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Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: January 30, at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: 202–523–5240.

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

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Parts 305 and 310

Recommendations and Statement of the Administrative Conference Regarding Administrative Practice and Procedure

AGENCY: Administrative Conference of the United States.

ACTION: Recommendations and a statement.

SUMMARY: The Administrative Conference of the United States, at its Fortieth Plenary Session, adopted four recommendations and one statement.

Recommendation 89–7, Federal Regulation of Biotechnology, recommends steps to improve interagency coordination of federal biotechnology regulation. These include enlarging the membership of the Office of Science and Technology Policy's Biotechnology Science Coordinating Committee and opening its proceedings to the public unless they involve confidential information. While the Conference recommends no statutory changes now, it suggests that a survey of biotechnology development and existing regulation be conducted, and that the President and Congress monitor interagency coordination of biotechnology regulation. The Conference also suggests that agencies consider adopting appropriate procedures concerning availability of information and public participation in biotechnology regulatory proceedings.

Recommendation 89–8, Agency Practices and Procedures for the Indexing and Public Availability of Adjudicatory Decisions, calls upon agencies to compile a subject-matter index of their adjudicatory decisions to afford citizens information useful in dealing with the agencies and to assist the development of agency standards and policies on general issues and recurring questions. Indexes, which should be public, may be either universal or selective. The Recommendation advises agencies to include in a selective index all significant adjudicatory decisions of the agency's highest level tribunal, whether or not they are considered precedential. Agencies are advised to consider indexing significant lower level final decisions.

Recommendation 89–9, Processing and Review of Visa Denials, recommends that the Department of State implement a number of changes in its procedures for review of visa applications at United States consulates abroad. Such changes include permitting the assistance of attorneys, increased explanation of the basis for visa denials, and making public advisory opinions of the Visa Office. The Recommendation also asks the State Department, after appropriate study, to develop and submit to Congress a proposed process for administrative review of consular visa actions.

Recommendation 89–10, Improved Use of Medical Personnel in Social Security Disability Determinations, recommends steps that SSA should take to increase the role of medical personnel at the initial decision stage of disability claims, including giving the medical member of the team primary responsibility for developing medical evidence in the record and using medical personnel to resolve conflicts on medical issues. It also recommends that SSA (1) provide medical personnel training on legal and program issues; (2) eliminate the separate reconsideration stage; and (3) encourage its administrative law judges to use independent medical experts to assess the need for additional medical evidence.

In a Statement, Procedures for Resolving Federal Personnel Disputes, the Conference suggests that Congress review the highly complex procedural framework set up by the Civil Service Reform Act. The Conference notes that the existing intricate procedures, consciously designed by Congress, have been perceived by employees and their representatives as providing necessary protection, and the question whether to retain or modify those procedures must be resolved largely through the legislative process. The Statement describes several issues that should be considered in a comprehensive congressional review.

Recommendations and statements of the Administrative Conference are published in full text in the Federal Register upon adoption. Complete lists of recommendations and statements, together with the texts of those deemed to be of continuing interest, are published in the Code of Federal Regulations (1 CFR parts 305 and 310).

DATES: These recommendations and statement were adopted December 14–15, 1989, and issued December 27, 1989.

FOR FURTHER INFORMATION CONTACT: Jean R. Conrad, Librarian and Information Officer or Jeffrey S. Lubbers, Research Director (202–254–7065).

SUPPLEMENTARY INFORMATION: The Administrative Conference of the United States was established by the Administrative Conference Act, 5 U.S.C. 571–576. The Conference studies the efficiency, adequacy, and fairness of the administrative procedures used by federal agencies in carrying out administrative programs, and makes recommendations for improvements to the agencies, collectively or individually, and to the President, Congress, and the Judicial Conference of the United States (5 U.S.C. 574(1)).

At its Fortieth Plenary Session, held December 14–15, 1989, the Assembly of the Administrative Conference of the United States adopted four recommendations and one statement, the texts of which are set out below. The texts of recommendations will be transmitted to the affected agencies and, if so directed, to the Congress of the United States. The Administrative Conference of the United States has advisory powers only, and the decision on whether to implement the recommendations must be made by each body to which the various recommendations are directed.

The transcript of the Plenary Session will be available for public inspection at the Conference's offices at Suite 500, 2120 L Street NW., Washington, DC.

List of Subjects in 1 CFR Parts 305 and 310

Administrative practice and procedure.

PART 305—RECOMMENDATIONS OF THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1. The authority citation for part 305 continues to read as follows:

Authority: 5 U.S.C. 571–576.

2. The table of contents to part 305 of title 1 CFR is amended to add the following new sections:

Sec.
305.89–7 Federal Regulation of Biotechnology (Recommendation No. 89–7).
305.89–8 Agency Practices and Procedures for the Indexing and Public Availability of Adjudicatory Decisions (Recommendation No. 89–8).
305.89–9 Processing and Review of Visa Denials (Recommendation No. 89–9).
305.89–10 Improved Use of Medical Personnal in Social Security Disability Determinations (Recommendation No. 89–10).

PART 310—MISCELLANEOUS STATEMENTS

3. The authority citation for part 310 continues to read as follows:

Authority: 5 U.S.C. 571–576.

4. The table of contents to part 310 of title 1 CFR is amended to add the following new section:

Sec.
310.15 Procedures for Resolving Federal Personnel Disputes.

5. New §§ 305.89–7 through 305.89–10 are added to part 305, to read as follows:

§ 305.89–7 Federal Regulation of Biotechnology (Recommendation 89–7).

New biotechnology techniques promise great benefits in fields such as medicine, agriculture, and manufacturing. However, these new techniques, which involve alteration of the genetic structure of an organism, have raised concerns that some new organisms or products may be dangerous to individuals or detrimental to the environment. This recommendation addresses coordination of federal regulation in this area and the procedures agencies use to regulate biotechnology development, testing and use.

Genetically-engineered organisms are regulated under a variety of statutes enacted to prevent or reduce society's exposure to unsafe or harmful products or substances. The agencies with such statutory authorities currently share responsibilities for regulation of biotechnology in accordance with policy statements issue in 1986 by the agencies and by the Director of the Office of Science and Technology Policy (who serves as the President's Science Adviser).[1] In its policy statement, the Office of Science and Technology Policy (OSTP) attempted to clarify the responsibility of each agency where more than one agency shared jurisdiction to regulate biotechnology areas.

The Conference recommends a continuation of interagency coordination under the auspices of the OSTP. Experience does not currently indicate that new legislation is needed for effective interagency coordination of biotechnology regulation. On the other hand, the Conference believes that both the President and the Congress should monitor closely the coordination process because of the importance of this area to the nation's economic and social well-being.

The Conference also recommends that the President and the Congress, through the OSTP and the Office of Technology Assessment (OTA), survey biotechnology developments and agency regulation of biotechnology under existing statutes to determine whether current law and regulation provide adequate authority to protect public and private interests or whether in particular instances current regulation is unnecessary. The survey should identify whether nonregulation of any particular area reflects an agency decision not to use its authority to regulate or an absence of regulatory authority.

The Conference also urges changes in the coordination role for biotechnology regulation performed by the President's Office of Science and Technology Policy. Most importantly, the Conference urges the President to make the work of the Office's Biotechnology Science Coordinating Committee (BSCC) a high priority. A revitalized BSCC can help agencies coordinate their activities concerning biotechnology development, regulation, funding, and biosafety research. To fulfill this mandate, the Conference believes the BSCC's role should emphasize fact-finding, reporting, and serving as a clearinghouse for information relating to biotechnology.

The Conference recommends that agencies engaged in biotechnology regulation articulate their policies through generic rules and policy statements to the extent possible. Since public acceptance of agency decisions is especially important in this area and because of the novelty and uncertainty of the risks associated with biotechnology, the Conference encourages agencies to adopt appropriate procedures to allow public participation. Agencies are also encouraged to seek ways to make biosafety information available to the public to the maximum extent consistent with protection of the proprietary interests of submitters of confidential business information.

Recommendation

1. Biotechnology Regulatory Structure

(a) Interagency coordination is critically needed to mitigate problems caused by concurrent regulation of biotechnology by two or more agencies. The Office of Science and Technology Policy's Biotechnology Science Coordinating Committee (BSCC) should have primary responsibility for identifying issues, exchanging information and preparing reports concerning issues common to several agencies. Responsibility for establishing uniform government policies should be retained by the Office of Management and Budget working in coordination with the BSCC.

(b) The President and Congress should survey biotechnology developments and agency regulation of biotechnology under existing statutes to consider whether and in what respects current regulation of biotechnology is inadequate or excessive. To facilitate this, the President's Office of Science and Technology Policy (OSTP) and Congress' Office of Technology Assessment (OTA) should, jointly or separately, identify all areas of biotechnology activity and determine the extent to which they are being regulated. OSTP and OTA should assess whether or not additional or diminished regulatory authority is desirable in such areas and furnish their findings and recommendations to the President and Congress.

2. Regulatory Coordination

(a) The President should make coordination of the government's activities relating to biotechnology a high priority. This should include:

(1) Monitoring the effectiveness of interagency coordination;

(2) Directing the Science Adviser to enlarge the membership of the BSCC to include all federal agencies that have substantial responsibilities for biotechnology research, development, or regulatory policy; and

(3) Directing the Science Adviser to invite representatives of other agencies to participate in the BSCC's activities, as appropriate, such as when their regulatory or other official responsibilities may be affected.

(b) The BSCC should have a broad subject-matter mandate, including issues of biotechnology development, regulation, funding, and biosafety research. The Committee's role should emphasize fact-finding, reporting, and serving as a clearinghouse for information relating to biotechnology.

(c) The Science Adviser should establish a policy for the BSCC that will foster opening its proceedings to the public.

(1) Meetings of the BSCC should be open to the public unless they involve confidential information.

(2) Members of the public should be allowed to provide comments to the BSCC either orally or in writing.

(3) The BSCC may invite advice from experts outside the government.

(4) The BSCC should keep minutes or other records of its proceedings.

[1] OSTP, Coordinated Framework for Regulation of Biotechnology; Announcement of Policy and Notice for Public Comment, 51 FR 23302 (1986).

including the reasons for closing any meetings.

3. Regulatory Procedures

(a) Agencies should, where appropriate, seek opportunities to promulgate generic biotechnology rules to address recurring regulatory issues.

(b) Agencies should consider the adoption of rules or policy statements to enunciate the principles or criteria they will include in their risk assessment and management decisions. When adopting policy statements, agencies should follow the public participation procedures set forth in Conference Recommendation 76–5.[2]

(c) Agencies should consider adopting appropriate procedures to allow public participation and other forms of input when making regulatory determinations concerning biotechnology. Such procedures might include:

(1) Giving notice to the public with an invitation to submit comments concerning the determination;

(2) Providing additional notice of pending regulatory actions to persons who live near sites where proposed activities would take place;

(3) Holding informal public hearings to supplement written procedures; or

(4) Utilizing advisory committees under the Federal Advisory Committee Act.[3]

(d) Agencies should seek ways to meet the public's need for biosafety information about substances or organisms produced through biotechnology, without divulging confidential business information.[4] Such steps might include:

(1) Requesting submitters of confidential business information to focus their claims for confidentiality as much as possible;

(2) Requiring submitters of data that include confidential business information to identify those portions that are claimed to be confidential and to substantiate their claims at the time of submission; and

(3) Summarizing or aggregating confidential data in a manner that does not compromise confidentiality.

§ 305.89–8 Agency Practices and Procedures for the Indexing and Public Availability of Adjudicatory Decisions (Recommendation 89–8).

This recommendation examines the obligation of agencies to index and make their adjudicatory decisions available to the public.

The Freedom of Information Act (FOIA) imposes numerous affirmative disclosure obligations on agencies. Under 5 U.S.C. 552(a)(2), each agency, in accordance with published rules, is required to make final adjudicatory decisions and orders [1] available for public inspection and copying unless the materials are promptly published and copies are offered for sale. In addition, each agency shall maintain and make available for public inspection and copying current indexes that provide identifying information for the public as to any matter issued, adopted, or promulgated. FOIA further mandates that each agency shall promptly publish, quarterly or more frequently, and distribute copies of each index unless it determines, by order published in the **Federal Register**, that such publication is unnecessary and impracticable.

Many agencies do, in fact, index and publish or otherwise make available to the public their adjudicatory decisions, as required under FOIA (e.g., the National Labor Relations Board, the Merit Systems Protection Board, the Interstate Commerce Commission, the Securities and Exchange Commission). This recommendation, then, is addressed to those agencies which either entirely fail to index, publish or make their decisions available to the public or fail to do so adequately, whether or not they use adjudicatory precedent to pronounce and develop agency policy.

Debate has surrounded consideration of an appropriate test for determining which types of adjudicatory decisions are included in this affirmative disclosure obligation. The Attorney General initially expressed the opinion that FOIA requires that agencies index only those decisions cited by an agency or relied upon as precedent. This limitation, in the view of the Attorney General, was derived from both the enforcement provision in the statute, which precludes the agency from giving precedential effect to matters not indexed, and the legislative history of the statute, which indicates that the disclosure provision was intended to make available documents having precedential significance. The Attorney General also was influenced by the impracticality of indexing all agency decisions.

Application of the affirmative disclosure requirements, beyond simply precedential decisions, however, offers several advantages. First, if agencies index all significant decisions, and not just those decisions deemed to be precedential, agencies would be less inclined to be restrictive or one-sided in the selection of cases to be accorded precedential effect. Second, private parties affected by agency action would be in a better position to learn of and influence agency policy. Third, a broader application of affirmative disclosure requirements would implement the underlying aim of the FOIA indexing requirements which is to afford citizens the essential information needed to deal effectively and knowledgeably with federal agencies and to guard against the development of secret law. Lastly, a current index of final decisions may assist agencies in developing standards and policies with respect to general issues and recurring questions.

The few cases dealing with the FOIA affirmative disclosure obligations have generally read the precedential test broadly. They require disclosure not only of decisions that an agency considers to be binding but also all decisions that an agency retains for general reference and research. The recommended approach to the indexing and public availability of final decisions focuses less on the binding nature of the precedent and more on the value that decisions can have to inform and assist the public.

Recommendation

1. Indexing of Agency Decisions

Agencies that do not already do so should compile a subject-matter index of their adjudicatory decisions so as to afford citizens information useful in dealing with the agencies and to assist the development of agency standards and policies on general issues and recurring questions.[2]

In meeting FOIA indexing requirements, agencies should ensure that a subject-matter index is made of their decisions and that the index includes all significant decisions, whether or not the decisions are designated as precedential.

2. Level and Scope of Decisions Indexed

The index should cover the adjudicatory decisions of the agency's highest level tribunal. The agency should also consider whether to index significant lower level decisions that have become final. The adjudicatory decisions intended to be covered by this recommendation are those made with an accompanying written opinion or rationale in contested cases after an opportunity for a hearing at some stage of the proceeding.

3. Index Contents

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[2] ACUS Recommendation 76–5, Interpretive Rules of General Applicability and Statements of General Policy, 1 CFR 305.76–5 (1989).

[3] See ACUS Recommendation, 82–5, Federal Regulation of Cancer-Causing Chemicals, Part IV, 1 CFR 305.82–5 (1989).

[4] See ACUS Recommendation 82–1, Exemption (b)(4) of the Freedom of Information Act, 1 CFR 305.82–1 (1988).

[1] This subsection also covers agency statements of policy and interpretations, as well as administrative staff manuals and instructions to staff that affect a member of the public. The Conference has already recommended that agency policies that affect the public should be articulated and made known to the public to the greatest extent feasible. ACUS Recommendation 71–3 "Articulation of Agency Policies." See also ACUS Recommendation 70–3, "SEC No-Action Letters Under section 4 of the Securities Act of 1933."

[2] In programs where the agency has established a policy that none of its decisions have precedential effect, the Conference urges that the agency re-examine the feasibility of creating a system that accords certain decisions precedential value to provide guidance about the factors that influence their decisions and to ensure better development of agency policy and standards. See ACUS Recommendation 87–7, "A New Role for the Social Security Appeals Council," 1 CFR 305.87–7. See also ACUS Recommendation 71–5, "Procedures of the Immigration and Naturalization Service In Respect to Change-of-Status Applications."

Agency indexes should be designed for effective and efficient use. These indexes should contain sufficient information on each indexed decision to identify the major issues decided and the location of the case file. Agencies should adopt one of the following practices in indexing their adjudicatory decisions:

A. *Universal Index.* Index all final decisions; or

B. *Selective Index.* Where the volume of decisions makes a universal index impracticable or uninformative, selectively index final decisions omitting those decisions that are repetitive. The selective index should include all significant decisions. Decisions may be significant because they are deemed by the agency to be precedential or otherwise establish a principle to govern recurring cases with similar facts, develop agency policy and exceptions to the policy in areas where the law is unsettled, deal with important emerging trends, or provide examples of the appropriate resolution of major types of cases not otherwise indexed.

4. Public Notice of the Index

Agency indexes should be fully disclosed and readily available. Appropriate notice of the existence of unpublished decisions should also be given in both the agency's FOIA regulations and the procedural or substantive regulations governing the specific program.

5. Computer Technology

Agencies should explore the use of computer technology in order to promote accessibilty and reduce costs of indexing.

§ 305.89-9 Processing and Review of Visa Denials (Recommendation 89-9).

United States consulates around the world complete the processing of some nine million applications for immigrant and nonimmigrant visas each year. Approximately ninety percent are granted; ten percent are denied. Under current practice, the only review of a consular official's denial of a visa may be by a more senior officer in the consulate, or, on points of law, by the Visa Office in the State Department. The Immigration and Nationality Act has been read to preclude administrative review, and the courts, with a few exceptions, have declined to review visa denials.

Immigrant visas are available to persons with close family relationships to U.S. citizens and residents, or with particular abilities or skills that are needed but not otherwise available in the United States. Nonimmigrant visas are available in a long list of classes, ranging from tourists to students to certain types of business personnel to diplomats.

Whatever the visas category or class, there clearly are important interests at stake. These interests are not just those of the applicants themselves, but also of citizens and residents of the United States who are sponsoring the applicant or have some other interest in the applicant's presence in the United States. These interests warrant a close look at whether initial decisions in this important program of mass adjudication should be more fully reviewable than at present.

Federal law and State Department regulations give consular officers substantial discretion in adjudicating visa applications. For example, consular officials exercise absolute discretion in determining whether an applicant may be represented by an attorney or other qualified representative at the visa application interview. Furthermore, although current Department regulations, at 22 CFR 41.121(c), require that a denial of a visa application be reviewed by a more senior officer, the high volume of applications at some posts has resulted in only a random sample of denials being reviewed. Review by a senior official may also be a problem in single-officer posts.

Consular posts send a few hundred cases a year presenting significant legal issues to the Visa Office of the State Department for an advisory opinion that is binding only with respect to legal issues. The applicant typically has no notice of this proceeding. Such review affects the results in only a small number of cases, since most visa denials are based on a factual determination.

Current law has been read by some to limit both administrative and judicial review. Section 104(a) of the INA, 8 U.S.C.1104(a), excepts the Secretary of State from the administration or enforcement of "those powers, duties and functions conferred upon the consular officers relating to the granting or refusal of visas." This language has been considered by some to preclude the establishment of a more formal review mechanism within the State Department. Further, courts have generally limited the extent of available judicial review.

The Conference believes that it is important that there be at least some level of review of consular discretion to deny or grant visas. The availability of such review would not only encourage consistency and care in the initial adjudication, but would serve interests of fairness and legitimacy. On the other hand, a review scheme in this area can be crafted in a fashion that keeps procedure to a minimum, takes account of the extremely high volume of visa applications, and avoids over-judicialization of the process.

The Recommendation reflects a two-pronged approach to administrative review of visa denials, aimed both at improving the review at the consular level and at considering the creation of a level of centralized administrative review. The suggestions directed at the consular offices are intended to encourage quick, consistently applied, and cost-effective review that would resolve many of the issues on which review might be requested. The Recommendation also asks the State Department to study the issues, and develop and submit to Congress a proposed process for administrative review of consular actions. The Conference recognizes that there are currently competing priorities for resources that might be required by implementation of the Recommendation, but believes that these proposals should be implemented as quickly as is feasible under the circumstances.

Recommendation

1. The State Department should adopt a regulation ensuring that applicants may be accompanied by an attorney or other authorized representative during the course of the visa application interview process. To the extent practicable, the State Department should take steps to reply promptly to communications from applicants or authorized representatives and to ensure that facilities are available to enable applicants to meet with their representatives during the application interview process.

2. The State Department should require consular officers to provide brief but explicit written statements of the factual and legal bases and reasons for denying a visa application, except where reasons of national security or potential adverse effects on foreign policy dictate otherwise.

3. The State Department should modify its regulations to allow Visa Office advisory opinions to be made available to applicants and their authorized representatives except where national security or potential adverse effects on foreign policy dictate otherwise.

4. The State Department should either comply with its regulation found at 22 CFR 41.121(c) requiring review within a consulate of each denial of a visa application, or examine alternative systems to review visa denials at consular posts. In such a study, the State Department should keep in mind the goal of ensuring consistency in visa adjudications and consider possible alternatives to address exigencies created by busy consular posts, for example, by reviewing random samples of visa denials, or selecting for review certain types of denials.

5. The State Department should, after appropriate study, develop and submit for Congressional review a proposed process for administrative review of consular visa actions.[1]

§ 305.89-10 Improved Use of Medical Personnel in Social Security Disability Determinations (Recommendation 88-10).

The Social Security Administration annually processes more than 1.5 million requests for Disability Insurance Benefits and Supplemental Security Income requiring a determination whether the claimant is disabled. The Administrative Conference has

[1] If it is thought that current law precludes such a State Department study, Congress should authorize the State Department to undertake the study.

addressed various aspects of the Social Security Administration's administrative procedures in earlier recommendations.[1] This recommendation focuses more specifically on the appropriate use of medical personnel in making disability determinations.

The Social Security Administration (SSA) uses medical personnel currently in two ways. First, initial and reconsideration determinations are made for SSA by federally funded state agencies that use teams composed of one lay disability examiner and one medical doctor or psychologist.[2] Second, medical sources are used to provide evidence of disability in individual cases and to explain or elaborate upon medical evidence obtained from other sources. Medical sources provide evidence relating to individual claims to state agencies at the initial decision and reconsideration levels, to administrative law judges at the hearing level, and to the Appeals Council. Requests can be made to the claimant's treating physician or to an independent physician who is asked to examine the claimant and report on his or her findings. Doctors are asked by some administrative law judges to explain or elaborate upon existing medical evidence; other administrative law judges and most state agency personnel do not use independent medical doctors for these purposes. Medical personnel are involved in the disability determination process for other federal disability programs as well. Although the extent to which they are used varies from program to program, programs typically concentrate the use of medical personnel at the initial decision stage, as does the Social Security Administration.[3]

There is no doubt that medical personnel can offer valuable assistance in making disability determinations called for by the Social Security Act. Notwithstanding the mixed medical and legal content of the Social Security Act's disability standards, most disability determinations require the resolution of medical issues in one form or another. At the same time, it must be recognized that doctors cannot simply apply their general medical expertise to the work of determining disability under a complex and multi-faceted statutory disability standard. Doctors are accustomed to evaluating a person's limitations in the context of treatment; they are oriented professionally to identify the cause of and resolve limitations, rather than to identify limitations and then measure them against stated requirements for receipt of benefits. These recommendations are intended to help reconcile the needs of the Social Security Administration disability determination process for medical expertise and the ability of the medical profession to meet those needs.

Medical personnel perform three main functions in current practice. First, they assist in developing the medical records on which disability decisions are based. Second, they provide medical evidence for the record, including medical findings and opinions relating to an individual claimant's impairments and explanations of other medical evidence already in the record. Third, they participate in making disability decisions at the initial and reconsideration levels based on the record.

Each of these functions suggests models for using medical decisionmakers in Social Security disability determinations. The first model would increase the responsibility of medical personnel for compiling all relevant medical evidence. Medical personnel would concentrate on evaluating the adequacy of the record and following up with requests for clarification and additional information from treating and consulting medical sources. Medical personnel would also be given specific responsibility for assuring that all medical evidence in the record is clear and understandable to both medical and non-medical decisionmakers. The second model would improve the use of doctors as sources for supplying medical data and opinions on which disability decisions can be based. This model also supports the use of medical personnel to evaluate and resolve certain specified medical issues relevant to a claim if, in a particular case, there are medical issues that can be identified as appropriate for separate decision. The third model would make more effective use of medical personnel in decisionmaking role. This model would concentrate medical resources at the initial decision level, where a doctor would share the responsibility for decisionmaking with a non-medical disability examiner. The doctor member of the team would be given special responsibility for certain tasks, and would undertake a full and independent review of the entire record in each case. The expectation is that through open exchange of information between the two decisionmakers and a reasonable allocation of responsibility based on each member's expertise, most disability determinations will be made by consensus. If conflicts arise on medical issues, separate medical personnel would be given the authority to resolve those conflicts.

The following recommendations would implement the important provisions of each of these models. Implementing these recommendations would require greater expenditures for medical personnel and related support at the state agencies. However, additional costs should be offset by savings resulting from elimination of the reconsideration level and reduced numbers of administrative and federal court appeals.

Recommendation

A. Improvements at the Initial Decision Level

The Social Security Administration (SSA) should enhance the decisionmaking role of medical personnel at the initial decision level. This can be accomplished by improving upon the current practice of using two-member teams—consisting of a medical member who is a licensed physician or psychologist and a non-medical member who is a disability examiner—to determine disability, as follows:

1. *Responsibility for developing medical evidence.* SSA should ensure that the medical member of the team is given primary responsibility for developing the medical evidence [4] in the record.

(a) Staff and resources should be allocated so as to assure that a complete record of all evidence relevant to a disability claim is obtained before an initial decision is made on the claim.

(b) Specially trained support staff, including nurses and non-medical personnel, should be made available to assist the medical member in developing the medical evidence.

(c) The medical member should, whenever possible, be assigned direct responsibility for evaluating the adequacy of reports from physicians and for following up with requests for clarification or additional information from these sources.

2. *Identifying and deciding discrete medical issues.* SSA should develop a list of discrete issues raised by the applicable disability standards that may arise in individual claims and that are appropriate for decision by medical staff. The medical member of the team assigned to a claim should be made responsible for identifying any such discrete issues raised in the claim, developing all evidences relevant to the issue, and reaching a decision on that issue.

3. *Resolving medical conflicts.* SSA should ensure that medical personnel are used to resolve any conflicts on medical issues that arise in the course of team evaluations of disability at the initial decision level.

(a) Senior medical staff should be given the authority to review claims where the team members are unable to agree and to recommend further action, including the development of additional medical evidence, to resolve the conflict.

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[1] See Recommendations 78–2 (ALJ hearing stage), 87–6 (state level determinations), 87–7 (Appeals Council).

[2] For cases involving mental impairments, Social Security regulations provide that either psychologists or psychiatrists may assist in determining disability. Accordingly, references to the terms "medical sources," "physicians," and "doctors" in these recommendations are intended to include psychologists used in those cases.

[3] While the Conference has examined the other federal disability programs and believes that these recommendations hold valuable lessons for the agencies administering those programs, these recommendations are addressed solely to the Social Security Administration.

[4] *"Medical evidence"* includes (1) medical findings and opinions relating to an individual claimant's impairments, (2) other evidence, including subjective symptoms, that is relevant to determining the existence or severity of the claimant's condition, and (3) explanations of other medical evidence already in the record. The recommendations' focus on development of medical evidence is not intended to minimize the importance of the development of other evidence, including vocational evidence.

(b) If the conflict persists, the state agency's medical personnel should assume primary responsibility for evaluating the record with respect to the medical issues and for making a determination based on that record.

(c) As part of this process, independent medical experts, or panels of experts, should be identified and retained for use as examining and non-examining consultants, as appropriate.

4. *Notice of deficiencies in medical evidence.* SSA should require that claimants be informed specifically of any deficiencies in the medical evidence that could lead to an adverse determination before the initial decision is made.

(a) This notice should be prepared by the medical member of the team, should clearly explain any deficiency in the medical evidence, and should encourage the claimant to provide additional information and explanation, as needed. This notice should also state that the agency will assist claimants in obtaining this information when they are unable to do so on their own due to financial or other constraints.

(b) As part of this process, either the claimant or the medical member should have the authority to initiate a face-to-face interview.

5. *Ensuring quality of evidence.* SSA should take steps to improve the quality of evidence provided by medical sources for disability adjudications.

(a) Guidelines should be established that identify priorities for the use of treating physicians, examining physicians and non-examining physicians, including specialists, for these purposes.

(b) Selection and evaluation of physicians asked to provide medical information should be performed by medical personnel independent from the agency staff responsible for making disability decisions and should be supported by a system for quality control covering both the selection of physicians and the reports submitted.

(c) Physicians asked to provide medical information should be adequately compensated and should be provided with instructions as to applicable agency standards.

(d) Medical personnel should be able, when appropriate, to consult with specialists before ordering examinations or tests.

(e) All contacts with medical sources relating to the determination of disability for a particular claim should be documented routinely in writing and included in the record. SSA should ensure that claimants are provided a copy of any reports prior to issuance of the decision and accorded an opportunity to object and rebut appropriately.

6. *Training and supervision of medical personnel.* SSA should ensure that all medical personnel are trained fully on legal and program issues and work under the supervision of the chief medical officer in the state agency. SSA should also ensure that medical staff act in accordance with the rules established by the Social Security Act and relevant federal court decisions, including the requirement to obtain and give appropriate weight to the opinions of claimants' treating physicians, in performing the functions described in paragraphs 2, 3(b), and 5(a).

B. Reconsideration

7. *Elimination of Reconsideration.* SSA should seek to concentrate the efforts of the disability determination team on a single initial decision process, as outlined in these recommendations. Together with implementations of these recommendations, the separate reconsideration stage should be eliminated.

C. Appeal Level

8. *ALJ use of medical experts.* SSA should encourage its administrative law judges to call on an independent medical expert in appropriate cases to assess the need for any additional medical evidence and to explain or clarify medical evidence in the record.[5] SSA should make clear by regulation that a medical expert's evidence can be presented orally or in writing. The regulations should also provide that claimants are notified of the inclusion of an expert's report in the record and should assure that claimants' rights to object to the inclusion of the report, submit rebuttal evidence, and cross-examine the expert are not abridged. The regulations should also provide that all information and opinions provided by medical experts must be included in the record.

9. New § 310.15 is added to Part 310, to read as follows:

§ 310.15 Procedures for Resolving Federal Personnel Disputes.

In 1978, Congress enacted the most comprehensive revision of the federal civil service laws since the Pendleton Act of 1883. The Civil Service Reform Act (CSRA) of 1978 created new institutions and processes for personnel management, including a substantially restructured system for considering complaints, grievances and appeals filed by federal employees in response to personnel actions.[1] Personnel disputes typically involve such matters as removals from the service, reductions in pay or grade, suspensions, furloughs, promotion and award decisions, and reductions-in-force.

Congress' 1978 revision of the framework for considering employee complaints, grievances and appeals was in part prompted by the confusing, complex and time-consuming nature of the existing procedures. Moreover, the procedures were seen as intimidating to both managers and employees and, therefore, likely to deter managers from taking appropriate personnel action and to discourage employees from pursuing available avenues to vindicate their rights. There was also a perception that the Civil Service Commission was unsympathetic to employee discrimination cases and to unions.

The statutory framework created in 1978, with its new forums for adjudicating employee claims, was no less complex and has continued to produce costs, delays, and confusion, accompanied by substantial resource commitments. Close scrutiny discloses that this complexity was in large part created by the tension inherent in the simultaneous pursuit of three important legislative goals: adequate protection of employees from discrimination;[2]

[5] SSA should also ensure that its ALJs receive appropriate training on medical issues relevant to their decisional responsibilities.

[1] Five institutions share in the administration of the CSRA:

1. Office of Personnel Management (OPM), which is vested with the general authority to execute, administer and enforce the laws and rules governing the civil service except with respect to those functions vested in other agencies;

2. Merit Systems Protection Board (MSPB), which is an independent adjudicatory body charged with hearing and deciding employee appeals from agency personnel actions of various kinds including major performance and disciplinary actions;

3. Office of the Special Counsel (OSC), which is charged with the investigation and prosecution before the MSPB of requests for corrective and disciplinary action when prohibited personnel practices have allegedly occurred;

4. Equal Employment Opportunity Commission (EEOC), which enforces various anti-discrimination statutes as they apply to both public and private employment, including Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Rehabilitation Act; and

5. Federal Labor Relations Authority (FLRA), which is an independent agency charged with hearing and deciding complaints of unfair labor practices and reviewing arbitration awards on matters falling within the scope of negotiated grievance procedures established by collective bargaining agreements.

[2] "Discrimination" refers to discrimination on the basis of race, color, religion, sex, national origin, age, and handicapping condition.

uniformity in federal personnel management; and solidification and expansion of the place of arbitration as a mechanism to resolve federal employee grievances.

As a general principle, procedures for handling federal employee disputes should be as simple and fair as feasible. Fairness must include a concern for the timely, final resolution of claims. At the same time, however desirable procedural simplification may be, federal employees and managers alike should have confidence in the processes for adjudicating personnel disputes. This is especially true when a federal employee contests a personnel action on the grounds of discrimination, since nothing is more basic than the right to be free of invidious discrimination.

To address these matters, the Administrative Conference commissioned a consultant's report.[3] The report describes the historical background to the 1978 reforms, along with the institutional and procedural framework created by the CSRA. It examines the operation of the system and makes specific recommendations for legislative and administrative changes. The Conference's Committee on Governmental Processes has held numerous meetings to consider the report, has provided opportunity for public participation in those meetings, and has invited public comment on various procedural changes that might be recommended.

This process has demonstrated the continuing importance of employee and management concerns in addressing the procedural questions that are the subject of the study. The intricate web of processes, consciously designed by Congress in its enactment of the CSRA, resulted in part from substantive policy and value judgments that transcend the domain of administrative procedure. The complex framework has been perceived by employees and their representatives as providing necessary protection against possible arbitrary employer action, particularly in cases where discrimination is alleged. As a result, employees may perceive proposed procedural simplification as a potential threat to substantive rights.

For this reason, whether to retain or modify the present procedures must be resolved largely through the legislative process. The experience of the past decade, as described in the consultant's report, has persuaded the Administrative Conference that the time is ripe for fresh consideration by Congress of the problems that gave rise to the CSRA and to the issues that have developed subsequently. In fact, Congress has started to re-examine selected aspects of the system, including equal employment opportunity. In addition, the EEOC has issued a notice of proposed rulemaking to change substantially the federal sector discrimination complaint process.[4]

This Statement describes certain important issues that we believe should be addressed as part of a comprehensive congressional review of the CSRA processes. These include:

(i) Whether there should be one rather than the present two opportunities for a full scale trial-type proceeding in cases raising claims of discrimination;

(ii) Whether to retain the existing complex structure for administrative adjudication of "mixed" cases, i.e., those in which the employee alleges that unlawful discrimination was the basis for an adverse personnel action;

(iii) Whether the government should have the right to appeal to the courts in cases involving claims of discrimination;

(iv) Whether employees or their unions should be permitted to seek judicial enforcement of arbitral awards; and

(v) Whether the functioning of existing adjudicatory frameworks—grievance systems of individual agencies, agency complaint processes for discrimination cases, the MSPB process and the various negotiated grievance processes—could and should be improved.

