipients.

(e) A State IV-A agency directly providing JOBS component services must certify in the State JOBS plan that such services are not otherwise available on a non-reimbursable basis.

§ 250.73 Matching rates.

(a) From a State IV-A agency's total annual limit of entitlement, FFP is available at a rate of 90 percent for expenditures up to an amount equal to the State's WIN or WIN Demonstration allotment for fiscal year 1987. The State's match for this amount may be in cash or in kind fairly evaluated.

(b)(1) FFP will be available for the balance of a State IV-A agency's limit of entitlement as follows:

(i) At the higher of the State's Medicaid matching rate or 60 percent for: personnel costs (salaries and benefits) for full-time staff working full-time in any capacity in the JOBS program; and all direct costs associated with providing JOBS program services to individuals, including assessment, development of the employability plan, case management, and JOBS component activities.

(ii) At 50 percent for: indirect personnel costs which are excluded from JOBS matching at the FMAP rate (or 60%); non-personal services costs associated with these indirect personnel costs, including space, travel, utilities, equipment, and supplies; the costs of such items as JOBS program planning,

monitoring, letting contracts, systems, title IV-F fair hearing activities, and other indirect costs of providing JOBS services and activities; and for transportation, work-related expenses, and work-related supportive services as provided under the requirements of Part 255.

(2) A State's match for these amounts must be in cash, not in kind.

(c) The costs of services and activities purchased under contract by the State or local IV-A agency must be segregated according to the requirements of the FMAP rate with a floor of 60 percent and the requirements for 50 percent matching.

(d) A State's share of JOBS expenditures may include public and private funds.

(1) Public funds may be considered as the State's share in claiming FFP when the funds are:

(i) Appropriated directly to the State or local agency, or transferred from another public agency (including Indian tribes) to the State or local agency and under its administrative control;

(ii) Not used to match other Federal funds; and

(iii) Not Federal funds, or are Federal funds authorized by Federal law to be used to match other Federal funds.

(2) Funds donated from private sources may be considered as the State's share in claiming FFP when the funds are:

(i) Transferred to the State or local agency and under its administrative control;

(ii) Donated without any restriction which would require their use for assisting a particular individual or at particular facilities or institutions;

(iii) Do not revert to the donor's facility or use.

(e) If included in a State's JOBS and Supportive Services plans, FFP is available for JOBS activities and services provided for certain periods to an individual who has been a JOBS participant but who loses eligibility for AFDC. These activities and periods are:

(1) Case management activities and supportive services for up to 90 days from the date the individual loses eligibility for AFDC; and

(2) JOBS component activities for the duration of the activity if funds for the activity are obligated or expended before the individual loses eligibility for AFDC.

§ 250.74 Reduced matching rate.

(a)(1) FFP for a State IV-A agency shall be 50 percent (rather than the rates described in § 250.73) in any fiscal year in which that State spends less than 55

percent of the State's JOBS expenditures on applicants and recipients who are members of the State's target populations as defined in § 250.1.

(2) If any State IV-A agency demonstrates to the satisfaction of the Secretary that the characteristics of the caseload in that State make it infeasible to meet the requirements of paragraph (a)(1), and that the State is targeting an approved set of long-term or potential long-term recipients, the match rate in § 250.73 shall be applied.

(3) A State IV-A agency need not require or allow participation of an individual in the program if, as a result of such participation, the amount payable to the State for quarters in a fiscal year with respect to the program would be reduced pursuant to paragraph (a)(1).

(b)(1) FFP for a State IV-A agency shall be 50 percent (rather than the rates described in § 250.73) in any fiscal year for the State's JOBS expenditures if the State's participation rate (determined under paragraph (b)(2)) for the preceding fiscal year does not equal or exceed:

- (i) 7 percent if the preceding fiscal year is 1990;
- (ii) 7 percent if such year is 1991, however, no reduction in FFP shall be made in 1991 for any failure to meet the participation rate specified in (b)(1)(i);
- (iii) 11 percent if such year is 1992;
- (iv) 11 percent if such year is 1993;
- (v) 15 percent if such year is 1994; and
- (vi) 20 percent if such year is 1995.

(2) The State IV-A agency's participation rate for a fiscal year shall be the average of its participation rates for computation periods in such fiscal year. The computation periods shall be:

- (i) The fiscal year, in the case of fiscal year 1990;
- (ii) The first six months, and the seventh through twelfth months, in the case of fiscal year 1991;
- (iii) The first three months, the fourth through sixth months, the seventh through ninth months, and the tenth through twelfth months, in the case of fiscal years 1992 and 1993; and
- (iv) Each month, in the case of fiscal years 1994 and 1995.

(3) The State IV-A agency's participation rate for a computation period shall be the number, expressed as a percentage, equal to:

(i) The average monthly number of individuals required or allowed by the State to participate in the program, who have participated (as defined in § 250.78) in such program in months in the computation period, plus the number of individuals required or allowed by the State to participate in such program, who have so participated in that month in such period for which the number of

such participants is the greatest; divided by

(ii) Twice the average monthly number of individuals required to participate in such period (other than individuals described in paragraphs (b)(9)(i) and (b)(9)(iv) of § 250.30 with respect to whom the State IV-A agency has exercised its option to require their participation and individuals sanctioned under § 250.34).

(4) In determining the average monthly number of individuals required to participate as provided in paragraph (b)(3)(ii), the following individuals shall be excluded:

(i) Those who are determined exempt in accordance with exemption criterion in § 250.30(b);

(ii) Those who on a case-by-case basis have been determined to have good cause for not participating;

(iii) Those who reside in an area of the State in which the JOBS program is not operated; and

(iv) Those who have been sanctioned.

(5) If the Secretary determines that the State IV-A agency has failed to achieve the participation rate for any fiscal year, if the Secretary may waive, in whole or in part, the reduction in the payment rate otherwise required by paragraph (b)(1) if he finds that:

(i) The State is in conformity with section 402(a)(19) and part F of the Act;

(ii) The State has made a good faith effort to achieve the applicable participation rate for such fiscal year; and

(iii) The State has submitted a proposal which is likely to achieve the applicable participation rate for the current fiscal year and the subsequent fiscal years (if any) specified therein.

(c)(1) FFP for a State IV-A agency shall be 50 percent beginning in fiscal year 1995 for the State's JOBS expenditures (rather than the rates described in § 250.73) if the percentage of UP cases meeting the participation requirements in § 250.33, for the preceding fiscal year does not equal or exceed:

(i) 40 percent in the case of the average of each month in fiscal year 1994;

(ii) 50 percent in the case of the average of each month in fiscal year 1995;

(iii) 60 percent in the case of the average of each month in fiscal year 1996; and

(iv) 75 percent in the case of the average of each month in each of the fiscal years 1997 and 1998.

(2) The percentage of participants for any month in a fiscal year for this purpose shall equal the average of:

(i) The number of individuals described in § 250.33 who have met the requirement therein; divided by

(ii) The total number of principal earners (but excluding those in families who have been recipients of aid for 2 months or less if, during the period that the family received aid, at least one parent engaged in intensive job search as defined in § 250.1).

(3) If the Secretary determines that the State IV-A agency has failed to achieve the participation rate for any fiscal year specified above, the Secretary may waive, in whole or in part, the reduction in the payment rate otherwise required by paragraph (c)(1) if he finds that:

(i) The State is in conformity with section 402(a)(19) and Part F of the Act;

(ii) The State has made a good faith effort to achieve the applicable participation rate and has been unable to do so because of economic conditions in the State, including significant numbers of recipients living in remote locations or isolated rural areas where the availability of work sites is severely limited, or because of rapid and substantial increases in the caseload that cannot reasonably be planned for; and

(iii) The State has submitted a proposal which is likely to achieve the applicable participation rate for the current fiscal year and the subsequent fiscal years (if any) specified therein.

§ 250.75 Activities excluded from FFP.

(a) The costs of education or training activities (such as tuition, books, fees, room and board) that the State IV-A agency determines may constitute participation under the provisions of § 250.48(a) shall not constitute federally reimbursable expenses for purposes of the JOBS program.

(b) No funds shall be used for construction.

(c) No funds shall be used to assist, promote, or deter union organizing.

§ 250.76 Financial reports, records, statements and audits.

(a) The following Departmental regulations are applicable to the JOBS program: Part 92, "Uniform administrative requirements for grants and cooperative agreements to State and local governments;" Part 16, "Procedures of the Departmental Appeals Board;" Part 30, "Claims collection;" Part 75, "Informal grant appeals procedures;" Part 95, "General administration-grant programs;" and Part 201, "Grants to States for public assistance programs."

(b) Financial reporting of JOBS program expenditures are generally

subject to the requirements of the existing regulations at § 201.5 and § 92.41, as appropriate.

(c) Financial records and accounts shall be made available for audit purposes to the Secretary or any authorized representative.

(d) JOBS program funds and activities shall be audited in conformity with the requirements of §§ 92.26 and 74.62(a).

(e) FFP improperly claimed under the JOBS program is subject to disallowance. If a State IV-A agency disagrees with a decision to disallow FFP, it can appeal within 30 days of the date of the disallowance decision. The procedures for appeal of AFDC disallowances apply, including review of the Departmental Appeals Board, in accordance with part 16 of the Department's regulations.

§ 250.77 Costs matchable as AFDC payments.

(a) Costs incurred by the State IV-A agency for supplemental AFDC payments shall be treated as title IV-A costs with respect to which sections 403(a)(1) or 403(a)(2) of the Act apply, when such payments are made in order that a recipient's family shall not experience a net loss of cash income from the recipient having been required by the State to accept a job.

(b) Payments to employers under work supplementation as described at § 250.62(l) shall be expenditures incurred by the State IV-A agency for AFDC.

(c) States may claim as AFDC administrative expenditures those costs related to JOBS orientation, determination of mandatory status, and referral to the JOBS program when such activities are conducted by a title IV-A eligibility or income maintenance worker. When these same activities are conducted by JOBS staff, these costs must be claimed under title IV-F.

§ 250.78 Definition of participation for enhanced FFP.

(a) For the purpose of determining a State's participation rate under § 250.74(b), the average monthly number of individuals who have participated will be the largest number of applicants and recipients whose combined and averaged weekly hours of participation in the activities specified in paragraph (b)(1) equals or exceeds 20 hours per week.

(b) For the purpose of paragraph (a),

(1) Activities include:

(i) Assessment and employability plan development, but only for one month for each such individual for each period on AFDC;

(ii) Any component specified in the State JOBS plan, with the exception of job development and job placement;

(iii) Any approved self-initiated education or training pursuant to § 250.48(a);

(iv) Job entry, in the following manner. For the month in which the job entry occurs, an individual will be considered to be participating for the number of hours of work. Hours of work will then be included with hours of component activity in the month of the job entry in determining the average weekly activity level for the individual. Hours of work in the following month will be counted, provided the individual retains employment throughout the month. However, job entries will only be considered for:

(A) Individuals who were participating in a JOBS component or activity during the month of the job entry, or the preceding calendar month, or;

(B) Individuals who received job development and placement services during the month of job entry, or the preceding calendar month.

(2) The number of hours counted for an individual will not include time spent commuting to or from the assignment or to or from a child care provider;

(3) Individuals, other than those in high school, will not be considered to be participating in an educational activity during the period between school years. An individual enrolled and in attendance in high school during the last semester of the school year will be considered to be participating at her average weekly attendance level for the previous school year during the period between school years if she is expected to return to high school for the next school year. Individuals in all educational activities will be considered to be participating for the assigned hours during shorter, scheduled school breaks;

(4) An individual will be considered to have satisfactorily participated if she attended an activity for at least 75 percent of the monthly hours scheduled. All hours of scheduled activity will be counted if the individual has satisfactorily participated. Neither hours of scheduled activity nor hours of participation will be counted if an individual has not satisfactorily participated.

Subpart I—Uniform Data Collection Requirements

§ 250.80 Uniform data collection requirements.

(a) A State IV-A agency must provide to the Department a sample of monthly

unaggregated case record data containing such data and identifiers as are specified in § 250.82, and such additional data as the Secretary may from time to time specify in an Action Transmittal or in reporting instructions.

(1) The sample must be provided in formats specified by the Department. Data must be submitted electronically on an on-going basis by means of disk, tape or electronic connection, with all cases submitted no later than 45 days after the end of the month in which the sample is drawn.

(2) Each record of the sample must contain an identifier that is not the Social Security number, and that protects the privacy of the individual pursuant to the requirements of § 205.50.

(3) The sample must be large enough to provide a precision of plus or minus two percentage points for an 0.2 attribute ($p=20\%$ or 0.2) at a 95 percent confidence level. Submission of 100 percent of unaggregated JOBS case records is also acceptable.

(4) The sample shall be drawn from the population of individuals scheduled to participate in a component, actively engaged in assessment or employability planning in the month, or who had a job entry in the sample month or the month previous to the sample month.

(5) For each record in the sample, the State must verify that the individual satisfactorily participated in the sample month, as defined in § 250.78, except that for individuals who entered employment, the State must verify only that the individual was employed at the end of the sample month.

(b) For the purpose of determining participation rates, a State IV-A agency must report, for each month, on a quarterly basis, the aggregate number of individuals required to participate as specified in § 250.74(b)(3)(ii).

(c)(1) For the purpose of calculating whether a State spent 55 percent of its title IV-F funds on target groups pursuant to § 250.74(a), and determining the amounts spent per family by component and activity, each year a State IV-A agency may, instead of a cost-tracking system that identifies all funds spent on each individual, develop and submit to the Secretary a table of the previous Federal fiscal year's average total JOBS cost per participant per month of participation.

(2) The average total cost data in the table must separately state:

(i) For pre-component activity: assessment and related testing, employability development planning, and associated administrative and case management costs;

(ii) For each component: component costs, and associated administrative and case management costs;

(d) A State IV-A agency must submit any other information that the Secretary determines necessary.

(e) Until October 1, 1991, or until sample based reporting is implemented, whichever is later, the State must submit such interim aggregate hardcopy reports as are required by the Secretary.

§ 250.81 State data systems options.

(a) A State IV-A agency may integrate its JOBS Automated System (JAS) with an existing or planned title IV-A system. A State IV-A agency may also use a stand-alone system. Either option must be a client-based information system capable of producing at a minimum all data elements required in § 250.82.

(b)(1) Title IV-A funding is available for planning, design, development and implementation of the JOBS interface between title IV-A and title IV-F requirements. The interface of an automated JOBS program with the title IV-A system, for verification of eligibility and reconciliation of data, includes planning, design, development and implementation of title IV-A systems to:

(i) Manage information on eligibility factors and target group membership;

(ii) Effect notifications and referrals including non-cooperation;

(iii) Check records of applicants and recipients on a periodic basis with other agencies to verify continued eligibility; and

(iv) Notify appropriate officials when a recipient ceases to be eligible.

(2) If the JAS interfaces with an existing or planned FAMIS-type system and all FAMIS requirements are met, title IV-A FFP at 90 percent is available. Otherwise interface expenditures are matched at 50 percent under title IV-A.

(c) JOBS funding is available at a 50 percent administrative rate for the acquisition and development of the remainder of the JAS, subject to the requirements of § 205.35 through § 205.38. This excludes the JOBS interface with the title IV-A system, but includes all other input, maintenance and reporting of those data elements required in § 250.82 that cannot be obtained from the title IV-A system through the JOBS interface. A cost allocation plan must be approved to share the cost among all Federal and State programs benefiting from the State's JAS.

(d) Administrative funding under either title IV-A or title IV-F for systems design, development, and

implementation must comply with the requirements of § 95.601, *et seq.*

§ 250.82 Required case record data.

(a) The State IV-A agency must maintain an individual case record for each JOBS participant.

(1) For the purposes of this section, a JOBS participant is an individual who is:

(i) Actively engaged in assessment or employability planning during the month; or

(ii) Assigned to a component, including self-initiated education or training pursuant to § 250.48(a).

(2) To the extent the State IV-A agency's JAS can access the required data in the required form from other systems, duplicate entry is to be avoided.