These questions cannot and should not be examined in isolation, as any review of the procedures of the CSRA should recognize the integrated nature of the complex processes of the Act. Whether or not congressional re-examination takes place, this Statement also suggests that the Office of Personnel Management and agencies scrutinize and, where appropriate, seek ways to improve the patterns of communication within agencies and to employees regarding the workings of the complaint, grievance and appeal system. The Conference encourages the creative use of alternative means of dispute resolution in resolving employee claims.[5]

A. Need for Comprehensive Overview

In considering the issues posed below, Congress should take into account the fact that the intricate federal personnel scheme consists of numerous interrelated processes and institutions. Accordingly, statutory changes should be enacted only after careful consideration of their potential direct and indirect consequences throughout the system for resolving employee complaints, grievances and appeals.

B. Cases Raising Claims of Discrimination

1. *The Number of Hearings in Mixed Cases.* "Mixed" cases are controversies involving personnel actions appealable to the MSPB, where an employee alleges that unlawful discrimination was a basis for the agency's action. These cases are "mixed" in that they involve issues both of civil service law and employment discrimination. Under present law federal employees, unlike employees in the private sector, on allegations of employment discrimination in such cases, have a right to a full trial-type administrative hearing (at the MSPB) and, if unsuccessful, may obtain a second *de novo* adjudicatory hearing in United States District Court. The question for congressional consideration is whether an employee who has chosen a trial-type administrative hearing in a mixed case, and has then been afforded the opportunity for a full evidentiary hearing on the record on all relevant matters, should be entitled to a judicial trial *de novo* or should be limited to judicial review in a court of appeals on the administrative record under the substantial evidence test—the customary venue and scope of review of formal administrative adjudications.

2. *The Process for Deciding Mixed Cases.* The statutory procedure for mixed cases provides the opportunity for sequential consideration by the MSPB and the EEOC, with the possibility of further proceedings before a Special Panel consisting of one member of the MSPB, one member of the EEOC, and a chairman appointed by the President for a term of six years with the advice and consent of the Senate. Through these provisions, the CSRA embodies Congress' effort to bring to bear both the MSPB's expertise in general issues of personnel law and the EEOC's expertise with discrimination issues. This complex procedure is intended to achieve a balanced use of both agencies' expertise.

In most mixed cases presented to the EEOC, the Commission has accepted the MSPB decision and, where it has not, the MSPB has generally deferred to the Commission's disposition of these cases. During the first ten years of the CSRA, there has been only three Special Panel

[3] William V. Luneburg, The Federal Personnel Complaint, Appeal, and Grievance Systems: A Structural Overview and Proposed Revisions, 78 Ky. L. J. —— (1989).

[4] See "Federal Sector Equal Employment Opportunity" (29 CFR part 1614), 54 Fed. Reg. 45747 (October 31, 1989).

[5] See Recommendation 86-3, Agencies' Use of Alternative Means of Dispute Resolution, 1 CFR 305.86-3.

proceedings, indicating that the two agencies have failed to reach an accommodation in only a very limited number of cases. Even where a Special Panel was unnecessary, however, sequential consideration by the MSPB and the EEOC has required significant time and effort and has at times led to confusion on the part of agencies and claimants. The question for congressional consideration is whether experience confirms the desirability of dual agency participation in mixed cases or whether that experience suggests that consistently fair and more timely results may be achieved through a less complex process.

3. *Government's Right to Appeal.* Under existing law the government may petition for judicial review of certain administrative and arbitral decisions in personnel cases that present significant issues of civil service law. The availability of such review is either uncertain or non-existent when those decisions implicate issues of discrimination law.[6] There is disagreement over the desirability of permitting the government to seek a judicial resolution of legal issues that have been decided adversely to the government at the administrative level.

The question for congressional consideration is whether in the interest of consistency the government should have the right to judicial review (or at least the authority to petition for it) in cases where the Director of OPM determines that an administrative or arbitral decision constitutes an incorrect interpretation of civil service or discrimination law that may have a substantial impact. The primary countervailing considerations are the increased potential for further delay in final resolution of such cases and whether the executive branch should be authorized to seek judicial resolution of disputes between two of its agencies, as would be the case if OPM were permitted to appeal from adverse determinations of the EEOC.

C. Enforcement of Arbitration Awards

Although federal employee grievance arbitration awards are intended to be binding, federal agencies do not always comply with them. Under the CSRA, the only mechanism available to a federal employee seeking to enforce an arbitral award is an unfair labor practice proceeding before the FLRA. Such a proceeding requires filing of a complaint by the Authority's General Counsel and a hearing before the FLRA, followed by judicial review and enforcement of the resulting FRLA order. There is substantial dispute over the question whether an employing agency may raise any defense to an enforcement action other than compliance with the arbitral award.

Questions for congressional consideration include to permit an employee or union to seek direct judicial enforcement of federal sector grievance arbitration awards, where such enforcement should take place, and what issues should be open for litigation in the chosen forum. A central issue is whether permitting such direct enforcement actions would increase or decrease the likelihood of voluntary agency compliance with arbitration awards.

D. Need To Examine Existing Adjudicatory Systems

1. *Agency Administrative Grievance Systems.* Agency administrative systems have taken on increasing importance as the only avenue of redress [7] available to an individual employee in cases not falling within MSPB or EEOC jurisdiction or within the scope of a negotiated grievance procedure. The Office of Personnel Management and other agencies should ensure that these systems in fact provide fair, efficient, and timely resolution of workplace disputes, and further studies of the structure and usage of these systems may be needed.[8] In reviewing these processes, agencies should give careful consideration to alternative means of dispute resolution.

2. *Agency Complaint Processes in Discrimination Cases.* Over the years, criticism has been leveled at the quality and timeliness of agency disposition of discrimination complaints. The EEOC and individual employing agencies should continue to take steps to ensure adequate and expeditious investigation and timely, final resolution of such claims. Experimentation with, and incorporation of, alternative dispute resolution techniques may be useful.

3. *MSPB and Negotiated Grievance Systems.* The MSPB process and the various negotiated grievance processes dispose of large numbers of significant employee claims. Concerns have been expressed regarding certain aspects of their operation, including the familiarity of arbitrators with federal personnel law and the need for increasing the statutory independence of the MSPB's administrative judges. These concerns may warrant further study.

E. Better Communication Within Agencies and to Employees

Multiple avenues for relief present the danger of parallel, duplicate proceedings. Agencies should take steps to ensure that there are consistent patterns of communication among their personnel, labor relations and equal employment opportunity staffs to reduce the likelihood of parallel, duplicative proceedings in personnel actions for which such duplication is not permitted by law.

To use the personnel grievance system effectively, employees must have clear and reliable information about options available to them and the consequence of choosing one route over another. The Office of Personnel Management and other agencies should ensure that there exist readily available and easily understandable written or other materials that inform federal employees of their complaint, grievance and appeal options and the consequences of their choice of one complaint, grievance or appellate route over another.

Dated: December 26, 1989.

Jeffrey S. Lubbers,

Research Director.

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BILLING CODE 6110-01-M

[6] See, e.g., *Moore* v. *Devine*, 780 F.2d 1559 (11th Cir. 1986).

[7] See, e.g., *Harrison* v. *Bowen*, 815 F.2d 1505 (D.C. Cir. 1987).

[8] OPM has recently reviewed the systems established by agencies and has published a study entitled *A Survey of Agency Administrative Grievance Systems* (June 1989).

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

RIN 3124-AA10

Practices and Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: On July 6, 1989, the U.S. Merit Systems Protection Board published interim rules of practice and procedure in part 1201, with the exception of Appendix I, (54 FR 28632) in plain English so that the Board's requirements and practice could be more readily understood by persons who are not practitioners in personnel administration or the law. The interim rules also implemented the Whistleblower Protection Act of 1989, Public Law 101-12. The interim regulations published under part 1201 on July 6, 1989 are hereby amended as set forth below, including the amended Appendix I to part 1201—Merit Systems

Protection Board Appeal Form and the addition of Appendix IV to part 1201—Sample Declaration Under 28 U.S.C. 1746, and these are now the final regulations of the Board in this part.

EFFECTIVE DATE: December 29, 1989.

FOR FURTHER INFORMATION CONTACT: Charles J. Stanislav, (202) 653–8931.

SUPPLEMENTARY INFORMATION: On July 6, 1989, the Board published interim regulations in this part in plain English, to implement the Whistleblower Protection Act of 1989 (Pub. L. 101–12) and to make other specified changes. The public was invited to comment on the interim regulations with respect to the ease of understanding and adherence to legal requirements. The Board has considered the comments received and has adopted many of those suggestions and has determined that certain technical corrections or other clarifying changes should be made also. The interim rules are hereby modified and are published here as the final rules of the Board in part 1201. The Board is republishing the entire rules in this part for clarity and the convenience of the public, parties and practitioners.

Five agencies and four individuals or private firms submitted comments on the interim rules published July 6, 1989. No organizations responded. The respondents offered some suggestions which the Board finds will further improve the rules. Technical corrections required in the rules as published were identified by the Board and by respondents. These include spelling errors or missing words or phrases and are corrected here without discussion or explanation.

The Board adopted suggestions for the following: Changing the designation of "presiding official" to "judge", changing "petition for appeal" to "appeal", allowing for filing and service by facsimile, eliminating the requirement to certify service to the Board as well as to the parties, allowing for filing by the appellant or the appellant's representative, modifying the paper size requirement under appropriate circumstances, clarifying that persons in official duty status are entitled to pay and other benefits, clarifying the section on substitution of parties, clarifying when a person may be excluded from a hearing, allowing for filing supplemental citations where appropriate, requiring that requests for depositions be served on the party's representative but not on the person to be deposed, clarifying the statement required in support of a request for a subpoena, and informing appellants in mixed cases that if they waive the discrimination issue, they may appeal to the U.S. Court of Appeals for the Federal Circuit.

The Board did not adopt suggestions for the following: excluding state holidays in computing timeliness, permitting agencies to request a hearing when the appellant does not request one, making back pay awards payable jointly to the appellant and the representative, revising the definition of "harmful error by changing "would" to "could", eliminating the requirement that the Director of the Office of Personnel Management (OPM) be served (apparently, notwithstanding OPM's right to intervene), requiring that penalties be imposed if a party fails to respond to a request for admissions, listing the types of discovery that may be required of nonparties, making it clear that sanctions apply to both parties, changing the effective date of interim relief and stating the factors that a judge is to consider in determining whether interim relief is appropriate, and revising the Special Panel's rule that requires the use of Express Mail.

The following constitutes a section-by-section analysis and discussion of each substantive change made at this time.

(a) Section 1201.2—is amended by changing the title and the text to state more clearly the Board's original jurisdiction, and a technical correction is made by deleting "Board's" to conform to Public Law 101–12.

(b) Section 1201.3—is amended by changing the title of this section and the title of paragraph (a) to more clearly state the Board's jurisdiction. Also, paragraph (a)(8) is amended to state more clearly the grounds for appeal and to correct the cite to the U.S. Code by changing "5" to "38".

(c) Section 1201.4—paragraph (a) is amended by substituting the term "judge" for "presiding official"; paragraph (c) is amended by eliminating words that are not part of the definition of "motion"; paragraph (f) is amended by substituting "appeal" for "petition for appeal" for accuracy, and "for" is inserted as a technical correction between "request" and "review"; paragraph (g) is amended to use "judge" to conform to the change in paragraph (a) of this section; paragraph (i) is amended by adding facsimile as a method of service; paragraphs (j) and (k) are amended by deleting "Board officials" and "or both"; and paragraph (l) is amended by adding a new second sentence to state that when service is by facsimile, the date of service is the date of the facsimile, and by adding to the last sentence a parenthetical statement to exclude days when the Board is closed to make clear how the Board computes presumed mailing dates.

(d) Section 1201.12—is amended by substituting "judge" for "presiding official" and by making it clear that the Board's regulations may be waived for good cause shown unless the regulation is required by statute.

(e) The heading before § 1201.21 is amended by deleting "Petitions for".

(f) Section 1201.22—is amended by substituting "appeal" or "appeals" for "petition for appeal" or "petitions" in the heading and in paragraphs (a), (b) and (c); paragraph (c) is restated to make it clear that an appeal may be dismissed unless a good reason is shown for the untimely filing, to delete the words "or the Board" as redundant, and to substitute "judge" for "presiding official"; paragraph (d) is amended by adding that appeals may be filed by facsimile and by deleting "normal business hours".

(g) Section 1201.24—is amended by substituting "appeal" for "petitions for appeal" and "judge" for "presiding official"; paragraph (a)(9) is also amended to eliminate the original signature requirement and to allow for signature of the appellant or the representative; paragraph (b) is rewritten to clarify the circumstances for raising a claim or defense not included in the initial appeal; paragraph (c) is amended by deleting unnecessary language; and paragraph (e) is amended to state that if a timely request for a hearing is not made, the right to a hearing is waived.

(h) Section 1201.25—is amended by substituting "an appeal" for "a petition for appeal"; also paragraph (c) is deleted and paragraphs (d)–(f) are renumbered (c)–(e).

(i) Section 1201.26—is amended by substituting "appeal" for "petition for appeal"; paragraph (a) is amended to provide that two copies of both the appeal and all attachments must be filed; paragraph (b) is amended to correct the cite to read § 1201.4(b), to make it clear that, except for the initial appeal, all documents submitted with a pleading—not just the pleading—must be served on the parties, to add facsimile as a method of service, and to delete "service list"; paragraph (c) is amended to allow exceptions, for good cause, to the 8½ by 11 inch paper size requirement.

(j) Section 1201.27—is amended by substituting "appeal" for "petition for appeal" and "judge" for "presiding official" in paragraphs (a), (b) and (c); paragraph (a) is amended by inserting the words "of the" between "representative" and "parties" in the

second sentence as a technical correction; paragraph (b) is amended by substituting "request" for "petition" in the second sentence.

(k) Section 1201.31—is amended by substituting "judge" for "presiding official" in paragraphs (b) and (c).

(l) Section 1201.32—is amended by adding clarifying language that witnesses can be represented when testifying, but a witness' representative cannot examine the witness at the hearing.

(m) Section 1201.33—is amended by substituting "judge" for "presiding official" and to clarify that since Federal employee witnesses are in a duty status, they are entitled to appropriate pay and benefits including travel and per diem.

(n) Section 1201.34—is amended by substituting "judge" for "presiding official"; by deleting references to the Board" in paragraphs (c), (d), and (e) as redundant; paragraph (c) is also amended to specifically state that an organization or an agency may be a permissive intervenor and to make it clear that the motion to intervene must explain the reason why the requester should be permitted to intervene; paragraph (e) is also amended to clarify that advice or suggestions are given by filing a brief.

(o) Section 1201.35—is amended by clarifying language in paragraph (a) stating the conditions for processing an appeal; paragraph (b) is amended by adding that a motion for substitution must be filed within 90 days except for good cause.

(p) Section 1201.36—is amended by substituting "judge" for "presiding official".

(q) Section 1201.37—is amended by substituting "judge" for "presiding official"; paragraph (a)(2) is restructured for clarity; paragraph (a)(3) is amended by inserting "issuance of" in the second sentence to make clear that a motion for attorney fees should be filed within 25 days of the date of the issuance of the final decision under section 1201.116 of this part; paragraph (b)(2) is rewritten for clarity and to conform with the law; and paragraph (b)(3) is amended by deleting the last sentence as unnecessary.

(r) The heading before § 1201.41 is amended by substituting "Judges" for "Presiding officials".

(s) Section 1201.41—is amended by substituting "judge(s)" for "presiding official(s)", and paragraph (b)(7) is restated to clarify that any person can be excluded from the hearing for good cause.

(t) Section 1201.42—is amended by substituting "judge" for "presiding official" and by adding a reference to appendix IV in paragraph (b).

(u) Section 1201.43—is amended by substituting "judge" for "presiding official".

(v) Section 1201.51—is amended by substituting "judge" for "presiding official", and paragraph (c) is amended for clarification and to add a reference to appendix IV.

(w) Section 1201.52—is amended by substituting "judge" for "presiding official".

(x) Section 1201.53—is amended by substituting "judge" for "presiding official", and paragraph (c) is amended for clarification and to add a reference to appendix IV.

(y) Section 1201.54—is amended by substituting "judge" for "presiding official".

(z) Section 1201.55—is amended by substituting "judge(s)" for "presiding official(s)"; and paragraph (d) is amended by substituting "the Special Counsel's" for "such" for clarity.

(aa) Section 1201.57—is amended by substituting "judge" for "presiding official".

(bb) Section 1201.58—is amended by substituting "judge" for "presiding official" paragraph (b) is amended also by correcting the error in the spelling of "of" thereby deleting "or"; and paragraph (c) is amended by revising the first sentence and adding that the judge will include in the record any supplemental citations received after the record is closed.

(cc) Section 1201.61—is amended by deleting it in its entirety.

(dd) Section 1201.62—is amended by renumbering it § 1201.61, changing the title, deleting paragraph (a), eliminating as unnecessary the paragraph designation "(b)" and in the remainder by substituting "judge" for "presiding official".

(ee) Section 1201.63—is amended by deleting it in its entirety.

(ff) Section 1201.64—is amended by renumbering it § 1201.62 and substituting "judge" for "presiding official" and restating the last sentence for clarity.

(gg) Section 1201.65—is amended by deleting it in its entirety.

(hh) Section 1201.66—is amended by renumbering it § 1201.63, correcting the error in the spelling of "Stipulations" in the heading, and correcting the error in the spelling of "proving" in the text.

(ii) Section 1201.67—is amended by renumbering it § 1201.64 and substituting "judge" for "presiding official" and changing "will" to "may" in the third sentence.

(jj) Section 1201.72—is amended in paragraph (a) by adding that the identification of potential witnesses is relevant information that may be discovered from another person or party if not otherwise provided, for clarity; and by deleting the last sentence in paragraph (c).

(kk) Section 1201.73—is amended by substituting "judge" for "presiding official"; paragraph (a) is amended to clarify that a party's representative or the party, if there is no representative, can be served with a discovery request, to eliminate the requirement that the person to be deposed be served also, and to add "if applicable" after "deposition"; paragraph (c)(2)(ii) is amended to add a reference to appendix IV; and paragraph (d)(5) is amended by deleting the requirement that discovery be completed within 65 days and by deleting the last sentence as unnecessary.

(ll) Section 1201.74—is amended by substituting "judge" for "presiding official"; paragraph (c) is rewritten for clarity.

(mm) Section 1201.75—is amended to provide that depositions may be taken by any method agreed to by the parties and to specify that deponents are subject to penalties for intentional false statements.

(nn) Section 1201.81—is amended by substituting "judge(s)" for "presiding official(s)"; by revising the last sentence of paragraph (b) to clarify the required support for a subpoena request and by renumbering it as paragraph (c); and by renumbering paragraph (d) as (c).

(oo) Section 1201.82—is amended by substituting "judge" for "presiding official".

(pp) Section 1201.83—is amended by deleting the second sentence in paragraph (a) and substituting a new sentence to provide for service of subpoenas by means prescribed by applicable state law.

(qq) Section 1201.85—is amended by substituting "judge" for "presiding official"; and paragraph (a) is amended to add a reference to appendix IV.

(rr) Section 1201.91—is amended by substituting "judge" for "presiding official", and by substituting "ruling" for "decision" in the first sentence.

(ss) Section 1201.92—is amended by substituting "judge" for "presiding official".

(tt) Section 1201.93—is amended by substituting "judge" for "presiding official"; in paragraph (a) by substituting "ruling" for "determination" in the first sentence and by revising the second sentence for clarity; by deleting paragraph (c) as unnecessary; and by renumbering paragraph (d) as (c).

(uu) Section 1201.101—is amended in paragraph (a) by deleting the first word of the third sentence and by deleting the word "other" between "violate" and "rules" for accuracy and clarity; and paragraph (b)(2) is amended by substituting "judge" for "presiding official" and clarifying that a decision-making official means one designated to hear and decide cases rather than one who may participate in the process.

(vv) Section 1201.103—is amended by substituting "judge" for "presiding official" and in paragraph (c)(1) by substituting "the" for "his or her".

(ww) Section 1201.111—is amended by substituting "judge" for "presiding official"; in paragraph (b)(4) by substituting "date" for "making" to clarify when interim relief is to begin; and in paragraph (c) by clarifying that interim relief is to be provided from the date of the initial decision to the date of the final decision, and to clarify that an agency in appropriate circumstances may decline to return the appellant to duty, but in such situations must provide pay and benefits to the appellant as required by Public Law 101–12.

(xx) Section 1201.112—is amended by substituting "judge" for "presiding official".

(yy) Section 1201.113—is amended by substituting "judge" for "presiding official" and by revising paragraph (c) for clarity.

(zz) Section 1201.114—is amended in paragraph (a) by deleting the requirement for an original signature; in paragraph (c) by adding facsimile as a method of filing; in paragraph (d) by deleting all after the third sentence as redundant; in paragraph (e) by adding a reference to appendix IV and by changing "must" to "should" in the last sentence to recognize that documentation is not always available; in paragraph (f) by revising the first sentence for clarity, deleting "for waiver" after "motion" throughout the paragraph, and adding a reference to appendix IV; in paragraphs (g)(1) and (g)(2) by providing that a notice of intervention by either the Director of the Office of Personnel Management or the Special Counsel is timely if filed within 45 days of the date the petition for review is filed; in paragraph (g)(3) by adding "organization or agency" as permissive intervenors; in paragraph (h) by providing for service in accordance with § 1201.26(b)(2); and in paragraph (i) by revising the last sentence for clarity.

(aaa) Section 1201.115—is amended by substituting "judge" for "presiding official"; by amending paragraph (b)(1) to clarify that the initial decision may grant interim relief to the appellant; by revising paragraph (b)(2) to clarify that if the grant of interim relief in the initial decision requires the return of the appellant to his/her place of employment and the agency determines that the return will be unduly disruptive, the agency must notify the appellant and the judge in writing of that determination; by amending paragraph (b)(3) to clarify that back pay is not required for the period preceding the date of the initial decision before the Board's decision becomes final; and by substituting "will" for "may" in paragraph (b)(4).

(bbb) Section 1201.116—is amended by substituting "judge" for "presiding official"; and by amending paragraph (a)(1) to add that the Board can in a single decision deny a petition for review in any case that is reopened or reviewed.

(ccc) Section 1201.117—is amended by substituting "judge" for "presiding official".

(ddd) Section 1201.122—is amended in paragraph (c) by correcting the cite to § 1201.4(b) and by adding facsimile as a method of service.

(eee) Section 1201.123—is amended in paragraph (a)(1) to delete unnecessary language and to make it clear that an agency is to correct a prohibited personnel practice.

(fff) Section 1201.126—is amended in paragraph (b)(1) to substitute "will" for "is to" in the last line for clarity.

(ggg) Section 1201.127—is amended by substituting "will" for "is about to" in the first sentence for accuracy and by substituting "Federal" for "legal" in the first sentence of paragraph (c).

(hhh) Section 1201.129—is amended by substituting "judge" for "presiding official" and by revising paragraph (d) for clarity.

(iii) Section 1201.135—is amended by substituting "judge" for "presiding official".

(jjj) Section 1201.151—is amended by deleting the last sentence of paragraph (b) as redundant.

(kkk) Section 1201.153—is amended by substituting "appeal" for "petition for appeal" and by revising paragraph (a)(1) for clarity.

(lll) Section 1201.154—is amended by substituting "appeal(s)" for "petition(s)" and "judge" for "presiding official"; in paragraph (c) by deleting the cite to § 1201.12 and the words "in his or her discretion"; in paragraph (d) by amending the time limit to 25 days from the date of issuance of the decision; and in paragraph (e) by revising the last sentence for clarity.

(mmm) Section 1201.155—is amended by changing the title and deleting paragraphs (a), (b), and (d) for simplification; by substituting "judge" for "presiding official"; and by amending the remaining language—formerly paragraph (c)—to make it clear that a judge can remand the discrimination issue to the agency and that the remand order will specify the time period within which the agency must complete its consideration of that issue.

(nnn) Section 1201.156—is amended by substituting "appeal" for "petition for appeal" and "judge" for "presiding official".

(ooo) Section 1201.157—is deleted as unnecessary.

(ppp) Section 1201.158—is amended by renumbering it § 1201.157 and by adding at the end a sentence which recognizes an appellant's option to waive the discrimination issue and file an appeal with the United States Court of Appeals for the Federal Circuit.

(qqq) Section 1201.161—is amended by adding "Equal Employment Opportunity" before "Commission" in the title and first sentence; by substituting "judge" for "presiding official"; by amending paragraph (e) to clarify that the reference is to paragraph (c) of this section; and by amending paragraph (f) to clarify that an appellant may file suit in an appropriate United States district court if the Commission concurs in the decision of the Board.

(rrr) Section 1201.162—is amended by correcting paragraphs (a) and (a)(1) to include language which was omitted in the publication of the interim rules.

(sss) Section 1201.165—is amended by renumbering it as § 1201.163; by amending paragraph (b) to substitute "appeal" for "petition for appeal"; by amending paragraph (c)(2) to correct the word "with" to read "within"; by substituting "Commission" for "EEOC" in paragraph (d); and by amending paragraph (d)(3) to correct the cite to read 5 U.S.C. 1204(g) pursuant to Pub.L. 101–12.

(ttt) Section 1201.182—is amended in paragraph (a) by adding the title "Appellate jurisdiction" and correcting the word "appellant" to read "appellate" in the first sentence; in paragraph (c) by correcting the word "how" in the second sentence to read "who"; and by deleting paragraph (d) as unnecessary.

(uuu) Section 1201.183—is amended by adding words to the section heading to make it clear that the procedures apply to petitions for enforcement; by substituting "judge" for "presiding official"; by substituting "alleged noncomplying" party for "alleged not to have complied" for clarity; by revising paragraphs (a)(1) (i) and (ii) to specify what evidence of compliance must

include; by adding a new paragraph (a)(2) regarding identification of the agency official charged with compliance; by renumbering paragraphs (a)(2)–(6) as (a)(3)–(7) and by making appropriate conforming changes in the references to these paragraphs; by correcting the spelling of "made" in renumbered paragraph (a)(5)(i); by changing the first word to "The" and changing "decisions" to "decision" in renumbered paragraph (a)(5)(ii); and by revising paragraph (b) for clarity.

(www) Appendix I—is amended by substituting the revised and OMB approved MSPB Appeal Form [Optional Form 283] for the previous edition of the form.

(xxx) Appendix II—is amended by adding the facsimile number for each regional office of the Board.

(yyy) Appendix III—is amended by adding Memphis, Tennessee as an approved hearing location under the St. Louis Region.

(zzz) Appendix IV—is added to provide a sample Declaration under 28 U.S.C. 1746.

List of Subjects in 5 CFR Part 1201

Administrative practice and procedure, Civil rights, Government employees.

Accordingly, the Merit Systems Protection Board revises 5 CFR part 1201 as follows:

PART 1201—PRACTICES AND PROCEDURES

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1201.181 Authority and explanation.
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Appendix I to Part 1201—Merit Systems Protection Board Appeal Form

Appendix II to Part 1201—Appropriate Regional Office for Filing Appeals

Appendix III to Part 1201—Approved Hearing Locations by Regional Office

Appendix IV to Part 1201—Sample Declaration Under 28 U.S.C. 1746

Authority: 5 U.S.C. 1204, and 7701 unless otherwise noted.

Subpart A—Jurisdiction and Definitions

§ 1201.1 General.

The Board has two types of jurisdiction, original and appellate.

§ 1201.2 Original jurisdiction.

The Board's original jurisdiction includes the following cases:

(a) Actions brought by the Special Counsel;

(b) Requests, by persons removed from the Senior Executive Service for performance deficiencies, for informal hearings; and

(c) Actions taken against administrative law judges under 5 U.S.C. 7521.

§ 1201.3 Appellate jurisdiction.

(a) *Generally.* The Board has jurisdiction over appeals from agency actions when the appeals are authorized by law, rule, or regulation. These include appeals from the following actions:

(1) Reduction in grade or removal for unacceptable performance (5 CFR part 432; 5 U.S.C. 4303(e));

(2) Removal, reduction in grade or pay, suspension for more than 14 days, or furlough for 30 days or less for cause that will promote the efficiency of the service. (5 CFR part 752, subparts C and D; 5 U.S.C. 7512);

(3) Removal, or suspension for more than 14 days, of a career appointee in the Senior Executive Service (5 CFR part 752, subparts E and F; 5 U.S.C. 7541–7543);

(4) Reduction-in-force action affecting a career appointee in the Senior Executive Service (5 U.S.C. 3595);

(5) Reconsideration decision sustaining a negative determination of competence for a general schedule employee (5 CFR 531.410; 5 U.S.C. 5335(c));

(6) Determinations affecting the rights or interests of an individual or of the United States under the Civil Service Retirement System or the Federal Employees' Retirement System (5 CFR parts 831 and 842; 5 U.S.C. 8347(d)(1)–(2) and 8461 (e)(1));

(7) Disqualification of an employee or applicant because of a suitability determination (5 CFR 731.401);

(8) Termination of employment during probation or the first year of a veterans readjustment appointment when: (i) the employee alleges discrimination because of partisan political reasons or marital status; or (ii) the termination was based on conditions arising before appointment and the employee alleges that the action is procedurally improper (5 CFR 315.806, 38 U.S.C. 2014(b)(1)(D));

(9) Termination of appointment during a managerial or supervisory probationary period when the employee alleges discrimination because of partisan political affiliation or marital status (5 CFR 315.908(b));

(10) Separation, reduction in grade, or furlough for more than 30 days, when the action was effected because of a reduction in force (5 CFR 351.901);

(11) Furlough of a career appointee in the Senior Executive Service (5 CFR 359.805);

(12) Failure to restore a former employee to employment following military service, or following partial or full recovery from a compensable injury (5 CFR 353.401);

(13) Employment of another applicant when the person who wishes to appeal to the Board is entitled to priority employment consideration after a reduction-in-force action, or after partial or full recovery from a compensable injury (5 CFR 302.501, 5 CFR 330.202);

(14) Failure to reinstate a former employee after service under the Foreign Assistance Act of 1961 (5 CFR 352.508);

(15) Failure to re-employ a former employee after movement between executive agencies during an emergency (5 CFR 352.209);

(16) Failure to re-employ a former employee after detail or transfer to an international organization (5 CFR 352.313);

(17) Failure to re-employ a former employee after service under the Indian Self-Determination Act (5 CFR 352.707);

(18) Failure to re-employ a former employee after service under the Taiwan Relations Act (5 CFR 352.807); and

(19) Employment practices administered by the Office of Personnel Management to examine and evaluate the qualifications of applicants for appointment in the competitive service (5 CFR 300.104).

(b) *Appeals involving an allegation that the action was based on appellant's "whistleblowing."* Appeals of actions appealable to the Board under any law, rule, or regulation, in which the appellant alleges that the action was taken because of the appellant's "whistleblowing" [a violation of the prohibited personnel practice described in 5 U.S.C. 2302(b)(8)], are governed by part 1209 of this title. The provisions of subparts B, C, E, F, and G of part 1201 apply to appeals and stay requests governed by part 1209 unless other specific provisions are made in that part.

(c) *Limitations on appellate jurisdiction, collective bargaining agreements, and election of procedures:*

(1) For an employee covered by a collective bargaining agreement under 5 U.S.C. 7121, the negotiated grievance procedures contained in the agreement are the exclusive procedures for resolving any action that could otherwise be appealed to the Board, with the following exceptions:

(i) An appealable action involving discrimination under 5 U.S.C. 2302(b)(1), reduction in grade or removal under 5 U.S.C. 4303, or adverse action under 5 U.S.C. 7512, may be raised under the Board's appellate procedures, or under the negotiated grievance procedures, but not under both;

(ii) Any appealable action that is excluded from the application of the negotiated grievance procedures may be raised only under the Board's appellate procedures.

(2) *Choice of procedure.* When an employee has an option of pursuing an action under the Board's appeal procedures or under negotiated grievance procedures, the Board considers the choice between those procedures to have been made when the employee timely files an appeal with the Board or timely files a written grievance, whichever event occurs first.

(3) *Review of discrimination grievances.* If an employee chooses the negotiated grievance procedure under paragraph (c)(2) of this section and alleges discrimination as described at 5 U.S.C. 2302(b)(1), then the employee, after having obtained a final decision under the negotiated grievance procedure, may ask the Board to review that final decision. The request must be filed with the Clerk of the Board in accordance with § 1201.154.

(d) *Appealability not affected by retirement status or election.* In determining the appealability of an action to the Board under any law, rule, or regulation, neither the status of the appellant under any retirement system established under a Federal statute nor any election made by the appellant under such system may be taken into account.

§ 1201.4 General definitions.

(a) *Judge.* Any person authorized by the Board to hold a hearing or to decide a case without a hearing, including an attorney-examiner, an administrative

judge, an administrative law judge, the Board, or any member of the Board.

(b) *Pleading.* Written submission setting out claims, allegations, arguments, or evidence. Pleadings include briefs, motions, petitions, attachments, and responses.

(c) *Motion.* A request that a judge take a particular action.

(d) *Appropriate regional office.* The regional office of the Board that has jurisdiction over the area where the appellant's duty station was located when the agency took the action. Appeals of Office of Personnel Management reconsideration decisions concerning retirement benefits, and appeals of adverse suitability determinations under 5 CFR part 731, must be filed with the regional office that has jurisdiction over the area where the appellant lives. Appendix II of these regulations lists the geographic areas over which each of the Board's regional offices has jurisdiction. Appeals, however, may be transferred from one regional office to another.

(e) *Party.* A person, an agency, or an intervenor, who is participating in a Board proceeding. This term applies to the Office of Personnel Management and to the Office of Special Counsel when those organizations are participating in a Board proceeding.

(f) *Appeal.* A request for review of an agency action.

(g) *Petition for review.* A request for review of an initial decision of a judge.

(h) *Day.* Calendar day.

(i) *Service.* The process of furnishing a copy of any pleading to Board officials, other parties, or both, either by mail, by facsimile, or by personal delivery.

(j) *Date of service.* The date on which documents are served on other parties.

(k) *Certificate of Service.* A document certifying that a party has served copies of pleadings on the other parties.

(l) *Date of filing.* A document that is filed with a Board office by personal delivery is considered filed on the date on which the Board office receives it. The date of filing by facsimile is the date of the facsimile. The date of filing by mail is determined by the postmark date; if no legible postmark date appears on the mailing, the submission is presumed to have been mailed five days (excluding days on which the Board is closed for business) before its receipt.

Subpart B—Procedures for Appellate Cases

General

§ 1201.11 Scope and policy.

The regulations in this subpart apply to Board appellate proceedings except as otherwise provided in § 1201.13. The regulations in this subpart apply also to appellate proceedings and stay requests covered by part 1209 unless other specific provisions are made in that part. These regulations also apply to original jurisdiction proceedings of the Board except as otherwise provided in subpart D. It is the Board's policy that these rules will be applied in a manner that expedites the processing of each case, with due regard to the rights of all parties.

§ 1201.12 Revocation, amendment, or waiver of rules.

The Board may revoke, amend, or waive any of these regulations. A judge may, for good cause shown, waive a Board regulation unless a statute requires application of the regulation. The judge must give notice of the waiver to all parties, but is not required to give the parties an opportunity to respond.

§ 1201.13 Appeals by Board employees.

Appeals by Board employees will be filed with the Clerk of the Board and will be assigned to an administrative law judge for adjudication under this subchapter. The Board's policy is to insulate the adjudication of its own employees' appeals from agency involvement as much as possible. Accordingly, the Board will not disturb initial decisions in those cases unless the party shows that there has been harmful procedural irregularity in the proceedings before the administrative law judge or a clear error of law. In addition, the Board, as a matter of policy, will not rule on any interlocutory appeals or motions to disqualify the administrative law judge assigned to those cases until the initial decision has been issued.

Appeal of Agency Action; Pleadings

§ 1201.21 Notice of appeal rights.

When an agency issues a decision notice to an employee on a matter that is appealable to the Board, the agency must provide the employee with the following:

(a) Notice of the time limits for appealing to the Board, the requirements of § 1201.22(c), and the address of the appropriate Board office for filing the appeal;

(b) A copy, or access to a copy, of the Board's regulations;

(c) A copy of the appeal form in Appendix I of this part; and

(d) Notice of any right the employee has to file a grievance.

§ 1201.22 Filing an appeal and responses to appeals.

(a) *Place of filing.* Appeals, and responses to those appeals, must be filed with the appropriate Board regional office. See § 1201.4(d) of this part.

(b) *Time of filing.* An appeal must be filed during the period beginning on the day after the effective date of the action being appealed and ending 20 days after the effective date. An appeal from a final or reconsideration decision that does not set an effective date must be filed within 25 days of the date of the issuance of the decision. (Paragraphs (a)(5), (6), (7), (12), (13), (14), (15), (16), (17), and (18) of § 1201.3 of this part list actions covered by the latter rule.) A response to an appeal must be filed within 20 days of the date of the Board's acknowledgment order.

(c) *Timeliness of appeals.* If a party does not submit an appeal within the time set by statute, regulation, or order of a judge, it will be dismissed as untimely filed unless a good reason for the delay is shown. The judge will provide the party an opportunity to show why the appeal should not be dismissed as untimely.

(d) *Method of filing.* Filing must be made with the appropriate Board office by personal delivery, by facsimile, or by mail.

§ 1201.23 Computation of time.

In computing the number of days allowed for filing a submission, the first day counted is the day after the event from which the time period begins to run. If the date that ordinarily would be the last day for filing falls on a Saturday, Sunday, or Federal holiday, the filing period will include the first workday after that date.

Example: If an employee receives a decision notice that is effective on June 1, the 20-day period for filing an appeal starts to run on June 2. The filing ordinarily would be timely only if it is made by June 21. If June 21 is a Saturday, however, the last day for filing would be Monday, June 23.

§ 1201.24 Content of an appeal; right to hearing.

(a) *Content.* Only an appellant, his or her designated representative, or a party properly substituted under § 1201.35 may file an appeal. Appeals may be in any format, including letter form, but they must contain the following:

(1) The name, address, and telephone number of the appellant, and the name and address of the agency that took the action;

(2) A description of the action the agency took and its effective date;

(3) A request for hearing if the appellant wants one;

(4) A statement of the reasons why the appellant believes the agency action is wrong;

(5) A statement of the action the appellant would like the judge to order;

(6) The name, address, and telephone number of the appellant's representative, if the appellant has a representative;

(7) The notice of the decision to take the action being appealed, along with any relevant documents;

(8) A statement telling whether the appellant or anyone acting on his or her behalf has filed a grievance or a formal discrimination complaint with any agency regarding this matter; and

(9) The signature of the appellant or, if the appellant has a representative, of the representative.

(b) An appellant may raise a claim or defense not included in the appeal at any time before the end of the conference(s) held to define the issues in the case. An appellant may not raise a new claim or defense after that time, except for good cause shown. However, a claim or defense not included in the appeal may be excluded if a party shows that including it would result in undue prejudice.

(c) *Use of Board form.* An appellant may comply with paragraph (a) of this section, and with § 1201.31 of this part, by completing the form in Appendix I of this part.

(d) *Right to hearing.* Under 5 U.S.C. 7701, an appellant has a right to a hearing.

(e) *Timely request.* The appellant must submit any request for a hearing with the appeal, or within any other time period the judge sets for that purpose. If the appellant does not make a timely request for a hearing, the right to a hearing is waived.

§ 1201.25 Content of agency response.

The agency response to an appeal must contain the following:

(a) The name of the appellant and of the agency whose action the appellant is appealing;

(b) A statement identifying the agency action taken against the appellant and stating the reasons for taking the action;

(c) All documents contained in the agency record of the action;

(d) Designation of and signature by the authorized agency representative; and

(e) Any other documents or responses requested by the Board.

§ 1201.26 Number of pleadings, service, and response.

(a) *Number.* The appellant must file two copies of both the appeal and all attachments with the appropriate Board office.

(b) *Service.*—(1) *Service by the Board.* The appropriate office of the Board will mail a copy of the appeal to each party to the proceeding other than the appellant. It will attach to each copy a service list, consisting of a list of the names and addresses of the parties to the proceeding or their designated representatives.

(2) *Service by the parties.* The parties must serve on each other one copy of each pleading, as defined by § 1201.4(b), and all documents submitted with it, except for the initial appeal. They may do so by mail, by facsimile, or by personal delivery to each party and to each representative. A certificate of service stating how and when service was made must accompany each pleading. The parties must notify the appropriate Board office and one another, in writing, of any changes in the names or addresses on the service list.

(c) *Paper size.* Pleadings and 8½ attachments must be filed on 8 1/2 by 11-inch paper, except for good cause shown. This requirement enables the Board to comply with standards established for U.S. courts.

§ 1201.27 Class appeals.

(a) *Appeal.* One or more employees may file an appeal as representatives of a class of employees. The judge will hear the case as a class appeal if he or she finds that a class appeal is the fairest and most efficient way to adjudicate the appeal and that the representative of the parties will adequately protect the interests of all parties. When a class appeal is filed, the time from the filing date until the judge issues his or her decision under paragraph (b) of this section is not counted in computing the time limit for individual members of the potential class to file individual appeals.

(b) *Procedure.* The judge will consider the appellant's request and any opposition to that request, and will issue an order within 30 days after the appeal is filed stating whether the appeal is to be heard as a class appeal. If the judge denies the request, the appellants affected by the decision may file individual appeals within 25 days after the denial. Each individual appellant is responsible for either filing an individual appeal within the original time limit, or keeping informed of the status of a class appeal and, if the class appeal is denied, filing an individual appeal within the additional 25-day period.

(c) *Standards.* In determining whether it is appropriate to treat an appeal as a class action, the judge will be guided but not controlled by the applicable provisions of the Federal Rules of Civil Procedure.

Parties, Representatives, and Witnesses

§ 1201.31 Representatives.

(a) A party to an appeal may be represented in any matter related to the appeal. The parties must designate their representatives, if any, in writing. Any change in representation, and any revocation of a designation of representative, also must be in writing. Notice of the change must be filed and served on the other parties in accordance with § 1201.26 of this part.

(b) A party may choose any representative as long as that person is willing and available to serve. The other party or parties may challenge the designation, however, on the ground that it involves a conflict of interest or a conflict of position. Any party who challenges the designation must do so by filing a motion with the judge within 15 days after the date of service of the notice of designation. The judge will rule on the motion before considering the merits of the appeal. These procedures apply equally to each designation of representative, regardless of whether the representative was the first one designated by a party or a subsequently designated representative. If a representative is disqualified, the judge will give the party whose representative was disqualified a reasonable time to obtain another one.

(c) The judge, on his or her own motion, may disqualify a party's representative on the grounds described in paragraph (b) of this section.

§ 1201.32 Witnesses; right to representation.

Witnesses have the right to be represented when testifying. The representative of a nonparty witness has no right to examine the witness at the hearing or otherwise participate in the development of testimony.

§ 1201.33 Federal witnesses.

Every Federal agency or corporation must make its employees or personnel available to furnish sworn statements or to appear as witnesses at the hearing when ordered by the judge to do so. When providing those statements or appearing at the hearing, Federal employee witnesses will be in official duty status (i.e., entitled to pay and benefits including travel and per diem, where appropriate).

§ 1201.34 Intervenors and amicus curiae.

(a) *Explanation of Intervention.* Intervenors are organizations or persons

who want to participate in a proceeding because they believe the proceeding, or its outcome, may affect their rights or duties. Intervenors as a "matter of right" are those parties who have a statutory right to participate. "Permissive" intervenors are those parties who may be permitted to participate if the proceeding will affect them directly and if intervention is otherwise appropriate under law. A request to intervene may be made by motion filed with the judge.

(b) *Intervenors as a matter of right.* (1) The Director of the Office of Personnel Management may intervene as a matter of right under 5 U.S.C. 7701(d)(1). The motion to intervene must be filed at the earliest practicable time.

(2)(i) Except as provided in paragraph (b)(2)(ii) of this section, the Special Counsel may intervene as a matter of right under 5 U.S.C. 1212(c). The motion to intervene must be filed at the earliest practicable time.

(ii) The Special Counsel may not intervene in an action brought by an individual under 5 U.S.C. 1221, or in an appeal brought by an individual under 5 U.S.C. 7701, without the consent of that individual. The Special Counsel must present evidence that the individual has consented to the intervention at the time the motion to intervene is filed.

(c) *Permissive intervenors.* (1) Any person, organization or agency may, by motion, ask the judge for permission to intervene. The motion must explain the reason why the person, organization or agency should be permitted to intervene.

(2) A motion for permission to intervene will be granted where the requester will be affected directly by the outcome of the proceeding. Any person alleged to have committed a prohibited personnel practice under 5 U.S.C. 2302(b) may request permission to intervene. A judge's denial of a motion for permissive intervention may be appealed to the Board under § 1201.91 of this part.

(d) *Role of intervenors.* Intervenors have the same rights and duties as parties, with the following two exceptions:

(1) Intervenors do not have an independent right to a hearing; and

(2) Permissive intervenors may participate only on the issues affecting them. The judge is responsible for determining the issues on which permissive intervenors may participate.

(e) *Amicus curiae.* An amicus curiae is a person or organization that, although not a party to an appeal, gives advice or suggestions by filing a brief with the judge regarding an appeal. Any person or organization, including those who do not qualify as intervenors, may, in the discretion of the judge, be granted permission to file an amicus curiae brief.

§ 1201.35 Substituting parties.

(a) If an appellant dies or is otherwise unable to pursue the appeal, the processing of the appeal will only be completed upon substitution of a proper party. Substitution will not be permitted where the interests of the appellant have terminated because of the appellant's death or other disability.

(b) The representative or proper party must file a motion for substitution within 90 days after the death or other disabling event, except for good cause shown.

(c) In the absence of a timely substitution of a party, the processing of the appeal may continue if the interests of the proper party will not be prejudiced.

§ 1201.36 Consolidating and joining appeals.

(a) *Explanation.* (1) Consolidation occurs when the appeals of two or more parties are united for consideration because they contain identical or similar issues. For example, individual appeals rising from a single reduction in force might be consolidated.

(2) Joinder occurs when one person has filed two or more appeals and they are united for consideration. For example, a judge might join an appeal challenging a 30-day suspension with a pending appeal challenging a subsequent dismissal if the same appellant filed both appeals.

(b) *Action by judge.* A judge may consolidate or join cases on his or her own motion or on the motion of a party if doing so would:

(1) Expedite processing of the cases; and

(2) Not adversely affect the interests of the parties.

(c) Any objection to a motion for consolidation or joinder must be filed within 10 days of the date of service of the motion.

§ 1201.37 Fees.

(a) *Attorney fees.* Except as provided in paragraphs (a)(1) and (a)(2) of this section, the judge may require the agency to pay reasonable attorney fees if the appellant is the prevailing party and payment is warranted in the interest of justice.

(1) If an appellant is the prevailing party and the decision is based on a finding of discrimination prohibited under 5 U.S.C. 2302(b)(1), the motion for an attorney fee award will be considered under the standards of section 706(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5(k)).

(2) If an appellant is the prevailing party in an appeal and the decision is based on the finding of any prohibited personnel practice under 5 U.S.C. 2302(b), as provided by 5 U.S.C. 1221(g) the agency shall be liable to the appellant for payment of reasonable attorney fees and any other reasonable costs incurred.

(3) Any request for payment of attorney fees must be made by motion. The motion must be filed with the judge within 20 days of the date on which an initial decision becomes final under § 1201.113 of this part or within 25 days of the date of issuance of a final decision under § 1201.116. The appellant must serve a copy of the motion on the agency. The agency may file a pleading responding to that motion within the time limit set by the judge. The motion must state why the appellant believes he or she is entitled to an award under the applicable statutory standard, and must be supported by evidence substantiating the amount of the request. That evidence must include, at a minimum:

(i) Accurate and current time records;

(ii) A copy of the terms of the fee agreement (if any); and

(iii) The attorney's customary billing rate for similar work if the attorney has a billing practice or, in the absence of that practice, other evidence of the prevailing community rate that will establish a market value for the attorney's services. A petition for Board review of the judge's decision on the motion must be filed within 35 days of the date of that decision, and must comply with § 1201.114 of this part.

(b) *Witness fees.*— (1) *Federal employees.* Employees of a Federal agency or corporation testifying in any Board proceeding or making a statement for the record will be in official duty status and will not receive witness fees.

(2) *Other witnesses.* Other witnesses (whether appearing voluntarily or under subpoena) shall be paid the same fee and mileage allowances which are paid subpoenaed witnesses in the courts of the United States.

(3) *Payment of witness fees and travel costs.* The party requesting the presence of a witness must pay that witness' fees. Those fees must be paid or offered to the witness at the time the subpoena is served, or, if the witness appears voluntarily, at the time of appearance. A Federal agency or corporation is not required to pay or offer witness fees in advance.

Judges

§ 1201.41 Judges.

(a) *Exercise of authority.* Judges may exercise authority as provided in paragraphs (b) and (c) of this section on their own motion or on the motion of a party, as appropriate.

(b) *Authority.* Judges will conduct fair and impartial hearings and will take all necessary action to avoid delay in all proceedings. They will have all powers necessary to that end unless those powers are otherwise limited by law. Judges' powers include, but are not limited to, the authority to:

(1) Administer oaths and affirmations;

(2) Issue subpoenas under § 1201.81 of this part;

(3) Rule on offers of proof and receive relevant evidence;

(4) Rule on discovery motions under § 1201.73 of this part;

(5) After notice to the parties, order a hearing on his or her own initiative if the judge determines that a hearing is necessary:

(i) To resolve an important issue of credibility;

(ii) To ensure that the record on significant issues is fully developed; or

(iii) To otherwise ensure a fair and just adjudication of the case;

(6) Convene a hearing as appropriate, regulate the course of the hearing, maintain decorum, and exclude any disruptive persons from the hearing;

(7) Exclude any person from the hearing for good reason;

(8) Rule on all motions, witness and exhibit lists, and proposed findings;

(9) Require the parties to file memoranda of law and to present oral argument with respect to any question of law;

(10) Order the production of evidence and the appearance of witnesses whose testimony would be relevant, material, and nonrepetitious;

(11) Impose sanctions as provided under § 1201.43 of this part;

(12) Hold prehearing conferences for the settlement and simplification of issues;

(13) Require that all persons who can be identified from the record as being clearly and directly affected by a pending retirement-related case be notified of the appeal and of their right to request intervention so that their interests can be considered in the adjudication;

(14) Issue any order that may be necessary to protect a witness or other individual from harassment and provide for enforcement of such order in accordance with subpart F;

(15) Issue initial decisions; and

(16) Determine, in decisions in which the appellant is the prevailing party, whether the granting of interim relief is appropriate.

(c) *Settlement.*—(1) *Settlement discussion.* The judge may initiate attempts to settle the appeal informally at any time. The parties may agree to waive the prohibitions against *ex parte* communications during settlement discussions, and they may agree to any limits on the waiver.

(2) *Agreement.* If the parties agree to settle their dispute, the settlement agreement is the final and binding resolution of the appeal, and the judge will dismiss the appeal with prejudice.

(i) If the parties offer the agreement for inclusion in the record, and if the judge approves the agreement, it will be made a part of the record, and the Board will retain jurisdiction to ensure compliance with the agreement.

(ii) If the agreement is not entered into the record, the Board will not retain jurisdiction to ensure compliance.

§ 1201.42 Disqualifying a judge.

(a) If a judge considers himself or herself disqualified, he or she will withdraw from the case, state on the record the reasons for doing so, and immediately notify the Board of the withdrawal.

(b) A party may file a motion asking the judge to withdraw on the basis of personal bias or other disqualification. This motion must be filed as soon as the party has reason to believe there is a basis for disqualification. The reasons for the request must be set out in an affidavit or sworn statement under 28 U.S.C. 1746. (See Appendix IV.)

(c) If the judge denies the motion, the party requesting withdrawal may request certification of the issue to the Board as an interlocutory appeal under § 1201.91 of this part. Failure to request certification is considered a waiver of the request for withdrawal.

§ 1201.43 Sanctions.

The judge may impose sanctions upon the parties as necessary to serve the ends of justice. This authority covers, but is not limited to, the circumstances set forth in paragraphs (a), (b), and (c) of this section.

(a) *Failure to comply with an order.* When a party fails to comply with an order, the judge may:

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) Prohibit the party failing to comply with the order from introducing evidence concerning the information sought, or from otherwise relying upon testimony related to that information;

(3) Permit the requesting party to introduce secondary evidence concerning the information sought; and

(4) Eliminate from consideration any appropriate part of the pleadings or other submissions of the party that fails to comply with the order.

(b) *Failure to prosecute or defend appeal.* If a party fails to prosecute or defend an appeal, the judge may dismiss the appeal with prejudice or rule in favor of the appellant.

(c) *Failure to make timely filing.* The judge may refuse to consider any motion or other pleading that is not filed in a timely fashion in compliance with this subpart.

Hearings

§ 1201.51 Scheduling the hearing.

(a) The hearing will be scheduled not earlier than 15 days after the date of the hearing notice unless the parties agree to an earlier date. The agency, upon request of the judge, must provide appropriate hearing space.

(b) The judge may change the time, date, or place of the hearing, or suspend, adjourn, or continue the hearing. The change will not require the 15-day notice provided in paragraph (a) of this section.

(c) Either party may file a motion for postponement of the hearing. The motion must be made in writing and must either be accompanied by an affidavit or sworn statement under 28 U.S.C. 1746. (See Appendix IV.) The affidavit or sworn statement must describe the reasons for the request. The judge will grant the request for postponement only upon a showing of good cause.

(d) The Board has established certain approved hearing locations, which are published as a Notice in the **Federal Register**. See Appendix III. Parties, for good cause, may file motions requesting a different hearing location. Rulings on those motions will be based on a showing that a different location will be more advantageous to all parties and to the Board.

§ 1201.52 Public hearings.

Hearings are open to the public. The judge may order a hearing or any part of a hearing closed, however, when doing so would be in the best interests of the appellant, a witness, the public, or any other person affected by the proceeding. Any order closing the hearing will set out the reasons for the judge's decision. Any objections to the order will be made a part of the record.

§ 1201.53 Verbatim record.

(a) *Preparation.* A verbatim record of every hearing, made under the

supervision of the judge, will be kept and will be the sole official record of the proceeding.

(b) *Copies.* Upon request, and upon payment of costs, a copy of a tape recording or transcript (if one is prepared) of the hearing will be made available to the parties. Parties must direct requests for copies of tape recordings or transcripts to the official hearing reporter.

(c) *Exceptions to payment of costs.* Exceptions to the payment requirement may be granted under extenuating circumstances for good cause shown. A motion for an exception must be filed with the judge. The reasons for the request must be set out in an affidavit or sworn statement under 28 U.S.C. 1746. (See Appendix IV.)

(d) *Corrections.* Corrections of the official transcript may be permitted on motion by a party or on the judge's own motion. Motions for corrections must be filed within 10 days after the receipt of a transcript. Corrections of the official transcript will be permitted only when errors of substance are involved and only on approval of the judge.

§ 1201.54 Official record.

Exhibits and the verbatim record of testimony, if a hearing is held, together with all pleadings filed during the appellate proceedings, and all orders and decisions of the judge and the Board, constitute the exclusive and official record of the case.

§ 1201.55 Motions.

(a) *Form.* All motions, except those made during a prehearing conference or a hearing, must be in writing. All motions must include a statement of the reasons supporting them. Written motions must be filed with the judge or the Board, as appropriate, and must be served upon all other parties in accordance with § 1201.26(b)(2) of this part. A party filing a motion for extension of time, a motion for postponement of a hearing, or any other procedural motion must first contact the other party to determine whether there is any objection to the motion, and must state in the motion whether the other party has an objection.

(b) *Objection.* Unless the judge provides otherwise, and unless the motion is one for payment of attorney fees under § 1201.37(a) of this part, any objection to a written motion must be filed within 10 days from the date of service of the motion. Judges, in their discretion, may grant or deny motions for extensions of time to file pleadings without providing any opportunity to respond to the motions.

(c) *Motions for extension of time.* Motions for extension of time will be granted only on a showing of good cause.

(d) *Motions for protective orders.* A motion for an order under 5 U.S.C. 1204(e)(1)(B) to protect a witness or other individual from harassment must be filed as early in the proceeding as practicable. The party seeking a protective order must include a concise statement of reasons justifying the motion, together with any relevant documentary evidence. An agency, other than the Office of Special Counsel, may not request such an order with respect to an investigation by the Special Counsel during the Special Counsel's investigation. An order issued under this paragraph may be enforced in the same manner as provided under subpart F for Board final decisions and orders.

§ 1201.56 Burden and degree of proof; affirmative defenses.

(a) *Burden and degree of proof.*—(1) *Agency:* Under 5 U.S.C. 7701(c)(1), and subject to the exceptions stated in paragraph (b) of this section, the agency action must be sustained if:

(i) It is brought under 5 U.S.C. 4303 or 5 U.S.C. 5335 and is supported by substantial evidence; or

(ii) It is brought under any other provision of law or regulation and is supported by a preponderance of the evidence.

(2) *Appellant:* The appellant has the burden of proof, by a preponderance of the evidence, with respect to:

(i) Issues of jurisdiction;

(ii) The timeliness of the appeal; and

(iii) Affirmative defenses.

In appeals from reconsideration decisions of the Office of Personnel Management involving retirement benefits, if the appellant filed the application, the appellant has the burden of proving, by a preponderance of the evidence, entitlement to the benefits. An appellant who has received an overpayment from the Civil Service Retirement and Disability Fund has the burden of proving, by substantial evidence, eligibility for waiver or adjustment.

(b) *Affirmative defenses of the appellant.* Under 5 U.S.C. 7701(c)(2), the Board is required to overturn the action of the agency, even where the agency has met the evidentiary standard stated in paragraph (a) of this section, if the appellant:

(1) Shows harmful error in the application of the agency's procedures in arriving at its decision;

(2) Shows that the decision was based on any prohibited personnel practice described in 5 U.S.C. 2302(b); or

(3) Shows that the decision was not in accordance with law.

(c) *Definitions.* The following definitions apply to this part:

(1) *Substantial evidence.* The degree of relevant evidence that a reasonable person, considering the record as a whole, might accept as adequate to support a conclusion, even though other reasonable persons might disagree. This is a lower standard of proof than preponderance of the evidence.

(2) *Preponderance of the evidence.* The degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue.

(3) *Harmful error.* Error by the agency in the application of its procedures that is likely to have caused the agency to reach a conclusion different from the one it would have reached in the absence or cure of the error. The burden is upon the appellant to show that the error was harmful, i.e., that it caused substantial harm or prejudice to his or her rights.

§ 1201.57 Order of hearing.

(a) In cases in which the agency has taken an action against an employee, the agency will present its case first.

(b) The appellant will proceed first at hearings convened on the issues of:

(1) Jurisdiction;

(2) Timeliness; or

(3) Office of Personnel Management disallowance of retirement benefits, when the appellant applied for those benefits.

(c) The judge may vary the normal order of presenting evidence.

§ 1201.58 Closing the record.

(a) When there is a hearing, the record ordinarily will close at the conclusion of the hearing. When the judge allows the parties to submit argument, briefs, or documents previously identified for introduction into evidence, however, the record will remain open for as much time as the judge grants for that purpose.

(b) If the appellant waives the right to a hearing, the record will close on the date the judge sets as the final date for the receipt or filing of submissions of the parties.

(c) Once the record closes, no additional evidence or argument will be accepted unless the party submitting it shows that the evidence was not readily available before the record closed. The judge will include in the record, however, any supplemental citations received from the parties or approved

corrections of the transcript, if one has been prepared.

Evidence

§ 1201.61 Exclusion of evidence and testimony.

Any evidence and testimony that is offered in the hearing and excluded by the judge will be described, and that description will be made a part of the record.

§ 1201.62 Producing prior statements.

After an individual has given evidence in a proceeding, any party may request a copy of any prior signed statement made by that individual that is relevant to the evidence given. If the party refuses to furnish the statement, the judge may exclude the evidence given.

§ 1201.63 Stipulations.

The parties may stipulate to any matter of fact. The stipulation will satisfy a party's burden of proving the fact alleged.

§ 1201.64 Official notice.

Official notice is the Board's or judge's recognition of certain facts without requiring evidence to be introduced establishing those facts. The judge, on his or her own motion or on the motion of a party, may take official notice of matters of common knowledge or matters that can be verified. The parties may be given an opportunity to object to the taking of official notice. The taking of official notice of any fact satisfies a party's burden of proving that fact.

Discovery

§ 1201.71 Purpose of discovery.

Proceedings before the Board will be conducted as expeditiously as possible with due regard to the rights of the parties. Discovery is designed to enable a party to obtain relevant information needed to prepare the party's case. These regulations are intended to provide a simple method of discovery. They will be interpreted and applied so as to avoid delay and to facilitate adjudication of the case. Parties are expected to start and complete discovery with a minimum of Board intervention.

§ 1201.72 Explanation and scope of discovery.

(a) *Explanation.* Discovery is the process, apart from the hearing, by which a party may obtain relevant information, including the identification of potential witnesses, from another person or a party, that the other person or party has not otherwise provided. Relevant information includes information that appears reasonably calculated to lead to the discovery of admissible evidence. This information is obtained to assist the parties in preparing and presenting their cases. The Federal Rules of Civil Procedure may be used as a general guide for discovery practices in proceedings before the Board. Those rules, however, are instructive rather than controlling.

(b) *Scope.* Discovery covers any nonprivileged matter that is relevant to the issues involved in the appeal, including the existence, description, nature, custody, condition, and location of documents or other tangible things, and the identity and location of persons with knowledge of relevant facts. Discovery requests that are directed to nonparties and nonparty Federal agencies and employees are limited to information that appears directly material to the issues involved in the appeal.

(c) *Methods.* Parties may use one or more of the methods provided under the Federal Rules of Civil Procedure. These methods include written interrogatories, depositions, requests for production of documents or things for inspection or copying, and requests for admission.

§ 1201.73 Discovery procedures.

(a) *Discovery from a party.* A party seeking discovery from another party must start the process by serving a request for discovery on the representative of the other party or the party if there is no representative. The request for discovery must state the time limit for responding, as prescribed in § 1201.73(d), and must specify the time and place of the taking of the deposition, if applicable.

When a party directs a request for discovery to an officer or employee of a Federal agency that is a party, the agency must make the officer or employee available on official time to respond to the request, and must assist the officer or employee as necessary in providing relevant information that is available to the agency.

(b) *Discovery from a nonparty, including a nonparty Federal agency.* Parties should try to obtain voluntary discovery from nonparties whenever possible. A party seeking discovery from a nonparty Federal agency or employee must start the process by serving a request for discovery on the nonparty Federal agency or employee. A party may begin discovery from other nonparties by serving a request for discovery on the nonparty directly. If the party seeking the information does not make that request, or if it does so but fails to obtain voluntary cooperation, it may obtain discovery from a nonparty by filing a written motion with the judge, showing the relevance, scope, and materiality of the particular information sought. If the party seeks to take a deposition, it should state in the motion the date, time, and place of the proposed deposition. An authorized official of the Board will issue a ruling on the motion, and will serve the ruling on the moving party. That official also will provide that party with a subpoena, if approved, that is directed to the individual or entity from which discovery is sought. The subpoena will specify the manner in which the party may seek compliance with it, and it will specify the time limit for seeking compliance. The party seeking the information is responsible for serving any Board-approved discovery request and subpoena on the individual or entity, or for arranging for their service.

(c) *Responses to discovery requests.* (1) A party, or a Federal agency that is not a party, must answer a discovery request within the time provided under paragraph (d)(2) of this section, either by furnishing to the requesting party the information or testimony requested or agreeing to make deponents available to testify within a reasonable time, or by stating an objection to the particular request and the reasons for the objection.

(2) If a party fails or refuses to respond in full to a discovery request, or if a nonparty fails or refuses to respond in full to a Board-approved discovery order, the requesting party may file a motion to compel discovery. The requesting party must file the motion with the judge, and must serve a copy of the motion on the other party and on any nonparty entity or person from whom the discovery was sought. The motion must be accompanied by:

(i) A copy of the original request and a statement showing that the information sought is relevant and material; and

(ii) A copy of the response to the request (including the objections to discovery) or, where appropriate, a statement that no response has been received, along with an affidavit or sworn statement under 28 U.S.C. 1746 supporting the statement. (See Appendix IV.)

(3) The other party and any other entity or person from whom discovery was sought may respond to the motion to compel discovery within the time limits stated in paragraph (d)(4) of this section.

(d) *Time limits.* (1) Parties who wish to make discovery requests or motions must serve their initial requests or motions within 25 days after the date on

which the judge issues an order to the respondent agency to produce the agency file and response.

(2) A party or nonparty must file a response to a discovery request promptly, but not later than 20 days after the date of service of the request or order of the judge. Any discovery requests following the initial request must be served within 10 days of the date of service of the prior response, unless the parties are otherwise directed. Deposition witnesses must give their testimony at the time and place stated in the request for deposition or in the subpoena, unless the parties agree on another time or place.

(3) Any motion to depose a nonparty (along with a request for a subpoena) must be submitted to the judge within the time limits stated in paragraph (d)(1) of this section or as the judge otherwise directs.

(4) Any motion for an order to compel discovery must be filed with the judge within 10 days of the date of service of objections or, if no response is received, within 10 days after the time limit for response has expired. Any pleading in opposition to a motion to compel discovery must be filed with the judge within 10 days of the date of service of the motion.

(5) Discovery must be completed within the time the judge designates.

§ 1201.74 Orders for discovery.

(a) *Motion for an order compelling discovery.* Motions for orders compelling discovery and motions for the appearance of nonparties must be filed with the judge in accordance with § 1201.73(c)(2) and (d)(4).

(b) *Content of order.* Any order issued will include, where appropriate:

(1) A provision that the person to be deposed must be notified of the time and place of the deposition;

(2) Any conditions or limits concerning the conduct or scope of the proceedings or the subject matter that may be necessary to prevent undue delay or to protect a party or other individual or entity from undue expense, embarrassment, or oppression;

(3) Limits on the time for conducting depositions, answering written interrogatories, or producing documentary evidence; and

(4) Other restrictions upon the discovery process that the judge sets.

(c) *Noncompliance.* The judge may impose sanctions under § 1201.43 of this part for failure to comply with an order compelling discovery.

§ 1201.75 Taking depositions.

Depositions may be taken by any method agreed upon by the parties. The person providing information is subject to penalties for intentional false statements.

Subpoenas

§ 1201.81 Requests for subpoenas.

(a) *Request.* Parties who wish to obtain subpoenas that would require the attendance and testimony of witnesses, or subpoenas that would require the production of documents or other evidence under 5 U.S.C. 1204(b)(2)(A), should file their motions for those subpoenas with the judge. Subpoenas are not ordinarily required to obtain the attendance of Federal employees as witnesses.

(b) *Form.* Parties requesting subpoenas must file their requests, in writing, with the judge. Each request must identify specifically the books, papers, or testimony desired.

(c) *Relevance.* The request must be supported by a showing that the evidence sought is relevant and that the scope of the request is reasonable.

(d) *Rulings.* Any judge who does not have the authority to issue subpoenas will refer the request to an official with authority to rule on the request, with a recommendation for decision. The official to whom the request is referred will rule on the request promptly. Judges who have the authority to rule on these requests themselves will do so directly.

§ 1201.82 Motions to quash subpoenas.

Any person to whom a subpoena is directed, or any party, may file a motion to quash or limit the subpoena. The motion must be filed with the judge, and it must include the reasons why compliance with the subpoena should not be required or the reasons why the subpoena's scope should be limited.

§ 1201.83 Serving subpoenas.

(a) Any person who is at least 18 years of age and who is not a party to the appeal may serve a subpoena. The means prescribed by applicable state law are sufficient. The party who requested the subpoena, and to whom the subpoena has been issued, is responsible for serving the subpoena.

(b) A subpoena directed to an individual outside the territorial jurisdiction of any court of the United States may be served in the manner described by the Federal Rules of Civil Procedure for service of a subpoena in a foreign country.

§ 1201.84 Proof of service.

The person who has served the subpoena must certify that he or she did so:

(a) By delivering it to the witness in person,

(b) By registered or certified mail, or

(c) By delivering the subpoena to a responsible person (named in the document certifying the delivery) at the residence or place of business (as appropriate) of the person for whom the subpoena was intended.

The document in which the party makes this certification also must include a statement that the prescribed fees have been paid or offered.

§ 1201.85 Enforcing subpoenas.

(a) If a person who has been served with a Board subpoena fails or refuses to comply with its terms, the party seeking compliance may file a written motion for enforcement with the judge or make an oral motion for enforcement while on the record at a hearing. That party must present the document certifying that the subpoena was served and, except where the witness was required to appear before the judge, must submit an affidavit or sworn statement under 28 U.S.C. 1746 (see Appendix IV) describing the failure or refusal to obey the subpoena. The Board, in accordance with 5 U.S.C. 1204(c), may then ask the appropriate United States district court to enforce the subpoena. If the person who has failed or refused to comply with a Board subpoena is located in a foreign country, the U.S. District Court for the District of Columbia will have jurisdiction to enforce compliance, to the extent that a U.S. court can assert jurisdiction over an individual in the foreign country.

(b) Upon application by the Special Counsel, the Board may seek court enforcement of a subpoena issued by the Special Counsel in the same manner in which it seeks enforcement of Board subpoenas, in accordance with 5 U.S.C. 1212(b)(3).

Interlocutory Appeals

§ 1201.91 Explanation.

An interlocutory appeal is an appeal to the Board of a ruling made by a judge during a proceeding. The judge may permit the appeal if he or she determines that the issue presented in it is of such importance to the proceeding that it requires the Board's immediate attention. Either party may make a motion for certification of an interlocutory appeal. In addition, the judge, on his or her own motion, may certify an interlocutory appeal to the Board. If the appeal is certified, the Board will decide the issue and the judge will act in accordance with the Board's decision.

§ 1201.92 Criteria for certifying interlocutory appeals.

The judge will certify a ruling for review only if the record shows that:

(a) The ruling involves an important question of law or policy about which there is substantial ground for difference of opinion; and

(b) An immediate ruling will materially advance the completion of the proceeding, or the denial of an immediate ruling will cause undue harm to a party or the public.

§ 1201.93 Procedures.

(a) *Motion for certification.* A party seeking the certification of an interlocutory appeal must file a motion for certification within 10 days of the date of the ruling to be appealed. The motion must be filed with the judge, and must state why certification is appropriate and what the Board should do and why. The opposing party may file objections within 10 days of the date of service of the motion, or within any other time period that the judge may designate.