(b) The minimum data required are:

(1) Case identifier other than Social Security Number, but the State must maintain in its files a link between the identifier and the SSN;

(2) Date of birth;

(3) Program status and exemption code;

(4) Youngest child's date of birth;

(5) Date of most recent AFDC opening;

(6) Number of months within the most recent 60 months of receipt of AFDC;

(7) Education level (highest grade completed) and date completed;

(8) Literacy level, but only when the State elects to determine a literacy level;

(9) Target group codes to identify which of the target groups specified in § 250.1 an individual was a member of, if any, at the time of entry into JOBS, and the date of entry;

(10) Identifier for a person not exempt, because the State elected to reduce the age of youngest child exemption to less than age three, or because the State elected to require participation of the second parent in a UP case where the second parent would otherwise be exempt for meeting the requirements of § 250.30(b)(9);

(11) Assignment status: scheduled hours, and beginning and ending dates, for each of the following that apply:

(i) Assessment and employability development planning;

(ii) Each JOBS component, including separate identification for self-initiated education or training, pursuant to § 250.48(a);

(iii) Job status, including date of job entry;

(12) Identifier indicating that the individual satisfactorily participated in the JOBS program, as defined at § 250.78, during the month, but only for sampled cases described in § 250.80;

(13) Amount of supportive services, other than child care, paid during the month;

(14) Amount of child care payment for the month;

(15) Type of child care;

(16) Such additional data as the Secretary may from time to time specify in an Action Transmittal or in reporting instructions.

Subpart J—Operation of JOBS Programs by Indian Tribes and Alaska Native Organizations

§ 250.90 Scope and purpose.

The purpose of an Indian Tribe or Alaska Native organization JOBS program is to assure that Tribal (refers to both an Indian Tribe and Alaska Native organization) members receiving AFDC obtain the education, training and employment services they need to avoid long-term dependency. Tribal grantees are subject to all the regulations under part 250, unless otherwise indicated in this subpart, and regulations under parts 255, 74, and 92, which include general funding and disallowance and termination provisions for Federal programs.

§ 250.91 Eligible Indian Tribe and Alaska Native organization grantees.

Funds shall be allotted to operate a JOBS program pursuant to § 250.71 to groups meeting the following eligibility standards:

(a) An Indian Tribe, defined as any Tribe, band, nation, or other organized group or community of Indians which:

(1) Is federally recognized as eligible for the special programs and services provided by the United States Government to Indians because of their status as Indians; and

(2) Has a reservation, which means Indian reservation, public domain Indian allotment, or former Indian reservation in Oklahoma.

(b) A consortium or Tribal organization representing more than one Tribe if each participating member Tribe meets the eligibility requirements for JOBS as defined in paragraph (a) of this section and if such consortium or organization meets the following criteria:

(1) All the participating members must be in geographic proximity to one another. However, a consortium may operate in more than one State;

(2) The consortium must demonstrate that it has the managerial, technical or administrative staff with the ability to properly administer government funds, manage a JOBS program, and comply with the provisions of the Statute and of the regulations;

(3) The consortium must submit with its JOBS application a resolution from

each participating Tribe authorizing the consortium to receive JOBS funds on behalf of each Tribe in its JOBS program.

(c) An Alaska Native organization including any Alaska Native village, or regional or village corporation eligible to operate a Federal program under Public Law 93-638 (Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450) or such group's designee. The boundaries of an Alaska Native organization are those of the geographical region, established pursuant to section 7(a) of the Alaska Native Claims Settlement Act, [85 Stat. 688] within which the Alaska Native organization is located.

§ 250.92 Selection criteria for eligible Alaska Native organizations.

(a) The Secretary may approve only one application from an Alaska Native organization for each of the 12 geographical regions established pursuant to section 7(a) of the Alaska Native Claims Settlement Act. The Department shall designate the Alaska Native grantee for each geographic region based on the following criteria:

(1) Previous experience in operating an effective employment and training program serving Indians and Native Alaskans;

(2) The number and kinds of activities of similar magnitude and complexity that the applicant has successfully completed; and

(3) The ability to provide services effectively to all eligible Native Alaskans residing in the region.

(b) In order to be approved an Alaska Native application must promote the efficient and nonduplicative administration of the JOBS program in the State of Alaska.

§ 250.93 Funding formula.

(a) A Tribal grantee's share of program funds will be calculated annually pursuant to § 250.71 and will be based on the following ratio:

(1) The number of adult members of the Indian Tribe receiving AFDC who live in the designated service area compared to the total number of adult AFDC recipients in the State. The designated service area must include the reservation but can not extend to areas or communities which are not designated by the Commissioner of Indian Affairs as "near reservation" as defined at 25 CFR 20.1(r). Tribal grantees may exclude a portion of the reservation which is remote from that part of the reservation where JOBS services are provided; or

(2) The number of adult Alaska Natives receiving AFDC who reside

within the boundaries of the region which the organization represents to the total number of adult AFDC recipients in the State of Alaska.

(3) Tribal member means a person who is enrolled in, or certified as meeting the membership requirements by the designated official of, that Indian Tribe or Alaska Native organization.

(b)(1) The State IV-A agency and the Indian Tribe or Alaska Native organization must exchange available information on adult Tribal AFDC recipients needed to determine the eligible Tribal population and to define the designated service area, if other than the reservation or trust lands. State and Tribal representatives receiving such AFDC recipient data must follow standards of confidentiality to assure that recipient and Tribal privacy is protected pursuant to § 205.50.

(2) If sufficient data on adult AFDC recipient members of a Tribe or of an Alaska Native organization are not available, the State IV-A agency and the Tribe or organization may enter into an agreement covering a mutually agreed upon estimated figure of the eligible Tribal population or covering the designated service area.

(3) If the State IV-A agency and the Tribe or organization cannot agree on the number of Tribal adult AFDC recipients or designated service area, the Secretary, in consultation with the Tribe or organization and State, will make the final determination of Tribal funding.

(c) A Tribal grantee is not required to match Federal funds.

(d) States with Tribal JOBS programs in operation or a pending application may require applicants and recipients living in the designated service area to provide Tribal membership status as a condition of eligibility for AFDC under the following conditions:

(1) The information is necessary either to determine the number of adult members of an Indian Tribe or Alaska Native organization who receive AFDC, or to help determine whether such individual is to be served by a State or Tribal JOBS program;

(2) Upon requesting information about Tribal status, the State must explain the reason for its request for the information (e.g., to determine which JOBS program will serve the individual), and refer the individual to the appropriate Tribal JOBS program for further information;

(3) Such information is only requested in those areas in which there is a Tribal JOBS program or an application pending and where a State JOBS program is also in operation; and

(4) Information requested must relate only to membership in those Tribes or

Alaska Native organizations operating or expected to operate a JOBS program in the area.

§ 250.94 Program administration, implementation and operations.

(a) The Tribal grantee must designate a Tribal agency or department to administer the Tribal JOBS program.

(1) The designated agency or department will be responsible for the administration of the Tribal JOBS program including the requirements under 402(a)(19) and Part F of the Act.

(2) The responsibility for the administration of JOBS, pursuant to paragraph (a)(1) of this section, includes functional areas such as exemption and priority determinations (§ 250.30), orientation and referrals (§ 250.40), assessment and the development of the employability plan (§ 250.41), JOBS activities (§ 250.44 and § 250.94(e)), dispute resolution and hearings (§ 250.36). Certain other related functions are retained by the State IV-A agency. These include the administration of provisions on child care (Part 255) and transitional child care services (Part 256).

(3) The designated agency or department may not delegate or contract out any functions which involve agency discretion, except as provided for in § 250.10 of the regulations.

(b) The Tribe or organization that submitted an application by April 13, 1989, may begin operating its JOBS program as of the first day of any quarter between July 1, 1989 and October 1, 1990, independent of the State's JOBS implementation date. If the Tribe or organization elects to begin operating its program before the State, during this interim time period:

(1) The Tribe or organization must guarantee necessary child care (without additional title IV-A funding for child care pursuant to Part 255) if it requires an individual to participate in its JOBS program.

(2) If the Tribe or organization cannot guarantee necessary child care as described in paragraph (b)(1), it cannot require an individual to participate in its JOBS program but may operate an entirely voluntary program.

(c) The Tribe or organization may not begin its JOBS program prior to approval of the Secretary. Final documentation for the application (meaning supplemental materials submitted after the initial April 13, 1989 application) must be sent to the Department at least 45 days prior to implementation of the Tribal program. This will allow sufficient time for the Department's review and approval.

(d)(1) Tribes or organizations shall not be subject to the specific requirements of § 250.12 of the regulations, but must coordinate program services with appropriate agencies as follows:

(i) The Tribal application with final documentation must be submitted to the State IV-A agency for its review and comment at least 30 days before submittal to the Secretary. The Tribe or organization shall consider comments made by the State IV-A agency in its application submitted to the Secretary.

(ii) The application with final documentation must also be made available to Tribal members for review and comment at least 30 days prior to submittal to the Secretary. The Tribe or organization must certify in its application that such public participation has taken place.

(2) To operate a JOBS program, the Tribe or organization must coordinate with the State IV-A agency to ensure that interrelated program functions are effectively performed. These functions include State responsibilities—such as providing to the Tribal grantee eligibility notifications and the necessary child care funds or services for Tribal participation—and Tribal responsibilities—such as notifying the State IV-A agency when Tribal members fail to participate without good cause.

(3) A Tribe or organization must consult and coordinate with other providers including those specified in paragraph (d)(4) of this section, to identify existing resources, prevent duplication of services, and ensure that the maximum level of services is available to enable participants to achieve self-sufficiency.

(4) At a minimum, the Tribal grantee must consult and coordinate with:

(i) The Tribal agency responsible for JTPA, if applicable;

(ii) The Tribal agency responsible for other employment and training services, including those offered under the Bureau of Indian Affairs;

(iii) The Tribal agency responsible for education, including any programs under the Bureau of Indian Affairs, the Department of Interior, or under the Office of Indian Education of the Department of Education.

(5) The Tribal grantee must consult with existing formal advisory councils, such as private industry councils, on the development of arrangements and contracts under JOBS, as described in § 250.12(d).

(6) The Tribal grantee must consult with private industry councils and Tribal Employment Rights Offices, as appropriate, to identify, and obtain advice on, the types of jobs available or

likely to become available within a reasonable commuting distance from the Tribe's designated service area or the organization's boundaries. The Tribe or organization must ensure that JOBS provides training for the types of jobs which are, or are likely to become, available in or near its designated service area or organization's boundaries and that resources are not expended on training for jobs that are not likely to become available.

(e) Tribal programs are subject to the requirements of § 250.44 but are not subject to the requirements of § 250.45.

(1) A Tribal JOBS program must include all the mandatory components at § 250.44 unless the Tribe or organization can justify that such activities are inappropriate. A Tribe's or organization's application must describe the types of activities and methods of delivery for each of the mandatory components.

(2) Tribal programs are not subject to the provisions at § 250.45 but must include at least one of the following components unless a Tribe or organization can justify that such activities are inappropriate:

(i) Group and individual job search, as described in § 250.60;

(ii) On-the-job training, as described in § 250.61;

(iii) Community work experience program, as described in § 250.63, or a work experience program as approved by the Secretary;

(iv) Work supplementation program, as described in § 250.62;

(v) Alternative education, training and employment activities which are not described in § 250.60, § 250.61, § 250.62 or § 250.63, as approved by the Secretary.

(A) Innovative approaches with the private sector are encouraged if they are consistent with the purpose of JOBS to assist AFDC recipients to avoid long-term dependency.

(B) JOBS funds may not be used for public service employment or for allowances other than for those required for supportive services as described in Part 255.

(3) Because the amount of the IV-A payment is an integral part of determining participation in work supplementation and community work experience programs, a Tribe or organization may operate these programs only if adequate agreements with the State IV-A agency are implemented. The agreements should cover operational procedures and the exchange of information, including grant levels and child support calculations for community work experience

participants and earnings for work supplementation participants.

§ 250.95 Supportive services.

(a) The Tribal grantee must provide, pay for, or reimburse necessary supportive services (other than child care) pursuant to Part 255, including transportation and other work-related expenses, that the Tribe or organization determines are necessary to enable an individual to participate in JOBS.

(b) The State IV-A agency is responsible for guaranteeing child care for Tribal JOBS participants according to the provisions specified under Part 255.

(c) If the Tribe or organization is using child care funds or services provided by the State pursuant to paragraph (b) of this section, it must ensure, based on a method which is mutually acceptable to the State IV-A agency and Tribal grantee, that necessary child care is available when requiring an individual to participate in its program.

(d) If the Tribe or organization does not choose to use State funds or services for child care, it must provide (without additional title IV-A funding for child care) these funds or services in order to guarantee necessary child care when requiring an individual to participate.

(e) Once the State has implemented its JOBS program, the Tribe or organization, in order to require an individual to participate, must guarantee necessary child care either through the State IV-A agency, pursuant to paragraphs (b) and (c), or directly, pursuant to paragraph (d) of this section; but it may not operate an entirely voluntary JOBS program.

§ 250.96 Waiver authority.

The Secretary may waive any JOBS requirements set forth under section 402(a)(19) and Part F of the Act that he determines inappropriate for Tribal JOBS programs.

(a) The Secretary has determined that certain requirements of the Act are inappropriate for JOBS programs operated by Indian Tribes or Alaska Native organizations. They cover the following provisions or sections of the regulations:

(1) Section 250.10 (IV-A agency administration);

(2) Section 250.11 (Statewide requirement);

(3) Section 250.12 (Coordination and consultation);

(4) Section 250.20 (State plan requirements);

(5) Section 250.21 (State plan content);

(6) Section 250.33 (UP-16 hour rule);

- (7) Section 250.45 (Optional components);
- (8) Section 250.70 (a) and (b) (Allocation entitlement);
- (9) Section 250.71 (b)(2) and (c) (Allotment);
- (10) Section 250.72 (Maintenance of effort);
- (11) Section 250.73 (Matching rates);
- (12) Section 250.74 (Reduced matching rate);
- (13) Section 250.78 (Definition of Participation for Enhanced FFP);
- (14) Section 250.80 (Uniform Data Collection Requirements);
- (15) Section 250.81 (State data systems);
- (16) Section 250.82 (Required case record data);
- (17) Section 255.1 (c) and (h) (Supportive Services plan requirements).

(b) A Tribe or organization may request that the Secretary waive any other requirements of section 402(a)(19) or Part F of the Act not listed under paragraph (a) of this section with proper justification. The Secretary will consider the appropriateness of such waivers on a case-by-case basis.

§ 250.97 Application requirements and documentation.

(a) As a condition of participation in the JOBS program, the designated Tribal agency or department responsible for administering the JOBS program must:

(1) No later than October 1, 1990, establish and operate a JOBS program under a JOBS application that has been approved by the Secretary before implementation and meets the requirements of parts 250 and 255.

(2) Submit final documentation for the application to the Secretary for review and action at least 45 days prior to the anticipated implementation date. The Tribal grantee may not begin its JOBS program prior to the Secretary's approval pursuant to § 250.94(c).

(b) The Tribal application must be submitted to the State IV-A agency for review and comment at least 30 days prior to submittal to the Secretary. The application shall be made available to Tribal members for review and comment at least 30 days prior to submittal to the Secretary. Comments received shall be resolved by the Tribe or organization.

(c)(1) The Tribal grantee must submit an update of its JOBS application to the Secretary for approval at least every two years. The update shall be considered a new JOBS application and shall be submitted to the Secretary for approval at least 90 days prior to the beginning of the next biennial period. The Tribal grantee must follow the public review and comment provisions in paragraph (b).

(2) The update must consist of:
(i) Assurances regarding those parts of the Tribal JOBS application that remain unchanged;

(ii) A description of any changes in program operations including but not limited to changes in component activities; and

(iii) An estimate of the number of persons to be served by the program during the next biennium.

(3)(i) For all Tribal grantees the first biennial update must be submitted by July 1, 1992, for the period beginning October 1, 1992.

(ii) Each approved biennial update shall remain in force until formal action is taken (i.e. approval or disapproval) by the Secretary on the update for the following biennial period.

(d) The Tribal grantee shall submit proposed amendments to the approved application as necessary, and they shall be reviewed according to the process described at §§ 201.3(f) and 201.3(g).