(b) *Certification and review.* The judge will grant or deny a motion for certification within five days after receiving all pleadings or, if no response is filed, within 10 days after receiving the motion. If the judge grants the motion for certification, he or she will refer the record to the Board. If the judge denies the motion, the party that sought certification may raise the matter at issue in a petition for review filed after the initial decision is issued, in accordance with §§ 1201.113 and 1201.114 of this part.

(c) *Stay of hearing.* The judge has the authority to proceed with or to stay the hearing while an interlocutory appeal is pending with the Board. Despite this authority, however, the Board may stay a hearing on its own motion while an interlocutory appeal is pending with it.

Ex Parte Communications

§ 1201.101 Explanation and definitions.

(a) *Explanation.* An ex parte communication is an oral or written communication between a decision-making official of the Board and an interested party to a proceeding, when that communication is made without providing the other parties to the appeal with a chance to participate. Not all ex parte communications are prohibited. Those that involve the merits of the case, or those that violate rules requiring submissions to be in writing, are prohibited. Accordingly, interested parties may ask about such matters as the status of a case, when it will be heard, and methods of submitting evidence to the Board. Parties may not ask about matters such as what defense they should use or whether their evidence is adequate, and they may not make a submission orally if that submission is required to be made in writing.

(b) *Definitions for purposes of this section.*

(1) *Interested party* includes:

(i) Any party or representative of a party involved in a proceeding before the Board; and

(ii) Any other person who might be affected by the outcome of a proceeding before the Board.

(2) *Decision-making official* means any judge, officer or other employee of the Board designated to hear and decide cases.

§ 1201.102 Prohibition on ex parte communications.

Except as otherwise provided in § 1201.41(c)(1) of this part, ex parte communications that concern the merits of any matter before the Board for adjudication, or that otherwise violate rules requiring written submissions, are prohibited from the time the persons involved know that the Board may consider the matter until the time the Board has issued a final decision on the matter.

§ 1201.103 Placing communications in the record; sanctions.

(a) Any communication made in violation of § 1201.102 of this part will be made a part of the record. If the communication was oral, a memorandum stating the substance of the discussion will be placed in the record.

(b) If there has been a violation of § 1201.102 of this part, the judge or the Clerk of the Board, as appropriate, will notify the parties in writing that the regulation has been violated, and will give the parties 10 days to file a response.

(c) The following sanctions are available:

(1) *Parties.* The offending party may be required to show why, in the interest of justice, the claim or motion should not be dismissed, denied, or otherwise adversely affected.

(2) *Board personnel.* Offending Board personnel will be treated in accordance with the Board's standards of conduct.

(3) *Other persons.* The Board may invoke appropriate sanctions against other offending parties.

Final Decisions

§ 1201.111 Initial decision by judge.

(a) The judge will prepare an initial decision after the record closes, and will serve that decision on the Clerk of the Board, on the Director of the Office of Personnel Management, and on all parties to the appeal, including named parties, permissive intervenors, and intervenors of right.

(b) Each initial decision will contain:

(1) Findings of fact and conclusions of law upon all the material issues of fact and law presented on the record;

(2) The reasons or bases for those findings and conclusions;

(3) An order making final disposition of the case, including appropriate relief;

(4) A statement, if the appellant is the prevailing party, as to whether interim relief is provided effective upon the date of the decision, pending the outcome of any petition for review filed by another party under Subpart C of this part;

(5) The date upon which the decision will become final (a date that, for purposes of this section, is 35 days after issuance); and

(6) A statement of any further process available, including, as appropriate, a petition for enforcement under § 1201.182 of this part, a petition for review under § 1201.114, and a petition for judicial review.

(c) *Interim relief.* Under 5 U.S.C. 7701(b)(2), if the appellant is the prevailing party, the initial decision will provide appropriate interim relief to the appellant effective upon the date of the initial decision and remaining in effect until the date of the final order of the Board on any petition for review, unless the judge determines that the granting of interim relief is not appropriate. The agency may decline to return the appellant to his or her place of employment if it determines that the return or presence of the appellant will be unduly disruptive to the work environment. However, pay and benefits must be provided.

§ 1201.112 Jurisdiction of judge.

After issuing the initial decision, the judge will retain jurisdiction over the case only to the extent necessary to correct the transcript, when one is obtained; to rule on motions for exceptions to the requirement that a party seeking a transcript must pay for it; to rule on a request by the appellant for attorney fees; and to process any petition for enforcement filed under subpart F of this part.

§ 1201.113 Finality of decision.

The initial decision of the judge will become final 35 days after issuance. Initial decisions are not precedential.

(a) *Exceptions.* The initial decision will not become final if, within 35 days after issuance of the decision, any party

files a petition for review, or if the Board reopens the case on its own motion.

(b) *Petition for review denied.* If the Board denies all petitions for review, the initial decision will become final when the Board issues its last decision denying a petition for review.

(c) *Petition for review granted or case reopened.* If the Board grants a petition for review or a cross petition for review, or reopens or dismisses a case, the decision of the Board is final if it disposes of the entire action.

(d) *Extensions.* The Board may extend the 35-day time limit for filing a petition for good cause shown as specified in § 1201.114 of this part.

(e) *Exhaustion.* Administrative remedies are exhausted when a decision becomes final in accordance with this section.

Subpart C—Petitions for Review of Initial Decisions

§ 1201.114 Filing petition and cross petition for review.

(a) *Who may file.* Any party to the proceeding, the Director of the Office of Personnel Management (OPM), or the Special Counsel may file a petition for review. The Director of OPM may request review only if he or she believes that the decision is erroneous and will have a substantial impact on any civil service law, rule, or regulation under OPM's jurisdiction. 5 U.S.C. 7701(e)(2). All submissions to the Board must contain the signature of the party or of the party's designated representative.

(b) *Cross petition for review.* If a party, the Director of OPM, or the Special Counsel files a timely petition for review, any other party, the Director of OPM, or the Special Counsel may file a timely cross petition for review. The Board normally will consider only issues raised in a timely filed petition for review or in a timely filed cross petition for review.

(c) *Place for filing.* A petition for review, cross petition for review, responses to those petitions, and all motions and pleadings associated with them must be filed with the Clerk of the Merit Systems Protection Board, Washington, DC 20419, by personal delivery, by facsimile, or by mail.

(d) *Time for filing.* Any petition for review must be filed within 35 days after the initial decision is issued. A cross petition for review must be filed within 25 days of the date of service of the petition for review. Any response to a petition for review or to a cross petition for review must be filed within 25 days after the date of service of the petition or cross petition.

(e) *Extension of time to file.* The Board will grant a motion for extension of time to file a petition for review, a cross petition, or a response only if the party submitting the motion shows good cause. Motions for extensions must be filed with the Clerk of the Board before the date on which the petition or other pleading is due. The Board, in its discretion, may grant or deny those motions without providing the other parties the opportunity to comment on them. A motion for an extension must be accompanied by an affidavit or sworn statement under 28 U.S.C. 1746. (See Appendix IV.) The affidavit or sworn statement must include a specific and detailed description of the circumstances alleged to constitute good cause, and it should be accompanied by any available documentation or other evidence supporting the matters asserted.

(f) *Late filings.* Any petition for review, cross petition for review, or response that is filed late must be accompanied by a motion that shows good cause for the untimely filing, unless the Board has specifically granted an extension of time under paragraph (e) of this section, or unless a motion for extension is pending before the Board. The motion must be accompanied by an affidavit or sworn statement under 28 U.S.C. 1746. (See Appendix IV.) The affidavit or sworn statement must include:

(1) The reasons for failing to request an extension before the deadline for the submission; and

(2) A specific and detailed description of the circumstances causing the late filing, accompanied by supporting documentation or other evidence.

Any response to the motion may be included in the response to the petition for review, the cross petition for review, or the response to the cross petition for review. The response will not extend the time provided by paragraph (d) of this section to file a cross petition for review or to respond to the petition or cross petition. In the absence of a motion, the Board may, in its discretion, determine on the basis of the existing record whether there was good cause for the untimely filing, or it may provide the party that submitted the document with an opportunity to show why it should not be dismissed or excluded as untimely.

(g) *Intervention.*—(1) *By Director of OPM.* The Director of OPM may intervene in a case before the Board under the standards stated in 5 U.S.C. 7701(d). The notice of intervention is timely if it is filed with the Clerk of the Board within 45 days of the date the petition for review was filed. If the Director requests additional time for filing a brief on intervention, the Board may, in its discretion, grant the request. A party may file a response to the Director's brief within 15 days of the date of service of that brief. The Director must serve the notice of intervention and the brief on all parties.

(2) *By Special Counsel.* (i) Under 5 U.S.C. 1212(c), the Special Counsel may intervene as a matter of right, except as provided in paragraph (g)(2)(ii) of this section. The notice of intervention is timely if it is filed with the Clerk of the Board within 45 days of the date the petition for review was filed. If the Special Counsel requests additional time for filing a brief on intervention, the Board may, in its discretion, grant the request. A party may file a response to the Special Counsel's brief within 15 days of the date of service. The Special Counsel must serve the notice of intervention and the brief on all parties.

(ii) The Special Counsel may not intervene in an action brought by an individual under 5 U.S.C. 1221, or in an appeal brought by an individual under 5 U.S.C. 7701, without the consent of that individual. The Special Counsel must present evidence that the individual has consented to the intervention at the time the motion to intervene is filed.

(3) *Permissive intervenors.* Any person, organization or agency, by motion made in a petition for review, may ask for permission to intervene. The motion must state in detail the reasons why the person, organization or agency should be permitted to intervene. A motion for permission to intervene will be granted if the requester shows that he or she will be affected directly by the outcome of the proceeding. Any person alleged to have committed a prohibited personnel practice under 5 U.S.C. 2302(b) may ask for permission to intervene.

(h) *Service.* A party submitting a pleading must serve a copy of it on each party and on each representative as provided in § 1201.26(b)(2).

(i) *Closing the record.* The record closes on expiration of the period for filing the response to the petition for review, or to the cross petition for review, or to the brief on intervention, if any, or on any other date the Board sets for this purpose. Once the record closes, no additional evidence or argument will be accepted unless the party submitting it shows that the evidence was not readily available before the record closed.

§ 1201.115 Contents of petition for review.

(a) The petition for review must state objections to the initial decision that are supported by references to applicable laws or regulations and by specific references to the record.

(b) (1) If the appellant was the prevailing party in the initial decision, and that decision granted the appellant interim relief, any petition for review or cross petition for review filed by the agency must be accompanied by evidence that the agency has provided the interim relief required, except when the agency has made a determination as described in paragraph (b)(2) of this section.

(2) Under 5 U.S.C. 7701(b)(2), if the initial decision provides interim relief which requires that the appellant be returned to his or her place of employment pending the outcome of any petition for review and the agency determines that the return or presence of the appellant will be unduly disruptive to the work environment, the agency must notify both the appellant and the judge in writing. The agency must also provide evidence of such notification to the Board at the time of filing a petition or cross petition for review. The evidence must show that the agency has provided that the appellant will receive pay, compensation, and all other benefits as terms and conditions of employment during the period a petition for review is pending.

(3) Nothing in paragraphs (b)(1) or (b)(2) of this section shall be construed to require any payment of back pay for the period preceding the date of the judge's initial decision or attorney fees before the decision of the Board becomes final.

(4) Failure of the agency to submit evidence that it has complied with the granting of interim relief in accordance with paragraph (b)(1) of this section, or that it has provided notification that interim relief will not be granted fully in accordance with paragraph (b)(2) of this section, will result in the dismissal of the agency's petition or cross petition for review.

(c) The Board, after providing the other parties with an opportunity to respond, may grant a petition for review when it is established that:

(1) New and material evidence is available that, despite due diligence, was not available when the record closed; or

(2) The decision of the judge is based on an erroneous interpretation of statute or regulation.

§ 1201.116 Procedures for review or reopening.

(a) In any case that is reopened or reviewed, the Board may:

(1) Issue a single decision that denies or grants a petition for review, reopens the appeal, and decides the case;

(2) Hear oral arguments;

(3) Require that briefs be filed;

(4) Remand the appeal so that the judge may take further testimony or evidence or make further findings or conclusions; or

(5) Take any other action necessary for final disposition of the case.

(b) The Board may affirm, reverse, modify, or vacate the decision of the judge, in whole or in part. Where appropriate, the Board will issue a final decision and order a date for compliance with that decision.

§ 1201.117 Board reopening of case and reconsideration of initial decision.

The Board may reopen an appeal and reconsider a decision of a judge on its own motion at any time, regardless of any other provisions of this part.

§ 1201.118 OPM petition for reconsideration.

(a) *Criteria.* Under 5 U.S.C. 7703(d), the Director of the Office of Personnel Management may file a petition for reconsideration of a Board final order if he or she determines:

(1) That the Board erred in interpreting a civil service law, rule, or regulation affecting personnel management, and

(2) That the Board's decision will have a substantial impact on a civil service law, rule, regulation, or policy directive.

(b) *Time limit.* The Director must file the petition for reconsideration within 35 days after the date of service of the Board's final order.

(c) *Briefs.* After the petition is filed, the Board will make the official record relating to the petition for reconsideration available to the Director for review. The Director's brief in support of the petition for reconsideration must be filed within 20 days after the Board makes the record available for review. Any party's opposition to the petition for reconsideration must be filed within 25 days from the date of service of the Director's brief.

(d) *Stays.* If the Director of OPM files a petition for reconsideration, he or she also may ask the Board to stay its final order. An application for a stay, with a supporting memorandum, must be filed at the same time as the petition for reconsideration.

§ 1201.119 Judicial review.

Any employee or applicant for employment who is adversely affected by a final order or decision of the Board under the provisions of 5 U.S.C. 7703 may obtain judicial review in the United States Court of Appeals for the Federal Circuit. As § 1201.175 of this part provides, an appropriate United States district court has jurisdiction over a request for judicial review of cases involving the kinds of discrimination issues described in 5 U.S.C. 7702.

Subpart D—Procedures for Original Jurisdiction Cases

Actions Brought by the Special Counsel

§ 1201.121 Scope of jurisdiction; compliance with subpart B.

(a) *Scope.* The Board has original jurisdiction over actions brought by the Special Counsel and over the Special Counsel's requests for stays of certain personnel actions.

(b) *Compliance with Subpart B.* Except as otherwise expressly provided by this subpart, the Special Counsel will comply with the regulations regarding hearing procedures that are set out in subpart B of this part in connection with all complaints or requests he or she files with the Board.

§ 1201.122 Filing complaints and requests; serving documents on parties.

(a) *Initial filing.* The Special Counsel must file two copies of each complaint or request, together with numbered and tabbed exhibits or attachments, if any, with the Clerk of the Board. In addition, he or she must file with that office, for service by the Board in accordance with paragraph (b) of this section, a sufficient number of copies of complaints or requests, together with numbered and tabbed exhibits and a certified list of parties or their representatives. The list must show the last known address of each party or representative.

(b) *Service by the Board.* The Board will mail copies of complaints and requests to the parties to the proceeding, or their representatives, at their last known addresses. It also will mail them any exhibits or attachments to the complaints and requests, along with copies of the pertinent regulations of the Board.

(c) *Subsequent filings and service.* Each party must serve on every other party one copy of each of its pleadings, as defined by § 1201.4(b). Service may be by mail, by facsimile, or by personal delivery to each party on the service list previously provided by the Board. A certificate of service describing how and when service was made must

accompany each pleading. All parties are responsible for notifying the Board and one another in writing of any changes in the names or addresses on the service list.

§ 1201.123 Contents of complaint.

(a) If the Special Counsel determines that the Board should take any of the actions listed below, he or she must file a written complaint stating with particularity any alleged violations of law or regulation, along with the supporting facts.

(1) Action to require an agency to correct a prohibited personnel practice (or a pattern of prohibited personnel practices) under 5 U.S.C. 1214(b)(4);

(2) Action to discipline an employee under 5 U.S.C. 1215(a);

(3) Action with respect to other matters within the jurisdiction of the Special Counsel under 5 U.S.C. 1216; and

(4) Action to discipline an employee under the Federal Employees Flexible and Compressed Work Schedule Act, 5 U.S.C. 6101.

(b) The Board may order the Special Counsel and the responding party to file briefs, memoranda, or both in any action the Special Counsel brings before the Board.

(c) If the Special Counsel files a corrective action with the Board on behalf of an employee, former employee, or applicant for employment who has sought corrective action from the Board directly under 5 U.S.C. 1214(a)(3), the Special Counsel must provide evidence that the employee, former employee, or applicant has consented to the Special Counsel's seeking corrective action. 5 U.S.C. 1214(a)(4).

§ 1201.124 Rights of employees.

(a) When the Special Counsel files a complaint seeking corrective action under 5 U.S.C. 1214(b)(2)(B), the Board shall provide the individual alleged to have been the subject of the prohibited personnel practice the opportunity to make written comments.

(b) When the Special Counsel files a complaint proposing a disciplinary action against an employee under 5 U.S.C. 1215(a)(1), the employee has the right:

(1) To file an answer, supported by affidavits and documentary evidence;

(2) To be represented;

(3) To a hearing on the record before the Board or an administrative law judge;

(4) To a written Board decision, issued at the earliest practicable date, in which the Board states the reasons for its conclusion; and

(5) To a copy of any final order imposing disciplinary action.

§ 1201.125 Answer to complaint.

(a) *Filing and default.* A party named in a Special Counsel complaint may file an answer with the Clerk of the Board within 35 days of the date of service of the complaint. If a party fails to answer, and does not show good cause for that failure, the failure will constitute waiver of the right to contest the allegations in the complaint. Unanswered allegations are considered admitted and will form the basis of a recommended or final decision as appropriate.

(b) *Content.* An answer must contain a specific denial, admission, or explanation of each fact alleged in the complaint. If the respondent has no knowledge of a fact, he or she must say so. The respondent may include statements of fact and appropriate documentation to support each denial or defense. Allegations that are unanswered or admitted in the answer are considered true and may not be denied later.

§ 1201.126 Final orders of the Board.

(a) In any action seeking correction of a prohibited personnel practice, the Board may order the corrective actions it considers appropriate after providing an opportunity for the Special Counsel, the agency, and the Office of Personnel Management to comment. 5 U.S.C. 1214(b)(4)(A).

(b)(1) Subject to the provisions of paragraph (b)(2) of this section, in any case involving an alleged prohibited personnel practice described in 5 U.S.C. 2302(b)(8), the Board will order such corrective action as the Board considers appropriate if the Special Counsel demonstrates that a disclosure described under 5 U.S.C. 2302(b)(8) was a contributing factor in the personnel action that was taken or will be taken against the individual.

(2) Corrective action under paragraph (b)(1) of this section may not be ordered if the agency demonstrates by clear and convincing evidence that it would have taken the same personnel action in the absence of such disclosure. 5 U.S.C. 1214(b)(4)(B).

(c) In any action to discipline an employee, except as provided in paragraphs (e) and (f) of this section, the Board may order a removal, a reduction in grade, a debarment (not to exceed five years), a suspension, a reprimand, or an assessment of civil penalty not to exceed $1,000. 5 U.S.C. 1215(a)(3).

(d) If a State or local agency fails to remove an employee whose removal is found to be warranted by the Board under 5 U.S.C. 1505, or if it reappoints such an employee within 18 months of a Board's final order finding that removal was warranted, the Board may order the Federal agency administering loans or grants to the State or local agency, to withhold money from the agency. The amount to be withheld will not exceed two years of the offending employee's pay at the rate he or she was being paid at the time of the violation. 5 U.S.C. 1506.

(e) In any action to discipline an employee under the Federal Employees Flexible and Compressed Work Schedule Act, 5 U.S.C. 6101, a final order of the Board may impose disciplinary action consisting of:

(1) Removal from Federal employment for any period of time the Board may prescribe;

(2) Suspension; or

(3) Other discipline that the Board considers appropriate.

(f) In any action in which the Board finds that an employee has violated 5 U.S.C. 7324, the Board will order the employee's removal, unless it finds by unanimous vote that the violation does not warrant removal and imposes instead a penalty of not less than 30 days suspension without pay.

§ 1201.127 Requesting stay of personnel action; protective orders.

Under 5 U.S.C. 1214(b)(1), the Special Counsel may ask a member of the Board to stay any personnel action if he or she determines that there are reasonable grounds to believe that the action was taken or will be taken as a result of a prohibited personnel practice.

(a) *Content of request.* The Special Counsel, or that official's representative, must sign each request, and must include the following information in the request:

(1) The names of the parties;

(2) The agency and officials involved;

(3) The nature of the action to be stayed;

(4) A concise statement of facts justifying the charge that the personnel action was or will be the result of a prohibited personnel practice; and

(5) The laws or regulations that were violated, or that will be violated if the stay is not issued.

(b) *Filing and serving of request.* The request for a stay must be filed and served on all parties in accordance with § 1201.122 of this part.

(c) *Action on the request for stay*—(1) *Initial stay.* Within three days after the filing of a request, excluding Saturdays, Sundays, and Federal holidays, any member of the Board will grant a request for a stay of 45 days under 5 U.S.C. 1214(b)(1)(A) unless the Member determines that, under the facts and circumstances, the requested stay would not be appropriate. Unless the stay is

denied within the 3-day period, it is considered granted by operation of law.

(2) *Extension of stay.* Upon the Special Counsel's request, the Board may extend any stay granted under 5 U.S.C. 1214(b)(1)(A) for whatever time it considers appropriate, but only after providing the Special Counsel and the agency with an opportunity to comment on the request, and only after the Board has concurred in the request of the Special Counsel. At the time he or she files a request for an extension of a stay under 5 U.S.C. 1214(b)(1)(B), the Special Counsel must also file a brief describing the facts and any relevant legal authority that the Board should consider. The agency must respond in accordance with any order of the Board.

(3) *Reports during pendency of a stay.* If the Board grants an extension of the initial stay, the Special Counsel must report to the Board, at intervals specified in the order granting extension of the stay, regarding the status of the case. Such reports will continue to be required until the Special Counsel files a corrective action with the Board or requests termination of the stay, or until the stay expires according to its terms.

(4) *Termination of stay.* The Board may terminate a stay at any time, except it may not terminate a stay:

(i) On its own motion or on the motion of an agency without first providing notice and opportunity for oral or written comments to the Special Counsel and the individual on whose behalf the stay was ordered; or

(ii) On the motion of the Special Counsel without first providing notice and opportunity for oral or written comments to the individual on whose behalf the stay was ordered.

(d) *Additional information.* At any time, the Board or, where appropriate, a member of the Board may require the Special Counsel, the agency, or both to appear and present further information or explanation regarding a request for a stay, to file supplemental briefs or memoranda, or to supply factual information that the Board needs in order to make a decision regarding a stay.

(e) *Protective orders.* The Board, during an investigation by the Special Counsel or during the pendency of any Special Counsel proceeding before the Board, may issue any order that may be necessary to protect a witness or other individual from harassment. The Special Counsel must submit any motion for a protective order to the Clerk of the Board. The motion must include a concise statement of the reasons justifying the request, together with any relevant documentary evidence. An agency, other than the Office of the Special Counsel, may not request a protective order with respect to an investigation by the Special Counsel during such investigation. An order issued under this paragraph may be enforced in the same manner as provided under subpart F for Board final decisions and orders.

§ 1201.128 Administrative appeal; judicial review.

(a) A party in a Special Counsel complaint does not have the right to file an administrative appeal from an order of the Board.

(b) An employee, former employee, or applicant for employment who is adversely affected by an order of the Board resulting from a corrective action brought by the Special Counsel may obtain judicial review of the order of the Board in the United States Court of Appeals for the Federal Circuit. 5 U.S.C. 1214(c).

(c) An employee subject to a final order imposing disciplinary action under 5 U.S.C. 1215 may obtain judicial review of the order of the Board in the United States Court of Appeals for the Federal Circuit. 5 U.S.C. 1215(a)(4).

§ 1201.129 Judge; exceptions and replies to exceptions.

(a) Except for requests for stays under 5 U.S.C. 1214(b)(1), and other matters specifically reserved for hearing by the Board, an action brought by the Special Counsel is heard by an administrative law judge, who will issue a recommended decision to the Board in accordance with 5 U.S.C. 557. Unless directed otherwise, the parties must file all pleadings with the Clerk of the Board.

(b) The parties may file with the Clerk of the Board any exceptions they may have to the recommended decision of the administrative law judge. Those exceptions must be filed within 35 days after the date of service of the recommended decision.

(c) The parties may file replies to exceptions within 25 days after the date of service of the exceptions, as that date is determined by the certificate of service.

(d) No additional evidence will be accepted with a party's exceptions or with a reply to exceptions unless the party submitting it shows that the evidence was not readily available before the administrative law judge closed the record.

Actions Against Administrative Law Judges

§ 1201.131 Procedures.

When an agency proposes an action against an administrative law judge, the procedures established under subpart B will apply to the hearing, unless these regulations expressly provide otherwise. Initial and subsequent pleadings, however, must be filed and served in accordance with § 1201.122 of this subpart.

§ 1201.132 Board jurisdiction.

The jurisdiction of the Board under this section is limited to proposals to take the following actions:

(a) Removal;

(b) Suspension;

(c) Reduction in grade;

(d) Reduction in pay; and

(e) Furlough of 30 days or less.

§ 1201.133 Filing a complaint.

To initiate an action against an administrative law judge, an agency must file a complaint with the Board describing with particularity the facts that support the proposed action.

§ 1201.134 Answer to complaint.

The administrative law judge against whom the complaint is filed may file an answer to the complaint. The answer must comply with the timeliness and other requirements of § 1201.125 of this subpart.

§ 1201.135 Judge; exceptions and replies to exceptions.

(a) Unless it is specifically reserved for hearing by the Board, an action by an employing agency against an administrative law judge will be heard by an administrative law judge, who will issue a recommended decision in accordance with 5 U.S.C. 557. All pleadings in those actions must be filed with the Clerk of the Board.

(b) The parties may file with the Clerk of the Board any exceptions they have to the recommended decision of the administrative law judge. Those exceptions must be filed within 35 days after the date on which the administrative law judge issues the recommended decision.

(c) The parties may file replies to exceptions within 25 days from the date of service of the exceptions.

§ 1201.136 Requirement for finding of good cause.

The Board will authorize the agency to take a disciplinary action, and will specify the penalty to be imposed, only after the Board has made a finding of good cause as required by 5 U.S.C. 7521.

Removal From the Senior Executive Service

§ 1201.141 Right to hearing.

If an agency proposes to remove a career appointee from the Senior

Executive Service under 5 CFR 359.502, and to place that employee in another civil service position, the appointee may request an informal hearing before an official appointed by the Board. If the appointee files the request with the Office of the Clerk at least 15 days before the effective date of the proposed removal, the request will be granted.

§ 1201.142 Hearing procedures; referring the record.

The appointee, the appointee's representative, or both may appear and present arguments in an informal hearing before the Board or its designee. A verbatim record of the proceeding will be made. The appointee has no other procedural rights before the Board. The Board will refer a copy of the record to the Special Counsel, the Office of Personnel Management, and the employing agency for whatever action may be appropriate.

§ 1201.143 Appeal.

There is no right under 5 U.S.C. 7703 to appeal the agency's or Board's actions in cases arising under § 1201.141 of this part. The removal action will not be delayed as a result of the hearing.

Subpart E—Procedures for Cases Involving Allegations of Discrimination

§ 1201.151 Scope and policy.

(a) *Scope.* (1) The rules in this subpart implement 5 U.S.C. 7702. They apply to any case in which an employee or applicant for employment alleges that a personnel action appealable to the Board was based, in whole or in part, on prohibited discrimination.

(2) "Prohibited discrimination," as that term is used in this subpart, means discrimination prohibited by:

(i) Section 717 of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e–16(a));

(ii) Section 6(d) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 206(d));

(iii) Section 501 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 791);

(iv) Sections 12 and 15 of the Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. 631, 633a); or

(v) Any rule, regulation, or policy directive prescribed under any provision of law described in paragraphs (a)(2) (i) through (iv) of this section.

(b) *Policy.* The Board's policy is to adjudicate impartially, thoroughly, and fairly all issues raised under this subpart.

§ 1201.152 Compliance with subpart B procedures.

Unless this subpart expressly provides otherwise, all actions involving allegations of prohibited discrimination must comply with the regulations that are included in subpart B of this part.

§ 1201.153 Contents of appeal.

(a) *Contents.* An appeal raising issues of prohibited discrimination must comply with § 1201.24 of this part, with the following exceptions:

(1) The appeal must state that there was discrimination in connection with the matter appealed, and it must state specifically how the agency discriminated against the appellant; and

(2) The appeal must state whether the appellant has filed a formal discrimination complaint or a grievance with any agency. If he or she has done so, the appeal must state the date on which the appellant filed the complaint or grievance, and it must describe any action that the agency took in response to the complaint or grievance.

(b) *Use of form.* Completing the form in Appendix I of these regulations constitutes compliance with paragraph (a) of this section.

§ 1201.154 Time for filing appeal; closing record in cases involving grievance decisions.

Appellants who file appeals raising issues of prohibited discrimination in connection with a matter otherwise appealable to the Board must comply with the following time limits:

(a) Where the appellant has been subject to an action appealable to the Board, he or she may either file a timely complaint of discrimination with the agency or file an appeal with the Board within 20 days after the effective date of the agency action being appealed.

(b) If the appellant has filed a timely formal complaint of discrimination with the agency:

(1) An appeal must be filed within 20 days after the appellant receives the agency resolution or final decision on the discrimination issue; or

(2) If the agency has not resolved the matter or issued a final decision on the formal complaint within 120 days, the appellant may appeal the matter directly to the Board at any time after the expiration of 120 calendar days.

(c) If the appellant files an appeal prematurely under this subpart, the judge will dismiss the appeal without prejudice to its later refiling under § 1201.22 of this part. If holding the appeal for a short time would allow it to become timely, the judge may hold the appeal rather than dismiss it.

(d) If the appellant has filed a grievance with the agency under its negotiated grievance procedure in accordance with 5 U.S.C. 7121, he or she may ask the Board to review the final decision under 5 U.S.C. 7702 within 25 days of the date of issuance of that decision. The appellant must file the request with the Clerk of the Board, Merit Systems Protection Board, Washington, DC 20419. The request for review must contain:

(1) A statement of the grounds on which review is requested;

(2) References to evidence of record or rulings related to the issues before the Board;

(3) Arguments in support of the stated grounds that refer specifically to relevant documents, and that include relevant citations of authority; and

(4) Legible copies of the final grievance or arbitration decision, the agency decision to take the action, and other relevant documents. Those documents may include a transcript or tape recording of the hearing.

(e) The record will close upon expiration of the period for filing the response to the petition for review, or to the brief on intervention, if any, or on any other date the Board sets for this purpose. Once the record closes, no additional evidence or argument will be accepted unless the party submitting it shows that the evidence was not readily available before the record closed.

§ 1201.155 Remand of allegations of discrimination.

If the parties file a written agreement that the discrimination issue should be remanded to the agency for consideration, and if the judge determines that action would be in the interest of justice, the judge may take that action. The remand order will specify a time period within which the agency action must be completed. In no instance will that time period exceed 120 days. While the issue is pending with the agency, the judge will retain jurisdiction over the appeal.

§ 1201.156 Time for processing appeals involving allegations of discrimination.

(a) *Issue raised in appeal.* When an appellant alleges prohibited discrimination in the appeal, the judge will decide both the issue of discrimination and the appealable action within 120 days after the appeal is filed.

(b) *Issue not raised in appeal.* When an appellant has not alleged prohibited discrimination in the appeal, but has raised the issue later in the proceeding, the judge will decide both the issue of

discrimination and the appealable action within 120 days after the issue is raised.

(c) *Discrimination issue remanded to agency.* When the judge remands an issue of discrimination to the agency, adjudication will be completed within 120 days after the agency completes its action and returns the case to the Board.

§ 1201.157 Notice of right to judicial review.

Any final decision of the Board under 5 U.S.C. 7702 will notify the appellant of his or her right, within 30 days after receiving the Board's final decision, to petition the Equal Employment Opportunity Commission to consider the Board's decision, or to file a civil action in an appropriate United States district court. If an appellant elects to waive the discrimination issue, an appeal may be filed with the United States Court of Appeals for the Federal Circuit as stated in § 1201.119 of this part.

Review of Board Decision

§ 1201.161 Action by the Equal Employment Opportunity Commission; judicial review.

(a) *Time limit for determination.* In cases in which an appellant petitions the Equal Employment Opportunity Commission (Commission) for consideration of the Board's decision under 5 U.S.C. 7702(b)(2), the Commission will determine, within 30 days after the date of the petition, whether it will consider the decision.

(b) *Judicial review.* The Board's decision will become judicially reviewable on:

(1) The date on which the decision is issued, if the appellant does not file a petition with the Commission under 5 U.S.C. 7702(b)(1); or

(2) The date of the Commission's decision that it will not consider the petition filed under 5 U.S.C. 7702(b)(2).

(c) *Commission processing and time limits.* If the Commission decides to consider the decision of the Board, within 60 days after making its decision it will complete its consideration and either:

(1) Concur in the decision of the Board; or

(2) Issue in writing and forward to the Board for its action under § 1201.162 of this subpart another decision, which differs from the decision of the Board to the extent that the Commission finds that, as a matter of law:

(i) The decision of the Board constitutes an incorrect interpretation of any provision of any law, rule, regulation, or policy directive related to prohibited discrimination; or

(ii) The evidence in the record as a whole does not support the decision involving that provision.

(d) *Transmittal of record.* The Board will transmit a copy of its record to the Commission upon request.

(e) *Development of additional evidence.* When asked by the Commission to do so, the Board or a judge will develop additional evidence necessary to supplement the record. This action will be completed within a period that will permit the Commission to make its decision within the statutory 60-day time limit referred to in paragraph (c) of this section. The Board or the judge may schedule additional proceedings if necessary in order to comply with the Commission's request.

(f) *Commission concurrence in Board decision.* If the Commission concurs in the decision of the Board under 5 U.S.C. 7702(b)(3)(A), the appellant may file suit in an appropriate United States district court.

§ 1201.162 Board action on the Commission decision; judicial review.

(a) *Board decision.* Within 30 days after receipt of a decision of the Commission issued under 1201.161(c)(2), the Board shall consider the decision and:

(1) Concur and adopt in whole the decision of the Commission; or

(2) To the extent that the Board finds that, as a matter of law:

(i) The Commission decision is based on an incorrect interpretation of any provision of any civil service law, rule, regulation, or policy directive, or

(ii) The evidence in the record as a whole does not support the Commission decision involving that provision, it may reaffirm the decision of the Board. In doing so, it may make revisions in the decision that it determines are appropriate.

(b) *Judicial review.* If the Board concurs in or adopts the decision of the Commission under paragraph (a)(1) of this section, the decision of the Board is a judicially reviewable action.

§ 1201.163 Mixed cases governed by Reorganization Plan No. 1 of 1978.

(a) *Definitions.*—(1) *Prohibited discrimination* as used in this section means discrimination prohibited by section 717 of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e–16(c)); section 501 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 791); and sections 12 and 15 of the Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. 631, 633a).

(2) *Initial decision* as used in this section means a decision rendered by a judge of the MSPB pursuant to 29 CFR part 1613 or 5 CFR part 772 (as in effect prior to January 11, 1979) on an appeal in which issues of prohibited discrimination have been raised.

(3) *Preliminary decision as used in this section means:* (i) An initial decision within the meaning of § 1201.163(a)(2) which has not been reopened by a Board member or as to which no petition to reopen was filed by a party within 35 days after issuance of the decision;

(ii) A decision by the Board itself pursuant to 29 CFR part 1613 or 5 CFR part 772, in which issues of prohibited discrimination are addressed, or a decision by the Board denying all petitions to reopen.

(b) *Contents of appeal.* An appeal raising issues of prohibited discrimination shall state there was discrimination in conjunction with the matter appealed and provide specific examples of how the appellant was discriminated against.

(c) *Procedures.* (1) Appeals under 29 CFR part 1613 shall be processed by the Board consistent with the provisions set forth in that part. Such appeals shall be filed in writing with the appropriate Board Regional Office.

(2) Appeals under the provisions of 5 CFR part 772 shall be processed as provided therein, except that under 5 CFR 772.306(b) the discrimination investigation shall be completed and the investigative file and report sent to the Board within 120 days. Except when this time has been extended upon a verified showing of good cause, the Board may impose the sanctions provided in 5 CFR 1201.43 if an agency fails to timely complete and file the result of such an investigation.

(3) An initial decision on an appeal which includes issues of prohibited personnel discrimination shall be rendered by an employee of the Board, pursuant to 29 CFR part 1613 or 5 CFR part 772, on all issues raised in the appeal.

(4) Unless a petition to reopen is filed with the Board or unless a Board member reopens on his/her own motion, within 35 days from issuance of an initial decision, the initial decision shall become the preliminary decision of the Board.

(d) *Review by Commission.*—(1) *Time for filing.* A petition to review the preliminary decision of the Board on issues of prohibited discrimination shall be filed with the Commission within 35 days after the initial decision of the Board becomes the preliminary decision.

(2) *Petition filed.* In the event a petition for review is filed with the Commission, the Board decision shall

become final on all issues, other than issues of prohibited discrimination, on the date the Commission's decision on these issues becomes final.

(3) *Petition not filed.* If a petition for review is not filed with the Commission, the decision of the Board shall become final on all issues. (5 U.S.C. 1204(g)).

Special Panel

§ 1201.171 Referral of case to Special Panel.

If the Board reaffirms its decision under § 1201.162(a)(2) of this part with or without modification, it will certify the matter immediately to a Special Panel established under 5 U.S.C. 7702(d). Upon certification, the Board, within 5 days (excluding Saturdays, Sundays, and Federal holidays), will transmit the administrative record in the proceeding to the Chairman of the Special Panel and to the Commission. That record will include the following:

(a) The factual record compiled under this section, which will include a transcript of any hearing;

(b) The decisions issued by the Board and the Commission under 5 U.S.C. 7702; and

(c) A transcript of oral arguments made, or legal briefs filed, before the Board or the Commission.

§ 1201.172 Organization of Special Panel; designation ofmembers.

(a) A Special Panel is composed of:

(1) A Chairman, appointed by the President with the advice and consent of the Senate, whose term is six (6) years;

(2) One member of the Board, designated by the Chairman of the Board each time a Panel is convened;

(3) One member of the Commission, designated by the Chairman of the Commission each time a Panel is convened.

(b) *Designation of Special Panel members.*—(1) *Time of designation.* Within 5 days of certification of a case to a Special Panel, the Chairman of Board and the Chairman of the Commission each will designate one member from his or her agency to serve on the Special Panel.

(2) *Manner of designation.* Letters designating the Panel members will be served on the Chairman of the Panel and on the parties to the appeal.

§ 1201.173 Practices and procedures of Special Panel.

(a) *Scope.* The rules in this subpart apply to proceedings before a Special Panel.

(b) *Suspension of rules.* Unless a rule is required by statute, the Chairman of a Special Panel may suspend the rule, in the interest of expediting a decision or for other good cause shown, and may conduct the proceedings in a manner he or she directs. The Chairman may take this action at the request of a party, or on his or her own motion.

(c) *Time limit for proceedings.* In accordance with 5 U.S.C. 7702(d)(2)(A), the Special Panel will issue a decision within 45 days after a matter has been certified to it.

(d) *Administrative assistance to the Special Panel.* (1) The Board and the Commission will provide the Panel with the administrative resources that the Chairman of the Special Panel determines are reasonable and necessary.

(2) Assistance will include, but is not limited to, processing vouchers for pay and travel expenses.

(3) The Board and the Commission are responsible for all administrative costs the Special Panel incurs, and, to the extent practicable, they will divide equally the costs of providing administrative assistance. If the Board and the Commission disagree on the manner in which costs are to be divided, the Chairman of the Special Panel will resolve the disagreement.

(e) *Maintaining the official record.* The Board will maintain the official record of the appeal. It will transmit two copies of each submission that is filed to each member of the Special Panel in an expeditious manner.

(f) *Filing and service of pleadings.* (1) The parties must file the original and six copies of each submission with the Clerk, Merit Systems Protection Board, 1120 Vermont Avenue, NW., Washington, DC 20419. The Office of the Clerk will serve one copy of each submission on the other parties.

(2) A certificate of service specifying how and when service was made must accompany all submissions of the parties.

(3) Service may be made by mail or by personal delivery during the Board's normal business hours (8:30 a.m. to 5:00 p.m.). Because of the short statutory time limit for processing these cases, parties must file their submissions by overnight Express Mail, provided by the U.S. Postal Service, if they file their submissions by mail.

(4) A submission filed by Express Mail is considered to have been filed on the date of the Express Mail Order. A submission that is delivered personally is considered to have been filed on the date the Office of the Clerk of the Board receives it.

(g) *Briefs and responsive pleadings.* If the parties wish to submit written argument, they may file briefs with the Special Panel within 15 days after the date of the Board's certification order. Because of the short statutory time limit for processing these cases, the Special Panel ordinarily will not permit responsive pleadings.

(h) *Oral argument.* The parties have the right to present oral argument. Parties wishing to exercise this right must indicate this desire when they file their briefs or, if no briefs are filed, within 15 days after the date of the Board's certification order. Upon receiving a request for argument, the Chairman of the Special Panel will determine the time and place for argument and the amount of time to be allowed each side, and he or she will provide this information to the parties.

(i) *Postargument submission.* Because of the short statutory time limit for processing these cases, the parties may not file postargument submissions unless the Chairman of the Special Panel permits those submissions.

(j) *Procedural matters.* Any procedural matters not addressed in these regulations will be resolved by written order of the Chairman of the Special Panel.

§ 1201.174 Enforcing the Special Panel decision.

The Board, upon receipt of the decision of the Special Panel, will order the agency concerned to take any action appropriate to carry out the decision of the Panel. The Board's regulations regarding enforcement of a final order of the Board apply to this matter. These regulations are set out in subpart F of this part.

§ 1201.175 Judicial review of cases decided under 5 U.S.C. 7702.

(a) *Place and type of review.* The appropriate United States district court is authorized to conduct all judicial review of cases decided under 5 U.S.C. 7702. Those cases include appeals from actions taken under the following provisions: Section 717(c) of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e–16(c)); section 15(c) of the Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. 633a(c)); and section 15(b) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 216(b)).

(b) *Time for filing request.* Regardless of any other provision of law, requests for judicial review of all cases decided under 5 U.S.C. 7702 must be filed within 30 days after the appellant received notice of the judicially reviewable action.

Subpart F—Enforcement of Final Decisions and Orders

§ 1201.181 Authority and explanation.

(a) Under 5 U.S.C. 1204(a)(2), the Board has the authority to order any Federal agency or employee to comply with decisions and orders issued under its jurisdiction, and the authority to enforce compliance with its orders and decisions. The parties are expected to cooperate fully with each other so that compliance with the Board's orders and decisions can be accomplished promptly and in accordance with the laws, rules, and regulations that apply to individual cases. The Board's decisions and orders will contain a notice of the Board's enforcement authority.

(b) In order to avoid unnecessary petitions under this subpart, the agency must inform the appellant promptly of the actions it takes to comply, and it must tell the appellant when it believes it has completed its compliance. The appellant must provide all necessary information that the agency requests in order to comply, and, if not otherwise notified, he or she should, from time to time, ask the agency about its progress.

§ 1201.182 Petition for enforcement.

(a) *Appellate jurisdiction.* Any party may petition the Board for enforcement of a final decision issued under the Board's appellate jurisdiction. The petition must be filed promptly with the regional office that issued the initial decision; a copy of it must be served on the other party or that party's representative; and it must describe specifically the reasons the petitioning party believes there is noncompliance. The petition also must include the date and results of any communications regarding compliance. Any petition for enforcement that is filed more than 30 days after the date of service of the agency's notice that it has complied must contain a statement and evidence showing good cause for the delay and a request for an extension of time for filing the petition.

(b) *Original jurisdiction.* Any party seeking enforcement of a Board order issued under its original jurisdiction must file a petition for enforcement with the Clerk of the Board and must serve a copy of that petition on the other party or that party's representative. The petition must describe specifically the reasons why the petitioning party believes there is noncompliance.

(c) *Petition by an employee other than a party.* Under 5 U.S.C. 1204(e)(2)(B), any employee who is aggrieved by the failure of any other employee to comply with an order of the Board may petition the Board for enforcement. The Board will entertain a petition for enforcement from an aggrieved employee who is not a party only if the employee seeks and is granted party status as a permissive intervenor under § 1201.34(c) of this part. The employee must file a motion to intervene at the time of filing the petition for enforcement. The petition and motion to intervene must be filed promptly with the regional office that issued the order or, if the order was issued by the Board, with the Clerk of the Board. The petitioner must serve a copy of the petition and motion to intervene on each party or the party's representative. The petition for enforcement must describe specifically why the petitioner believes there is noncompliance and in what way the petitioner is aggrieved by the noncompliance. The motion to intervene will be considered in accordance with § 1201.34(c) of this part.

§ 1201.183 Procedures for processing petitions for enforcement.

(a) *Initial Processing.* (1) When a party has filed a petition for enforcement of a final decision, the alleged noncomplying party must file one of the following within 15 days of the date of service of the petition:

(i) Evidence of compliance, including a narrative explanation of the calculation of back pay and other benefits, and supporting documents;

(ii) Evidence as described in paragraph (a)(1)(i) of this section of the compliance actions that the party has completed, and a statement of the actions that are in process and the actions that remain to be taken, along with a reasonable schedule for full compliance; or

(iii) A statement showing good cause for the failure to comply completely with the decision of the Board.

The party that filed the petition may respond to that submission within 10 days after the date of service of the submission. The parties must serve copies of their pleadings on each other as required under § 1201.26(b)(2) of this part.

(2) If the agency is the alleged noncomplying party, it shall submit the name and address of the agency official charged with complying with the Board's order, even if the agency asserts it has fully complied. In the absence of this information, the Board will presume that the highest ranking appropriate agency official who is not appointed by the President by and with the consent of the Senate is charged with compliance.

(3) The judge may convene a hearing if one is necessary to resolve matters at issue.

(4) If the judge finds that there has been compliance or a good faith effort to take all actions required to be in compliance with the final decision, he or she will state those findings in a decision. That decision will be subject to the procedures for petitions for review by the Board under subpart C of this part, and subject to judicial review under § 1201.119 of this part.

(5) If the judge finds that:

(i) The alleged noncomplying party has not taken, or has not made a good faith effort to take, any action required to be in compliance with the final decision, or

(ii) The party has taken or made a good faith effort to take one or more, but not all, actions required to be in compliance with the final decision; he or she will issue a recommendation containing his or her findings, a statement of the actions required by the party to be in compliance with the final decision, and a recommendation that the Board enforce the final decision.

(6) If a recommendation described under paragraph (a)(5) of this section is issued, the alleged noncomplying party must do one of the following:

(i) If it decides to take the actions required by the recommendation, it must submit to the Clerk of the Board, within 15 days after the issuance of the recommendation, evidence that it has taken those actions.

(ii) If it decides not to take any of the actions required by the recommendation, it must file a brief supporting its nonconcurrence in the recommendation. The brief must be filed with the Clerk of the Board within 30 days after the recommendation is issued and, if it is filed by the agency, it must identify by name, title, and grade the agency official responsible for the failure to take the actions required by the recommendation for compliance.

(iii) If the party decides to take one or more, but not all, actions required by the recommendation, it must submit both evidence of the actions it has taken and, with respect to the actions that it has not taken, a brief supporting its disagreement with the recommendation. The evidence and brief must be filed with the Clerk of the Board within 30 days after issuance of the recommendation and, if it is filed by the agency, it must contain the identifying information required by paragraph (a)(6)(ii) of this section.

(7) The petitioner may file a brief that responds to the submission described in

paragraph (a)(6) of this section, and that asks the Board to review any finding in the recommendation, made under paragraph (a)(5)(ii) of this section, that the other party is in partial compliance with the final decision. The petitioner must file this brief with the Clerk of the Board within 20 days of the date of service of the submission described in paragraph (a)(6) of this section.

(b) *Consideration by the Board.* (1) The Board will consider the recommendation, along with the submissions of the parties, promptly. When appropriate, the Board may require the alleged noncomplying party, or that party's representative, to appear before the Board to show why sanctions should not be imposed under 5 U.S.C. 1204(a)(2) and 1204(e)(2)(A). The Board also may require the party or its representative to make this showing in writing, or to make it both personally and in writing.

(2) The Board may hold a hearing on an order to show cause, or it may issue a decision without a hearing.

(3) The Board's final decision on the issues of compliance is subject to judicial review under § 1201.119 of this part.

(c) *Certification to the Comptroller General.* When appropriate, the Board may certify to the Comptroller General of the United States, under 5 U.S.C. 1204(e)(2)(A), that no payment is to be made to a certain Federal employee. This order may apply to any Federal employee, other than a Presidential appointee subject to confirmation by the Senate, who is found to be in noncompliance with the Board's order.

(d) *Effect of Special Counsel's action or failure to act.* Failure by the Special Counsel to file a complaint under 5 U.S.C. 1215(a)(1)(C) and subpart D of this part will not preclude the Board from taking action under this subpart.

Subpart G—Savings Provisions

§ 1201.191 Savings provisions.

(a) *Civil Service Reform Act of 1978 (Pub.L. 95–454).*—(1) *Scope.* All executive orders, rules and regulations relating to the Federal service that were in effect prior to the effective date of the Civil Service Reform Act shall continue in effect and be applied by the Board in its adjudications until modified, terminated, superseded, or repealed by the President, Office of Personnel Management, the Merit Systems Protection Board, the Equal Employment Opportunity Commission, or the Federal Labor Relations Authority, as appropriate.

(2) *Administrative proceedings and appeals therefrom.* No provision of the Civil Service Reform Act shall be applied by the Board in such a way as to affect any administrative proceeding pending at the effective date of such provision. "Pending" is considered to encompass existing agency proceedings, and appeals before the Board or its predecessor agencies, that were subject to judicial review or under judicial review on January 11, 1979, the date on which the Act became effective. An agency proceeding is considered to exist once the employee has received notice of the proposed action.

(3) *Explanation.* Mr. X was advised of agency's intention to remove him for abandonment of position, effective December 29, 1978. Twenty days later Mr. X appealed the agency action to the Merit Systems Protection Board. The Merit Systems Protection Board docketed Mr. X's appeal as an "old system case," i.e., one to which the savings clause applied. The appropriate regional office processed the case, applying the substantive laws, rules and regulations in existence prior to the enactment of the Act. The decision, dated February 28, 1979, informed Mr. X that he is entitled to judicial review if he files a timely notice of appeal in the appropriate United States district court or the United States Court of Claims under the statute of limitations applicable when the adverse action was taken.

(b) *Whistleblower Protection Act of 1989 (Pub.L. 101–12).*—(1) *Scope.* All orders, rules, and regulations issued by the Board and the Special Counsel before the effective date of the Whistleblower Protection Act of 1989 shall continue in effect, according to their terms, until modified, terminated, superseded, or repealed by the Board or the Special Counsel, as appropriate.

(2) *Administrative proceedings and appeals therefrom.* No provision of the Whistleblower Protection Act of 1989 shall be applied by the Board in such a way as to affect any administrative proceeding pending at the effective date of such provision. "Pending" is considered to encompass existing agency proceedings, including personnel actions that were proposed, threatened, or taken before July 9, 1989, the effective date of the Whistleblower Protection Act of 1989, and appeals before the Board or its predecessor agencies that were subject to judicial review on that date. An agency proceeding is considered to exist once the employee has received notice of the proposed action.

Appendix I to Part 1201—Merit Systems Protection Board Appeal Form

U.S. MERIT SYSTEMS PROTECTION BOARD

Appeal Form

Instructions

General: You do not have to use this form to file an appeal with the Board. However, if you do not, your appeal must still comply with the Board's regulations. 5 C.F.R. Part 1201. Your agency's personnel office will give you access to the regulations, and the Board will expect you to be familiar with them. You also should become familiar with the Board's key case law and controlling court decisions as they may affect your case. You may tell the Board if you are raising an affirmative defense (see Part III), and you are responsible for proving each defense you raise.

Where to file an appeal: You must file your appeal with the Board's regional office identified in the decision notice the agency gave you.

When to file an appeal: Your appeal must be filed during the period beginning with the day after the effective date of the action you are appealing and ending on the 20th day after the effective date. You must not file your appeal before the effective date of the action you are appealing. If you are appealing from a decision which does not set an effective date, you must file within 25 days of the date of the decision you are appealing. If your appeal is late, it may be dismissed as untimely. The date of filing is the date your appeal is postmarked or the date of receipt if you personally deliver it to the regional office.

How to file an appeal: You may file your appeal by mail, by facsimile, or by personal delivery. You must submit an original and one copy of both your appeal and all attachments. You may supplement your response to any question on separate sheets of paper, but if you do, please put your name and address at the top of each additional page. All of your submissions must be legible and on 8½" x 11" paper. Your appeal must contain your or your representative's signature in block 6. If it does not, your appeal will be rejected and returned to you. If your representative signs block 6, you must sign block 35 or submit a separate written designation of representative.

Privacy act statement: This form requests personal information which is relevant and necessary to reach a decision in your appeal. The U.S. Merit Systems Protection Board collects this

information in order to process appeals under its statutory and regulatory authority. Since you appeal is a voluntary action you are not required to provide any personal information in connection with it. However, failure to supply the U.S. Merit Systems Protection Board with all the information essential to reach a decision in your case could result in the rejection of your appeal.

The Merit Systems Protection Board is authorized under provisions of Executive Order 9397, dated November 22, 1943, to request your Social Security number, but providing your Social Security number is voluntary and failure to provide it will not result in the rejection of your appeal. Your Social Security number will only be used for identification purposes in the processing of your appeal.

You should know that the decisions of the U.S. Merit Systems Protection Board on appeals are final administrative decisions and, as such, are available to the public under the provisions of the Freedom of Information Act. Additionally, it is possible that information contained in your appeal file may be released as required by the Freedom of Information Act. Some information about your appeal will also be used in depersonalized form as a data base for program statistics.

Public reporting burden: The public reporting burden for this collection of information is estimated to vary from 20 minutes to 1 hour, with an average of 30 minutes per response, including time for reviewing the form, searching existing data sources, gathering the data necessary, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, to the Office of Management Anaylsis, Merit Systems Protection Board, 1120 Vermont Ave., NW, Washington, DC 20419, and to the Office of Management and Budget, Paperwork Reduction Project (3124–0009), Washington, DC 20503.

Part I—Appellant Identification

1. Name (last, first, middle initial)

2. Social Security Number

3. Present address (number and street, city, state, and ZIP code). You must notify the Board of any change of address or telephone number while the appeal is pending with the MSPB.

4. Home phone (include area code)

5. Office phone (include area code)

6. I certify that all of the statements in this appeal are true, complete, and correct to the best of my knowledge and belief.

Signature of appellant or designated representative

Date signed

Part II Appealed Action

7. Briefly describe the agency action you wish to appeal and attach any relevant documents, including the proposal letter, the decision letter, and the relevant SF50 or its equivalent.

8. Name and address of the agency that took the action you are appealing *(including bureau or other divisions, as well as street address, city, state and ZIP code)*

9. Your position title and duty station at the time of the action appealed.

10. Grade at time of the action appealed

11. Salary at the time of the action appealed

$ per

12. Are you a veteran and/or entitled to the employment rights of a veteran?

☐ *Yes*
☐ *No*

13. Employment status at the time of the action appealed

☐ *Temporary*
☐ *Permanent*
☐ *Applicant*
☐ *Term*
☐ *Retired*
☐ *Seasonal*

14. If retired, date of retirement *(month, day, year)*

15. Type of service

☐ *SES*
☐ *Postal Service*
☐ *Competitive*
☐ *Excepted*

16. Length of government service

17. Length of service with acting agency

18. Were you serving a probationary or trial period at the time of the action appealed?

☐ *Yes*
☐ *No*

19. Date you received written notice of the proposed action *(month, day, year)*

20. Date you received the final decision notice *(month, day, year) (attach a copy)*

21. Effective day of the action appealed *(month, day, year)*

22. Explain briefly why you think the agency was wrong in taking this action.

23. Do you believe the penalty imposed by the agency was too harsh?

☐ *Yes*
☐ *No*

24. What action would you like the Board to take on this case (i.e., what remedy are you asking for)?

Part III Appellant's Defenses

25. a) Do you believe the agency committed harmful procedural error(s)?

☐ *Yes*
☐ *No*

25. b) If so, what is (are) the error(s)?

25. c) Explain how you were harmed by the error(s).

26. a) Do you believe that the action you are appealing violated the law?

☐ *Yes*
☐ *No*

26. b) If so, what law?

26. c) How was it violated?

27. If you believe this action was taken as a result of your whistleblowing activities, please provide details, including dates and names of persons involved.

28. a) If you believe you were discriminated against by the agency, in connection with the matter appealed, because of either your race, color, religion, sex, national origin, marital status, political affiliation, handicapping condition, or age, indicate so and explain why you believe it to be true. You must indicate, by specific examples, how you were discriminated against.

28. b) Have you filed a formal discrimination complaint with your agency or any other agency concerning the matter which you are seeking to appeal?

☐ *Yes (attach a copy)*
☐ *No*

28. c) If yes, place filed *(agency, number and street, city, state, and ZIP code)*

28. d) Date filed *(month, day, year)*

28. e) Has a decision been issued?

☐ *Yes (attach a copy)*
☐ *No*

29. a) Have you, or anyone in your behalf, filed a formal grievance with your agency concerning this matter, under a negotiated grievance procedure provided by a collective bargaining agreement?

☐ *Yes (attach a copy)*
☐ *No*

29. b) Date filed *(month, day, year)*

29. c) If yes, place filed *(agency, number and street, city, state, and ZIP code)*

29. d) Has a decision been issued?
☐ *Yes (attach a copy)*
☐ *No*

29. e) If yes, date issued *(month, day, year)*

Part IV Hearing

30. You may have a right to a hearing on this appeal. If you do not want a hearing, the Board will make its decision on the basis of the documents you and the agency submit, after providing you and the agency with an opportunity to submit additional documents. If neither box is checked, the Board will presume you do not want a hearing, and none will be scheduled.

Do you want a hearing?
☐ Yes
☐ No

If you choose to have a hearing, the Board will notify you where and when it is to be held.

Part V Designation of Representative

31. You may represent yourself in this appeal, or you may choose someone to represent you. Your representative does not have to be an attorney. You may change your designation of a representative at a later date, if you so desire, but you must notify the Board promptly of any change. Where circumstances require, a separate designation of representative may be submitted after the original filing. Include the information requested in blocks 31 through 35.

"I hereby designate _____ to serve as my representative during the course of this appeal. I understand that my representative is authorized to act on my behalf."

32. Representative's address (number and street, city, state, and ZIP code).

33. Representative's employer

34. Representative's telephone number (include area code).

35. Appellant's signature Date

Part VI Reduction In Force (RIF)

Instructions

Fill out this part only if you are appealing from a Reduction In Force. Your agency's personnel office can furnish you with most of the information requested below.

36. Retention group and sub-group

37. Service computation date

38. a) Has your agency offered you another position rather than separating you?
☐ Yes
☐ No

38. b) Title of position offered

38. c) Grade of position offered

38. d) Salary of position offered
$ per

38. e) Location of position offered

38. f) Did you accept this position?
☐ Yes
☐ No

39. Explain why you think you should not have been affected by the Reduction In Force. (Explanations could include: you were placed in the wrong retention group or sub-group; an error was made in the computation of your service computation date; competitive area was too narrow; improperly reached for separation from competitive level; an exception was made to the regular order of selection; full 30-day notice was not given; you believe you have assignment [bump or retreat] rights; or any other reasons. Please provide as much information as possible regarding each reason.)

Appendix II to Part 1201—Appropriate Regional Office for Filing Appeals

All submissions shall be addressed to the Regional Director, Merit Systems Protection Board, at the addresses listed below, according to geographic region of the employing agency or as required by § 1201.4(d) of this part. Address of Appropriate Regional Office and Area Served:

1. Atlanta Regional Office, Suite 500, 1365 Peachtree Street, NE., Atlanta, Georgia 30309–3199, Facsimile No.: (404) 257–5267
(Alabama, Florida, Georgia, Mississippi, North Carolina, and South Carolina)
2. Boston Regional Office, 10 Causeway Street, Room 1078, Boston, Massachusetts 02222–1042, Facsimile No.: (617) 835–5903
(Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont)
3. Chicago Regional Office, 230 South Dearborn Street, 31st Floor, Chicago, Illinois 60604–1669, Facsimile No.: (312) 886–4231
(Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin)
4. Dallas Regional Office, 1100 Commerce Street, Room 8F20, Dallas, Texas 75242–9979, Facsimile No.: (214) 729–0102,
(Arkansas, Louisiana, Oklahoma, and Texas)
5. Denver Regional Office, 730 Simms Street, Suite 301, P.O. Box 25025, Facsimile No.: (303) 233–5438, Denver, Colorado 80225–0025,
(Arizona, Colorado, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, South Dakota, Utah, and Wyoming)
6. New York Regional Office, 26 Federal Plaza, Room 3137–A, New York, New York 10278–0022, Facsimile No.: (212) 264–1417
(New York, Puerto Rico, Virgin Islands, and the following counties in New Jersey: Bergen, Essex, Hudson, Hunterdon, Morris, Passaic, Somerset, Sussex, Union, and Warren)
7. Philadelphia Regional Office, U.S. Customhouse, Room 501, Second and Chestnut Streets, Philadelphia, Pennsylvania 19106–2904, Facsimile No.: (215) 597–3456,
(Delaware, Pennsylvania, Virginia—except cities and counties served by Washington Regional Office, West Virginia, and the following counties in New Jersey: Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Middlesex, Monmouth, Ocean, and Salem)
8. St. Louis Regional Office, 911 Washington Avenue, Room 615, St. Louis, Missouri 63101–1203, Facsimile No.: (314) 279–4294
Kentucky, Missouri, and Tennessee)
9. San Francisco Regional Office, 525 Market Street, Room 2800,San Francisco, California 94105–2789, Facsimile No.: (415) 467–8532
(California)
10. Seattle Regional Office, 915 Second Avenue, Suite 1840, Seattle, Washington 98174–1001, Facsimile No.: (206) 399–6484
(Alaska, Hawaii, Idaho, Oregon, Washington, and Pacific overseas areas)
11. Washington Regional Office, 5203 Leesburg Pike, Suite 1109, Falls Church, Virginia 22041–3473, Facsimile No.: (703) 756–7112
(Washington, DC., Maryland, all overseas areas not otherwise covered, and the following cities and counties in Virginia: Alexandria, Falls Church, Arlington, Fairfax City, Fairfax County, Loudoun, and Prince William)

Appendix III to Part 1201—Approved Hearing Locations by Regional Office

Atlanta Region

Atlanta, Georgia
Augusta, Georgia
Macon, Georgia
Savannah, Georgia
Birmingham, Alabama
Huntsville, Alabama
Montgomery, Alabama
Jacksonville, Florida
Miami, Florida
Orlando, Florida
Pensacola, Florida
Tampa/St. Petersburg, Florida
Jackson, Mississippi
Asheville, North Carolina
Jacksonville, North Carolina
Raleigh, North Carolina
Columbia, South Carolina
Charleston, South Carolina

Boston Region

Boston, Massachusetts
Hartford, Connecticut
New Haven, Connecticut

Bangor, Maine
Portland, Maine
Manchester, New Hampshire
Portsmouth, New Hampshire
Providence, Rhode Island
Burlington, Vermont

Chicago Region

Chicago, Illinois
Davenport, Iowa/Rock Island, Illinois
Indianapolis, Indiana
Detroit, Michigan
Minneapolis/St. Paul, Minnesota
Cleveland, Ohio
Cincinnati, Ohio
Columbus, Ohio
Dayton, Ohio
Milwaukee, Wisconsin

Dallas Region

Dallas, Texas
Corpus Christi, Texas
El Paso, Texas
Houston, Texas
San Antonio, Texas
Temple, Texas
Texarkana, Texas
Little Rock, Arkansas
Alexandria, Louisiana
New Orleans, Louisiana
Oklahoma City, Oklahoma
Tulsa, Oklahoma

Denver Region

Denver, Colorado
Pueblo, Colorado
Phoenix, Arizona
Tucson, Arizona
Wichita, Kansas
Billings, Montana
Great Falls, Montana
Missoula, Montana
Omaha, Nebraska
Las Vegas, Nevada
Reno, Nevada
Albuquerque, New Mexico
Bismarck, North Dakota
Rapid City, South Dakota
Sioux Falls, South Dakota
Salt Lake City, Utah
Casper, Wyoming

New York Region

Albany, New York
New York, New York
Buffalo, New York
Syracuse, New York
Newark, New Jersey

Philadelphia Region

Philadelphia, Pennsylvania
Harrisburg, Pennsylvania
Pittsburgh, Pennsylvania
Wilkes-Barre, Pennsylvania
Trenton, New Jersey
Dover, Delaware
Norfolk, Virginia
Richmond, Virginia
Roanoke, Virginia
Charleston, West Virginia
Morgantown, West Virginia

San Francisco Region

San Francisco, California
Fresno, California
Los Angeles, California
Sacramento, California
San Diego, California

Seattle Region

Seattle, Washington
Spokane, Washington
Richland, Kennewick, and Pasco, Washington
Anchorage, Alaska
Honolulu, Hawaii
Boise, Idaho
Pocatello, Idaho
Medford, Oregon
Portland, Oregon

St. Louis Region

St. Louis, Missouri
Kansas City, Missouri
Springfield, Missouri
Des Moines, Iowa
Lexington, Kentucky
Louisville, Kentucky
Knoxville, Tennessee
Nashville, Tennessee
Memphis, Tennessee

Washington Region

Bailey's Crossroads, Falls Church, Virginia
Washington, DC
Baltimore, Maryland

Appendix IV to Part 1201—Sample Declaration Under 28 U.S.C. 1746

Declaration

I, _____, do hereby declare:

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on

_____

Date

_____

Signature

Dated: December 26, 1989.

Patricia M. Paige,

Acting Clerk of the Board.

[FR Doc. 89-30254 Filed 12-28-89; 8:45 am]

BILLING CODE 7400-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1030

[DA-89-009]

Milk in the Chicago Regional Marketing Area; Order Terminating Certain Provision of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Termination of rule.

SUMMARY: This action removes Crawford and Grant Counties in Wisconsin from the provision that defines the Chicago Regional milk order marketing area. The termination is based on evidence obtained at a public hearing held in Bettendorf, Iowa, beginning August 9, 1988, which provided the basis for including the two Wisconsin counties in the marketing area of the Iowa order. The Iowa order is being amended to include Crawford and Grant counties in the marketing area. Therefore, in order to implement the amendments, it is necessary to remove the two counties from the Chicago Regional marketing area.

EFFECTIVE DATE: January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-4829.

SUPPLEMENTARY INFORMATION: Prior document of this proceeding: Notice of Proposed Termination: Issued April 12, 1989; published April 18, 1989 (54 FR 15413).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action does not affect the regulatory status of milk handlers nor will it have an adverse impact upon dairy farmers who have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

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

This order of termination is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and of the order regulating the handling of milk in the Chicago Regional marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on April 18, 1989 (54 FR 15413) concerning a proposed termination of a provision of the order. Interested parties were afforded opportunity to file written data, views, and arguments thereon.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that the following provisions of the order do not tend to effectuate the declared policy of the Act: In § 1030.2(b)(1), the words "Crawford" and "Grant".

Statement of Consideration

This termination action removes from the Chicago Regional marketing area the counties of Crawford and Grant in the State of Wisconsin. Producers supplying the Iowa market have approved an amended Iowa order that now includes these two counties. Therefore, it is necessary that the counties be removed from the Chicago Regional order marketing area by terminating the names of the two counties from the provision defining the marketing area.

The termination is based upon the evidence obtained at a public hearing held in Bettendorf, Iowa, beginning August 9, 1988, to consider, among other proposals, a proposal by Swiss Valley Farms, Co., to expand the Iowa marketing area by adding several unregulated counties in Illinois, Iowa, and Missouri, and Crawford and Grant Counties in Wisconsin. The two Wisconsin counties now are part of the marketing area for the Chicago Regional marketing area.

The Deputy Assistant Secretary, Marketing and Inspection Services, adopted the proposal with regard to the Wisconsin counties, and that action was approved by dairy farmers under the Iowa order. Therefore, an amended order is being issued concurrently with this termination action so that the same effective date will apply to both actions.

Four comments were received in response to the proposal to terminate the two Wisconsin counties from the provision of the Chicago order that defines "marketing area". Two comments supported the proposed termination, and two were opposed. Swiss Valley Farms, Co., the proponent of the change, and Anderson Erickson Dairy Co., a handler regulated under the Iowa order, supported the termination.

Central Milk Producers Cooperative (CMPC), a federation of cooperatives representing over 13,000 producers for the Chicago order, opposed the termination. Also, the National Farmers Organization (NFO) expressed opposition.

Both opponents of the termination expressed the view that this action is unlawful because, in their view, it constitutes an order amending the Chicago order without having held a hearing on a proposal to do so. CMPC specifically takes issue with the conclusion that continuation of the two counties in the Chicago Regional marketing area would not tend to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937, as amended (the Act). CMPC contends that there is no basis in the record of the Iowa hearing for this conclusion, and that therefore the proceedings should be terminated.

Notwithstanding the objections of CMPC and NFO, this action to remove the two counties from the Chicago order is both authorized by the Act and an appropriate action in this case. The Department has concluded that it is necessary to include the Wisconsin Counties of Crawford and Grant in the Iowa marketing area in order to effectuate the declared policy of the Act. This termination action removes these two counties from the Chicago order as a means of implementing the decision to expand the Iowa marketing area, which will become effective January 1, 1990.

Therefore, good cause exists for making this order effective January 1, 1990.

List of Subjects in 7 CFR Part 1030

Dairy products, Milk, Milk marketing orders.

It is therefore ordered, That the aforesaid provision in § 1030.2 of the Chicago Regional order is hereby terminated.

PART 1030—MILK IN THE CHICAGO REGIONAL MARKETING AREA

1. The authority citation for 7 CFR part 1030 continues to read as follows:

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

§ 1030.2 [Amended]

2. In § 1030.2(b)(1), the words "Crawford" and "Grant" are removed.

Signed at Washington, DC, on: December 22, 1989.

John E. Frydenlund,

Acting Assistant Secretary of Agriculture, Marketing and Inspection Services.