(e) A Tribe or organization that submits an application, an amendment to an existing application, or a biennial update to its application that is not approvable will be given the opportunity to make revisions before formal disapproval; upon formal disapproval, a Tribe or organization may request a hearing pursuant to the process set forth in § 201.4 and Part 213.

(f) A Tribal applicant must submit documentation (which is in addition to the information requested in the application) covering the following items for the Secretary's review before final approval of the application can be determined:

(1) Assurances that the administering Tribal agency will have in effect a JOBS program which meets the requirements of section 402(a)(19) and Part F of the Act, unless waived by the Secretary, and including cross-references to all appropriate statutory and regulatory requirements that the JOBS program will meet;

(2) A description of the administrative process and methods of delivery for:

(i) Providing program information under § 250.40;

(ii) Assessments pursuant to § 250.41;

(iii) Agency-participant agreements, if this option is elected;

(iv) Case management system (§ 250.43), if this option is elected;

(3) A description of the mandatory and elected optional component activities described under § 250.94(e) and the methods of delivery;

(4) A description of the selection and assignment criteria that will be used to refer participants to the various services and activities provided under the Tribal JOBS program;

(5) A description of the coordination processes with other programs, including any agreements with the State IV-A agency, Tribal JTPA agency, other employment and training agencies and educational agencies, specifying how these other agencies will track and report to the Tribe or organization on satisfactory participation and use of JOBS funds;

(6) A description of how the administering Tribal agency will determine eligibility for work-related expenses such as clothing or transportation and other supportive services; a listing of the work-related expenses and the supportive services it will provide to its JOBS participants; the methods of delivering these supportive services; and

(7) A description of the conciliation and hearings procedures which meet the due process standards specified in proposed § 250.36, including notification to the State IV-A agency of formal decisions that a non-exempt Tribal member has failed to participate.

§ 250.98 Maintenance of effort for Indian Tribes and Alaska Native organizations.

Tribal programs are not subject to the requirements in § 250.72 but are subject to the following requirements:

(a) JOBS funds shall be used only for education, training and employment activities that are in addition to those which would otherwise be available to Tribal AFDC recipients in the absence of such funds.

(b) A Tribe or organization may contract for services only to the extent that such services are not otherwise available to AFDC Tribal recipients on a non-reimbursable basis.

Title 45, Chapter II, Code of Federal Regulations is amended by adding a new Part 255 to read as follows:

PART 255—CHILD CARE AND OTHER WORK-RELATED SUPPORTIVE SERVICES DURING PARTICIPATION IN EMPLOYMENT, EDUCATION, AND TRAINING

Sec.

255.0 Purpose.

255.1 State plan requirements.

255.2 Eligibility.

255.3 Methods of providing child care and other supportive services.

255.4 Allowable costs and matching rates.

255.5 Child care standards.

255.6 Uniform reporting requirements for child care.

Authority: Sections 402, 403 and 1102 of the Social Security Act as amended (42 U.S.C. 602, 603 and 1302).

§ 255.0 Purpose.

This Part pertains to child care and other supportive services for families receiving, and in some cases applying for, AFDC. State IV-A agencies must provide such services, under conditions specified in this Part, to eligible families to allow participation in employment, education or training.

§ 255.1 State plan requirements.

A State IV-A agency operating a program under title IV-A must submit a Supportive Services plan to the Secretary, consistent with the schedule specified at § 250.20, which includes the following:

(a) The methods the State IV-A agency will use to provide child care in accordance with § 255.3.

(b) The dollar amount(s) which the State IV-A agency establishes for limiting the amount of payment or reimbursement for child care, if the State IV-A agency elects pursuant to § 255.4(a)(1), to set an amount (or amounts) higher than the amount of the disregard at § 233.20(a)(11)(i).

(c) A description of the types of other supportive services and work-related expenses, including transportation, which will be available to participants in the JOBS program under Part 250 and other eligible recipients, the methods by which they will be provided, the monetary limits to be applied to each type of service or activity, and the basis for determining need for each type.

(d)(1) A description of the criteria which will be used to approve education or training for child care and supportive services in non-JOBS areas of the State, in accordance with § 255.2. Such criteria must, at a minimum, include:

- (i) That the education or training is consistent with an appropriate employment goal; and
- (ii) That the individual is making satisfactory progress.

(2) Specification of any procedures under which IV-A staff will approve, in non-JOBS areas:

- (i) Education or training activities for child care and supportive services; and
- (ii) One-time work-related expenses which are necessary for an applicant or recipient to accept or maintain employment.

(e) An assurance that procedures are established to ensure that:

- (1) Child care meets applicable standards of State and local law, and/or Tribal law, where applicable;
- (2) Any entity providing child care allows parental access as required under § 255.4(c)(1);
- (3) In arranging child care, the State IV-A agency takes the individual needs

of the child into account, in accordance with § 255.3(b); and

(4) Child care provided or claimed for reimbursement is reasonably related to the hours of participation or employment.

(f) An assessment of the availability of child care services provided on a non-reimbursable basis by Federal, State and local sources other than title IV-A.

(g) Specification of a State IV-A agency's policies on:

(1) Interim child care and other supportive services as provided in § 255.2(d); and

(2) Transitional supportive services, as provided in § 250.73(e)(1).

(h) Specification of a State IV-A agency's policy on provision of one-time work-related expenses in accordance with § 255.2(c)(3), including:

- (1) The types of any such expense;
- (2) The monetary limits to be applied to such expenses; and
- (3) Whether the State provides one-time work-related expenses in non-JOBS areas.

(i) A description of the methodology used for setting local market rates pursuant to § 255.4(a)(2). Such methodology must address rates established for each type of care (i.e., center, group family day care, family day care, and in-home care) provided. The plan must address variations in the costs of care for infants, toddlers, pre-school and school-age children, special needs children, whether care is full or part-time, and reduction in the cost of care for additional children in the same family if such variations exist. The rates must be submitted to the Family Support Administration Regional Office and must be updated periodically, but no less than biennially.

(j) A description of the nature of the State IV-A agency's efforts to coordinate child care and other supportive services, with the groups specified at § 255.3(h).

(k) In States where Tribal entities are directly funded to operate a JOBS program, a description of how the State will provide child care services for JOBS participants served by those Tribal entities.

(l)(1) A description of the State's procedures for ensuring that center-based care will be subject to State and local requirements designed to ensure basic health and safety, including fire safety, protections; or

(2) A plan for developing such procedures.

§ 255.2 Eligibility.

(a) The State IV-A agency must guarantee child care for a dependent child who is: under age 13; physically or

mentally incapable of caring for himself or herself, as verified by the State based upon a determination by a physician or a licensed or certified psychologist; or under court supervision (and for a child who would be a dependent child except for the receipt of benefits under Supplemental Security Income under title XVI or foster care under title IV-E), to the extent that such child care is necessary to permit an AFDC eligible family member to—

(1) Accept employment or remain employed; or

(2) Participate in an approved education or training activity under JOBS (including self-initiated education or training pursuant to § 250.48(a)), or in approved education or training consistent with criteria in the State's Supportive Services plan for approval of education or training in non-JOBS areas.

(b) The guarantee under paragraph (a) also applies to Tribal members who are subject to participation requirements under Subpart J of Part 250, consistent with the requirement in paragraph (f).

(c)(1) The State IV-A agency must provide, pay for, or reimburse transportation and other work-related expenses (including work-related supportive services) which it determines are necessary to enable an individual to participate in approved JOBS activities under Part 250, including self-initiated education or training pursuant to § 250.48(a).

(2)(i) The State agency may provide, pay for, or reimburse transportation and other work-related expenses (including work-related supportive services) which it determines are necessary to enable a recipient to participate in approved education or training in non-JOBS areas;

(ii) Approval of education and training for necessary supportive services in non-JOBS areas must be consistent with criteria established in the Supportive Services plan.

(3)(i) The State agency may provide, pay for, or reimburse one-time, work-related expenses which it determines are necessary for an applicant or recipient to accept or maintain employment.

(ii) The State IV-A agency may approve these expenses through the JOBS program or, in non-JOBS areas, through procedures established in accordance with § 255.1(d)(2).

(d) The State IV-A agency may provide for child care and other necessary supportive services for an individual who is waiting to enter an approved education, training, or JOBS component or employment:

- (1) For a period not to exceed two weeks; or

(2) For a period not to exceed one month where child care (or other services) arrangements would otherwise be lost and the subsequent activity is scheduled to begin within that period.

(e) The State IV-A agency must provide child care and supportive services necessary:

(1) For applicants to participate in job search pursuant to § 250.60; and

(2) For applicants and recipients to participate in other approved activities to prepare them for participation in the JOBS program.

(f) The State IV-A agency must make child care services available to applicants and recipients who are participating in a JOBS program operated by an Indian Tribe or Alaska Native organization, pursuant to §§ 250.94 and 250.95. Child care services, which are also appropriate in meeting any special needs of Tribal participants, must be made available on an equitable basis. To the extent it is appropriate, the same range of reimbursement methods must be available to Tribal JOBS participants as are available to participants in the State JOBS program.

(g)(1) The State IV-A agency must inform families requesting child care under this Part of their rights and responsibilities.

(2) The State IV-A agency must respond to a request for child care under this Part within a reasonable period of time.

(h) AFDC applicants and recipients are entitled to hearings under the provisions of §§ 205.10 or 250.36, as appropriate, on issues concerning the appropriateness of, denial of, prompt issuance of, or intended actions to discontinue, terminate, suspend or reduce assistance under this part. However:

(1) Changes in the manner of payment are not subject to timely notice requirements unless they result in a discontinuation, suspension, reduction, or termination of benefits, or they force a change in child care arrangements; and

(2) The provisions of § 205.10(a)(6) regarding aid paid pending a hearing do not apply.

§ 255.3 Methods of providing child care and other supportive services.

(a) The State IV-A agency may use any of the following methods for guaranteeing the availability of child care:

(1) Providing the care directly;

(2) Arranging the care through providers by use of purchase of service contracts or vouchers;

(3) Providing cash or vouchers in advance to the caretaker relative in the family;

(4) Reimbursing the caretaker relative in the family;

(5) Arranging with other agencies and community volunteer groups for non-reimbursed care;

(6) Using the child care disregard as provided in § 233.20(a)(11)(i); or

(7) Adopting such other arrangements as the State IV-A agency deems appropriate.

(b) In arranging for child care, the State IV-A agency must take into account the individual needs of the child, including the reasonable accessibility of the care to the child's home and school, or caretaker's place of employment or training (based on normally accepted standards in the community or State), and the appropriateness of the care to the age and special needs of the child.

(c) If more than one type of child care is available, e.g., center, group family care, family day care or in-home care, the caretaker relative must be provided an opportunity to choose the arrangement. The State IV-A agency may select the method of payment under paragraph (a).

(d)(1) An individual required to participate under Part 250 may refuse available appropriate child care as determined by the State IV-A agency, if she can arrange other child care or can show that such refusal will not prevent or interfere with participation in approved education or training activities (including JOBS) or employment.

(2) The State IV-A agency must establish at least one method by which self-arranged child care can be paid.

(e)(1) If a State IV-A agency chooses to meet the cost of child care through a method other than use of the child care disregard at § 233.20(a)(11)(i), the State IV-A agency must then determine AFDC eligibility and payment amount without this disregard, except for families described in paragraph (e)(2) of this section.

(2) In the case of a family which was receiving AFDC on October 13, 1988, based on application of the child care disregard at § 233.20(a)(11)(i) or through the provision of special needs, if such a family would be disadvantaged as a result of meeting the cost of child care through another method which does directly affect AFDC eligibility, the State must determine the family's AFDC eligibility and payment (including child care needs), as if the method of provision which was applicable on October 13, 1988, is still in effect.

(f)(1) For cases subject to retrospective budgeting, the State IV-A

agency has the option to meet the cost of child care directly for the first one or two months of employment and then to apply the child care disregard at § 233.20(a)(11)(i) to offset income received in those initial one or two months in determining the AFDC payment for the corresponding payment months. The State IV-A agency's payment shall not be counted as income or resources for any month. Under these circumstances, a State IV-A agency may not apply the disregard to income used to determine the amount of the payment for the month(s) following the month in which child care ceases.

(2) The State IV-A agency, at its option, may provide a supplemental payment to a family when the amount available through the disregard is less than the amount that would be available if another method were used.

(g) The State IV-A agency may assure the availability of necessary transportation and other work-related expenses (including other work-related supportive services) through direct provision, or payment, or reimbursement of costs consistent with its Supportive Services plan.

(h) Each State IV-A agency must coordinate:

(1) Its child care activities with existing child care resource and referral agencies and with early childhood education programs in the State, including Head Start programs, preschool programs funded under Chapter 1 of the Education Consolidation and Improvement Act of 1981, and school and nonprofit child care programs (including community-based organizations receiving funds designated for preschool programs for handicapped children); and

(2) Its supportive services with related services provided by other agencies.

§ 255.4 Allowable costs and matching rates.

(a) FFP is available for the actual cost of child care up to a statewide limit established by the State IV-A agency in its State Supportive Services plan, but not for more than the applicable local market rate.

(1) In setting the statewide limit:

(i) The State IV-A agency may choose the amount of the child care disregard at § 233.20(a)(11)(i), or some higher amount(s); and

(ii) The State agency may specify a higher statewide limit for children with special needs.

(2) The applicable local market rates must be determined:

(i) Based on representative samples of child care providers or slots;

(ii) For all political subdivisions or for alternative areas which represent reasonable local child care markets based upon their geographic proximity or common characteristics; and

(iii) Based on the 75th percentile cost of such types of care in the local areas. (However, where there are only one or two providers of a type of care in a local market area, the rate may be set at the 100th percentile.)

(3) Local market rates must:

(i) Be established for center care, group family care, family day care, and in-home care;

(ii) Differentiate among care for children with special needs, infants, toddlers, pre-school and school-age children, where applicable;

(iii) Differentiate between full-time and part-time care, if applicable; and

(iv) Consider reductions in the cost of care for additional children in the same family.

(b)(1) Except for Puerto Rico, Guam, the Virgin Islands, and American Samoa, in the case of amounts expended for child care, FFP shall be at the Federal medical assistance program (Medicaid) rate and is included in the title IV-A general program entitlement.

(2) For Puerto Rico, Guam, the Virgin Islands, and American Samoa, the rate is 75 percent and is included in the JOBS limit of entitlement.

(c) FFP is available only if:

(1) The entity providing the care allows parental access; and

(2) The care meets applicable standards of State and local law, and/or Tribal law, where applicable.

(d) In the case of amounts expended for transportation and other work-related expenses and supportive services for eligible individuals, FFP shall be at the rate of 50 percent and is subject to the annual limit of entitlement, pursuant to § 250.73(b)(1).

(e) The State IV-A agency is not permitted to provide payment for child care or any other supportive service or work-related expense as an AFDC special need pursuant to § 233.20(a)(2)(v)(B)(2).

(f) FFP is not available for:

(1) Recruitment or training of child care providers, resource development, or licensing activities; or

(2) Payments made for care provided by parents, legal guardians, or members of the assistance unit (including essential persons).

(g) The matching rate for child care administrative costs under this Part is 50 percent and, except for Puerto Rico, Guam, the Virgin Islands, and American Samoa, the amount is outside the funding limitation for JOBS.

(h) The State IV-A agency must take reasonable precautions to guard against fraud and abuse in the funding of child care costs, consistent with requirements at § 235.110.

(i)(1) Federal matching funds improperly claimed for child care services or administration are subject to disallowance under Part 201. If the State IV-A agency disagrees with the decision to disallow FFP, it can appeal under existing title IV-A procedures, including review of the Departmental Appeals Board in accordance with Part 16 of these regulations.

(2) Financial reporting of child care expenditures is generally subject to the requirements of the existing regulations at § 201.5.

(3) Child care expenditures are generally subject to the requirements of Part 201, including the provisions at § 201.5(e) (regarding the applicability of most of the requirements of Part 74 to the administration of grants to States), the provisions at Subpart B (regarding review and audits), and the provisions of § 201.67 (regarding treatment of uncashed or cancelled checks).

(j)(1) The State must take all reasonable steps necessary to promptly correct any overpayment to a recipient or a service provider under this section (or Part 256). An overpayment to a family or provider currently receiving child care payments or benefits must be recovered through repayment (in part or in full) by the family or provider responsible for the overpayment or by recovering the overpayment through a reduction in the amount payable to the family or provider.