[FR Doc. 89–30242 Filed 12–28–89; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1079

[Docket No. AO–295–A38; DA–88–111]

Milk in the Iowa Marketing Area; Order Amending Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action expands the marketing area for the Iowa order. The added territory includes some unregulated areas in Iowa, Illinois, and Missouri, and two counties in Wisconsin that currently are part of the Chicago Regional milk order marketing area. Another document issued concurrently with this one terminates the two Wisconsin counties from the marketing area provision of the Chicago order. The amendments were proposed by Swiss Valley Farms, Co., a dairy farmer cooperative.

The amended order also provides a temporary lock-in to the Iowa order for a distributing plant that also meets the pooling requirements of another Federal milk order and which has greater Class I dispositions, both in route sales and transfers to distributing plants, in such other marketing area than it does in the Iowa marketing area. Such a plant would remain regulated under the Iowa order until the third consecutive month that its sales were greater in the other marketing area.

The amendments are based on the record of a public hearing held at Bettendorf, Iowa, August 9–11, 1988. The amendments are necessary to reflect current marketing conditions and to maintain orderly marketing in the Iowa marketing area. Cooperatives representing more than two-thirds of the order's producers favor issuance of the amended order.

EFFECTIVE DATE: January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–4829.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued July 11, 1988; published July 13, 1988 (53 FR 26446).

Notice of Rescheduled Hearing: Issued July 31, 1988; published July 21, 1988 (53 FR 27863).

Recommended Decision: Issued April 12, 1989; published April 18, 1989 (54 FR 15417).

Correction of Recommended Decision: published May 3, 1989 (54 FR 18979).

Proposed Termination: Issued April 12, 1989; published May 12, 1989 (54 FR 15413).

Extension of Time to file Exceptions to the Recommended Decision and Comments on Proposed Termination: Issued May 8, 1989; published May 12, 1988 (54 FR 20605).

Final Decision: Issued November 20, 1989; published November 28, 1989 (54 FR 48900).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Iowa order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings upon the basis of the hearing record. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Iowa marketing area.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held; and

(4) All milk and milk products handled by handlers, as defined in the order as hereby amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products.

(b) *Additional findings.* It is necessary in the public interest to make this order amending the order effective not later than January 1, 1990. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing area.

The provisions of this order are known to handlers. The recommended decision of the Administrator was issued April 12, 1989, and the decision of the Deputy Assistant Secretary containing all amendment provisions of this order was issued November 20, 1989. The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective January 1, 1990, and that it would be contrary to the public interest to delay the effective date of this amendment for 30 days after its publication in the **Federal Register**. (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551–559)

(c) Determinations. It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending the order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order; and

(3) The issuance of the order amending the order is approved or favored by at leat two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Part 1079

Dairy products, Milk, Milk marketing orders.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Iowa marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, as follows:

PART 1079—[AMENDED]

1. The authority citation for 7 CFR part 1079 continues to read as follows:

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

2. Amend § 1079.2 by revising paragraphs (a) and (b), and adding paragraphs (c) and (d) to read as follows:

§ 1079.2 Iowa marketing area.

* * * * *

(a) The Iowa counties of: Adair, Adams, Allamakee, Appanoose, Audubon, Benton, Black Hawk, Boone, Bremer, Buchanan, Butler, Calhoun, Carroll, Cedar, Cerro Gordo, Chickasaw, Clarke, Clayton, Clinton, Dallas, Davis, Decatur, Delaware, Des Moines, Dubuque, Fayette, Floyd, Franklin, Greene, Grundy, Guthrie, Hamilton, Hancock, Hardin, Henry, Humboldt, Iowa, Jackson, Jasper, Jefferson, Johnson, Jones, Keokuk, Linn, Louisa, Lucas, Madison, Mahaska, Marion, Marshall, Monroe, Muscatine, Pocahontas, Polk, Poweshiek, Ringgold, Scott, Story, Tama, Taylor, Union, Van Buren, Wapello, Warren, Washington, Wayne, Webster, Wright, and the city of Osage in Mitchell County.

(b) The Illinois counties of: Henderson, Henry, Mercer, Rock Island, and the city of East Dubuque in Jo Daviess County, and the townships of Fulton, Ustick, Clyde, Genesee, Mount Pleasant, Union Grove, Garden Plain, Lyndon, Fenton, Newton, Prophetstown, Portland, and Erie in Whiteside County.

(c) The Missouri counties of: Grundy, Harrison, Mercer, Putnam, Schuyler.

(d) The Wisconsin counties of: Crawford and Grant.

3. In § 1079.7, revise paragraph (d) to read as follows:

§ 1079.7 Pool plant.

* * * * *

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A governmental agency plant;

(3) A plant qualified as a pool plant pursuant to paragraph (a) in this section which also meets the pooling requirements of another Federal order and from which during the month a greater quantity of fluid milk products, except filled milk, was disposed of as route disposition, in such other marketing area and to pool plants qualified on the basis of route disposition in such other marketing area than was so disposed of from such plant in the Iowa marketing area as route disposition, or to pool plants qualified on the basis of route disposition, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of its fluid milk products disposition, except filled milk, is made in the above described manner in such other marketing area, unless, notwithstanding the provisions of this paragraph, it is regulated by such other order;

(4) A plant qualified as a pool plant pursuant to this section which also meets the pooling requirements of another Federal order and from which during the month a greater quantity of fluid milk products, except filled milk, was disposed of as route disposition in this marketing area, and to pool plants qualified on the basis of route disposition in this marketing area than was so disposed of in such other Federal order marketing area but which plant is,

nevertheless, fully regulated under such other Federal order; and

(5) That portion of a plant that is physically separated from the Grade A portion of such plant, is operated separately, and is not approved by any regulatory agency for the receiving, processing, or packaging of any fluid milk product for Grade A disposition.

4. In § 1079.52, revise paragraph (a)(2)(ii) to read as follows:

§ 1079.52 Plant location adjustments for handlers.

(a) * * *

(2) * * *

(iii) The Illinois counties of Henry, Mercer, Rock Island, and the townships of Fulton, Ustick, Clyde, Genesee, Mount Pleasant, Union Grove, Garden Plain, Lyndon, Fenton, Newton, Prophetstown, Portland, and Erie in Whiteside County.

* * * * *

Signed at Washington, DC, on December 22, 1989.

John E. Frydenlund,

Acting Assistant Secretary of Agriculture, Marketing and Inspection Services.

[FR Doc. 89-30243 Filed 12-28-89; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1139

[DA-89-024]

Milk in the Great Basin Marketing Area; Order Suspending Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action suspends for the period of December 1989 through August 1990 the Great Basin order's limit on the amount of milk that a producer-handler may purchase from pool plants or other order plants without losing its unregulated status. The suspension was requested by a producer-handler under the Great Basin Federal milk order.

An evaluation of data, views, arguments, and other pertinent information available leads to the conclusion that this suspension action is needed to relieve an unwarranted burden on producer-handlers in the market.

EFFECTIVE DATE: December 29, 1989.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/ Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456 (202) 447-7183.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued June 13, 1989; published June 19, 1989 (54 FR 25727).

The Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain producer-handlers and tends to encourage more orderly marketing of milk in the Great Basin marketing area.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 15121 and has been determined to be a "non-major" rule under the criteria contained therein.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and of the order regulating the handling of milk in the Great Basin marketing area. A notice of rulemaking was published in the Federal Register on June 19, 1989 (54 FR 25727) concerning a proposed suspension of certain provisions of the Great Basin Federal milk order. Interested parties were afforded an opportunity to file written data, views, and arguments thereon.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the months of December 1989 through August 1990 the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1139.10(b)(1)(ii), the words "in an amount that is not in excess of the larger of 5,000 pounds or 5 percent of such person's Class I disposition during the month."

Statement of Consideration

This action makes inoperative for the months of December 1989 through August 1990 the provisions of the Great Basin milk order that limit the amount of milk that a producer-handler may purchase from pool plants and other order plants. The provisions suspended limit the amount of milk that a producer-handler may buy from pool plants or from other order plants to supplement its own production to 5,000 pounds or 5 percent of its Class I sales, whichever is greater.

The suspension was requested for an indefinite period by Glen E. Brown, owner of Brown Dairy, Inc., a producer-handler located in Coalville, Utah. Mr. Brown asserted that it is virtually impossible to manage a dairy herd in a manner that allows a producer-handler to service its sales accounts without producing an unneeded surplus and that removal of the limit on purchases is the only logical way to provide a producer-handler the means of marketing all of its production. He stated that such a solution would eliminate the need to dump surplus milk onto the market and would foster orderly marketing to the consumer.

Mr. Brown pointed out that a producer-handler has no way of knowing the full extent of his allowable purchases until the current month is completed, thus limiting his ability to purchase the entire 5 percent of his route dispositions that is permitted. Further, he stated, that the limit makes it difficult to provide fluid milk products to groups and facilities with seasonal needs, such as boy scout camps.

The producer-handler stated that the percentage of the milk distributed in the Great Basin market that is handled by producer-handlers has decreased over time, and that there is no indication that producer-handlers in the Great Basin market represent a threat to orderly marketing conditions. Further, he indicated that he knows of no undesirable marketing conditions or any increase in numbers of producer-handlers in markets without limits on the amount of milk that producer-handlers are allowed to purchase.

Mr. Brown asserted that the prices at which the producer-handlers sell milk are not the lowest or highest in the market, and do not adversely affect orderly marketing in the Great Basin marketing area. He stated that paying the order's Class I price for raw milk would not provide producer-handlers any unusual opportunity to upset the market structure, and that prices received by producers whose milk is pooled under the order would not be negatively affected by the proposed suspension.

Finally, Mr. Brown cited the Regulatory Flexibility Act (5 U.S.C. 601-612) to argue that the requested suspension would represent a very positive action on behalf of small entities affected by the provisions of the Great Basin milk order.

In response to the notice of proposed suspension, seven comments were received from interested parties. Comments filed by Glen Brown and by the three other interested persons located in or near the marketing area supported the proposed suspension. Comments filed by three pooled handlers, including the cooperative association that represents approximately 70 percent of the

producers whose milk is pooled under the Great Basin milk order, opposed the proposed suspension.

Mr. Brown's comments reiterated the basis of his request for suspension of the purchase limit and included information indicating that the price paid to producer-handlers by manufacturing plant operators is based on a cheese formula price minus 50 cents and hauling deductions. Randal Stoker of Buhl, Idaho, stated that producer-handlers can better serve the fresh fluid milk needs of consumers in some remote areas, and that producer-handlers must bear burdens that other marketing organizations spread among many producers. He identified these burdens as the necessity of constantly balancing supply and demand, being both dairy and business managers, and the responsibility of obtaining large amounts of capital for production, processing and marketing, and maximizing the use of that capital. Mr. Stoker stated that producer-handlers should be allowed to purchase supplemental supplies of milk during the generally short periods of high demand. He pointed out that having to purchase milk from pool handlers at the Class I price (probably with the addition of hauling costs, handling charges and premiums) would serve as an incentive for producer-handlers to limit such purchases since producer-handlers acquire most of their milk at the cost of production, which is generally less than the Class I prices.

Mr. Gerald L. Carlisle of Jerry's Dairy, a producer-handler under the Great Basin order, argued that the current allowable level of purchases is too small to use as an effective management tool, and leaves him unable to supply nearby summer programs with milk products. He pointed out that acts of nature, such as extreme weather conditions, can cause fluctuations of more than 5 percent in milk production. According to Mr. Carlisle, the present limit on purchases creates unstable marketing conditions during peak-production months by causing producer-handlers to lower prices on their Class I sales at such times while the ability to expand purchases would make producer-handlers better able to maintain their fluid milk sales at prices closer to the order's Class I price. Mr. Carlisle stated that suspension of the purchase limit would cause producer-handlers to adjust production closer to market demand, would return the Class I price to pooled producers, and would create no market disruption.

Gordon M. Liddle, president of Winder Dairy, a pooled handler located in Salt Lake City, Utah, stated that by definition and because of the large capital outlays required to compete on a larger scale, producer-handlers will remain a small market force. Mr. Liddle stated that more flexibility in a producer-handler's ability to purchase supplemental milk supplies is needed without incurring the extreme penalty of becoming a pool plant. He complained that the current regulations force producer-handlers to produce excess milk during the months of seasonally low production to avoid participating in the marketwide pool. As a result, he stated, a great deal of excess production must be marketed during the months of flush production, which results either in a reduction in returns on surplus production or lowered prices on fluid use that jeopardize market integrity. According to Mr. Liddle, the proposed suspension would provide for more orderly planning.

K.D.K. Dairy, a proprietary handler pooled under the Great Basin order, expressed opposition to the proposed suspension by quoting relevant paragraphs from the decision justifying the producer-handler exemption from regulation and the current order provisions. The decision stated that producer-handler operations may be exempted from full regulation because fluctuations in their daily and seasonal needs are met through their own farm production, with their surplus production disposed of at their own expense. According to the portion of the decision quoted by K.D.K., the necessity of balancing its own production with the market's Class I needs limits a producer-handler's ability to be a major competitive factor in the market supplied by regulated handlers. A further paragraph quoted from the decision noted that a producer-handler that is able to buy substantial supplemental supplies does not differ significantly from pooled handlers, but contributes none of the proceeds from its Class I sales to the market while other producers bear the cost of carrying the producer-handler's necessary reserve.

Gossner Foods, another pool plant regulated under the Great Basin order, opposed the proposed suspension on the basis that the producer-handler exemption from regulation is intended to cover small family operations selling milk from plant stores directly to consumers. Gossner's comments state that Brown's Dairy actively solicits and gains grocery store accounts previously supplied by pool handlers. These stores must then supplement their fluid milk needs by purchases from regulated handlers. According to Gossner's comments, in the absence of limits on producer-handler purchases, producer-handlers would be able to build up their production to eventually displace the milk purchased from pooled handlers. Gossner concluded that the present order provisions allow producer-handlers adequate flexibility to supplement their production to meet temporary needs.

Comments were filed on behalf of Western Dairymen, Inc. (WDCI), a cooperative association representing approximately 70 percent of the producers pooled under the Great Basin order. WDCI opposed the proposed suspension on the grounds that it is contrary to and would undermine the "orderly marketing" purpose of the Agricultural Marketing Agreement Act of 1937 (the Act), and that the producer-handler exemption from regulation is an exception to the uniform pricing and pooling provisions of the order and should not be broadened beyond its limited purpose.

WDCI's comments argued that the Act authorizes the regulation of handlers by requiring them to pay uniform class prices for milk purchased, and specifically includes producers in their capacity as handlers. The cooperative further stated that the exemption of producer-handlers from full regulation is based on the theory that such a handler is a self-contained production, processing and distribution unit that neither shares its Class I sales with other producers in the market nor counts on other producers to meet any of its needs. WDCI cited a USDA Judicial Officer's decision stating that unlimited purchases by a producer-handler would allow such an entity to rely on the pool to produce enough surplus milk to cover the producer-handler's peak demand while not sharing the benefits of its Class I use with other producers. Consequently, the producer-handler would enjoy the benefits of the regulatory program without sharing any of the burdens of surplus milk.

As indicated by those opposing the suspension, the limit on supplemental milk purchases by producer-handlers is essentially for the purpose of precluding a producer-handler from shifting to pool producers the burden of carrying its own reserve supply. Without any purchase limit a producer-handler could be expected to obtain Class I sales accounts in an amount equal to the volume of milk produced in the seasonally high production months. During seasonally low production months, a producer-handler could supplement its lack of sufficient

production with purchases from pool sources. Thus, a producer-handler that is permitted to follow this practice could effectively shift the burden of the seasonal reserve associated with its Class I sales to pool producers. Therefore, there continues to be an appropriate basis to continue to protect pool producers from this type of shift in the seasonal burden of reserve supplies associated with Class I sales of producer-handlers.

However, year-round application of the limit tends to impose an unnecessary burden on certain producer-handler operations in the market. Some producer-handler plants are located within close proximity to summer camps and winter recreational facilities that have a short-duration demand for milk in the months of seasonally higher production. The limit on supplemental milk purchases tends to either effectively preclude producer-handlers from serving such accounts or encourage producer-handlers to produce an unnecessary surplus of milk to serve such accounts and thereby retain producer-handler status. In circumstances where producer-handlers are placed in a position of having to refuse to service nearby summer camp accounts, it detracts from obtaining potential marketing efficiency and accommodation to sales accounts through the use of the packaged milk cooler space maintained at the producer-handler's plant. In the circumstance of excess production by producer-handlers to serve such accounts, it tends to detract from overall marketing efficiency by unduly encouraging increased milk production during periods of seasonal surplus and thereby adding to the seasonal variation in the volume of surplus milk to be processed in the market. If, on the other hand, producer-handlers were permitted to purchase pool milk to serve such accounts, pool producers would still tend to receive the benefit of such Class I sales, yet less surplus milk would be put on the market by producer-handlers.

Additionally, removal of the limit during the market's seasonally higher production months would tend to provide an incentive for producer-handlers to shift their production pattern so that it would peak during the market's low-production months of September through November in order to service their year-round sales accounts and retain producer-handler status. To the extent that this results in producer-handlers buying milk from pool sources during the market's high-production months, it would contribute to overall marketing efficiency by narrowing the magnitude of the seasonal variation in reserve milk supplies to be processed in the market.

In light of the foregoing consideration, it is concluded that application of the limit on a producer-handler's purchases of pool milk during December through August, the months of seasonally higher milk production in the market, detracts from the order's basic purpose of encouraging and maintaining orderly and efficient marketing in the Great Basin marketing area. To keep the limit on a producer-handler's purchases during the months of September through November, as herein concluded to be appropriate, the indefinite suspension request should not be adopted. However, to make the limit inoperative for the months of December through August, suspension action is necessary. To best effect an indefinite change to this provision of the order, the issue appropriately should be addressed at a public hearing. Pending such a hearing, the limit should be suspended for the period of December 1989 through August 1990.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that unnecessary production of surplus milk by producer-handlers is being encouraged by the limit on purchases of pool milk by producer-handlers and the limit is unduly disrupting the marketing of milk to seasonal recreational sales accounts in the marketing area;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded an opportunity to file written data, views or arguments concerning this suspension.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1139

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the aforesaid provisions of § 1139.10 of the Great Basin order are hereby suspended for the months of December 1989 through August 1990, as follows:

PART 1139—MILK IN THE GREAT BASIN MARKETING AREA

1. The authority citation for Part 1139 continues to read as follows:

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

§ 1139.10 [Temporarily suspended in part.]

2. In § 1139.10(b)(1)(ii), the words "in an amount that is not in excess of the larger of 5,000 or 5 percent of such person's Class I disposition during the month" are suspended for the months of December 1989 through August 1990.

Signed at Washington, DC on: December 26, 1989.

John E. Frydenlund,

Acting Assistant Secretary of Agriculture, Marketing and Inspection Services.

[FR Doc. 89–30274 Filed 12–28–89; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF ENERGY

Office of Fossil Energy

10 CFR Part 590

Administrative Procedures With Respect to the Import and Export of Natural Gas; Technical Amendments

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of publication of technical changes to final administrative procedures rule to reflect transfer of natural gas import and export functions.

SUMMARY: On January 6, 1989, the administration of the natural gas import and export authorization program within the Department of Energy was transferred from the Economic Regulatory Administration to the Office of Fossil Energy. DOE Delegation Order No. 0204–127, specifies the transferred functions (54 FR 11437, March 20, 1989).

The Office of Fossil Energy hereby gives notice of clarification and technical changes to the Administrative Procedures in 10 CFR part 590, which govern the operation of the natural gas import and export program, to reflect this transfer of authority and to correct typographical errors in the original publication.

EFFECTIVE DATE: December 29, 1989.

FOR FURTHER INFORMATION CONTACT:

Stanley C. Vass (Office of Fuels Program), Fossil Energy, U.S. Department of Energy, Forrestal Bldg., room 3F–056, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586–1302;

Michael T. Skinner (Natural Gas & Mineral Leasing), Office of General

Counsel, U.S. Department of Energy, Forrestal Bldg., room 6E-042, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586-6667.

List of Subjects in 10 CFR Part 590

Administrative practice and procedure, Exports, Imports, Filing Fees, Natural Gas, Recordkeeping and reporting requirements, Environmental protection.

In consideration of the foregoing, chapter II of title 10, subchapter G, part 590, Code of Federal Regulations, is revised, as set forth below.

Issued in Washington, DC on December 22, 1989.

Denise L. Swink,

Acting Assistant Secretary, Fossil Energy.

Part 590 of subchapter II of title 10, Code of Federal Regulations, is revised to read as follows:

PART 590—ADMINISTRATIVE PROCEDURES WITH RESPECT TO THE IMPORT AND EXPORT OF NATURAL GAS

Subpart A—General Provisions

Sec.

590.100 OMB Control Numbers.
590.101 Purpose and scope.
590.102 Definitions.
590.103 General requirements for filing documents with FE.
590.104 Address for filing documents.
590.105 Computation of time.
590.106 Dockets.
590.107 Service.
590.108 Off-the-record communications.
590.109 FE investigations.

Subpart B—Applications for Authorization to Import or Export Natural Gas

590.201 General.
590.202 Contents of applications.
590.203 Deficient applications.
590.204 Amendment or withdrawal of applications.
590.205 Notice of applications.
590.206 Notice of procedures.
590.207 Filing fees.
590.208 Small volume exports.
590.209 Exchanges by displacement

Subpart C—Procedures

590.301 General
590.302 Motions and answers.
590.303 Interventions and answers.
590.304 Protests and answers.
590.305 Informal discovery.
590.306 Subpoenas.
590.307 Depositions.
590.308 Admissions of facts.
590.309 Settlements.
590.310 Opportunity for additional procedures.
590.311 Conferences.
590.312 Oral presentations.
590.313 Trial-type hearings.
590.314 Presiding officials.
590.315 Witnesses.
590.316 Shortened proceedings.
590.317 Complaints.

Subpart D—Opinions and Orders

590.401 Orders to show cause.
590.402 Conditional orders.
590.403 Emergency interim orders.
590.404 Final opinions and orders.
590.405 Transferability.
590.406 Compliance with orders.
590.407 Reports of changes.

Subpart E—Applications for Rehearing

590.501 Filing.
590.502 Application is not a stay.
590.503 Opinion and order on rehearing.
590.504 Denial by operation of law.
590.505 Answers to applications for rehearing.

Authority: Secs. 301(b), 402(f), and 644, Pub. L. 95-91, 91 Stat. 578, 585, and 599 (42 U.S.C. 7151(b), 7172(f), and 7254), Sec. 3, Act of June 21, 1938, c. 556, 52 Stat. 822 (15 U.S.C. 717b); E.O. 12009 (42 FR 46267, September 15, 1977); DOE Delegation Order Nos. 0204-111 and 0204-127 (49 FR 6684, February 22, 1984; 54 FR 11437, March 20, 1989).

Subpart A—General Provisions

§ 590.100 OMB Control Numbers.

The information collection requirements contained in this part have been approved by the Office of Management and Budget under Control No. 1903-0081.

§ 590.101 Purpose and scope.

The purpose of this Part is to establish the rules and procedures required to be followed by persons to obtain authorizations from DOE to import or export natural gas under the Natural Gas Act and by all other persons interested in participating in a natural gas import or export proceeding before the agency. This Part establishes the procedural rules necessary to implement the authorities vested in the Secretary of Energy by sections 301(b) and 402(f) of the DOE Act, which have been delegated to the Assistant Secretary.

§ 590.102 Definitions.

As used in this part:

(a) *"Assistant Secretary"* means the Assistant Secretary for Fossil Energy or any employee of the DOE who has been delegated final decisional authority.

(b) *"Contested proceeding"* means a proceeding:

(1) Where a protest or a motion to intervene, or a notice of intervention, in opposition to an application or other requested action has been filed, or

(2) Where a party otherwise notifies the Assistant Secretary and the other parties to a proceeding in writing that it opposes an application or other requested action.

(c) *"Decisional employee"* means the Assistant Secretary, presiding officials at conferences, oral presentations or trial-type hearings, and any other employee of the DOE, including consultants and contractors, who are, or may reasonably be expected to be, involved in the decision-making process, including advising the Assistant Secretary on the resolution of issues involved in a proceeding. The term includes those employees of the DOE assisting in the conduct of trial-type hearings by performing functions on behalf of the Assistant Secretary or presiding official.

(d) *"DOE"* means the Department of Energy, of which FE is a part.

(e) *"DOE Act"* means the Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 (42 U.S.C. 7101 et seq.).

(f) *"FE"* means the Office of The Assistant Secretary for Fossil Energy.

(g) *"FERC"* means the Federal Energy Regulatory Commission.

(h) *"Interested person"* means a person, other than a decisional employee, whose interest in a proceeding goes beyond the general interest of the public as a whole and includes applicants, intervenors, competitors of applicants, and other individuals and organizations, including non-profit and public interest organizations, and state, local, and other public officials, with a proprietary, financial or other special interest in the outcome of a proceeding. The term does not include other federal agencies or foreign governments and their representatives, unless the agency, foreign government, or representative of a foreign government is a party to the proceeding.

(i) *"Natural gas"* means natural gas and mixtures of natural gas and synthetic natural gas, regardless of physical form or phase, including liquefied natural gas and gels primarily composed of natural gas.

(j) *"NGA"* means the Natural Gas Act of June 21, 1938, c. 556, 52 Stat. 821 (15 U.S.C. 717 et seq.).

(k) *"Off-the-record communication"* means a written or oral communication not on the record which is relevant to the merits of a proceeding, and about which the parties have not been given reasonable prior notice of the nature and purpose of the communication and an opportunity to be present during such communication or, in the case of a written communication, an opportunity to respond to the communication. It does not include communications concerned solely with procedures which are not relevant to the merits of a proceeding. It also does not include general background discussions about an entire industry or natural gas markets or communications of a general nature

made in the course of developing agency policy for future general application, even though these discussions may relate to the merits of a particular proceeding.

(l) "*Party*" means an applicant, any person who has filed a motion for and been granted intervenor status or whose motion to intervene is pending, and any state commission which has intervened by notice pursuant to § 590.303(a).

(m) "*Person*" means any individual, firm, estate, trust, partnership, association, company, joint-venture, corporation, United States local, state and federal governmental unit or instrumentality thereof, charitable, educational or other institution, and others, including any officer, director, owner, employee, or duly authorized representative of any of the foregoing.

(n) "*Presiding official*" means any employee of the DOE who has been designated by the Assistant Secretary to conduct any stage of a proceeding, which may include presiding at a conference, oral presentation, or trial-type hearing, and who has been delegated the auhority of the Assistant Secretary to make rulings and issue orders in the conduct of such proceeding, other than final opinions and orders, orders to show cause, emergency interim orders, or conditional decisions under subpart D and orders on rehearing under subpart E.

(o) "*Proceeding*" means the process and activity, and any part thereof, instituted by FE either in response to an application, petition, motion or other filing under this Part, or on its own initiative, by which FE develops and considers the relevant facts, policy and applicable law concerning the importation or exportation of natural gas and which may lead to the issuance of an order by the Assistant Secretary under subparts D and E.

(p) "*State commission*" means the regulatory body of a state or municipality having jurisdiction to regulate rates and charges for the sale of natural gas to consumers within the state or municipality, or having any regulatory jurisdiction over parties involved in the import or export arrangement.

§ 590.103 General requirements for filing documents with FE.

(a) Any document, including but not limited to an application, amendment of an application, request, petition, motion, answer, comment, protest, complaint, and any exhibit submitted in connection with such documents, shall be filed with FE under this Part. Such document shall be considered officially filed with FE when it has been received and stamped with the time and date of receipt by the Office of Fuels Programs, FE. Documents transmitted to FE must be addressed as provided in § 590.104. All documents and exhibits become part of the record in the official FE docket file and will not be returned. An original and fifteen (15) copies of all applications, filings and submittals shall be provided to FE. No specific format is required. Applicants required to file quarterly reports as a condition to an authorization need only file an original and four (4) copies.

(b) Upon receipt by FE, each application or other initial request for action shall be assigned a docket number. Any petition, motion, answer, request, comment, protest, complaint or other document filed subsequently in a docketed proceeding with FE shall refer to the assigned docket number. All documents shall be signed either by the person upon whose behalf the document is filed or by an authorized representative. Documents signed by an authorized representative shall contain a certified statement that the representative is a duly authorized representative unless the representative has a certified statement already on file in the FE docket of the proceeding. All documents shall also be verified under oath or affirmation by the person filing, or by an officer or authorized representative of the firm having knowledge of the facts alleged. Each document filed with FE shall contain a certification that a copy has been served as required by § 590.107 and indicate the date of service. Service of each document must be made not later than the date of the filing of the document.

(c) A person who files an application shall state whether, to the best knowledge of that person, the same or a related matter is being considered by any other part of the DOE, including the FERC, or any other Federal agency or department and, if so, shall identify the matter and the agency or department.

§ 590.104 Address for filing documents.

All documents filed under this part shall be addressed to: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Docket Room 3F–056, FE–50, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585. All hand delivered documents shall be filed with the Office of Fuels Programs at the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

§ 590.105 Computation of time.

(a) In computing any period of time prescribed or allowed by these regulations, the day of the act or event from which the designated period of time begins to run is not included. The period of time begins to run the next day after the day of the act or event. The last day of the period so computed is included unless it is a Saturday, Sunday, or legal Federal holiday, in which event the period runs until the end of the next day that is neither a Saturday, Sunday, nor a legal Federal holiday, unless otherwise provided by this Part or by the terms of an FE order. Documents received after the regular business hours of 8 a.m. to 4:30 p.m. are deemed filed on the next regular business day.

(b) When a document is required to be filed with FE within a prescribed time, an extension of time to file may be granted for good cause shown.

(c) An order is issued and effective when date stamped by the Office of Fuels Programs, FE, after the order has been signed unless another effective date is specified in the order.

§ 590.106 Dockets.

The FE shall maintain a docket file of each proceeding under this Part, which shall contain the official record upon which all orders provided for in subparts D and E shall be based. The official record in a particular proceeding shall include the official service list, all documents filed under § 590.103, the official transcripts of any procedures held under subpart C, and opinions and orders issued by FE under subparts D and E, and reports of contract amendments under § 590.407. All dockets shall be available for inspection and copying by the public during regular business hours between 8 a.m. and 4:30 p.m. Dockets are located in the Office of Fuels Programs, FE, Docket Room 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

§ 590.107 Service.

(a) An applicant, any other party to a proceeding, or a person filing a protest shall serve a copy of all documents filed with FE upon all parties unless otherwise provided in this part. The copy of a document served upon parties shall be a true copy of the document filed with FE, but does not have to be a copy stamped with the time and date of receipt by FE. The FE shall maintain an official service list for each proceeding which shall be provided upon request.

(b) When the parties are not known, such as during the initial comment period following publication of the notice of application, service requirements under paragraph (a) of this section may be met by serving a copy of all documents on the applicant and on

FE for inclusion in the FE docket in the proceeding.

(c) All documents required to be served under this Part may be served by hand, certified mail, registered mail, or regular mail. It shall be the responsibility of the serving party to ensure that service is effected in a timely manner. Service is deemed complete upon delivery or upon mailing, whichever occurs first.

(d) Service upon a person's duly authorized representatives on the official service list shall constitute service upon that person.

(e) All FE orders, notices, or other FE documents shall be served on the parties by FE either by hand, registered mail, certified mail, or regular mail, except as otherwise provided in this Part.

§ 590.108 Off-the-record communications.

(a) In any contested proceeding under this part:

(1) No interested person shall make an off-the-record communication or knowingly cause an off-the-record communication to be made to any decisional employee.

(2) No decisional employee shall make an off-the-record communication or knowingly cause an off-the-record communication to be made to any interested person.

(3) A decisional employee who receives, makes, or knowingly causes to be made an oral off-the-record communication prohibited by this section shall prepare a memorandum stating the substance of the communication and any responses made to it.

(4) Within forty-eight (48) hours of the off-the-record communication, a copy of all written off-the-record communications or memoranda prepared in compliance with paragraph (a)(3) of this section shall be delivered by the decisional employee to the Assistant Secretary and to the Deputy Assistant Secretary for Fuels Programs. The materials will then be made available for public inspection by placing them in the docket associated with the proceeding.

(5) Requests by a party for an opportunity to rebut, on the record, any facts or contentions in an off-the-record communication may be filed in writing with the Assistant Secretary. The Assistant Secretary shall grant such requests only for good cause.

(6) Upon being notified of an off-the-record communication made by a party in violation of this section, the Assistant Secretary may, to the extent consistent with the interests of justice and the policies of the NGA and the DOE Act, require the party to show cause why the party's claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of the violation.

(b) The prohibitions of paragraph (a) of the section shall apply only to contested proceedings and begin at the time either a protest or a motion to intervene or notice of intervention in opposition to the application or other requested action is filed with FE, or a party otherwise specifically notifies the Assistant Secretary and the other parties in writing of its opposition to the application or other requested action, whichever occurs first.

§ 590.109 FE investigations.

The Assistant Secretary or the Assistant Secretary's delegate may investigate any facts, conditions, practices, or other matters within the scope of this part in order to determine whether any person has violated or is about to violate any provision of the NGA or other statute or any rule, regulation, or order within the Assistant Secretary's jurisdiction. In conducting such investigations, the Assistant Secretary or the Assistant Secretary's delegate may, among other things, subpoena witnesses to testify, subpoena or otherwise require the submission of documents, and order testimony to be taken by deposition.

Subpart B—Applications for Authorization to Import or Export Natural Gas

§ 590.201 General.

(a) Any person seeking information to import or export natural gas into or from the United States, to amend an existing import or export authorization, or seeking any other requested action, shall file an application with the FE under the provisions of this part.

(b) Applications shall be filed at least ninety (90) days in advance of the proposed import or export or other requested action, unless a later date is permitted for good cause shown.

§ 590.202 Contents of applications.

(a) Each application filed under § 590.201 shall contain the exact legal name of the applicant, the names, titles, and mailing addresses of a maximum of two persons for the official service list, a statement describing the action sought from FE, the justification for such action, including why the proposed action is not consistent with the public interest, and the FE docket number, if applicable.

(b) Each application shall include the matters listed below to the extent applicable. All factual matters shall be supported to the extent practicable by the necessary data or documents. Copies of relevant documents filed or intended to be filed with FERC may be submitted to satisfy the requirements of this section. Topics to be addressed or described shall include:

(1) The scope of the project, including the volumes of natural gas involved, expressed in either Mcf or Bcf and their Btu equivalents, the dates of commencement and completion of the proposed import or export, and the facilities to be utilized or constructed;

(2) The source and security of the natural gas supply to be imported or exported, including contract volumes and a description of the gas reserves supporting the project during the term of the requested authorization;

(3) Identification of all the participants in the transaction, including the parent company, if any, and identification of any corporate or other affiliations among the participants;

(4) The terms of the transaction, such as take-or-pay obligations, make-up provisions, and other terms that affect the marketability of the gas;

(5) The provisions of the import arrangement which establish the base price, volume requirements, transportation and other costs, and allow adjustments during the life of the project, and a demonstration as to why the import arrangement is and will remain competitive over the life of the project and is otherwise not consistent with the public interest;

(6) For proposed imports, the need for the natural gas by the applicant or applicant's prospective customers, including a description of the persons who are expected to purchase the natural gas; and for proposed exports, the lack of a national or regional need for the gas; and

(7) The potential environmental impact of the project. To the extent possible, the application shall include a listing and description of any environmental assessments or studies being performed on the proposed gas project. The application shall be updated as the status of any environmental assessments changes.

(c) The application shall also have attached a statement, including a signed opinion of legal counsel, showing that a proposed import or export of natural gas is within the corporate powers of the applicant and a copy of all relevant contracts and purchase agreements.