(2) State IV-A agencies need not attempt recovery of overpayments from providers if obligated to make the full payment under contract; however, FFP may not be claimed for such overpayments.

(3) In recovering overpayments from a recipient family, the State shall provide that the family retains, for any month, a reasonable amount of funds.

(4) Recoupment of child care overpayments may be made only from child care benefits; and recoupment of supportive services overpayments may be made only from supportive services benefits. Any recoveries of child care or supportive services overpayments may be made from AFDC benefit payments only upon a voluntary request of the recipient family.

(5) Overpayments to individuals may be recovered from the family unit which was overpaid, from individuals who were members of the family when overpaid, or from families which include members of a previously overpaid family. In cases of former recipients or

recipients who refuse to repay, recovery shall be made by appropriate action under State law against the income and resources of the overpaid individual or family.

(6) Underpayments and overpayments may be offset against each other in correcting incorrect payments.

(7) Recovery must be attempted in all cases of fraud, in all cases involving current recipients, and in all cases where the overpayment amount would equal or exceed the costs of recovery.

(8) States must collect and maintain information on the collection of overpayments and make appropriate adjustments for Federal matching, consistent with requirements established by the Secretary.

§ 255.5 Child care standards.

(a) The State IV-A agency must establish procedures to ensure that center-based child care will be subject to State and local (and/or Tribal, where applicable) requirements designed to ensure basic health and safety (including fire safety) protections.

(b) The State must also endeavor to develop guidelines for family day care if it has not already done so.

(c) Upon request of the Secretary, the State IV-A agency must make available information on applicable standards of State and local law, including the requirements specified in paragraph (a) of this section and the guidelines specified in paragraph (b) of this section.

§ 255.6 Uniform reporting requirements for child care.

Each State IV-A agency shall be required to provide such child care information and data as are determined to be necessary by the Secretary to ensure the effective implementation of the provisions under this Part and Part 250. The uniform reporting requirements include, at a minimum, the average monthly number of families served, the types of such families, the amounts expended with respect to families assisted, the types of paid child care arrangements, and the length of time for which such families are assisted. The information and data for these families shall be separately stated with respect to families who have earnings and those who do not, and with respect to families who are receiving aid under the State IV-A plan and those who are not.

Title 45, chapter II, Code of Federal Regulations is amended by adding a new part 256 to read as follows:

PART 256—TRANSITIONAL CHILD CARE**Sec.**

- 256.0 Purpose.
- 256.1 State plan requirements.
- 256.2 Eligibility.
- 256.3 Fee requirement.
- 256.4 Other provisions.

Authority: Sections 402, 403 and 1102 of the Social Security Act as amended (42 U.S.C. 602, 603 and 1302).

§ 256.0 Purpose.

This part pertains to child care available to families whose eligibility for AFDC assistance has ceased due to increased hours of, or earnings from, employment or as a result of the loss of income disregards due to the expiration of the time limits at § 233.20(a)(11).

§ 256.1 State plan requirements.

(a) The State Supportive Services plan specified under § 255.1 must include a description of:

- (1) The methods the State IV-A agency will use to provide transitional child care;
- (2) The sliding fee scale under which families will contribute toward the cost of child care;
- (3) The methods and procedures the State IV-A agency shall use to ensure that fees are collected; and
- (4) The application requirements established by the State.

(b) A State IV-A agency which has not implemented a JOBS program as of April 1, 1990 must submit a Supportive Services plan for transitional care which includes the provisions described in this Part and the provisions at § 255.1 which apply to transitional child care (i.e., paragraphs (a), (b), (e), (f), (i), (k) and (l)).

§ 256.2 Eligibility.

(a) The State IV-A agency must guarantee child care for a child who is: under age 13; is physically or mentally incapable of caring for himself or herself, as verified by the State based on a determination of a physician or a licensed or certified psychologist; or under court supervision, and who would be a dependent child, if needy, (and for a child who would be a dependent child except for the receipt of benefits under Supplemental Security Income under title XVI or foster care under title IV-E), to the extent that such care is necessary to permit a member of an AFDC family to accept or retain employment.

(b) A family is eligible for transitional child care provided the following conditions are met:

(1) The family must have ceased to be eligible for AFDC as a result of increased hours of, or increased income from, employment or the loss of income disregards due to the time limitations at § 233.20(a)(11);

(2) The family must have received AFDC in at least three of the six months immediately preceding the first month of ineligibility;

(3) The family requests transitional child care benefits, provides the information necessary for determining eligibility and fees, and meets appropriate application requirements established by the State; and

(4) The family ceased to be eligible for AFDC on or after April 1, 1990.

(c) Notwithstanding when the family requests assistance under this Part, eligibility for transitional child care begins with the first month for which the family is ineligible for AFDC, for the reasons included in paragraph (b)(1), and continues for a period of 12 consecutive months. Families may begin to receive child care in any month during the 12-month eligibility period.

(d) The family is not eligible for child care under this Part for any remaining portion of the 12-month period if the caretaker relative:

(1) Terminates employment without good cause, as defined in § 250.35; or

(2) Fails to cooperate with the State IV-A agency in establishing payments and enforcing child support obligations, as defined in § 232.12.

(e)(1) If the caretaker relative loses a job with good cause, and then finds another job, the family can qualify for the remaining portion of the 12-month eligibility period.

(2) If the family re-establishes eligibility for AFDC during this period, it could qualify for a new 12-month eligibility period if it met the necessary conditions of eligibility (including the 3-of-6 month requirement).

§ 256.3 Fee requirement.

(a) The State IV-A agency must require each family receiving transitional child care to contribute toward the payment for such care based on the family's ability to pay.

(b) Each State IV-A agency shall establish a sliding fee scale which will

provide for some level of contribution by all recipients.

(c) A State IV-A agency may vary the period of collection for different fee levels.

(d) The State IV-A agency may establish whether fees are paid to the providers or the State agency. In cases where the family's contribution is paid to the State IV-A agency, such contribution is subject to the program income requirements in § 74.42(c), Subpart F. Claims for Federal matching funds for child care expenditures shall be adjusted to reflect collection of fees under this Part.

(e) Individuals who fail to cooperate in paying required fees will, subject to appropriate notice and hearings requirements, lose eligibility for benefits under this Part for so long as back fees are owed, unless satisfactory arrangements are made to make full payment.

§ 256.4 Other provisions.

(a) The State IV-A agency, in providing transitional child care, must meet the requirements in §§ 255.3(a) paragraphs (1)-(5) and (7), (b), (c), (d), and (h); 255.5; and 255.6.

(b) The provisions on child care costs and matching rates at § 255.4 shall apply to this Part, except in the case of Puerto Rico, Guam, the Virgin Islands, and American Samoa, child care expenditures under this Part are not covered as JOBS expenditures, but as expenditures subject to the limitation under section 1108 of the Act.

(c) The State IV-A agency must notify all families of their potential eligibility for transitional child care services under this part in writing, and orally as appropriate, at the time they become ineligible for AFDC. The notification must include information on the steps they must take to establish eligibility for benefits and of their rights and responsibilities under the program.

(d) Provision of benefits under this part are subject to the notice and hearings provisions at § 205.10, except that timely notice requirements do not apply to changes in the manner of payment, unless those changes result in a discontinuation, suspension, reduction, or termination of benefits, or they force a change in child care arrangements.

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THE HISTORY OF THE
CITY OF BOSTON
FROM 1630 TO 1800
BY
JOHN B. HENNING
IN TWO VOLUMES
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Desert Tortoise

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Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and
Plants; Desert Tortoise; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN: 1018-AB35

Endangered and Threatened Wildlife and Plants; Desert Tortoise

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to determine the Mojave population of the desert tortoise (*Gopherus* (= *Xerobates*, = *Scaptochelys*) *agassizii*) as an endangered species pursuant to the Endangered Species Act of 1973, as amended (Act). The Service proposes to determine the Sonoran population of the desert tortoise found outside its natural range in Arizona (south and east of the Colorado River) and Mexico as a threatened species due to similarity of appearance to the Mojave population. Desert tortoises belonging to the Sonoran population remaining in their natural range in Arizona (south and east of the Colorado River) and in Mexico are not covered by this proposed rule.

An emergency rule was published on August 4, 1989, listing the Mojave population of the desert tortoise as an endangered species which expires on August 2, 1990. An emergency situation in the form of a recently documented outbreak of a virulent respiratory disease, currently known as Upper Respiratory Disease Syndrome (Respiratory Disease Syndrome), has been identified and has caused significant declines to certain tortoise subpopulations and threatens to become pandemic in subpopulations already stressed as a result of habitat degradation, predation, and other factors. The Beaver Dam Slope desert tortoise is proposed to be upgraded from threatened to endangered with the critical habitat remaining as previously designated. The Service seeks data and comments from the public on this proposed rule.

DATES: Comments from all interested parties must be received by January 11, 1990. The Act requires the Service to promptly hold at least one public hearing on the proposed listing regulation, if requested by any person by November 27, 1989. Because of anticipated widespread public interest, the Service has decided to hold three public hearings. See **SUPPLEMENTARY INFORMATION** for dates and locations of hearings.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Regional Director (Attn: Listing Coordinator), U.S. Fish and Wildlife Service, 1002 NE. Holladay Street, Portland, Oregon 97232-4181. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Robert P. Smith, Assistant Regional Director for Fish and Wildlife Enhancement, at the above address (telephone (503) 231-6131 or FTS 429-6131).

SUPPLEMENTARY INFORMATION:**Hearing Information**

November 20, 1989, 7:00 to 11:00 p.m., Riverside Convention Center at Raincross Square, 3443 Orange Street, Riverside, California.

November 28, 1989, 2:00 to 5:00, and 7:00 to 10:00 p.m., Clark County Commission Chambers, Bridger Building, 225 Bridger Avenue, First Floor, Las Vegas, Nevada.

November 29, 1989, 7:00 to 9:00 p.m., St. George City Offices, Council Chambers, 175 East 200 North, St. George, Utah.

A public hearing will be conducted at each of these locations at the times indicated. Oral statements may be limited to 3 or 5 minutes, if the number of parties present desiring to give such statements necessitates limitation. There are no limits to the length of any written statement presented at a hearing or mailed to the Service. Written comments are given the same weight and consideration as oral comments presented at the public hearings.

Background

The desert tortoise is one of three species in the genus *Gopherus* found in the United States. The Berlandier's tortoise (*G. berlandieri*) is found in northeastern Mexico and southern Texas. The gopher tortoise (*G. polyphemus*) is found in the hot, humid portions of southeastern United States. *G. agassizii* is relatively large, with adults measuring up to 15 inches in shell length and inhabits the Mojave, Colorado, and Sonoran deserts in the southwestern United States and adjacent Mexico.

Recent studies based on shell shape and variations in genetic composition indicate that the desert tortoise has two distinct populations, one of which is divided into two subpopulations (Spang et al. 1988). A summary of this information is as follows:

The Colorado River has been an effective geographic barrier, isolating the Mojave and the Sonoran populations for millions of years. The Mojave population is found to the west and the north of the river and the Sonoran population is found to the east and south. The Mojave population is further divided into two subpopulations.

The western Mojave subpopulation includes parts of the west Mojave, east Mojave, and Colorado Deserts in California and extreme southern Nevada. Tortoises occur in creosote bush (*Larrea tridentata*), cactus, and shadscale (*Atriplex confertifolia*) scrub habitats, and Joshua tree (*Yucca brevifolia*) woodlands (Dodd 1986).

Study plot data from eight sites in the western Mojave region indicate that populations have declined at rates of 10 percent or more per year for the last six to eight years. Vandalism, collections, raven predation, and disease are a few of the many factors that have resulted in population declines. Habitat conditions have deteriorated and/or habitat has been lost in certain localities due to urban, energy, and mineral development, vehicle-oriented recreation, grazing, military activities, and other uses.

The eastern Mojave subpopulation includes tortoises in eastern California, southern Nevada, and the Beaver Dam Slope and the Virgin River Basin of southwestern Utah and extreme northwestern Arizona (north of the Colorado River). Eastern Mojave tortoises occur in creosote bush-burro bush (*Ambrosia dumosa*) or creosote bush-Joshua tree vegetation types. Downward trends in this subpopulation and its habitat are believed to be a result of urban development, long-term livestock grazing, mining, large-scale water development, off-road vehicle use, collecting, military activities, and many other human-related uses.

The Sonoran population is found in Arizona, south and east of the Colorado River, and in Mexico. Tortoises in this area are found predominantly on steep, rocky slopes of mountain ranges, primarily in Arizona upland vegetation dominated by palo verde and saguaro cactus. The distribution of the present population and habitat is disjunct. Some habitat has been lost to expansion of urban areas. Grazing, mining, and fire have adversely affected some areas of tortoise habitat.

The Beaver Dam Slope subpopulation of the Mojave population of desert tortoises in Utah was listed as threatened with critical habitat on August 20, 1980 (45 FR 55654).

The Service received a petition on September 14, 1984, from the Environmental Defense Fund, Natural Resources Defense Council, and Defenders of Wildlife to list the desert tortoise in Arizona, California, and Nevada as endangered under the Endangered Species Act. The Service determined in September 1985 that the proposed listing of the tortoise within the three petitioned States was warranted but precluded by other listing actions of higher priority under authority of section 4(b)(3)(B)(iii) of the Act. Annual findings of warranted but precluded have been made in each subsequent year since 1985 under authority of section 4(b)(3)(C) of the Act.

Data collection on the Mojave population in recent months indicate that many local tortoise subpopulations throughout the range of the species have declined precipitously. The rapid spread of Respiratory Disease Syndrome, rarely seen before in wild tortoises, has been identified as a significant contributing factor in the current high level of tortoise losses.

On May 31, 1989, the same three environmental organizations that petitioned the Service in 1984 provided substantial new information and again petitioned the Service to list the desert tortoise as an endangered species throughout its United States range under the expedited emergency provisions of the Act. This second petition, treated by the Service as a petition under the Administrative Procedure Act, was received on June 2, 1989. In response to this petition, the Service conducted an extensive review of existing information on the Respiratory Disease Syndrome, other reported diseases in Arizona, and the current status of the tortoise. As a result of this and other information, the Service determined the Mojave population of the desert tortoise to be an endangered species under an emergency rule published on August 4, 1989 (54 FR 32326). The emergency rule provides protection under the Act for the Mojave population of tortoises for 240 days (until April 2, 1990). The Service did not take emergency action to reclassify the Beaver Dam Slope subpopulation in Utah to endangered because it is already protected by the Act.

This proposal constitutes the final finding on the petitioner's request to list the desert tortoise throughout its range in the United States as an endangered species.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement

the listing provisions of the Act (50 CFR part 424) set forth the procedures for adding species to the Federal list. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). The Act defines species to include subspecies and any distinct population segment of any species of vertebrate fish or wildlife that interbreeds when mature. The factors and their application to the Mojave population of the desert tortoise are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

As indicated above, habitat is deteriorating and has been lost in many parts of the tortoise's range due to an accelerating rate of urban, energy, and mineral development, military activities, vehicle-oriented recreational activities, grazing, and land exchanges.

For an animal such as the tortoise, which must consume its annual forage requirement in no more than five months out of the year (March to June, and September), it is apparent that meeting this need can become critical if forage has not been produced, is unavailable, or is of poor nutritive quality.

Changes in perennial vegetation, especially the reduction in cover of small and large shrubs and perennial grasses, are believed to be the result of cattle and sheep grazing pressures. These changes have created openings and barren areas in the desert landscape and have deteriorated the quality of habitat for the tortoise. Losses of plant cover may contribute to the excessive raven predation on small tortoises, making the tortoise more exposed and vulnerable as raven prey.

Changes in annual vegetation, also thought to be mostly connected to grazing, have also affected food supplies for tortoises. Weedy plant species that have been introduced for grazing, such as red brome (*Bromus rubens*), filaree (*Erodium cicutarium*), and abu mashi (*Schismus arabicus*), can germinate, flower, and fruit before native plants. Native plant species are essential to meet the nutritional needs of the tortoise and are their favored forage. Exotic, weedy plant species are outcompeting many native plant species (Berry 1988). Additional potential adverse impacts to the tortoise from cattle and sheep grazing include: damage to shrubs used for tortoise shelter, crushing of burrows and nests, and trampling of young tortoises. The degree and nature of impacts from cattle grazing are dependent upon habitat, grazing history, seasons of use, stocking rates, and

density of the tortoise population (Sievers et al. 1988).

Livestock grazing is thought to be a factor contributing to tortoise habitat degradation in portions of all four States covered by this proposed rule: Nevada, Utah, Arizona, and California. No formal research has been conducted in Nevada on effects of livestock grazing on tortoises. However, both the Final Statement for the Proposed Domestic Livestock Grazing Management Program for the Caliente Area, Nevada, and the Final Environmental Impact Statement for the Clark County, Nevada Grazing Program concluded that conflicts between livestock and desert tortoises would be reduced by grazing reductions and/or livestock removal during portions of the growing season (Bureau of Land Management (BLM) 1979, BLM 1982).

One BLM-funded research study on the Crescent Peak grazing allotment in Piute Valley near Searchlight, Nevada in 1983, concluded that an observed die-off of tortoises was "aggravated by the long-term grazing intensity that had occurred in the area" (Mortimer and Schneider 1983). An unusually high mortality rate in desert tortoises was found while the authors were investigating a permanent tortoise study plot in the valley. The plot is located in an ephemeral pasture used by livestock in the winter and early spring. From the data collected, the authors inferred that a major population change of tortoises occurred between 1979 and 1983. The population sustained a very high mortality rate (23.8 percent) with a resultant decline in the number of sexually mature individuals. Heavy spring grazing pressure had occurred for several years before 1980 and little or no annual forage was produced on the allotment in 1980 and 1981. The authors concluded that the decade of spring grazing had reduced the quality of the habitat and the ability of the tortoises to withstand the drought years of 1980 and 1981, even when cattle were not turned into the pasture during those years.

The Goffs tortoise study plot is located 26 miles to the south of the Piute Valley site and in 1980 was estimated to have a 2 percent annual mortality rate (Turner and Berry 1984). The major difference between the two plots is that the Goffs site is not grazed. The tortoises on that site were able to withstand the adverse weather conditions because they were in better physical condition than those in Piute Valley.

The majority of Utah's Beaver Dam Slope allotment is in the Southern Desert Shallow Hardpan Range Site as

identified by the Soil Survey of Washington County (United States Department of Agriculture 1977). The potential vegetation for this site is approximately 15 to 25 percent grasses, 2 to 5 percent forbs, and 40 to 80 percent shrubs. If the site is in excellent condition, the total annual production of air-dried herbage available as forage is about 400 pounds per acre in good moisture years and 250 pounds per acre under poor moisture years. The median production of annuals on the Beaver Dam Slope between 1980 and 1986 was 83 pounds per acre; half of the time forage production was more and half of the time it was less. The mean (average) production of annuals during that time period was 191 pounds per acre.

It is possible that the forage requirements of the tortoise may never be met on the Beaver Dam Slope. The BLM (BLM 1987) stated that 47 percent of the Beaver Dam Slope allotment is considered to be in fair forage condition while 53 percent is in poor forage condition. This estimate was based on desirable forage for livestock, and hence tortoises because of the dietary overlap. Additionally, the overall range trend has been static, no improvement has occurred.

Another important facet of tortoise feeding behavior is food preferences. Like livestock, tortoises prefer some plants over others and will go out of their way to consume them even if the plant is in low abundance. Coombs (1977b) observed in his study on the Beaver Dam Slope that bush muhly (*Muhlenbergia porteri*) was sought out more than any other plant even though it was one of the least available. This perennial grass has been greatly reduced in abundance by livestock grazing (Stoddart et al. 1975). The second most important plant was cheatgrass (*Bromus tectorum*) and was also one of the least common plants available to the tortoise. Minden (1980) found that a milk-vetch (*Astragalus nuttallianus*) was by far the most commonly consumed plant in his study (59 percent). This annual plant was not mentioned by Coombs (1977). Apparently, the year of Minden's study (1980) was one of above normal rainfall which allowed this annual forb to grow. It is, therefore, believed that the tortoise has food preferences and that total forage production is not an accurate gauge of food availability.

In Arizona, the habitat of the Mojave population of tortoises has experienced alteration of plant species composition and density. This floristic change has been attributed, in part, to livestock grazing. The area has been overgrazed

by cattle, sheep, and horses since the 1850's. Examination of livestock use in some of this area plus changes in plant densities and species composition indicate that adequate nutritional forage for tortoises may be lacking because of past overgrazing practices (Hohman and Ohmart 1978).

Vehicle free-play in tortoise habitat results in cumulative adverse impact to tortoise habitat. Impacts vary from minor habitat alteration and vehicle route proliferation to total denudation of extensive areas created by intensive vehicle play, parking, and camping. Concentrated vehicle play areas may eliminate all but the most hardy shrubs. Other impacts include soil compaction and erosion. Tortoises suffer from loss of forage, loss of vegetative cover, and loss of burrow sites and then become subject to increased mortality from crushing, collection, and vandalism (Sievers et al. 1988).

The increasing use of off-road vehicles appears to be having a significant effect on tortoise abundance and distribution. Not only may direct mortality result through crushing of tortoises either above ground or in their burrows, but the desert ecosystems may be degraded as a result of off-road vehicle use (Luckenbach 1982). Growth of annuals and herbaceous perennials may be severely reduced. The basic energy fixation and transfer systems of the desert can be disrupted or destroyed by vehicular activities. The tortoises in the St. George area of Utah are particularly vulnerable because of their proximity to an expanding urban population.

Competitive off-highway vehicle racing events adversely impact tortoise habitat. They often involve several hundred race participants and thousands of spectators. The camping and race start and finish areas receive intensive vehicle use and become devoid of vegetation. Tortoises are eliminated from these areas entirely due to the loss of food, cover, and burrow sites. Affected areas become enlarged with continued use (Sievers et al. 1988).

Competitive off-highway vehicle racing events have adversely impacted tortoise habitat in Nevada. Vehicles operated by racers and pit crews, as well as spectators, have been known to cut across desert habitat off-road, and racers frequently pass other vehicles in vegetated areas (Burge 1986; U.S. Fish and Wildlife Service 1989).

Vehicle route proliferation has occurred in many areas and can result in a significant cumulative loss of habitat. Human access increases the incidence of tortoise mortality from

collection, gunshot, and crushing by vehicles. Soil compaction results in loss of vegetation and increases in erosion (Sievers et al. 1988).

Road construction and vehicle use appear to have a long-ranging impact on the tortoise. Besides the immediate loss of tortoise habitat from road construction, paved roads and vehicular traffic affect tortoise populations within about one kilometer (km) (0.62 mile) of a road. For new roads, the extent of impact is up to 0.4 km (0.29 mile) away, while older roads may reduce tortoise numbers up to 2 km (1.24 miles) away (Nicholson 1978).

Large surface disturbances (e.g., power plants, mining, agricultural developments, military activities, and urbanization) cause long-term, permanent loss of habitat. Both large and small developmental activities often induce further surface disturbing activities with resulting habitat loss and tortoise population reduction. Increased human activity results in increased vehicle kills, vandalism, and collecting of tortoises (Sievers et al. 1988).

The metropolitan Las Vegas, Nevada, area has experienced rapid expansion in recent years, climbing from 241,000 people in 1980 to 335,000 in 1987; an increase of 28 percent (Walker and Cowperthwaite 1988). In the four years between 1982 and 1986, 10,000 acres of desert (tortoise habitat) were converted to urban uses (Clark County Department of Comprehensive Planning, pers. comm. 1989). City and county planners assume the ultimate limits of growth are set at the effective topographic limits of construction; planning maps indicate that the metropolitan area could eventually cover approximately 390 square miles (Clark County Regional Flood Control District 1986).

In northeast Arizona, additional habitat loss and fragmentation has occurred from mining, off-road vehicle activities, road and powerline construction and maintenance, agricultural development, and commercial, residential, and recreational developments. Currently, there is a proposal to develop 2,000 acres of tortoise habitat near Littlefield, Arizona for commercial purposes. Other developments are also planned for this area. Long-term plans call for development of a community of 250,000 people in the Littlefield area. Other potential habitat degradation activities include a BLM proposal for a utility corridor alternative across the Beaver Dam Slope in Arizona that would be two miles wide.

Land exchanges may result in habitat loss and increased fragmentation of

populations. Even where tortoise habitat is exchanged by the BLM for other tortoise habitat, there is an increased likelihood of development, resulting in loss of habitat, on the new private holdings (Sievers et al. 1988).

Three thousand sixty seven acres of moderate tortoise density lands, west of Las Vegas, Nevada, were recently transferred from BLM to Summa Corporation. The Desert Tortoise Council (Council) estimated that from 300 to 800 tortoises would be displaced by the exchange, and 3,470 acres of crucial tortoise habitat, as defined by the Council, would be lost to private development (Desert Tortoise Council 1987).

Recent legislation directs the Secretary of the Interior (Secretary) to sell 3,700 acres of moderate-to-high tortoise density lands, 20 miles northeast of Las Vegas, to Clark County. The Secretary is also authorized to offer for sale up to 17,000 additional acres in the same area (Pub. L. 101-67. Apex Project, Nevada Land Transfer and Authorization Act of 1989. July 31, 1989).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Desert tortoises have long been a popular pet in the southwest. It is not currently known to what extent collecting has impacted wild populations. It is estimated that at least 100,000 desert tortoises exist in captivity. Many tortoises held in captivity, however, are known to exhibit signs of the contagious Respiratory Disease Syndrome. The release of diseased captive tortoises is considered by the BLM to be the source of introduction of the currently identified Respiratory Disease Syndrome found in wild populations.

Vandalism, including shooting and crushing of tortoises under vehicles, has been documented by the BLM and is considered a factor in reducing the number of tortoises in their natural habitat. BLM studies in the western Mojave Desert of California on 11 permanent study plots showed 14.3 percent of the carcasses with evidence of gunshot. At one plot, carcasses with evidence of gunshot was as high as 28.9 percent (Sievers et al. 1988).

Loss of tortoises from vandalism has also been reported in northwest Arizona. Approximately 10 percent of shell remains from a tortoise study plot near Littlefield, Arizona, had gunshot wounds (Charles Pregler, BLM 1989).

Luckenbach (1982) concluded that human activity is the most significant cause of tortoise mortality. The Beaver Dam Slope subpopulation of the Mojave

tortoise population has been subjected to collecting pressure in the past, and although the species is now protected in Utah, some collecting may still occur. On the Beaver Dam Slope in Arizona, heavy collection for the pet trade took place until the 1970s (Coombs 1977). Automotive stations paid children to collect tortoises and sold them to passing motorists (Coombs 1977a).

C. Disease or Predation

Predation of young tortoises by ravens (*Corvus corax*) is a growing threat to the species. Common raven populations in the southwestern deserts have increased significantly since the early 1940's, presumably in response to expanding human use of the desert. Sewage ponds, landfills, power lines, roads, and other uses have increased available foraging, roosting, and nesting opportunities for ravens. In recent years, raven predation on juvenile desert tortoises has increased to a point where recruiting of young tortoises into the adult population has been significantly reduced or eliminated in certain localities. Ravens are highly adaptable as to their feeding patterns, and concentrate on easily available seasonal food sources such as juvenile tortoises, including live, healthy animals. In the Desert Tortoise Natural Area, a protected area of 21,320 acres in the western Mojave Desert in California, even though tortoise eggs are still being laid and hatched, as shown by the presence of very small tortoises, raven predation appears to have severely curtailed the recruitment of the young into the adult population (BLM 1989).

The BLM's 1989 Environmental Assessment (BLM 1989) for the Selected Control of the Common Raven to Reduce Desert Tortoise Predation in the Mojave Desert, California, further summarizes the annual trend (percent annual change) and the change (percent) of raven numbers in the last 20 years. In the Mojave Desert, raven populations have increased 1528 percent between 1968 and 1988, at a rate of nearly 15 percent per year. In the Colorado-Sonoran Deserts, raven populations have increased 474 percent in 20 years, at a rate of over 9 percent per year. In the Great Basin Desert, raven populations have increased by 168 percent in the last 20 years, at a rate of over 5 percent per year. In the Southern California Basin, raven populations have increased by 328 percent, at a rate of over 7.5 percent per year.

In 1989, BLM funded a tortoise study at the Piute Valley study plot in Nevada. Preliminary indications include a relatively large number of young tortoise mortalities due to ravens. The carcasses have not yet been extensively examined

in the laboratory. Evidence of raven predation on young tortoises at another study plot (Christmas Tree Pass in Nevada) was observed in 1986, as evidenced by tortoise remains around a raven nest and roost site (Sid Sloan, BLM, pers. comm. 1989).

Predation studies on the Mojave population of the tortoise in Arizona have not been formally conducted. The proximity of tortoises to local dumps and a dairy, however, indicates that increased predation by ravens on juvenile tortoises, if not already a problem, may result in increased mortality of tortoises in the future.

A new threat to certain desert tortoise subpopulations has recently been identified. A fatal disease, currently referred to as Desert Tortoise Respiratory Disease Syndrome, has been observed in animals in a number of widely dispersed locations throughout the Mojave Desert. It currently appears to be spreading and the mature, reproductively active segment of the population may be most vulnerable.

The disease has been known for some time in captive tortoises throughout the world (Snipes et al. 1980), although the exact cause, or etiological agent, has not been clearly identified. The disease is probably the result of multiple factors working in concert. It is known that the disease may be readily transmitted from an infected tortoise to a non-infected tortoise (Roszkopf 1988). A virus (herpes-like) has been observed by electron microscopic studies in other species of turtles with respiratory tract infections (Jacobson et al. 1986). A paramyxovirus is also considered as a primary pathogen capable of initiating the disease (Jacobson, pers. comm., in Roszkopf 1988). Infected animals may not necessarily exhibit obvious signs of the disease.

Once the disease is initiated, bacteria may invade and become the primary pathological agent. *Pasturella testudinatus* was recently isolated from a series of sick tortoises collected for disease study from the Desert Tortoise Natural Area in California. Species of *Pasturella* bacteria are commonly associated with disease syndromes initiated or enhanced by other predisposing factors, including poor nutrition, stress, and immune system compromise.

The disease appears to be spread via physical contact between infected and non-infected animals (Roszkopf 1988). Adult male tortoises may contact many females in a single breeding season and, thus, the occurrence of the disease in the adult breeding population would reinforce the conclusion that direct nose

contact during courtship activities could spread the pathogen to susceptible tortoises. Once the disease is contracted, there appears to be little chance of full recovery and the affected individual eventually becomes debilitated and dies. Even individuals given extensive treatment in captivity usually succumb to the disease eventually. Furthermore, if an individual appears to overcome the disease, relapse may occur under stress conditions (Roskopf 1988).

Although the transmittance of an infectious agent from one tortoise to another occurs by contact, the actual infection of the newly inoculated individual may be associated with other factors that increase its susceptibility. Some of the original information published about this disease suggested a nutritional and/or stress-related cause with a secondary bacterial infection of debilitated animals (Fowler 1977). The combination of an infectious agent along with lowered resistance is typical of these types of disease syndromes in many other animals.

Based on current knowledge of the incidence, morbidity, and the mortality rates, the disease appears to be escalating in surveyed populations in the western Mojave Desert. The disease was first recognized as a major problem in wild populations in the spring of 1988 (Fauna West Wildlife Consultants 1989). Signs of the disease were observed in up to 46 percent of adult tortoises examined during surveys of the Desert Tortoise Natural Area in the western Mojave Desert in southern California in the spring of 1988. In one portion of this range, the infection rate went from 9 percent in a 1988 survey to 52 percent of all tortoises in a 1989 survey. A loss of about 20 percent of the marked tortoise population with disease signs occurred in one year in this plot.