(d) The Assistant Secretary or the Assistant Secretary's delegate may at any time require the applicant and other parties to make supplemental filings of

additional information necessary to resolve issues raised by the application.

(e) All information and data filed in support of or against an application will be placed in the official FE docket file of the proceeding and will not be afforded confidential treatment, unless the party shows why the information or data should be exempted from public disclosure and the Assistant Secretary or Assistant Secretary's delegate determines that such information or data shall be afforded confidential treatment. Such determination shall be made in accordance with 10 CFR 1004.11.

§ 590.203 Deficient applications.

If an application is incomplete or otherwise deemed deficient, the Assistant Secretary or the Assistant Secretary's delegate may require the applicant to submit additional information or exhibits to remedy the deficiency. If the applicant does not remedy the deficiency within the time specified by the Assistant Secretary or the Assistant Secretary's delegate, the application may be dismissed without prejudice to refiling at another time.

§590.204 Amendment or withdrawal of applications.

(a) The applicant may amend or supplement the application at any time prior to issuance of the Assistant Secretary's final opinion and order resolving the application, and shall amend or supplement the application whenever there are changes in material facts or conditions upon which the proposal is based.

(b) The Assistant Secretary may for good cause shown by motion of a party or upon the Assistant Secretary's own initiative decline to act on, in whole or in part, an amendment or supplement requested by an applicant under paragraph (a) of this section.

(c) After written notice to FE and service upon the parties of that notice an applicant may withdraw an application. Such withdrawal shall be effective thirty (30) days after notice to FE if the Assistant Secretary does not issue an order to the contrary within that time period.

§ 590.205 Notice of applications.

(a) Upon receipt of an application, the FE shall publish a notice of application in the **Federal Register.** The notice shall summarize the proposal. Except in emergency circumstances, generally the notice shall provide a time limit of not less than thirty (30) days from the notice's date of publication in the **Federal Register** for persons to file protests, comments, or a motion to intervene or notice of intervention, as applicable. The notice may also request comments on specific issues or matters of fact, law, or policy raised by the application.

(b) The notice of application shall advise the parties of their right to request additional procedures, including the opportunity to file written comments and to request that a conference, oral presentation, or trial-type hearing be convened. Failure to request additional procedures at this time shall be deemed a waiver of any right to additional procedures should the Assistant Secretary decide to grant the application and authorize the import or export by issuing a final opinion and order in accordance with 590.316.

(c) Where negotiations between the DOE, including FE, and a foreign government have resulted in a formal policy agreement or statement affecting a particular import or export proceeding, FE shall include in the notice of application a description of the terms or policy positions of that agreement or statement to the extent they apply to the proceeding, and invite comment. A formal policy agreement or statement affecting a particular import or export proceeding that is arrived at after publication of the notice of application shall be placed on the record in that proceeding and the parties given an opportunity to comment thereon.

§ 590.206 Notice of procedures.

In all proceedings where, following a notice of application and the time specified in the notice for the filing of responses thereto, the Assistant Secretary determines to have additional procedures, which may consist of the filing of supplemental written comments, written interrogatories or other discovery procedures, a conference, oral presentation, or trial-type hearing, the Assistant Secretary shall provide the parties with notice of the procedures the Assistant Secretary has determined to follow in the proceeding and advise the parties of their right to request any additional procedures in accordance with the provisions of § 590.310. The notice of procedures may identify and request comments on specific issues of fact, law, or policy relevant to the proceeding and may establish a time limit for requesting additional procedures.

§ 590.207 Filing fees.

A non-refundable filing fee of fifty dollars ($50) shall accompany each application filed under § 590.201. Checks shall be made payable to "Treasury of the United States."

§ 590.208 Small volume exports.

Any person may export up to 100,000 cubic feet of natural gas (14.73 pounds per square inch at 60 degrees Fahrenheit) or the liquefied or compressed equivalent thereof, in a single shipment for scientific, experimental, or other non-utility gas use without prior authorization of the Assistant Secretary.

§ 590.209 Exchanges by displacement.

Any importer of natural gas may enter into an exchange by displacement agreement without the prior authorization of the Assistant Secretary when the net effect of the exchange is no different than under the importer's existing authorization. An exchange by displacement is an arrangement whereby authorized imported volumes are displaced by other gas for purposes of storage or flexibility. The term of the exchange agreement may not exceed five (5) years, the volumes imported may not exceed the importer's existing import authorization, and no actual natural gas may flow across the United States border under the terms of the exchange agreement. Any importer who enters into an exchange agreement pursuant to this section shall file with FE within fifteen (15) days after the start up of the exchange, a written description of the transaction, the exact volume of natural gas to be displaced, the name of the purchaser, and the import authorization under which the exchange is being carried out.

Subpart C—Procedures

§ 590.301 General.

The procedures of this subpart are applicable to proceedings conducted on all applications or other requested actions filed under this Part. The Assistant Secretary may conduct all aspects of the procedures of this Subpart or may designate a presiding official pursuant to § 590.314.

§ 590.302 Motions and answers.

(a) Motions for any procedural or interlocutory ruling shall set forth the ruling or relief requested and state the grounds and the statutory or other authority relied upon. All written motions shall comply with the filing requirements of § 590.103. Motions made during conferences, oral presentations or trial-type hearings may be stated orally upon the record, unless the Assistant Secretary or the presiding official determines otherwise.

(b) Any party may file an answer to any written motion within fifteen (15) days after the motion is filed, unless another period of time is established by the Assistant Secretary or the presiding official. Answers shall be in writing and shall detail each material allegation of the motion being answered. Answers shall state clearly and concisely the facts and legal authorities relied upon.

(c) Any motion, except for motions

seeking intervention or requesting that a conference, oral presentation or trial-type hearing be held, shall be deemed to have been denied, unless the Assistant Secretary or presiding official acts within thirty (30) days after the motion is filed.

§ 590.303 Interventions and answers.

(a) A state commission may intervene in a proceeding under this Part as a matter of right and become a party to the proceeding by filing a notice of intervention no later than the date fixed for filing motions to intervene in the applicable FE notice or order. If the period for filing the notice has expired, a state commission may be permitted to intervene by complying with the filing and other requirements applicable to any other person seeking to become a party to the proceeding as provided in this section.

(b) Any other person who seeks to become a party to a proceeding shall file a motion to intervene, which sets out clearly and concisely the facts upon which the petitioner's claim of interest is based.

(c) A motion to intervene shall state, to the extent known, the position taken by the movant and the factual and legal basis for such positions in order to advise the parties and the Assistant Secretary as to the specific issues of policy, fact, or law to be raised or controverted.

(d) Motions to intervene may be filed at any time following the filing of an application, but no later than the date fixed for filing such motions or notices in the applicable FE notice or order, unless a later date is permitted by the Assistant Secretary for good cause shown and after considering the impact of granting the late motion on the proceeding. Each motion or notice shall list the names, titles, and mailing addresses of a maximum of two persons for the official service list.

(e) Any party may file an answer to a motion to intervene, but such answer shall be made within fifteen (15) days after the motion to intervene was filed, unless a later date is permitted by the Assistant Secretary for good cause shown. Answers shall be in writing. Answers shall detail each material allegation of the motion to intervene being answered and state clearly and concisely the facts and legal authorities relied upon. Failure to answer is deemed a waiver of any objection to the intervention. This paragraph does not prevent the Assistant Secretary from ruling on a motion to intervene and issuing a final opinion and order in accordance with § 590.316 prior to the expiration of the fifteen (15) days in which a party has to answer a motion to intervene.

(f) If an answer in opposition to a motion to intervene is timely filed or if the motion to intervene is not timely filed, then the movant becomes a party only after the motion to intervene is expressly granted.

(g) If no answer in opposition to a motion to intervene is filed within the period of time prescribed in paragraph (e) of this section, the motion to intervene shall be deemed to be granted, unless the Assistant Secretary denies the motion in whole or in part or otherwise limits the intervention prior to the expiration of the time allowed in paragraph (e) for filing an answer to the motion to intervene. Where the motion to intervene is deemed granted, the participation of the intervenor shall be limited to matters affecting asserted rights and interests specifically set forth in the motion to intervene, and the admission of such intervenor to party status shall not be construed as recognition by FE that the intervenor might be aggrieved because of any order issued.

(h) In the event that a motion for late intervention is granted, an intervenor shall accept the record of the proceeding as it was developed prior to the intervention.

§ 590.304 Protests and answers.

(a) Any person objecting to an application filed under 590.201 of this part or to any action taken by FE under this part may file a protest. No particular form is required. The protest shall identify the person filing the protest, the application or action being objected to, and provide a concise statement of the reasons for the protest.

(b) The filing of a protest, without also filing a motion to intervene or a notice of intervention, shall not make the person filing the protest a party to the proceeding.

(c) A protest shall be made part of the official FE docket file in the proceeding and shall be considered as a statement of position of the person filing the protest, but not as establishing the validity of any assertion upon which the decision would be based.

(d) Protests shall be served on the applicant and all parties by the person filing the protest. If the person filing the protest is unable to provide service on any person identified as a party to the proceeding after a good faith effort, then FE shall effect service. However, when the parties are not known, service requirements may be met by serving a copy of the applicant and on FE as provided in § 590.107(b).

(e) Protests may be filed at any time following the filing of an application, but no later than the date fixed for filing protests in the applicable FE notice or order, unless a later date is permitted by the Assistant Secretary for good cause shown.

(f) Any party may file an answer to a protest but such answer must be filed within fifteen (15) days after the protest was filed, unless a later date is permitted by the Assistant Secretary for good cause shown.

§ 590.305 Informal discovery.

The parties to a proceeding may conduct discovery through use of procedures such as written interrogatories or production of documents. In response to a motion by a party, the Assistant Secretary or presiding official may determine the procedures to be utilized for discovery if the parties cannot agree on such procedures.

§ 590.306 Subpoenas.

(a) Subpoenas for the attendance of witnesses at a trial-type hearing or for the production of documentary evidence may be issued upon the initiative of the Assistant Secretary or presiding official, or upon written motion of a party or oral motion of a party during a conference, oral presentation, or trial-type hearing, if the Assistant Secretary or presiding official determines that the evidence sought is relevant and material.

(b) Motions for the issuance of a subpoena shall specify the relevance, materiality, and scope of the testimony or documentary evidence sought, including, as to documentary evidence, specification to the extent possible of the documents sought and the facts to be proven by them, the issues to which they relate, and why the information or evidence was not obtainable through discovery procedures agreed upon by the parties.

(c) If service of a subpoena is' made by a United States Marshal or a Deputy United States Marshal, service shall be evidenced by their return. If made by another person, that person shall affirm that service has occurred and file an affidavit to that effect with the original subpoena. A witness who is subpoenaed shall be entitled to witness fees as provided in § 590.315(c).

§ 590.307 Depositions.

(a) Upon motion filed by a party, the Assistant Secretary or presiding official may authorize the taking of testimony of any witness by deposition. Unless otherwise directed in the authorization issued, a witness being deposed may be examined regarding any matter which is relevant to the issues involved in the pending proceeding.

(b) Parties authorized to take a deposition shall provide written notice to the witness and all other parties at

least ten (10) days in advance of the deposition unless such advance notice is waived by mutual agreement of the parties.

(c) The requesting motion and notice shall state the name and mailing address of the witness, delineate the subject matters on which the witness is expected to testify, state the reason why the deposition should be taken, indicate the time and place of the deposition, and provide the name and mailing address of the person taking the deposition.

(d) A witness whose testimony is taken by deposition shall be sworn in or shall affirm concerning the matter about which the witness has been called to testify before any questions are asked or testimony given. A witness deposed shall be entitled to witness fees as provided in § 590.315(c).

(e) The moving party shall file the entire deposition with FE after it has been subscribed and certified. No portion of the deposition shall constitute a part of the record in the proceedings unless received in evidence, in whole or in part, by the Assistant Secretary or presiding official.

§ 590.303 Admissions of facts.

(a) At any time prior to the end of a trial-type hearing, or, if there is no trial-type hearing, prior to the issuance of a final opinion and order under § 590.404, any party, the Assistant Secretary, or the presiding official may serve on any party a written request for admission of the truth of any matters at issue in the proceeding that relate to statements or opinions of fact or of the application of law to fact.

(b) A matter shall be considered admitted and conclusively established for the purposes of any proceeding in which a request for admission is served unless, within fifteen (15) days of such time limit established by the Assistant Secretary or presiding official, the party to whom the request is directed answers or objects to the request. Any answer shall specifically admit or deny the matter, or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny, unless the answering party states that, after reasonable inquiry, the answering party has been unable to obtain sufficient information to admit or deny. If an objection is made, the answering party shall state the reasons for the objection.

(c) If the Assistant Secretary or presiding official determines that an answer to a request for admission does not comply with the requirements of this section, the Assistant Secretary or presiding official may order either that the matter is admitted or that an amended answer be served.

(d) A copy of all requests for admission and answers thereto shall be filed with FE in accordance with § 590.103. Copies of any documents referenced in the request shall be served with the request unless they are known to be in the possession of the other parties.

(e) The Assistant Secretary or presiding official may limit the number of requests for admission of facts in order to expedite a proceeding through elimination of duplicative requests.

§ 590.309 Settlements.

The parties may conduct settlement negotiations. If settlement negotiations are conducted during a conference, at the request of one of the parties, the Assistant Secretary or presiding official may order that the discussions be off-the-record with no transcript of such settlement negotiations being prepared for inclusion in the official record of the proceeding. No offer of settlement, comment or discussion by the parties with respect to an offer of settlement shall be subject to discovery or admissible into evidence against any parties who object to its admission.

§ 590.310 Opportunity for additional procedures.

Any party may file a motion requesting additional procedures, including the opportunity to file written comments, request written interrogatives or other discovery procedures, or request that a conference, oral presentation or trial-type hearing be held. The motion shall describe what type of procedure is requested and include the information required by §§ 590.311, 590.312 and 590.313, as appropriate. Failure to request additional procedures within the time specified in the notice of application or in the notice of procedure, if applicable, shall constitute a waiver of that right unless the Assistant Secretary for good cause shown grants additional time for requesting additional procedures. If no time limit is specified in the notice or order, additional procedures may be requested at any time prior to the issuance of a final opinion and order. At any time during a proceeding, the Assistant Secretary or presiding official may on his or her own initiative determine to provide additional procedures.

§ 590.311 Conferences.

(a) Upon motion by a party, a conference of the parties may be convened to adjust or settle the proceedings, set schedules, delineate issues, stipulate certain issues of fact or law, set procedures, and consider other relevant matters where it appears that a conference will materially advance the proceeding. The Assistant Secretary or presiding official may delineate the issues which are to be considered and may place appropriate limitations on the number of intervenors who may participate, if two or more intervenors have substantially like interests.

(b) A motion by a party for a conference shall include a specific showing why a conference will materially advance the proceeding.

(c) Conferences shall be recorded, unless otherwise ordered by the Assistant Secretary or presiding official, and the transcript shall be made a part of the official record of the proceeding and available to the public.

§ 590.312 Oral presentations.

(a) Any party may file a motion requesting an opportunity to make an oral presentation of views, arguments, including arguments of counsel, and data on any aspect of the proceeding. The motion shall identify the substantial question of fact, law or policy at issue and demonstrate that it is material and relevant to the merits of the proceeding. The party may submit material supporting the existence of substantial issues. The Assistant Secretary or presiding official ordinarily will grant a party's motion for an oral presentation, if the Assistant Secretary or presiding official determines that a substantial question of fact, law, or policy is at issue in the proceeding and illumination of that question will be aided materially by such an oral presentation.

(b) The Assistant Secretary or presiding official may require parties making oral presentations to file briefs or other documents prior to the oral presentation. The Assistant Secretary or presiding official also may delineate the issues that are to be considered at the oral presentation and place appropriate limitations on the number of intervenors who may participate if two or more intervenors have substantially like interests.

(c) Oral presentations shall be conducted in an informal manner with the Assistant Secretary or the presiding official and other decisional employees presiding as a panel. The panel may question those parties making an oral presentation. Cross-examination by the parties and other more formal procedures used in trial-type hearings will not be available in oral presentations. The oral presentation may be, but need not be, made by legal counsel.

(d) Oral presentations shall be recorded, and the transcript shall be made part of the official record of the proceeding and available to the public.

§ 590.313 Trial-type hearings.

(a) Any party may file a motion for a trial-type hearing for the purpose of taking evidence on relevant and material issues of fact genuinely in dispute in the proceeding. The motion shall identify the factual issues in dispute and the evidence that will be presented. The party must demonstrate that the issues are genuinely in dispute, relevant and material to the decision and that a trial-type hearing is necessary for a full and true disclosure of the facts. The Assistant Secretary or presiding official shall grant a party's motion for a trial-type hearing, if the Assistant Secretary or presiding official determines that there is a relevant and material factual issue genuinely in dispute and that a trial-type hearing is necessary for a full and true disclosure of the facts.

(b) In trial-type hearings, the parties shall have the right to be represented by counsel, to request discovery, to present the direct and rebuttal testimony of witnesses, to cross-examine witnesses under oath, and to present documentary evidence.

(c) The Assistant Secretary or presiding official upon his or her own initiative or upon the motion of any party may consolidate any proceedings involving common questions of fact in whole or in part for a trial-type hearing. The Assistant Secretary or presiding official may also place appropriate limitations on the number of intervenors who may participate if two or more intervenors have substantially like interests.

(d) The Assistant Secretary or presiding official may make such rulings for trial-type hearings, including delineation of the issues and limitation of cross-examination of a witness, as are necessary to obtain a full and true disclosure of the facts and to limit irrelevant, immaterial, or unduly repetitious evidence.

(e) At trial-type hearings, the Assistant Secretary or presiding official, or any other decisional employee directed by the Assistant Secretary or presiding official, may call witnesses for testimony or presenting exhibits that directly relate to a particular issue of fact to be considered at the hearing. The Assistant Secretary or presiding official, or any other decisional employee directed by the Assistant Secretary or presiding official, may also question witnesses offered by the parties concerning their testimony.

(f) Trial-type hearings shall be recorded, and the transcript shall be made part of the official record of the proceeding and available to the public.

§ 590.314 Presiding officials.

(a) The Assistant Secretary may designate a presiding official to conduct any stage of the proceeding, including officiating at a conference, oral presentation, or trial-type hearing. The presiding official shall have the full authority of the Assistant Secretary during such proceedings.

(b) A presiding official at a conference, oral presentation, or trial-type hearing shall have the authority to regulate the conduct of the proceeding including, but not limited to, determination of the issues to be raised during the course of the conference, oral presentation, or trial-type hearing, administering oaths or affirmations, directing discovery, ruling on objections to the presentation of testimony or exhibits, receiving relevant and material evidence, requiring the advance submission of written testimony and exhibits, ruling on motions, determining the format, directing that briefs be filed with respect to issues raised or to be raised during the course of the conference, oral presentation or trial-type hearing, questioning witnesses, taking reasonable measures to exclude duplicative material, and placing limitations on the number of witnesses to be called by a party.

§ 590.315 Witnesses.

(a) The Assistant Secretary or presiding official may require that the direct testimony of witnesses in trial-type hearings be submitted in advance of the hearing and be under oath, and in written form.

(b) Witnesses who testify in trial-type hearings shall be under oath or affirmation before being allowed to testify.

(c) Witnesses subpoenaed pursuant to § 590.306 shall be paid the same fees and mileage as paid for like services in the District Courts of the United States.

(d) Witnesses subpoenaed pursuant to § 590.506 shall be paid the same fees and mileage as paid for like services in the District Court of the United States.

§ 590.316 Shortened proceedings.

In any proceeding where, in response to a notice of application or notice of procedures, if applicable, no party files a motion requesting additional procedures, including the right to file written comments, or the holding of a conference, oral presentation, or trial-type hearing, or where the Assistant Secretary determines that such requested additional procedures are not required pursuant to §§ 590.310, 590.311, 590.312 and 590.313, the Assistant Secretary may issue a final opinion and order on the basis of the official record, including the application and all other filings. In any proceeding in which the Assistant Secretary intends to deny the application or grant the application with the attachment of material conditions unknown to, or likely to be opposed by, the applicant, solely on the basis of the application and responses to the notice of application or notice of procedures, if applicable, without additional procedures, the Assistant Secretary shall advise the parties in writing generally of the issues of concern to the Assistant Secretary upon which the denial or material conditions would be based and provide them with an opportunity to request additional procedures pursuant to §§ 590.310, 590.311, 590.312 and 590.313.

§ 590.317 Complaints.

(a) Any person may file a complaint objecting to the actions by any other person under any statute, rule, order or authorization applicable to an existing import or export authorization over which FE has jurisdiction. No particular form is required. The complaint must be filed with FE in writing and must contain the name and address of the complainant and the respondent and state the facts forming the basis of the complaint.

(b) A complaint concerning an existing import or export authorization shall be served on all parties to the original import or export authorization proceeding either by the complainant or by FE if the complainant has made a good faith effort but has been unable to effect service.

(c) The Assistant Secretary may issue an order to show cause under § 590.401, or may provide opportunity for additional procedures pursuant to §§ 590.310, 590.311, 590.312, or § 590.313, in order to determine what action should be taken in response to the complaint.

Subpart D—Opinions and Orders

§ 590.401 Orders to show cause.

A proceeding under this Part may commence upon the initiative of the Assistant Secretary or in response to an application by any person requesting FE action against any other person alleged to be in contravention or violation of any authorization, statute, rule, order, or law administered by FE applicable to the import or export of natural gas, or for any other alleged wrong involving importation or exportation of natural gas over which FE has jurisdiction. Any show cause order issued shall identify the matters of interest or the matters complained of that the Assistant Secretary is inquiring about, and shall be deemed to be tentative and for the purpose of framing issues for consideration and decision. The respondent named in the order shall respond orally or in writing, or both, as required by the order. A show cause order is not a final opinion and order.

§ 590.402 Conditional orders.

The Assistant Secretary may issue a conditional order at any time during a proceeding prior to issuance of a final opinion and order. The conditional order shall include the basis for not issuing a final opinion and order at that time and a statement of findings and conclusions. The findings and conclusions shall be based solely on the official record of the proceeding.

§ 590.403 Emergency interim orders.

Where consistent with the public interest, the Assistant Secretary may waive further procedures and issue an emergency interim order authorizing the import or export of natural gas. After issuance of the emergency interim order, the proceeding shall be continued until the record is complete, at which time a final opinion and order shall be issued. The Assistant Secretary may attach necessary or appropriate terms and conditions to the emergency interim order to ensure that the authorized action will be consistent with the public interest.

§ 590.404 Final opinions and orders.

The Assistant Secretary shall issue a final opinion and order and attach such conditions thereto as may be required by the public interest after completion and review of the record. The final opinion and order shall be based solely on the official record of the proceeding and include a statement of findings and conclusions, as well as the reasons or basis for them, and the appropriate order, condition, sanction, relief or denial.

§ 590.405 Transferability.

Authorizations by the Assistant Secretary to import or export natural gas shall not be transferable or assignable, unless specifically authorized by the Assistant Secretary.

§ 590.406 Compliance with orders.

Any person required or authorized to take any action by a final opinion and order of the Assistant Secretary shall file with FE, within thirty (30) days after the requirement or authorization becomes effective, a notice, under oath, that such requirement has been complied with or such authorization accepted or otherwise acted upon, unless otherwise specified in the order.

§ 590.407 Reports of changes.

Any person authorized to import or export natural gas has a continuing obligation to give the Assistant Secretary written notification, as soon as practicable, of any prospective or actual changes to the information submitted during the application process upon which the authorization was based, including, but not limited to, changes to: the parties involved in the import or export arrangement, the terms and conditions of any applicable contracts, the place of entry or exit, the transporters, the volumes accepted or offered, or the import or export price. Any notification filed under this section shall contain the FE docket number(s) to which it relates. Compliance with this section does not relieve an importer or exporter from responsibility to file the appropriate application to amend a previous import or export authorization under this part whenever such changes are contrary to or otherwise not permitted by the existing authorization.

Subpart E—Applications for Rehearing

§ 590.501 Filing.

(a) An application for rehearing of a final opinion and order, conditional order, or emergency interim order may be filed by any party aggrieved by the issuance of such opinion and order within thirty (30) days after issuance. The application shall be served on all parties.

(b) The application shall state concisely the alleged errors in the final opinion and order, conditional order, or emergency interim order and must set forth specifically the ground or grounds upon which the application is based. If an order is sought to be vacated, reversed, or modified by reason of matters that have arisen since the issuance of the final opinion and order, conditional order, or emergency interim order, the matters relied upon shall be set forth with specificity in the application. The application shall also comply with the filing requirements of § 590.103.

§ 590.502 Application is not a stay.

The filing of an application for rehearing does not operate as a stay of the Assistant Secretary's order, unless specifically ordered by the Assistant Secretary.

§ 590.503 Opinion and order on rehearing.

Upon application for rehearing, the Assistant Secretary may grant or deny rehearing or may abrogate or modify the final opinion and order, conditional order, or emergency interim order with or without further proceedings.

§ 590.504 Denial by operation of law.

Unless the Assistant Secretary acts upon the application for rehearing within thirty (30) days after it is filed, it is deemed to be denied. Such denial shall constitute final agency action for the purpose of judicial review.

§ 590.505 Answers to applications for rehearing.

No answers to applications for rehearing shall be entertained. Prior to the issuance of any final opinion and order on rehearing, however, the Assistant Secretary may afford the parties an opportunity to file briefs or answers and may order that a conference, oral presentation, or trial-type hearing be held on some or all of the issues presented by an application for rehearing.

[FR Doc. 89-30270 Filed 12-28-89; 8:45 am]
BILLING CODE 6450-01-M

FEDERAL RESERVE SYSTEM

12 CFR Parts 202, 205, 213, and 226

[Regs. B, E, M, and Z; Docket No. R-0682]

Equal Credit Opportunity, Electronic Fund Transfers, Consumer Leasing, and Truth in Lending; Change in Enforcement Agency; Technical Amendment

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Technical amendment.

SUMMARY: The Board is making technical amendments to its regulations to reflect the transfer of enforcement functions from the Federal Home Loan Bank Board to the Office of Thrift Supervision, pursuant to the recent FIRREA legislation.

EFFECTIVE DATE: December 29, 1989.

FOR FURTHER INFORMATION CONTACT: W. Kurt Schumacher, Staff Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551 at (202) 452-2412; for the hearing impaired *only*, contact Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452-3544.

SUPPLEMENTARY INFORMATION: The Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA; Pub. L. No. 101-73, 103 Stat. 183) abolished the Federal Home Loan Bank Board and transferred its enforcement responsibilities to a new agency, the Office of Thrift Supervision.

The following amendments are hereby made to the Board's Regulations B (Equal Credit Opportunity), E (Electronic Fund Transfers), M (Consumer Leasing), and Z (Truth in Lending) to reflect this change in agency structure.

List of Subjects

12 CFR Part 202

Banks, Banking, Civil rights, Counsumer protection, Credit, Federal Reserve System, Marital status

discrimination, Minority groups, Penalities, Sex discrimination, Women.

12 CFR Part 205

Banks, Banking, Consumer protection, Electronic fund transfers, Federal Reserve System, Penalties.

12 CFR Part 213

Advertising, Consumer leasing, Truth in lending.

12 CFR Part 226

Advertising, Banks, Banking, Consumer protection, Credit, Federal Reserve System, Finance, Penalties, Rate limitations, Truth in lending.

12 CFR Chapter II is amended as follows:

PART 202—EQUAL CREDIT OPPORTUNITY

1. The authority citation for 12 CFR part 202 continues to read as follows:

Authority: 15 U.S.C. 1691–1691f.

§ 202.14 [Amended]

2. Section 202.14(a)(1) is amended by removing the phrase "Federal Home Loan Bank Board" and the parenthetical information that follows, and adding the words "Office of Thrift Supervision" in its place.

Appendix A—[Amended]

3. Appendix A is amended by removing the phrase "Savings Institutions Insured by the FSLIC and Members of the FHLB System," the parenthetical information that follows, and the next full sentence, and adding the following words in place thereof:

Savings institutions insured under the Savings Association Insurance Fund of the FDIC and federally chartered saving banks insured under the Bank Insurance Fund of the FDIC (but not including state-chartered savings banks insured under the Bank Insurance Fund).

The District Director of the Office of Thrift Supervision in the District in which the institution is located.

PART 205—ELECTRONIC FUND TRANSFERS

1. The authority citation for 12 CFR Part 205 continues to read as follows:

Authority: Pub. L. 95–630, 92 Stat. 3730 (15 U.S.C. 1693b).

§ 205.13 [Amended]

2. Section 205.13(a)(1) is amended by removing the phrase "Federal Home Loan Bank Board" and the parenthetical information that follows, and adding the words "Office of Thrift Supervision" in its place.

PART 213—CONSUMER LEASING

1. The authority citation for 12 CFR Part 213 continues to read as follows:

Authority: Sec. 105, Truth in Lending Act, as amended by sec. 605, Pub. L. 92–221, 94 Stat. 170 (15 U.S.C. 1604).

Appendix D—[Amended]

2. Appendix D is amended by removing the phrase "Savings Institutions Insured by the FSLIC and Members of the FHLB System." the parenthetical information that follows, and the next full sentence, and adding the following words in place thereof:

Savings institutions insured under the Savings Association Insurance Fund of the FDIC and federally chartered savings banks insured under the Bank Insurance Fund of the FDIC (but not including state-chartered savings banks insured under the Bank Insurance Fund).

The District Director of the Office of Thrift Supervision in the District in which the institution is located.

PART 226—TRUTH IN LENDING

1. The authority citation for 12 CFR part 226 continues to read as follows:

Authority: Truth in Lending Act, 15 U.S.C. 1604 and sec. 2, Public Law 100–583, 102 Stat. 2960; sec. 1204(c), Competitive Equality Banking Act, Public Law 100–86, 101 Stat. 552.

Appendix I—[Amended]

2. Appendix I is amended by removing the phrase "Savings Institutions Insured by the FSLIC and Members of the FHLB System," the parenthetical information that follows, and the next full sentence, and adding the following words in place thereof:

Savings institutions insured under the Savings Association Insurance Fund of the FDIC and federally chartered savings banks insured under the Bank Insurance Fund of the FDIC (but not including state-chartered savings banks insured under the Bank Insurance Fund).

The District Director of the Office of Thrift Supervision in the District in which the institution is located.

Board of Governors of the Federal Reserve System, December 26, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89–30287 Filed 12–28–89; 8:45 am]

BILLING CODE 6210–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 303

RIN 3064–AB03

Applications, Requests, Submittals, Delegations of Authority, and Notices of Acquisition of Control

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Interim rule with request for comments.

SUMMARY: The FDIC is establishing interim application and notice procedures governing: (1) Requests by state savings associations to engage directly in activities (other than as agent on behalf of customers) that are not permissible for federally chartered savings associations; (2) the direct conduct (other than agent on behalf of customers) by state savings associations of activities permissible for federal savings associations but in an amount in excess of that permissible for federals; (3) the divestiture of equity investments held by state savings associations that are no longer permissible investments as a result of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"); (4) the divestiture of "junk bonds" by state and federal savings associations; and (5) prior notice of the establishment or acquisition of a subsidiary by a state or federal savings association or the conduct of a new activity by an existing subsidiary of such institutions. Comments will be accepted on the interim rule for 60 days, after which time the FDIC will issue a final rule based upon the comments.

DATE: *Effective:* December 29, 1989. *Comments:* Comments must be received by February 28, 1990.

ADDRESSES: Send comments to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand delivered to Room 6097 on business days between 8:30 a.m. and 5:00 p.m. Comments may also be inspected in Room 6097 between 8:30 a.m. and 5:00 p.m. on business days. [FAX number: (202) 347–2773 or 2775.]

FOR FURTHER INFORMATION CONTACT: Pamela E.F. LeCren, Counsel, (202) 898–3730, Legal Division, FDIC, 550 17th Street, NW., Washington, DC 20429; Daniel E. Austin, Review Examiner, (202) 898–6774, or Garfield Gimber, Examination Specialist, (202) 898–6913, Division of Supervision, FDIC, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this rule has been submitted to the Office of Management and Budget for review pursuant to section 3504(h) of the Paperwork Reduction Act [44 U.S.C. 3501 *et seq.*]. Comments on the collection of information should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Federal Deposit Insurance Corporation, with copies of such comments to be sent to John R. Kelper, Jr., Assistant Executive Secretary, Room 6096, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. The collection of information in this regulation is in §§ 303.13(b), (c), (d), (e), (f), and (g). This information is required by the Federal Deposit Insurance Corporation in order that the FDIC may discharge its responsibilities under section 18(m) and section 28 of the Federal Deposit Insurance Act ("FDI Act"), as added by FIRREA. Pub. L. No. 101–73, sections 221 and 222, respectively, 103 Stat. 183, 266–269, 269–73, (1989). This information will be used to ensure compliance with the requirements of those sections of the FDI Act which (1) provide that savings associations must file notice with the FDIC prior to acquiring or establishing a subsidiary or conducting a new activity through a subsidiary, (2) set certain limits and restrictions on the permissible activities and equity investments of state savings associations, and (3) prohibit savings associations from acquiring or retaining corporate debt securities that are not of investment grade. The information will also be used to aid the FDIC in discharging its responsibilities under section 18(m) to adopt regulations, or issue orders, to prohibit activities which may be a serious threat to the Savings Association Insurance Fund (SAIF) or the Bank Insurance Fund (BIF). The likely respondents to these information collection requirements are savings associations engaging in the activities described above.

The estimated annual reporting burden for the collection of information in the regulation is summarized as follows:

Number of Respondents: 1,100
Number of Responses Per Respondent: 1
Total Annual Responses: 1,100
Hours Per Response: 8
Total Annual Burden Hours: 8,800

Discussion of Interim Rule

Background

On August 9, 1989 President Bush signed FIRREA into law. FIRREA amended the FDI Act in a number of ways, among which was the addition of subsection (m) to section 18 of the FDI Act (12 USC 1828(m)) by § 221 of FIRREA (103 Stat. 266–269) and the addition of § 28 to the FDI Act by § 222 of FIRREA (103 Stat. 269–273).

Section 18(m)(1), as added by FIRREA, provides that (with certain exceptions) *any* insured savings association (state or federal) must notify the FDIC (and the Office of Thrift Supervision ("OTS")) at least 30 days prior to the establishment or acquisition of a subsidiary and at least 30 days prior to electing to conduct any new activity through a subsidiary. The savings association is to include in the notice such information as the FDIC requires by regulation. Section 18(m)(2) sets forth the authority of the OTS with regard to subsidiaries of insured savings associations. It also provides that should the Director of OTS determine that ownership or control of a particular subsidiary by a savings association, or the relationship between a savings association and its subsidiary, either constitutes a serious risk to the safety, soundness or stability of the savings association, is inconsistent with the purposes of the FDI Act, or is inconsistent with sound banking principles, the FDIC may order divestiture of the subsidiary.

Section 18(m)(3) provides that the FDIC may determine by regulation or order that any specific activity of a savings association poses a serious threat to the SAIF and further that the FDIC may prescribe and enforce such regulations (and/or issue such orders) that the FDIC determines are necessary to prevent actions or practices by savings associations that pose a serious threat to SAIF or BIF.