While not all populations surveyed have such high mortality rates, these figures demonstrate the potential impact the disease can have on any given area. Infection rates in multiple grid areas in the southern California study area range from 7 to 50 percent. The disease signs have also been observed in individual tortoises from a variety of populations (Berry 1989) including the Fremont Valley (50 percent infection rate), Saguara National Monument in Arizona (2 of 12 radio-tagged infected, and died), and Beaver Dam Slope, Utah-Arizona (10 to 20 percent infection rate with high mortality in radio-tagged animals). Interviews of personnel at veterinary hospitals in the Las Vegas, Nevada, area by Service personnel have revealed that most cases of Respiratory Disease

Syndrome are found in captive tortoises, but that wild tortoises have been brought in with signs of respiratory disease. The potential exists for the Respiratory Disease Syndrome to reach epidemic proportions throughout the Mojave population. There appear to be no natural barriers that would prevent transfer of infectious agents from California subpopulations to Nevada, Utah, and Arizona subpopulations in the Mojave desert. The release of diseased captive animals may, however, spread the disease faster than the natural movement of tortoises between States.

In addition to the identified respiratory disease in the Beaver Dam Slope subpopulation of the Mojave tortoise population, an apparent nutritional disease causing osteoporosis of the bones has been identified (Jarchow 1988).

Berry and Coffeen (1987) analyzed 100 remains of desert tortoises collected between 1982 and 1986 on the Beaver Dam Slope, Utah. Almost all of the remains were collected from two permanent study plots: Woodbury-Hardy and Beaver Dam Slope. Of the 72 tortoises found on the Woodbury-Hardy plot and one off the plot, fifteen (20.6 percent) of the specimens showed thinning of the plastron and/or carapace, holes in the bone, or a honeycomb structure. An additional five specimens (6.9 percent) had deformed bones (pelvic girdle) or eroded bones. Another 15 tortoises (20.6 percent) showed no evidence of abnormalities or thinning of bones. The remaining 38 specimens (52 percent) could not be evaluated. Of the 23 tortoises from the Beaver Dam Slope plot and 5 from nearby, 9 (32.1 percent) showed evidence of thin bones and/or holes on the plastron and/or carapace or honeycombing on the girdles. Nine (32.1 percent) had normal bones and an additional nine could not be classified.

In 2,300 tortoise specimens observed in California, Berry found very few cases of bone abnormality, bone disease, and thinning of bones in young individuals. In contrast, young to middle-aged tortoises from Utah were found in substantial numbers with thin bones or bone disease. Dr. J. Fischer, an orthopedic surgeon, speculated that poor nutrition was the cause for thin bones and osteoporosis in young tortoises.

A study by Jarchow (1987) indicated that osteoporosis (porous bones) and associated osteomalacia (soft bones) in tortoise shells and skeletons found on the Beaver Dam Slope could be attributed to long-term malnutrition. He suggested that the reduction in abundance of bush muhly may be the

primary cause. This perennial grass is highly palatable to livestock, as well as to the tortoise. Bush muhly, once occurred in extensive stands throughout the southwest, but is now found only in the protection of shrubs due to grazing pressure (Cronquist et al. 1977).

D. The Inadequacy of Existing Regulatory Mechanisms

All four States in which the Mojave tortoise population occurs have laws that provide varying levels of protection for the desert tortoise. Even with State protective measures, subpopulations of the tortoise have continued to decline.

State of Nevada laws concerning fish, game, and watercraft, as amended, afford limited protection to the desert tortoise. Nevada Revised Statutes (NRS), section 501.110.1(d) sets forth that reptiles must be classified as either protected or unprotected. NRS section 501.110.2 states that protected wildlife may be further classified as either sensitive, threatened, or endangered. The Nevada Administrative Code (NAC), section 503.080.1(a) classifies the desert tortoise as protected and rare outside the urban areas of Clark County (Las Vegas). NRS section 503.597, states that it is unlawful, unless with written consent of the Nevada Department of Wildlife, to transport a desert tortoise from one portion to another portion of the State or across State lines.

The California Fish and Game Commission adopted a regulation change on June 22, 1989, to amend the California Code of Regulations, section 670.5(b)(4) of title 14, to add the desert tortoise as a State threatened species. Under the Fish and Game Code, Article 3, section 2080 prohibits the import or export of endangered or threatened species. This section also indicates that no person shall take, possess, purchase, or sell within the State, any listed species, or any part or product thereof, except as otherwise provided in State law or regulation.

The California Fish and Game Code, Article 4, section 2090 requires that each State agency shall consult with the California Department of Fish and Game to ensure that any action authorized, funded, or carried out by that State lead agency is not likely to jeopardize the continued existence of any State listed species.

On January 1, 1988, the Arizona Game and Fish Commission (Commission) prohibited the take of desert tortoises from the wild (Arizona Game and Fish Commission 1989). The Commission also prohibits the sale of tortoises and the export of tortoises from the State. Prior to that date, anyone with an Arizona

hunting license could take and possess one tortoise for each person in that household. No provisions have been made to permit or otherwise identify those tortoises that were in possession prior to January 1, 1988. Thus, enforcement of the State ban on take may not be possible unless the actual taking of a tortoise from the wild is observed. There is no State authority in Arizona to regulate the take of desert tortoise habitat.

Unlike many other States, Utah does not have special regulations designating certain species as either threatened or endangered, thereby affording them additional protection. All Utah wildlife species are classified as prohibited, controlled, or noncontrolled. The desert tortoise is considered a "prohibited reptile" under Utah Rule R608-3 *Collection, Importation, Transportation, and Subsequent Possession of Zoological Animals* (Utah Division of Wildlife Resources 1987). Prohibited species are zoological animals that are prohibited from collection, importation, transportation possession, sale, transfer, or release because they pose unacceptable disease, ecological, environmental, or human health or safety risks. No state regulations exist to stop loss of tortoise habitat through land development or other habitat degradative actions.

E. Other Natural or Manmade Factors Affecting its Continued Existence

An ancillary effect of continued declines in populations and loss of habitat is the fragmentation of remaining populations. Long-term survival of these fragmented populations will be aggravated by normal random fluctuations in the population and environment that could lead to extirpation of subpopulations.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the Mojave population of the desert tortoise in determining to propose this rule. Based on this evaluation, the preferred action is to list the Mojave population of the desert tortoise as endangered. The Act states that the term "endangered species" means any species that is in danger of extinction throughout all or a significant portion of its range. Given the loss of a substantial number of tortoises due to the respiratory disease, loss and degradation of habitat over much of their range, and losses due to raven predation, it is considered that some subpopulations could be extirpated within one year. If the declining trend is not turned around,

eventual extinction of the population may be unavoidable.

Listing of Sonoran Population Still Precluded

The Service declined to emergency list the Sonoran population of the desert tortoise in response to the petition. The rationale leading to this decision was as follows:

1. Historically, desert tortoises in the Sonoran population occur in numerous small groups, more or less patchy or disjunct, inhabiting steep-sided canyons. This habitat is less subject to disturbance than is more level terrain.

2. The very patchiness of the distribution in the Sonoran population leads the Service to believe that the Respiratory Disease Syndrome affecting other subpopulations will not likely reach the epidemic proportions that it has in locations like the Desert Tortoise Natural Area in California. Although a few instances of a respiratory disease have been documented in the Sonoran population and are of concern to the Service, it appears that respiratory disease: (a) is usually present in tortoise populations to varying degrees; (b) has not shown any evidence of becoming pandemic; (c) has not been shown to be Respiratory Disease Syndrome; and (d) is currently being addressed by the Service and the Arizona Game and Fish Department, who will continue to gather and evaluate data. A report on the results of these studies will be available in January 1991.

The report will contain information needed to determine whether the Sonoran population of the desert tortoise warrants listing. All available information on distribution, abundance, and threats will be summarized. This will include review of published and unpublished information and preparation of maps overlaying tortoise distribution with projected land use patterns. Results of field work to determine population status and trend with emphases on reproduction, disease, and mortality will be determined from revisiting previously sampled sites.

Similarity of Appearance Treatment of the Sonoran Population

Section 4(e) of the Endangered Species Act, as amended, provides that the Secretary of the Interior may, by regulation of commerce or taking, and to the extent he deems advisable, treat any species as an endangered or threatened species even though it is not listed pursuant to section 4(a)(1) of the Act if he finds that: (a) Such species so closely resembles in appearance an endangered or threatened species that enforcement personnel would have substantial

difficulty in attempting to differentiate between the listed and unlisted species; (b) the effect of this substantial difficulty is an additional threat to the endangered or threatened species; and (c) such treatment of an unlisted species will substantially facilitate the enforcement and further the policy of the Act.

The Service finds that there are no visual differences, readily discernible by law enforcement personnel or the general public, between the tortoises in the Mojave and Sonoran populations, that the similarity of appearance represents an additional threat to the Mojave population, and that treating the Sonoran population as threatened due to similarity of appearance, when located outside its natural range, would facilitate the enforcement of prohibitions under the Act regarding illegal trade in or possession of endangered Mojave desert tortoises. Treating the Sonoran population as threatened due to similarity of appearance when outside its natural range would eliminate the necessity of Service special agents having to determine the origin of each desert tortoise prior to enforcing the prohibitions in section 9 of the Act. Inability of the Service to enforce the prohibitions in the Act would represent an additional threat to the listed Mojave population of the desert tortoise. By treating members of the Sonoran population of tortoises as threatened under the similarity of appearance provisions of the Act, when located outside their natural range, the Service believes that enforcement problems can be minimized, while at the same time, the conservation of listed Mojave populations can be ensured.

Reclassification of the Beaver Dam Slope Population from Threatened to Endangered

The Beaver Dam Slope population of the desert tortoise was listed as threatened with critical habitat in 1980. The declining trend of this population appears to be continuing despite the protection afforded by the Endangered Species Act and efforts of State and Federal agencies to reverse the downward trend.

Minden and Keller (1981) surveyed a one square mile plot in the Woodbury Desert Study Area, which is located within designated critical habitat for the tortoise in southwestern Utah. They estimated a density of 109 to 136 tortoises per square mile based on the 74 live wild animals that were found. The average mortality rate for 1980 and 1981 was 6 percent.

The same one square mile study plot was resurveyed in 1986 (Welker 1986). Preliminary results indicate an estimated reduction of over 50 percent in numbers from Minden and Keller's work in 1981. The data in Welker's draft report indicates that only 27 tortoises were captured within the study plot; i.e., 6 released captives and 21 wild tortoises. The density of tortoises within the study area was estimated at between 34 and 47 per square mile. The population was dominated by adult (61.9 percent) and male (77 percent) tortoises. This is a complete reversal of the sex ratios found by Woodbury and Hardy (1948) of 36 percent males and 64 percent females. An animal population weighed heavily towards males is an indication of a population in poor reproduction condition. The average annual mortality rate in 1986 was 22 percent with the majority of deaths occurring in juvenile and female tortoises. This rate is considered high when compared to an average annual mortality rate of 1 to 5 percent in 1948; 6.86 percent by Coombs (1977b); and 6 percent in 1981.

A 50 percent population decline of the desert tortoise on a study plot on the Beaver Dam Slope, Utah has been documented between 1981 and 1986. This data appears to be representative of a continuing decline of the entire Beaver Dam Slope subpopulation of Mojave desert tortoises. The Act states that the term "endangered species" means any species or vertebrate population which is in danger of extinction throughout all or a significant portion of its range. As previously discussed herein, given the loss of a substantial number of Beaver Dam Slope tortoises due to disease, loss and degradation of habitat over much of their range, losses due to raven predation, and an escalating decline in the population, it is considered that the Beaver Dam Slope subpopulation of the Mojave desert tortoise population is in imminent danger of extinction.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time a species is proposed to be endangered or threatened.

Critical habitat was designated for the Beaver Dam Slope subpopulation of the Mojave desert tortoise in 1980. The status of this previously designated critical habitat would not be changed with this proposal.

The Service finds that designation of critical habitat for the remainder of the Mojave desert population is not

presently determinable. The Service's regulations (50 CFR 424.12(a)(2)) state that critical habitat is not determinable if information sufficient to perform required analyses of the impacts of the designation is lacking or if the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat. The range of the Mojave desert tortoises is extensive. Much of this habitat has been fragmented and degraded by a number of land-disturbing activities. Some remaining areas of good habitat are isolated from each other or are of such small size as not to support viable subpopulations of the tortoise. The specific size and spatial configuration of these essential habitats, as well as vital connecting linkages between areas necessary for ensuring the conservation of the Mojave desert population throughout its range, cannot be determined at this time.

During the proposed comment period, the Service will seek additional agency and public input on critical habitat, along with information on the biological status of and threats to the Mojave desert tortoise. The Service intends to use this and other information in formulating a decision on critical habitat designation for the Mojave population of the tortoise.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with States, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing.

Such increased recognition and conservation efforts would provide a means to ensure survival for the desert tortoise. Available funding would be used on research to determine the causes of and possible treatments for the disease currently infecting tortoise populations and to determine whether the disease can be passed on to hatchlings by infected females. Available funding would also be used for, but would not necessarily be limited to, the identification and isolation of healthy populations, carrying out predator control to reduce loss of immature tortoises, public education to

discourage further releases of diseased captive tortoises, and to address habitat issues including land acquisition, fencing, and habitat improvement.

The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Regulations governing these conferences are found at 50 CFR 402.10. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

At least 50 percent of occupied habitat within the range of the Mojave population of the desert tortoise is managed by the BLM. Other Federal managers of tortoise habitat include the Department of Defense, National Park Service, and the Fish and Wildlife Service. Tortoises are also found on lands managed by Indian tribes. Federal activities may include, but may not be limited to, actions resulting in grazing, off-highway-vehicle use, mining, construction of developments and rights-of-way, and military activities.

The act and implementing regulations found at 50 CFR part 17 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import or export, ship in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale any endangered species in interstate or foreign commerce. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been illegally taken. Certain exceptions apply to agents of the

Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing such permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

All *Gopherus* tortoises, including the desert tortoise, were listed on July 1, 1975, as Appendix II species under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES Convention). The only exception within the genus is *G. flavomarginatus*, which was listed as an Appendix I species. The CITES Convention, as implemented by the Act and various regulations (50 CFR part 23), imposes restrictions on importation and exportation of Appendix I and II species.

Status of Feral Tortoises and Tortoises Currently Held in Captivity

Feral desert tortoises, which have been released inside the native habitat of the Mojave desert tortoise, would be classified endangered species in the area north and west of the Colorado River and would be protected under the Act.

Under section 9(b)(1) of the Act, prohibitions applicable to the Mojave population will not apply to tortoises that were held in captivity or in a controlled environment on the date of the publication of the emergency rule (August 4, 1989), provided, that such

holding and any subsequent holding or use of the tortoise was not in the course of a commercial activity.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions for the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final action concerning this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, pursuant to the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the

Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the Regional Director (Attention: Listing Coordinator) at the address provided above (**ADDRESSES** section).

Author

The primary author of this proposed rule is Miss Jackie Campbell, Division of Endangered Species and Habitat Conservation, Regional Office, U.S. Fish and Wildlife Service, 1002 NE Holladay Street, Portland, Oregon 97232-4181, (503) 231-6131 or FTS 429-6131.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1543; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.11(h) by revising the entry for "Tortoise, desert" under REPTILES to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rule
Common name	Scientific name						
REPTILES							
Tortoise, desert.....	Gopherus (=Xerobates, =Scaptochelys) agassizii.	U.S.A. (AZ, CA, NV, UT), Mexico.	Entire area, except in AZ, south and east of the Colorado River, and Mexico.	E.....	103,357 ...	17.95(c)	NA.
Do	do.....	do.....	U.S.A. (AZ, south and east of Colorado River) and Mexico when found outside of AZ, south and east of Colorado River, or Mexico.	T(S/A)		NA	17.42(e).

3. It is further proposed to amend § 17.42 by adding a new paragraph (e) to read as follows:

§ 17.42 Special rules—reptiles.

* * * * *

(e) Desert tortoise (*Gopherus* (= *Xerobates*, = *Scaptochelys*) *agassizii*)

(1) *Definition.* For the purposes of this paragraph (e) "desert tortoise" shall mean any member of the species *Gopherus* (= *Xerobates*, = *Scaptochelys*) *agassizii*, whether alive or dead, and any part, product, egg, or offspring thereof, found outside of Arizona (south and east of the Colorado River) and Mexico, regardless of natal origin or place of removal from the wild.

(2) *Applicable provisions.* The provisions of § 17.21–17.23 shall apply to any desert tortoise subject to this paragraph (e).

Dated: October 6, 1989.

Richard N. Smith,
Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 89-24252 Filed 10-12-89; 8:45 am]

BILLING CODE 4310-55-M

Presidential Proclamations

Friday
October 13, 1989

Part IV

The President

Proclamation 6043—National Domestic
Violence Awareness Month, 1989

Proclamation 6044—National Job Skills
Week, 1989

Executive Order 12694—Amending
Executive Order No. 12345

1930
1931
1932
1933
1934
1935
1936
1937
1938
1939
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1943
1944
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2025

Part IV

The President

Executive Order 12812 - National Domestic Violence Awareness Month 1990
Proclamation 6411 - National Top Skills Week 1992
Executive Order 12812 - National Domestic Violence Awareness Month 1990
Executive Order 12812 - National Domestic Violence Awareness Month 1990

Federal Register

Vol. 54, No. 197

Friday, October 13, 1989

Presidential Documents

Title 3—

The President

Proclamation 6043 of October 11, 1989

National Domestic Violence Awareness Month, 1989

By the President of the United States of America

A Proclamation

Today, far too many American families, whose lives and homes should be blessed by tranquility and security, dwell instead under the terrifying shadow of domestic violence. Domestic violence is not just a series of simple disputes or family quarrels. It is not just an isolated incident or private matter to be quietly settled, forgiven, and forgotten. Domestic violence is a serious crime that tears at the fabric of the American family.

Each year, hundreds of thousands of Americans—Americans of every age, race, and gender, and from every social, religious, and economic background—are harmed in their homes by a loved one. It is estimated that one-third of all domestic violence incidents involve felonies, including rape, aggravated assault, and robbery. Domestic violence is the single largest cause of injury to women in the United States, and research has shown that persons who engage in one form of family violence are likely to engage in others. Researchers are just beginning to understand the extent of injuries suffered by men as a result of domestic violence, particularly in their advanced years.

The suffering of those children who are abused, or who witness incidents of domestic violence, is inestimable. Domestic violence deprives these little ones of the innocence, joy, and security of childhood—and nothing can replace their loss.

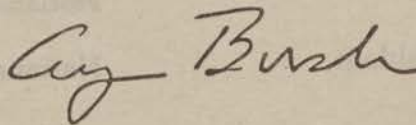
In recent years, the number of shelters and safehouses for battered adults and children has increased dramatically. This month, we recognize the dedicated professionals and volunteers who provide these vital services to the victims of domestic violence. These generous, hard-working men and women merit our respect and gratitude.

However, because many abused individuals continue to need assistance, we must also recognize the importance of supporting private and public efforts to aid victims of domestic violence. Public awareness and understanding of the needs of battered adults and children must be increased. This month, let us renew our determination to learn more about the problem of domestic violence and how each of us can help bring an end to it.

The Congress, by Senate Joint Resolution 133, has designated October 1989 as "National Domestic Violence Awareness Month" and has authorized and requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim October 1989 as National Domestic Violence Awareness Month. I urge all Americans to become more aware of the tragedy of domestic violence; to support and assist victims and those who are working to eliminate domestic violence in our land; and to participate in other appropriate efforts.

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



[FR Doc. 89-24433

Filed 10-12-89; 11:57 am]

Billing code 3195-01-M

Presidential Documents

Proclamation 6044 of October 11, 1989

National Job Skills Week, 1989

By the President of the United States of America

A Proclamation

The observance of National Job Skills Week, 1989, gives all Americans an opportunity to reflect on the changes taking place in our economy and work force. Today, the United States continues to hold a position of leadership in global economic affairs—with most Americans enjoying a high standard of living, employment levels continuing to increase, and unemployment falling to the lowest levels in more than a decade. In large part, this leadership reflects the flexibility, creativity, and commitment to excellence among American workers and employers, as well as the quality of our educational and training institutions.

However, the United States faces a serious challenge that must be dealt with immediately and directly. An increasingly competitive international economy requires that our labor force have improved skills—skills necessary to adapt to technological advances in the workplace.

At the same time, demographic changes are altering the composition of our labor force. Trends indicate that, during the next decade, fewer new young workers will be entering the labor market, and the average age of the work force will rise significantly. Workers without adequate education or training will likely make up a larger share of the entrants into the work force. These trends underscore the importance of providing retraining for older workers and employment opportunities for those Americans who, in the past, have not been able to compete in the labor market due to lack of education or occupational skills.

We must reaffirm our commitment to bringing disadvantaged and unemployed Americans into the labor market so that they, too, can experience the rewards of productive employment and self-sufficiency. Such a commitment is not only a moral imperative, but also vital to maintaining our Nation's prosperity and economic growth.

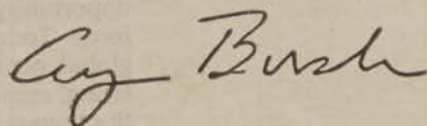
The centerpiece of the Federal Government's efforts to meet this challenge and commitment is the Job Training Partnership Act (JTPA). Through the JTPA, private and governmental efforts are combined to provide needed training and assistance to individuals seeking private sector employment. The JTPA has been an extremely successful program, but it can be improved. Amendments under consideration would target assistance and training to those who face the most serious barriers to employment; enhance the quality of services provided; and promote coordination of human resource programs serving the disadvantaged.

In addition, the Family Support Act of 1988—last year's landmark welfare reform legislation—moves us in the direction of including job training and education in our welfare system. Similarly, proposed changes to the Carl D. Perkins Vocational Education Act, now being considered, would emphasize student achievement in acquiring basic skills and occupational competence. Effective implementation of these programs can make a critical contribution to our efforts to train unskilled and disadvantaged Americans and bring them into the economic mainstream.

To focus national attention on present and future work force needs, the Congress, by Senate Joint Resolution 148, has designated the week of October 8 through October 14, 1989, as "National Job Skills Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week of October 8 through October 14, 1989, as National Job Skills Week. I urge all Americans to observe this week with appropriate programs and activities.

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



[FR Doc. 89-24434

Filed 10-12-89; 11:58 am]

Billing code 3195-01-M

Presidential Documents

Executive Order 12694 of October 11, 1989

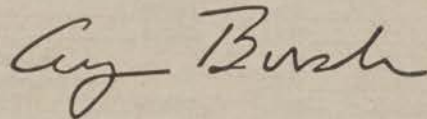
Amending Executive Order No. 12345

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App.), and in order to amend Executive Order No. 12345, as amended, to provide for the option of selecting one or more Chairmen and Vice Chairmen from among the members of the President's Council on Physical Fitness and Sports, it is hereby ordered that Executive Order No. 12345, as amended, is amended as follows:

Section 1. The second sentence of Section 2(b) shall read "The President may, as he deems appropriate, designate one or more members to be Chairmen and to be Vice Chairmen."

Sec. 2. This order is effective immediately.

THE WHITE HOUSE,
October 11, 1989.



[FR Doc. 89-24437

Filed 10-12-89; 12:06 pm]

Billing code 3195-01-M

Reader Aids

Federal Register

Vol. 54, No. 197

Friday, October 13, 1989

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230
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Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, OCTOBER

40369-40626	2
40627-40856	3
40857-41038	4
41039-41236	5
41237-41428	6
41429-41576	10
41577-41816	11
41817-41942	12
41943-42286	13

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

Proposed Rules:	
Ch. III	40880

3 CFR

Proclamations:	
6030	40839
6031	40849
6032	40851
6033	40853
6034	41039
6035	41041
6036	41429
6037	41431
6038	41573
6039	41577
6040	41579
6041	41581
6042	41817
6043	42281
6044	42283

Executive Orders:

11145 (Continued by EO 12692)	40627
11183 (Continued by EO 12692)	40627
11287 (Continued by EO 12692)	40627
11776 (Continued by EO 12692)	40627
12131 (Continued by EO 12692)	40627
12171 (Amended by EO 12692)	40629
12190 (Continued by EO 12692)	40627
12196 (Continued by EO 12692)	40627
12216 (Continued by EO 12692)	40627
12296 (Revoked by EO 12692)	40627
12345 (Continued by EO 12692)	40627
12345 (Amended by EO 12694)	42285
12367 (Continued by EO 12692)	40627
12382 (Continued by EO 12692)	40627
12462 (Revoked by EO 12692)	40627
12528 (Revoked by EO 12692)	40627
12592 (Revoked by EO 12692)	40627
12601 (Revoked by EO 12692)	40627
12607 (Revoked by EO 12692)	40627
12610 (Superseded by EO 12692)	40627

12668 (Revoked by EO 12692)

40627	40627
12692	40627
12693	40629
12694	42285

7 CFR

26	41237
301	40570
701	41819
906	41583
910	40369, 41433
920	41433
946L41585	
989	41586
1065	41240
1079	40857, 41241
1137	41437
1427	41237
1434	41588
1435	41043, 41588
1446	40858
1477	40369
1765	41713

Proposed Rules:

51	41597, 41599
401	41246, 41248
403	41249
906	41249
926	41251
955	41252
966	41253
968	41601
981	41979
1139	41254
1948	41626

9 CFR

319	40631
327	41045
381	41045

Proposed Rules:

71	41845
80	41845
92	42144
94	41845

10 CFR

11	40859
25	40859
35	41819
95	40859
600	41943

Proposed Rules:

2	40780
50	41980

12 CFR

312	40377
1510	41948
1511	41948

Proposed Rules:	21 CFR	156.....	41366	42 CFR
203.....	Ch. I.....	334.....	40572	405.....
220.....	177.....			411.....
	436.....	34 CFR		412.....
14 CFR	442.....	600.....	40388	433.....
21.....	453.....			489.....
23.....	455.....	36 CFR		
39.....	510.....	292.....	41089	43 CFR
40633, 40635, 40636-40639,	522.....	Proposed Rules:		Proposed Rules:
41051-41054, 41438, 41821,	540.....	254.....	41849	11.....
41958-41960	544.....			
61.....	555.....	38 CFR		44 CFR
71.....	558.....	1.....	40388, 40870	60.....
91.....	Proposed Rules:	21.....	40871	64.....
97.....	10.....	Proposed Rules:		Proposed Rules:
Proposed Rules:	310.....	3.....	40684, 40686, 41110	67.....
Ch. I.....	314.....	21.....	40687, 40688, 41110	
1.....	320.....	40 CFR		45 CFR
27.....	341.....	35.....	40798	205.....
29.....	347.....	52.....	40657, 40659, 40660,	224.....
33.....	348.....		41094, 41443, 41830	233.....
39.....	1316.....	60.....	40662	234.....
40672, 40673, 40675-40678,	22 CFR	61.....	40662	238.....
41103-41106, 41456, 41846, 41987, 41988	514.....	81.....	41094, 41831	239.....
71.....	Proposed Rules:	123.....	40664	240.....
41109, 41110, 41458, 41713	50.....	180.....	41098	250.....
41989		261.....	41402	255.....
15 CFR	23 CFR	271.....	41402	256.....
769.....	Proposed Rules:	300.....	41000, 41015	
770.....	658.....	302.....	41402	46 CFR
771.....		370.....	41904	50.....
776.....	24 CFR	403.....	40664	56.....
779.....	1710.....	795.....	41832	61.....
799.....		799.....	41832	67.....
Proposed Rules:	26 CFR	Proposed Rules:		Proposed Rules:
19.....	1.....	51.....	41218	30.....
771.....	5h.....	52.....	40689, 40889, 41218, 41629, 41849	31.....
772.....	602.....		40779, 41113	32.....
773.....	Proposed Rules:	61.....	41218	33.....
774.....	1.....	81.....	41218	35.....
786.....	602.....	228.....	40415	39.....
799.....		260.....	41930	67.....
806.....	29 CFR	261.....	41114	70.....
	1601.....	300.....	40889	71.....
16 CFR	1910.....	370.....	41907	75.....
305.....	1926.....	41 CFR		78.....
	2644.....	Ch. 101.....	41244	90.....
17 CFR	2676.....	101-6.....	41214	91.....
1.....	Proposed Rules:	101-47.....	41099, 41244	94.....
3.....	1910.....	Proposed Rules:		97.....
31.....		201-2.....	41850	107.....
145.....	30 CFR	201-6.....	41850	108.....
147.....	914.....	201-7.....	41850	109.....
200.....	Proposed Rules:	201-8.....	41850	112.....
211.....	7.....	201-11.....	41850	154.....
Proposed Rules:	70.....	201-16.....	41850	160.....
240.....	75.....	201-17.....	41850	161.....
	917.....	201-18.....	41850	167.....
18 CFR	925.....	201-19.....	41850	168.....
154.....	943.....	201-20.....	41850	188.....
294.....		201-21.....	41850	189.....
	31 CFR	201-22.....	41850	192.....
19 CFR	317.....	201-23.....	41850	196.....
171.....		201-24.....	41850	199.....
Proposed Rules:	33 CFR	201-26.....	41850	580.....
12.....	100.....	201-30.....	41850	581.....
24.....	117.....	201-31.....	41850	
132.....	165.....	201-33.....	41850	47 CFR
133.....	241.....	201-34.....	41850	1.....
142.....	Proposed Rules:	201-38.....	41850	2.....
	117.....	201-39.....	41850	73.....
20 CFR	154.....	201-41.....	41850	40393, 40873-40875,
404.....	155.....	201-44.....	41850	41100, 41445, 41446
416.....				4184

Proposed Rules:

2..... 41464
 15..... 41125, 41464
 73..... 40419, 40420, 40893-
 40896, 41125-41128, 41465-
 41470, 41852, 41853

48 CFR

1532..... 40876
 1552..... 40876
 2801..... 40877
 2813..... 40877
 2819..... 40877

Proposed Rules:

20..... 40420
 37..... 41941
 52..... 41941

49 CFR

171..... 41447
 172..... 41447
 191..... 40878
 195..... 40878
 219..... 40879
 383..... 40782
 391..... 40782
 531..... 40665
 565..... 41843
 571..... 41844

Proposed Rules:

177..... 41902
 195..... 41912
 217..... 40856
 219..... 40856
 225..... 40856
 531..... 40689
 571..... 40896, 41632, 41636,
 41854
 1022..... 41643
 1043..... 41643
 1044..... 41643
 1047..... 41643
 1051..... 41643
 1058..... 41643
 1061..... 41643
 1063..... 41643
 1067..... 41643
 1070..... 41643
 1080..... 41643
 1081..... 41643
 1083..... 41643
 1084..... 41643
 1085..... 41643
 1091..... 41643
 1104..... 41643
 1136..... 41643
 1143..... 41643
 1161..... 41643
 1167..... 41643
 1169..... 41643
 1170..... 41643
 1331..... 41643

50 CFR

17..... 41448
 380..... 40668
 651..... 41975
 661..... 41591, 41592
 662..... 41975, 41976
 663..... 41594
 672..... 40394, 41101, 41976
 675..... 40716, 41101, 41977

Proposed Rules:

17..... 40444-40458,
 41470-41475, 42270
 23..... 41282, 41475

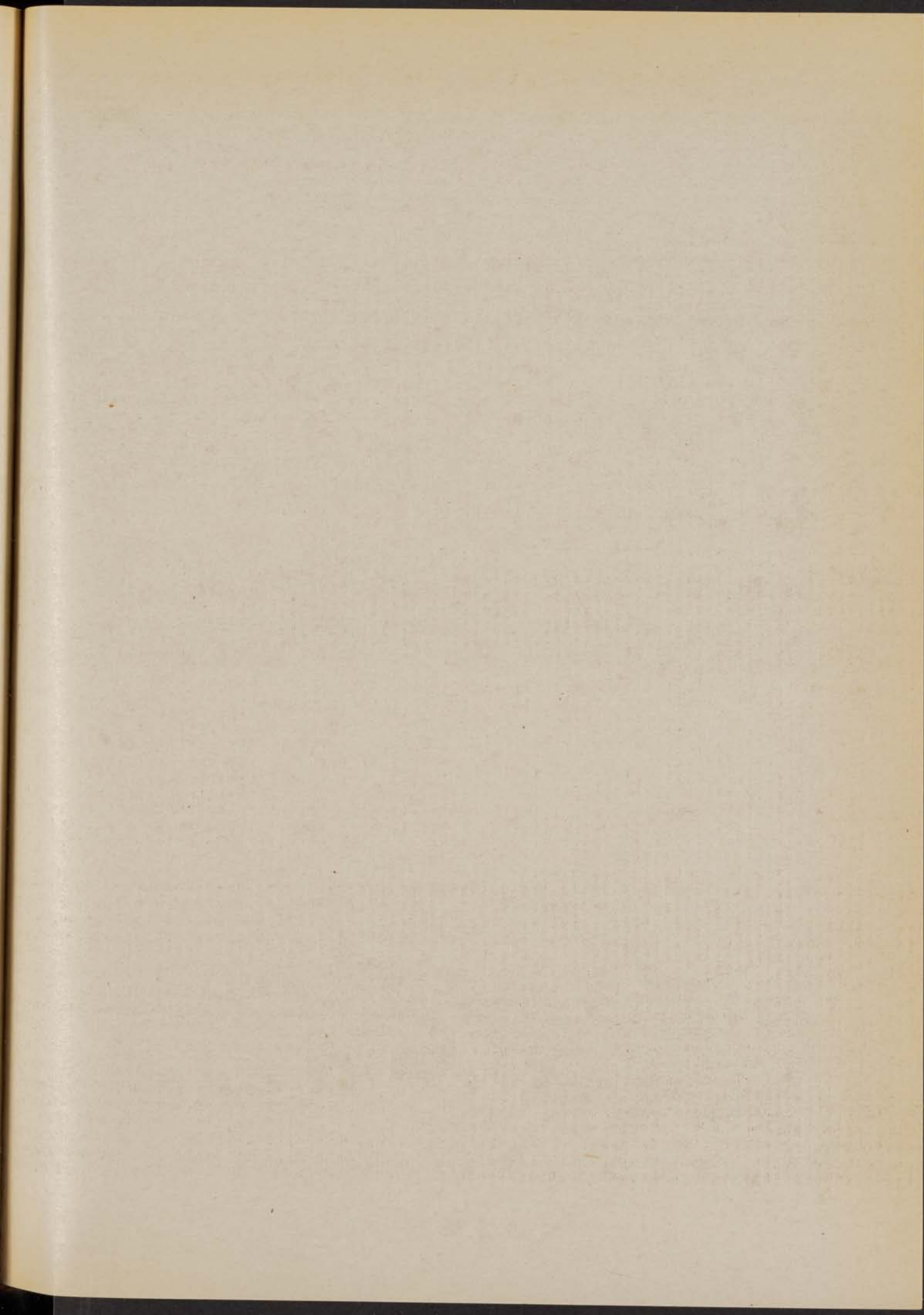
24..... 41295
 216..... 41654
 222..... 40699
 228..... 40703
 264..... 40779
 265..... 41296
 611..... 40716, 41855
 641..... 41297
 650..... 40463, 41902
 651..... 40466
 663..... 41855
 672..... 40716

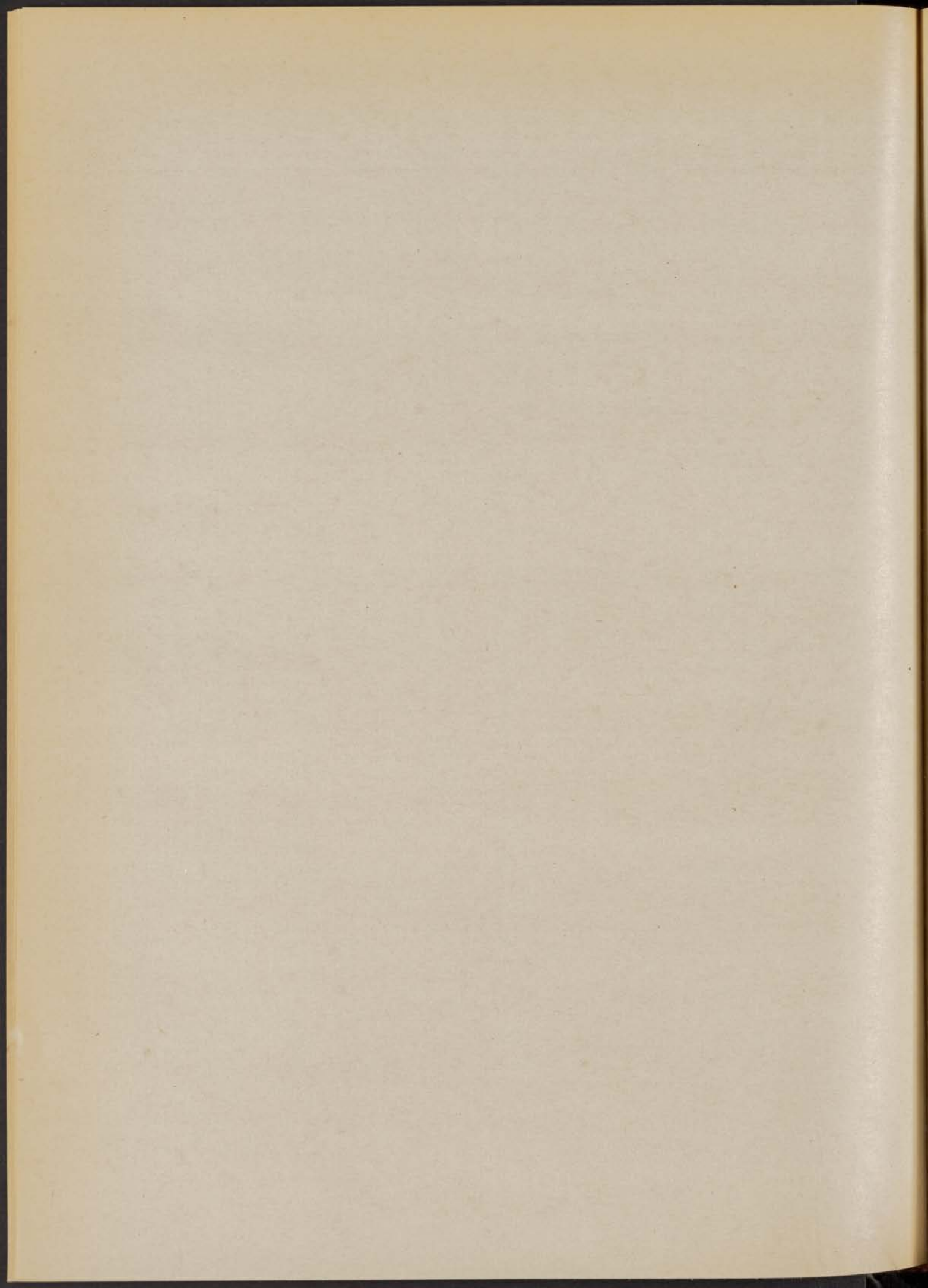
LIST OF PUBLIC LAWS

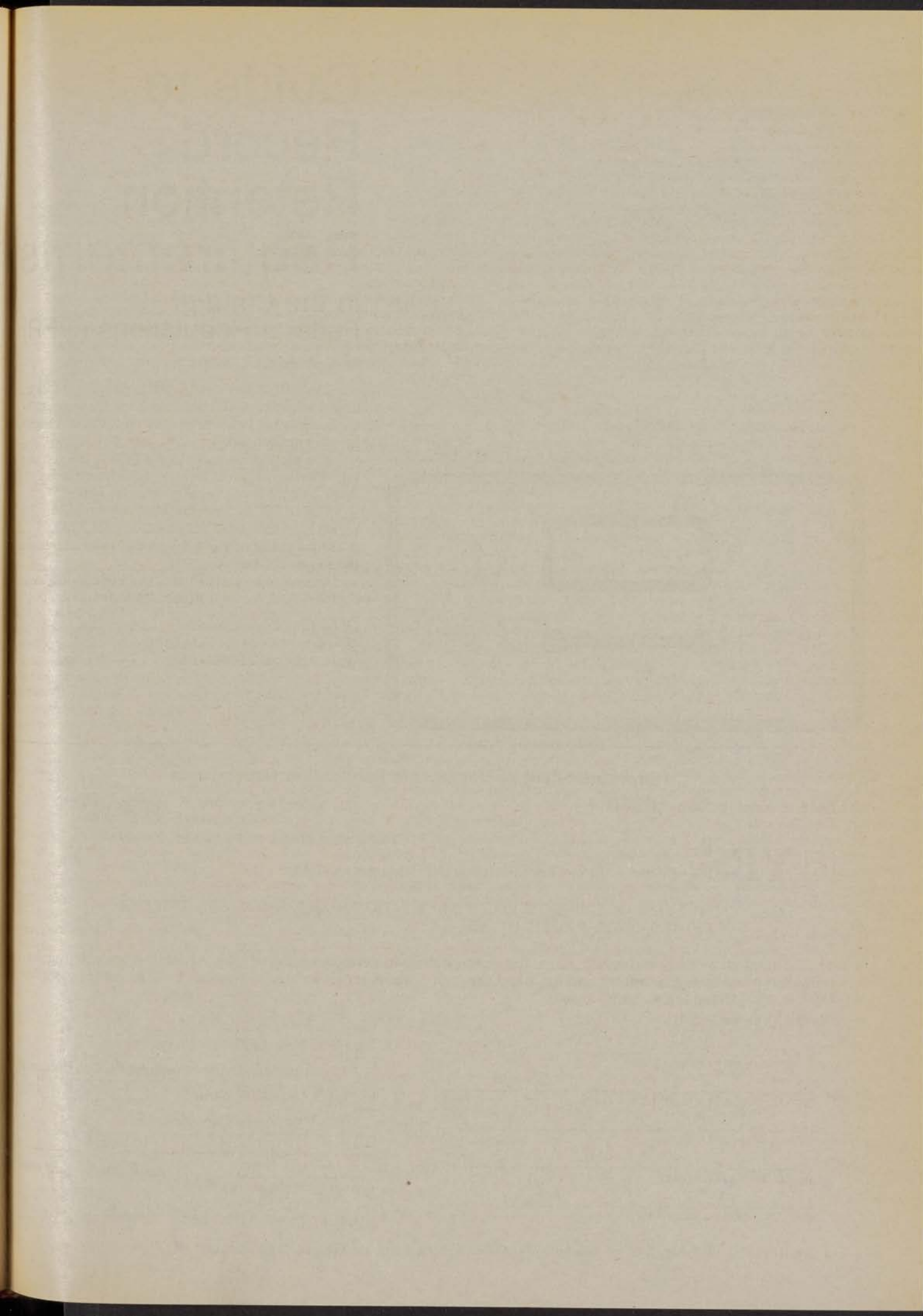
Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List October 12, 1989

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
101	102	103	104	105	106	107	108	109	110	111	112	113	114	115	116	117	118	119	120	121	122	123	124	125	126	127	128	129	130	131	132	133	134	135	136	137	138	139	140	141	142	143	144	145	146	147	148	149	150	151	152	153	154	155	156	157	158	159	160	161	162	163	164	165	166	167	168	169	170	171	172	173	174	175	176	177	178	179	180	181	182	183	184	185	186	187	188	189	190	191	192	193	194	195	196	197	198	199	200
201	202	203	204	205	206	207	208	209	210	211	212	213	214	215	216	217	218	219	220	221	222	223	224	225	226	227	228	229	230	231	232	233	234	235	236	237	238	239	240	241	242	243	244	245	246	247	248	249	250	251	252	253	254	255	256	257	258	259	260	261	262	263	264	265	266	267	268	269	270	271	272	273	274	275	276	277	278	279	280	281	282	283	284	285	286	287	288	289	290	291	292	293	294	295	296	297	298	299	300
301	302	303	304	305	306	307	308	309	310	311	312	313	314	315	316	317	318	319	320	321	322	323	324	325	326	327	328	329	330	331	332	333	334	335	336	337	338	339	340	341	342	343	344	345	346	347	348	349	350	351	352	353	354	355	356	357	358	359	360	361	362	363	364	365	366	367	368	369	370	371	372	373	374	375	376	377	378	379	380	381	382	383	384	385	386	387	388	389	390	391	392	393	394	395	396	397	398	399	400
401	402	403	404	405	406	407	408	409	410	411	412	413	414	415	416	417	418	419	420	421	422	423	424	425	426	427	428	429	430	431	432	433	434	435	436	437	438	439	440	441	442	443	444	445	446	447	448	449	450	451	452	453	454	455	456	457	458	459	460	461	462	463	464	465	466	467	468	469	470	471	472	473	474	475	476	477	478	479	480	481	482	483	484	485	486	487	488	489	490	491	492	493	494	495	496	497	498	499	500
501	502	503	504	505	506	507	508	509	510	511	512	513	514	515	516	517	518	519	520	521	522	523	524	525	526	527	528	529	530	531	532	533	534	535	536	537	538	539	540	541	542	543	544	545	546	547	548	549	550	551	552	553	554	555	556	557	558	559	560	561	562	563	564	565	566	567	568	569	570	571	572	573	574	575	576	577	578	579	580	581	582	583	584	585	586	587	588	589	590	591	592	593	594	595	596	597	598	599	600
601	602	603	604	605	606	607	608	609	610	611	612	613	614	615	616	617	618	619	620	621	622	623	624	625	626	627	628	629	630	631	632	633	634	635	636	637	638	639	640	641	642	643	644	645	646	647	648	649	650	651	652	653	654	655	656	657	658	659	660	661	662	663	664	665	666	667	668	669	670	671	672	673	674	675	676	677	678	679	680	681	682	683	684	685	686	687	688	689	690	691	692	693	694	695	696	697	698	699	700
701	702	703	704	705	706	707	708	709	710	711	712	713	714	715	716	717	718	719	720	721	722	723	724	725	726	727	728	729	730	731	732	733	734	735	736	737	738	739	740	741	742	743	744	745	746	747	748	749	750	751	752	753	754	755	756	757	758	759	760	761	762	763	764	765	766	767	768	769	770	771	772	773	774	775	776	777	778	779	780	781	782	783	784	785	786	787	788	789	790	791	792	793	794	795	796	797	798	799	800
801	802	803	804	805	806	807	808	809	810	811	812	813	814	815	816	817	818	819	820	821	822	823	824	825	826	827	828	829	830	831	832	833	834	835	836	837	838	839	840	841	842	843	844	845	846	847	848	849	850	851	852	853	854	855	856	857	858	859	860	861	862	863	864	865	866	867	868	869	870	871	872	873	874	875	876	877	878	879	880	881	882	883	884	885	886	887	888	889	890	891	892	893	894	895	896	897	898	899	900
901	902	903	904	905	906	907	908	909	910	911	912	913	914	915	916	917	918	919	920	921	922	923	924	925	926	927	928	929	930	931	932	933	934	935	936	937	938	939	940	941	942	943	944	945	946	947	948	949	950	951	952	953	954	955	956	957	958	959	960	961	962	963	964	965	966	967	968	969	970	971	972	973	974	975	976	977	978	979	980	981	982	983	984	985	986	987	988	989	990	991	992	993	994	995	996	997	998	999	1000







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Revised January 1, 1989

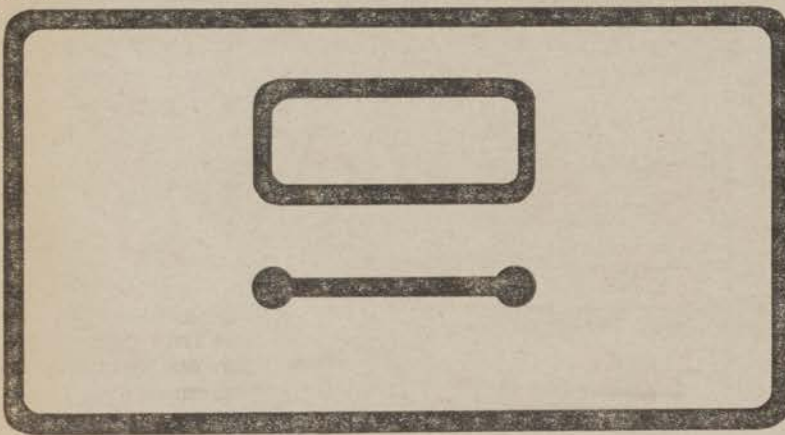
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