Section 28, as added to the FDI Act by FIRREA, deals, in part, with the activities and equity investments of state chartered savings associations and the investment by state or federal savings associations in "junk bonds." Section 28(a) prohibits a state chartered savings association from engaging as principal on or after January 1, 1990 in any activity of a type that is not permissible for federal savings associations unless the FDIC determines that the activity poses no significant risk to the affected deposit insurance fund *and* the savings association is, and continues to be, in compliance with the fully phased-in capital standards prescribed under section 5(t) of the Home Owners' Loan Act ("HOLA"), as amended by FIRREA (12 U.S.C. 1464(t)).

Section 28(b) deals with the direct activities of state chartered savings associations that are permissible for federal savings associations but which are authorized to state associations in an amount in excess of that which would be permissible for federal associations. The statute allows such activities to be conducted in amounts in excess of that which would be permissible directly for federal savings associations, provided that the FDIC has not determined that doing so poses any significant risk to the affected deposit insurance fund and provided that the savings association is, and continues to be, in compliance with the fully phased-in capital standards prescribed under HOLA.

Section 28(c) concerns equity investments made by state chartered savings associations. Under subsection (c), effective August 9, 1989, a state savings association is prohibited, with a limited exception for service corporations, from directly acquiring, or retaining, any equity investment of a type, or in an amount, that would not be permissible for federal savings associations. A state savings association that acquired a nonconforming equity investment prior to August 9, 1989 is required to divest such investment as soon as can be prudently done, but in any event not later than July 1, 1994. The FDIC may establish restrictions and/or requirements in connection with the divestiture of such investments.

Section 28(d) provides that no savings association (state or federal) may directly or indirectly through a subsidiary acquire or retain any corporate debt security that is not of investment grade (frequently referred to as "junk bonds"). The prohibition does not apply to acquisition or retention of such debt by a qualified affiliate of the savings association. Any savings association, or subsidiary of a savings association, that held debt securities not of investment grade prior to August 9, 1989 is required to divest those securities as quickly as can be prudently done and, in any event, not later than July 1, 1994. The FDIC is authorized to establish restrictions and/or requirements in connection with divestiture.

The FDIC is issuing regulations to implement the statutory provisions discussed above. Since the provisions being implemented relate to savings associations, the FDIC has consulted with the OTS for advice and comments during the draft of the regulation,

especially in the case of the provisions of section 18(m) of the FDI Act (§ 303.13 (f) of the regulation), under which both the FDIC and OTS have substantial responsibility. The FDIC also intends to coordinate with OTS in administering the provisions of section 28 of the FDI Act, especially where divestiture is concerned.

In applying the regulatory provisions, it is crucial that associations keep in mind that more than one filing may be necessary as a result of a single transaction. For instance, a state association which is establishing a subsidiary which is to engage in an activity not authorized to all federal associations will have to file a notice with the FDIC concerning the establishment of the subsidiary (as well as with OTS). The association's investment in the subsidiary must also conform to the requirements for equity investments. It is also possible that the association will have to adhere to various other statutory and regulatory provisions being administered by OTS. Again, the FDIC anticipates cooperation between the FDIC and OTS in such situations.

Description of Interim Rule

1. *Engaging as principal in activities after January 1, 1990 that are not "permissible" for federal savings associations*—[§ 28(a) of FDI Act—§ 303.13(b)].

Section 28(a) of the FDI Act, as added by FIRREA, seeks to, among other things, establish parallel regulations of state and federally chartered savings associations and to prevent state associations from exercising powers which are too risky to insure. (135 Cong. Rec. H2720, H2798, daily ed. June 15, 1989, statement of Rep. Torres and Rep. Kanjorski). To that end, the FDIC has been granted the authority and responsibility to ensure that any power exercised after January 1, 1990 by any state association is no greater than that "permissible" for federally chartered savings associations. Under § 28 other powers conferred by a state may only be exercised if the FDIC determines that the exercise of such power will *not* pose a significant risk to the affected deposit insurance fund and if the association in question is, and continues to be, in compliance with the fully phased-in capital standards prescribed by § 5(t) of HOLA.

Scope of § 303.13(b)

Section 303.13(b) of the interim rule sets forth application procedures which must be followed if a state savings association wishes to request the FDIC's approval to directly engage after January 1, 1990 in an activity in which a federal savings association could not engage. Under the interim rule, a state savings association must apply to the FDIC for approval if the association wishes to continue or initiate any activity directly (other than as agent on behalf of its customers) that is "not expressly authorized for all federal savings associations by statute or regulation issued by the Office of Thrift Supervision." The rule thus uses language to clarify the statute's use of the word "permissible" in order to clearly indicate the standard to which the FDIC will look in order to determine whether or not a particular activity is permissible for federal savings associations. The FDIC has specifically conferred with the OTS prior to adopting this position. Furthermore, the reference to statute or regulation is clearly consistent with FIRREA's legislative history which evidences an intent to include regulations adopted by the primary federal supervisory agency for federal associations. "An activity is not permissible for a Federal savings association for purposes of section 28 if, for example, it is impermissible for a Federal savings association under regulations prescribed by the Chairman of the Office of Savings Associations pursuant to section 5(c) of the Home Owners' Loan Act." (135 Cong. Rec. S6914, daily ed. June 19, 1989, section by section analysis of S. 774).

Under the interim rule, an activity that is not expressly authorized by statute or regulation, but that has been found permissible under a staff interpretation of the statute or regulation, does not qualify as "permissible". An association that wishes to conduct such an activity must file an application under the regulation. By adopting a conservative posture the FDIC will ensure that activities not clearly contemplated under statute or regulation are assessed in light of their potential impact on the insurance fund. Additionally, the reference in the interim rule to activities expressly authorized "for all" federal savings associations has the effect of limiting the universe of activities that will *not* trigger the need for prior approval to those generally available to all federal savings associations. Thus, the fact that federal association "X" is authorized to exercise a particular power (as a result, for example, of having retained a state-granted power when the association converted from a state to a federal charter sometime prior to August 9, 1989 or as a result of an OTS order or resolution granting it permission to so engage in a given set of circumstances) does not mean that state associations in general may exercise that power without the FDIC's approval. Particular OTS orders or resolutions are likely to be based upon facts and circumstances peculiar to the particular applicant. In brief, that power is not permissible for "all" federal associations. Again, this conservative approach allows the FDIC to assess the ability of any particular state association to engage in any activity within the context of the potential impact on the insurance fund.

The statutory prohibition in the rule against engaging "as principal" in activities not authorized to federal associations translates in the interim rule to a requirement for approval if a state savings association wishes to *directly* engage in a nonpermissible activity unless the association is strictly acting as agent on behalf of its customers. This reading of the statute is based upon legislative history. "Subsection (a) does not apply to activities that a savings association engages in strictly as its customer's agent. This is the effect of the subsection's references to engaging in activities as principal." 135 Cong. Rec. S10203, daily ed. Aug. 4, 1989, statement of Sen. Riegle. Although activities in which the association is acting strictly as agent are not subject to prior approval under § 28(a) and this rule, the activities could be restricted under other provisions of law. (Joint Explanatory Statement of the Committee of Conference, p. 403.)

Despite the fact that nonresidential real estate lending is a permissible activity for federal associations, the procedures set forth in § 303.13(b) must also be followed if a state association wishes to make loans secured by nonresidential real property in an amount in excess of that authorized to all federal savings associations. Although § 28(a) generally deals only with activities of a type that are not permissible for federal savings associations, nonresidential real estate lending is specifically identified by the statute as being subject to subsection (a).

Thus, nonresidential real estate lending is dealt with by the statute in the same manner as an activity that is not permissible for a federal savings association. ("Subsection (b) [of section 28 which generally governs the exercise of federally permissible activities in an amount in excess of that permitted to federal associations] does not apply to nonresidential real-estate loans, which are governed by subsection (a) [of section 28]." Joint Explanatory Statement of the Committee of Conference, p. 403.)

Section 28(g) of the FDI Act, as added by FIRREA, provides that subsections (a) and (b) of § 28 shall not be construed to require any state association that held an asset prior to August 9, 1989 to divest that asset. In accordance therewith, paragraph (b)(2) of § 303.13 indicates that paragraph (b)(1) of that section shall not be read to require the divestiture of an asset that was held by a state association prior to August 9, 1989, even though the asset (*e.g.*, an office building) is utilized in connection with the conduct of an activity for which the association must obtain the FDIC's approval (*e.g.*, real estate brokerage). Divestiture of the asset is not required pursuant to § 303.13(b)(1), even if approval to continue the activity is denied. Thus, the association could retain a building that had been used for an impermissible activity and convert its use to something else. This does not preclude the FDIC, however, from requiring the divestiture of the asset, in appropriate circumstances, pursuant to authority granted the FDIC by other provisions of the FDI Act or other statute. In fact, an asset acquired prior to August 9, 1989, may be subject to divestiture under section 28(c) of the FDI Act and § 303.13(d) of this rule if it is an equity investment. (135 Cong. Rec. S6914, 6915, daily ed. June 19, 1989, section by section analysis of S. 774).

Content and Filing of Application

Applicants do not need to file a particular form or application under § 303.13(b) but may simply file a letter application. The letter application is to be filed with the regional director for the Division of Supervision for the FDIC regional office in which the savings association's principal office is located. For the purposes of the rule the phrase "principal office" is intended to refer to the office of the headquarters of the savings association.

The rule requires that the following information be set forth in the letter application: (1) A brief description of the activity and the manner in which it is (or will be) conducted; (2) a copy, *if available*, of any feasibility study, management plan, financial projections, business plan, or similar document concerning the conduct of the activity; (3) an estimate of the present or expected dollar volume of the activity; (4) a copy of resolutions by the board of directors or board of trustees of the applicant authorizing the conduct of the activity in question and the submission of the application; (5) the most recent statement of the applicant's assets, liabilities, and capital on both a consolidated and non-consolidated basis; (6) a discussion by management of its analysis regarding the impact of the activity on the applicant's earnings, capital adequacy, and general condition; (7) a statement by the applicant of whether or not it is in compliance with the fully phased-in capital standards prescribed under section 5(t) of HOLA, including a calculation of the relevant capital ratio; and (8) a statement indicating the authority which the savings association is relying upon for the conduct of the activity.

In addition, the rule allows the regional director to request additional information. The FDIC wishes to emphasize that applicants are not generally required to develop feasibility studies or similar information under item (2) but are merely required to submit to the FDIC copies of whatever such information the association prepared or reviewed in connection with its decision to initiate the activities covered by the application. The FDIC reserves the right, however, to determine in the appropriate circumstances, that such a plan should have been developed or that the lack of any such plan constitutes an unsafe or unsound banking practice.

Standard for Processing Applications

Under the statute, the FDIC is precluded from approving the conduct by state savings associations of activities that are not permissible for federally chartered savings associations *unless* two tests are met: (1) The association in question is, and continues to be, in compliance with the fully phased-in capital standards prescribed by section 5(t) of HOLA, and (2) the conduct of the activity will pose no significant risk to the affected deposit insurance fund. Both conditions must be met if an activity is to be approved. In short, section 28(a) does not allow the FDIC to authorize the conduct of the activity absent such compliance. In fact, unless an association is in compliance with the fully phased-in capital standards, the association need not apply to engage in an activity not permissible to a federal savings association. Thus, an association which is not in compliance with the fully phased-in capital standards will have to terminate, and cannot initiate, an activity not allowable to a federal association. Any association that has not terminated an impermissible activity by January 1, 1990 which is not eligible to apply for the FDIC's permission to continue the activity is subject to enforcement action.

The second requirement for allowing the activity is that the FDIC determine that the activity poses no "significant risk" to the fund. This phrase is defined in the rule to mean that it is likely that either of the insurance funds administered by the FDIC will suffer a loss as a result of the conduct of the activity. This definition is discussed at length below, along with the other definitions contained in the rule. Applicants should be aware that an application may be denied even though both the capital and significant risk test have been met, provided that the FDIC has an independent basis under other provisions of the FDI Act, or any other statute, or regulation to condition, restrict, or prohibit the conduct of the activity in question. ("Section 28 does not limit any authority of the FDIC under other provisions of law." 135 Cong. Rec. S6915, daily ed. June 19, 1989, section by section analysis of S. 774.)

Capital standards—For the purposes of applying § 28 of the FDI Act and this rule, the FDIC intends to construe the phrase "fully phased-in capital standards" to refer to those capital requirements that will be generally applicable to all savings associations after any phase-in periods provided by FIRREA, or by regulations adopted by OTS, have expired. Thus, the relevant standards are those that will be applicable after the Director of OTS no longer has authority to make temporary exceptions to the capital standards set forth in section 5(t) of HOLA (January 1, 1991); the requirement that investments in, and extensions of credit to, certain subsidiaries be excluded from the capital of the parent savings association is in full force (July 1, 1994); and the transitional period for including qualifying supervisory goodwill in the calculation of core capital has expired (January 1, 1995). Additionally, since section 5(t)(1)(B) requires the Director of OTS to adopt regulations setting forth capital requirements that are no less stringent than the capital standards applicable to national banks, the relevant capital level for the application of § 303.13 also includes the risk-based capital requirements that will be in effect for national banks as of December 31, 1992. A savings association that is operating under an exemption granted by OTS, or a business plan acceptable to OTS, will not be considered to be in compliance with the fully phased-in capital requirements. (135 Cong. Rec. S6913, daily ed. June 19, 1989).

2. *Engaging in activities authorized to a federal association but to an extent not authorized for federals*—[Section 28(b) of FDI Act, § 303.13(c)].

Activities previously being conducted—Section 303.13(c)(1)(i) of the rule requires those state savings associations that are engaging, as of the

effective date of the regulation, in an activity of the type which is expressly authorized for federal savings associations by statute or regulation adopted by OTS, but which are engaging in such activity to a greater extent than is authorized to federal associations to file a notice with the FDIC. The notice must be sent, return receipt requested, to the regional director for the Division of Supervision for the region in which the association's principal office is located. The notice must be received by the regional director no later than 30 days after the effective date of the regulation. The notice must contain the information listed in § 303.13(b)(1) of the rule. In addition, the regional director may request such other information as the director deems appropriate.

A state savings association filing notice pursuant to paragraph (c)(1)(i) may continue the activities described in the notice at the level described unless the FDIC notifies the association to the contrary. No association will be permitted to continue such activities if the association is not in compliance with the fully phased-in capital standards prescribed by section 5(t) of HOLA or the FDIC determines that the conduct of such activities at the level described poses a significant risk to either of the deposit insurance funds. As is the case with activities covered by § 303.13(b) of the rule, a state savings association may not engage in a permissible activity at a level in excess of that permissible for federal associations unless it is in compliance with the fully phased-in capital standards. Such an institution must reduce the activity to a level which conforms to that applicable to a federal association. The FDIC is also not precluded from prohibiting the conduct of the activities at the level described if the activities, or the manner in which they are conducted, is contrary to statute or regulation. (135 Cong. Rec. S6915, daily ed. June 19, 1989, section by section analysis of S. 774).

Paragraph (c)(1)(iii) of the rule indicates that a savings association which held assets on its books prior to August 9, 1989 in connection with the conduct of an activity which gives rise to a notice pursuant to paragraph (c)(1) shall not be requried to divest those assets based upon section 28(b) of the FDI Act. This is so even if the FDIC notifies the association that it may not continue the conduct which has been the subject of a notice. This section of the rule thus tracks the language found in § 303.13(b)(2) and is based upon section 28(g) of FIRREA.

Commencing activities for the first time—State associations proposing to conduct activities of the sort described in paragraph (c)(1)(i) are required under paragraph (c)(2) of the rule to file a notice with the FDIC at least 60 days before initiating the activity. The notice is required to be filed with the regional director for the Division of Supervision for the region in which the association's principal office is located. The same information must be contained in the notice as is required for the notice for activities previously conducted. The regional director may request additional information. Provided that the association is in compliance with the fully phased-in capital standards prescribed by § 5(t) of HOLA and unless the 60-day notice period is extended or the association has been notified to the contrary, the association may begin to conduct the activity 60 days after the notice is received in the regional office (or in less than 60 days if so notified). The 60-day period may be extended by the regional director upon notice to the association if the notice as received is incomplete or the notice raises issues that require additional information or time for analysis. if the regional office extends the 60-day period, the association may begin the conduct of the activities only upon receipt of written notification from the FDIC. No savings association will be permitted to initiate activities at a level that is determined to pose a significant risk to either of the deposit insurance funds administered by the FDIC.

3. *Acquisition or retention of equity investments after August 9, 1989*—[section 28(d) of FDI Act, § 303.13(d)].

Section 303.13(d) of the rule implements the prohibition contained in section 28(c) of the FDI Act on state chartered savings associations' *directly* acquiring or retaining after August 9, 1989 equity investments of the sort not permissible for federal savings associations. ("If the owners of a thrift want to make investments [that a federally chartered thrift cannot make], they must do so with a separately capitalized subsidiary cut off from Federal deposit insurance * * *" 135 Cong. Rec. S3996, daily ed. April 17, 1989, statement of Sen. Riegle.) "Equity investment" is defined in the rule to mean any equity security, any partnership interest, any equity interest in real estate, and any transaction which in substance falls within any of these categories, even though it may be structured as some other form of business transaction. For an in-depth discussion of what constitutes an equity investment for the purposes of this rule see the discussion below covering definitions.

As indicated previously, section 28 requires the FDIC to direct state savings associations to divest any nonconforming *equity investments* held as of August 9, 1989 as quickly as prudently possible. Additionally, section 28(c) may require the divestiture of an *asset* that was held by a state savings association prior to August 9, 1989 if that asset is a nonconforming equity investment. (135 Cong. Rec. S6915, daily ed. June 19, 1989, section by section analysis of S. 774). The latest allowable date for completion of divestiture is July 1, 1994. Under the statute, the FDIC is the final arbiter of when divestiture can be prudently accomplished. (Joint Explanatory Statement of the Committee of Conference, p. 403, 135 Cong. Rec. S4091, daily ed. April 18, 1989, excerpts from Report accompanying S. 774).

As is the case with the sections of the rule described above, paragraph (d)(1) refers to investments that are expressly authorized by statute or regulation adopted by OTS for all federal savings associations. Thus, for example, the fact that one or more federal savings associations have been permitted by order or resolution of the OTS (or its predecessor, the Federal Home Loan Bank Board) to acquire a certain equity investment, or staff of the OTS (or its predecessor) have issued an interpretive opinion indicating that a particular investment is permissible given the facts and circumstances, does not qualify that investment as one expressly authorized by statute or regulation to all federal savings associations.

Under the interim rule, any state chartered savings association that as of August 9, 1989 held one or more equity investments subject to the restrictions of section 28(c) must file a letter application, return receipt requested, with the regional director for the Division of Supervision for the region in which the association's principal office is located not later than 30 days from the effective date of the regulation. The letter must describe the obligor, type, amount, and book and market values of the equity investment(s) held by the savings association which trigger(s) the application; evaluate the anticipated gain or loss from the divestiture of the investment and the impact thereof on the association; enclose a copy of the association's plan to comply with the divestiture requirement as quickly as prudently possible; enclose a copy of the board of directors' (or board of trustees in a mutual association) resolution authorizing the filing of the application; and request the FDIC's permission to

accomplish divestiture in accordance with the plan set forth in the application. The regional director may request additional information as deemed appropriate.

It is the FDIC's intent to review each application, along with such additional information as requested, for the purpose of determining whether or not the savings association which filed the application can prudently divest the equity investments in question in a more expeditious fashion than that contemplated under the plan filed with the regional office. In connection therewith, and as recited in the interim rule, the FDIC may impose such conditions and requirements as it deems appropriate (in its sole discretion) with regard to the divestiture, including setting a date for final divestiture in advance of July 1, 1994 or the date contemplated by the association. The FDIC also reserves the right under the interim rule to set conditions and restrictions regarding divestiture at any time during the divestiture period. It was the clear intent of Congress in enacting section 28(c) of the FDI Act to preclude state chartered savings assocations from making nontraditional equity investments which involve unacceptable risks in the future. It is also clear that Congress intended to change the FDIC with the responsibility to see that savings associations which already had such investments rid themselves of those investments as quickly as possible so that those institutions would not suffer losses from those investments. (135 Cong. Rec. S4091, daily ed. April 18, 1989, excerpts from Report accompanying S.774; 135 Cong. Rec. S3996, daily ed. April 17, 1989, statement of Sen. Riegle). It is therefore equally as clear that any approval the FDIC may give of an association's plan to divest nonconforming equity investments cannot be frozen in time. The FDIC must be able to reassess that plan in light of subsequent events and in light of the association's condition on an on-going basis. Any approval will therefore be conditioned upon the continuing validity of any assumptions upon which the plan is based, the continuing vitality of the association in question, and the facts and circumstances existing at the time the approval was granted and during the course of the divestiture period. The FDIC also wishes to make clear that the FDIC intends to consult with OTS regarding the approval of divestiture plans filed with the regional offices.

Service corporation exception—Paragraph (2) of § 303.13(d) concerns the investment by state savings associations in service corporations. (Under the interim rule, a "service corporation" is a corporation the capital stock of which is available for purchase only by savings associations.) Section 28(c) of the FDI Act permits a state savings association to acquire an equity investment in a service corporation without the FDIC's approval if the service corporation is engaged in activities that are permissible for all service corporations owned by federal savings associations, that is, not just some service corporations, and the association's investment in the service corporation does not exceed that permissible for a federal savings association. Equity investments can be made in service corporations with the FDIC's approval even if the above conditions are not met, provided that the FDIC (1) determines that the acquisition does not pose a significant risk of loss to either deposit insurance fund administered by the FDIC, and (2) the association in question is, and continues to be, in compliance with the fully phased-in capital standards prescribed by section 5(t) of HOLA. Similarly to § 303.13 (b) and (c), if an association is not in compliance with the fully phased-in capital standards, that association cannot take advantage of the service corporation exception and need not file an application to do so.

Under § 303.13(d)(2) of the interim rule, a state savings association that wishes to acquire an equity investment in a service corporation that engages in activities in which a service corporation of a federal savings association is not expressly authorized to engage either by statute or a regulation adopted by the OTS must file a letter application with the regional director for the Division of Supervision for the region in which the savings association's principal office is located. Likewise, a state savings association that wishes to make an investment in a service corporation in excess of the amount of an investment which is permissible for federal savings associations to make in a service corporation must file a letter application with the appropriate FDIC regional director. Those associations which held investments such as those described above as of August 9, 1989 and which would like to retain those investments must file an application with the regional director no latter than 30 days after the effective date of the regulation requesting permission to retain the investments.

The letter application must contain the information set forth in § 303.13(b)(1), as it relates both to the service corporation and to the parent savings association; a listing of the officers (contemplated officers) of the service corporation; a listing of any other shareholders (existing or prospective) of the service corporation and their respective holdings; and a list of the locations (expected locations) of all of the offices of the service corporation. The regional director may request other information deemed appropriate.

As stated earlier, approval to acquire or retain the investment in question will not be granted if the association is not in compliance with the fully phased-in capital standards prescribed by section 5(t) of HOLA or if it is determined that the retention or acquisition of such investment would pose a significant risk to either deposit insurance fund administered by the FDIC. The FDIC is not precluded from denying an application based upon some other independent basis, however. If a request to retain an investment is denied, as association will need to divest the investment as quickly as prudently possible, but in any event not later than July 1, 1994. The interim rule, therefore, requires an association whose application to retain an investment has been denied to file a plan of divestiture with the regional director requesting permission to accomplish divestiture in accordance therewith.

Commitments entered into prior to August 9, 1989—It is the FDIC's opinion that state savings associations which, prior to August 9, 1989, entered into commitments to acquire equity investments at some time after August 9, 1989 of the type, or in an amount, which is now prohibited to state associations pursuant to section 28(c) may not proceed with the acquisition. Generally speaking, associations in this circumstance should have a defense to a breach of contract claim on the basis of impossibility of performance (*i.e.*, performance under the contract would be illegal as a result of subsequently enacted legislation). *See Connolly v. Pension Benefit Guaranty Corporation*, 475 U.S. 211 (1986); *Omnia Commercial Co. v. U.S.*, 261 U.S. 502, 511 (1923); *Louisville and Nashville R.R. Co. v. Mottley*, 219 U.S. 467 (1911). In short, the FDIC is adopting the position that, with regard to fully executory contracts, there had been no "acquisition" of an equity investment as of August 9, 1989 which is eligible for retention over the divestiture period. Partially performed contracts will need to be reviewed on the facts in order to determine whether it can be said that an equity investment was acquired before August 9, 1989. Associations should be reminded, however, that, even if it is determined

that the completion of a partially performed contract does not violate the prohibition of section 28(c), the equity investment must be divested if it is a nonconforming investment.

4. *Corporate debt securities not of investment grade*—[Section 28(d) of FDI Act, § 303.13(e)].

Section 303.13(e) of the rule establishes application procedures covering the direct or indirect retention of "junk bonds" by savings associations (State or federal) during the divestiture period provided for by § 28(d) of the FDI Act. (Acquisition or retention of junk bonds by a qualified affiliate of a savings association is not prohibited under the statute.) Under this section of the interim rule, any savings association which, as of August 9, 1989, held corporate debt securities that were not of investment grade when acquired must file an application with the regional director for the Division of Supervision for the region in which the savings association's principal office is located. The application must be filed within 30 days from the effective date of the regulation. The application may take the form of a letter to the regional director and must contain the following: (1) A description of the obligor, type, and amount of each debt security and of its book and market value; (2) the association's plans to comply with the requirements of § 28(d) to divest the securities as quickly as prudently possible, but in no event later than July 1, 1994; (3) a description of the anticipated gain or loss from the sale of the securities and the impact of the sale on the association's capital (including capital ratios before and after the sale); (4) a copy of the resolution of the board of directors (or trustees) authorizing the filing of the submission; and (5) a request for the FDIC's permission to accomplish divestiture in accordance with the submitted plan. The regional director may request such other information as the director deems appropriate.

Upon review of the notice and such additional information as requested by the director, the FDIC may impose such conditions and requirements as it deems appropriate, in its sole discretion, with regard to the divestiture, including requiring divestiture to be accomplished in advance of July 1, 1994 and the date called for in the association's plan of divestiture. The rule also makes clear that the FDIC may impose conditions and restrictions at any time during the divestiture period, *i.e.*, the FDIC is not precluded from notifying the association at some date subsequent to the agency's original review of the association's plan that new conditions or restrictions are being imposed by the FDIC. Thus, it is the FDIC's intent that any "approval" of a divestiture plan will be conditioned upon the continued validity of any assumptions upon which the association's plan is based, the continued vitality of the association in question, and the facts and circumstances which exist at the time of the association's application and during the divestiture period.

5. *Notice of acquisition or establishment of a subsidiary or the conduct of new activities through a subsidiary*—[Section 18(m)(1) of FDI Act, § 303.13(f)].

General—Paragraph (f) of § 303.13 of the interim rule implements the newly enacted statutory requirement that all insured savings associations (State or federal) must give the FDIC at least 30 days prior notice before establishing or acquiring a subsidiary or initiating the conduct of any "new" activity through a subsidiary. The term "subsidiary" does not include an insured depository institution for purposes of the prior notice. Under the rule, a notice is required, subject to certain exceptions identified below, when a savings association establishes a subsidiary after August 9, 1989 or when an existing subsidiary initiates the conduct of an activity "new" to that subsidiary after August 9, 1989. The notice is to be filed, return receipt requested, with the regional director for the Division of Supervision for the region in which the savings association's principal office is located.

The notice is to contain the same information as required under § 303.13(b)(1), plus the following additional information: (i) a description of how the subsidiary will fund the activity, (ii) the amount of the savings associations investment and the form it will take, (iii) the percentage of ownership in the subsidiary, (iv) a list of other owners of the subsidiary, and (v) in the case of the acquisition of a going concern, the terms and conditions of the acquisition including an appraisal, assessment of value or other substantiation of the purchase price plus operating statements for the concern for the previous three years (if applicable). If the filing with OTS under § 18(m)(1) of the FDI Act contains all of the information required under § 303.13(f)(1), a copy of the material filed with OTS may be filed with the FDIC regional office in satisfaction of the notice requirement contained in § 303.13(f)(1). If the filing with OTS does not contain all of the information required by § 303.13(f)(1), the filing may still be submitted in satisfaction of § 303.13(f)(1) provided that the filing is supplemented with the necessary information. The regional director may request additional information as deemed appropriate. If additional information is requested, or if the notice when received is incomplete, the 30-day period will not begin to run until the additional information is received or the incomplete notice is completed.

Catch-up notice as to existing subsidiaries—The rule also requires any insured savings association that had one or more subsidiaries as of August 9, 1989 to file an abbreviated notice to that effect with the regional director for the Division of Supervision for the region in which the savings association's principal office is located. The notice must be filed with the regional director within 30 days after the effective date of the regulation. This requirement will not be burdensome, since the interim rule only requires that the notice contain a minimal amount of information. This provision has been included in the rule in order to supply the FDIC with information regarding the nature of activities being indirectly conducted by insured savings associations. The FDIC is charged with protecting the solvency of the deposit insurance funds and pursuant to § 18(m)(3) of the FDI Act may prohibit the conduct of specific activities, as well as certain acts or practices, if the FDIC determines that said activities may pose a serious threat to either of the funds. In order to properly discharge this responsibility, the FDIC must have complete, accurate, and up to date information regarding savings associations and their activities.

Federal savings banks chartered prior to October 15, 1982—Section 18(m)(5) of the FDI Act provides that the prior notice requirements of paragraph (1) of that section shall not apply to any federal savings bank that was chartered prior to October 15, 1982 as a savings bank under state law nor to any savings association that acquired its principal assets from such an institution. In accordance therewith, § 303.13(f)(2) the interim rule indicates that such savings associations are not subject to the prior notice requirements of § 303.13(f)(1).

6. *Subsequent notice by certain federal savings associations enjoying grandfather rights*—[Section 303.13(g)].

Section 5(i)(4) of HOLA provides that, subject to the FDIC's authority to determine that the conduct of a specific activity or an act or practice is a serious threat to either deposit insurance fund administered by the FDIC, any federal savings bank chartered as such prior to October 15, 1982 may make any

investment, or engage in any activity, not otherwise authorized under section 5 of HOLA, to the degree it was permitted to do so as a federal savings bank prior to October 15, 1982. Likewise, subject to the same authority of the FDIC, any federal savings bank organized prior to October 15, 1982 that had previously been a state-chartered mutual savings bank may continue to make any investment, or engage in any activity, not otherwise authorized under section 5 of HOLA, to the degree it was authorized to do so as a state mutual savings bank. Finally, any other federal savings bank that acquires a federal savings bank that falls into either of the above categories will receive the benefit of the same grandfather treatment.

Under the interim rule, any federal savings association that enjoys grandfather rights pursuant to section 5(i)(4) of HOLA must file a notice with the regional director for the Division of Supervision for the region in which the federal savings association's principal office is located. This notice must be filed within 30 days after the effective date of the regulation or within 30 days after the date the association first enjoys grandfather rights, whichever comes first. The notice must briefly describe the activity or investment with regard to which the association enjoys grandfather rights. A notice should be filed even if the association is not actually exercising the additional authority or does not have, at that time, any investment which is greater than that permitted other federal savings associations under section 5 of HOLA. The FDIC is adopting this notice requirement as a means of gathering information so that it can properly discharge its responsibilities under section 18(m)(3) of the FDI Act.

7. *Definitions. "Activity"* is defined, for the purposes of paragraphs (b) and (c) of § 303.13, to include acquiring or retaining any investment other than an equity investment. The definition is taken from § 28(g) of the FDI Act which provides that for the purposes of the activity and magnitude restrictions of section 28(a) and (b), the term "activity" shall include acquiring or retaining any investment. As it is clear based upon FIRREA's legislative history that section 28(c) of the FDI Act, which places a prohibition on acquiring or retaining equity investments other than those that are permissible for federal savings associations, was intended to override paragraphs (a) and (b), the rule makes clear that the reference to "activity" does not encompass the acquisition or retention of an equity investment.

"Control" is defined in the rule to mean the power to vote, directly or indirectly, 25 per centum or more of any class of the voting stock of a company, the ability to control in any manner the election of a majority of a company's directors or trustees, or the ability to exercise a controlling influence over the management and policies of a company. The definition used in the rule is the same as is used in § 337.4 of the FDIC's regulations. 12 CFR 337.4.

"Corporate debt securities not of investment grade" for the purposes of the interim rule refers to any corporate debt security that when acquired was not rated among the four highest rating categories by at least one nationally recognized statistical rating organization. The definition specifically indicates, however, that the phrase should not be read to include any obligation issued or guaranteed by a corporation that may be held by a federal savings association without limitation as to percentage of assets under subparagraphs (D), (E), or (F) of section 5(c)(1) of HOLA. Subparagraph (D) covers investments in the stock or bonds of a Federal home loan bank or in the stock of the Federal National Mortgage Association. Subparagraph (E) refers to investments in mortgages, obligations, or other securities which are or have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or section 306 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454, 1455). Subparagraph (F) refers to investments in obligations, participations, securities, or other instruments issued by, or fully guaranteed as to principal and interest by, the Federal National Mortgage Association, the Student Loan Marketing Association, the Government National Mortgage Association, or any agency of the United States. It also includes securities guaranteed pursuant to section 306(g) of the National Housing Act (12 U.S.C. 1721).

It should be noted that the general supervisory definition of investment quality security as utilized by the FDIC and discussed in the Division of Supervision Manual of Examination Policies (FDIC) includes unrated securities that are of an equivalent quality to securities in the four highest rating categories. The definition as used in this rule which is taken from section 28(d) does not extend to unrated securities, whether or not those unrated securities are of equivalent quality.

"Equity Investment" is defined for the purposes of the rule to mean any equity security (discussed below), any partnership interest (general or limited), and any equity interest in real estate (also discussed below). ("Effective as soon as the bill becomes law, subsection (c) [section 28(c)] prohibits a State savings association from acquiring or retaining any equity investment of a type of [sic] in an amount that is not permissible for a Federal savings association to acquire and retain directly. *The prohibition applies to equity investments in real estate, investments in equity securities, and other equity investment[s].*" 135 Cong. Rec. S10203, daily ed. August 4, 1989, statement of Sen. Riegle. (emphasis added).

The term also includes any transaction which in substance falls within any of these categories, even though it may be structured as some other form of business transaction. Transactions which in substance give rise to an equity investment, as that term is defined in the interim rule, are included within the scope of the definition, based upon clear statements in the legislative history that it was the intent of Congress that "[i]n applying subsection (c) [section 28(c) of the FDI Act] Federal regulators should look to the substance of the investment and not merely to the form. Any transaction that is in substance an equity investment is covered by subsection (c), even if the transaction is nominally a loan or other permissible transaction." Joint Explanatory Statement of the Committee of Conference, p. 403; 135 Cong. Rec. S10203, daily ed. August 4, 1989, statement of Sen. Riegle. (See also 135 Cong. Rec. S6914, daily ed. June 19, 1989, section by section analysis of S. 774; 135 Cong. Rec. S4091, daily ed. April 18, 1989, excerpts from Report accompanying S. 774).

"Equity interest in real estate" as defined in the interim rule refers to any form of direct or indirect ownership of any interest in real property (whether in the form of an equity interest, partnership, joint venture or other form) which is accounted for as an investment in real estate or real estate joint ventures under generally accepted accounting principles. The phrase also includes transactions that have been determined to be investments in real estate ventures for purposes of the Federal Financial Institutions Examination Council instructions for the preparation of reports of condition. For the purposes of applying these two standards the FDIC will generally look to the guidance prepared by the American Institute of Certified Public Accountants (AICPA) in Notices to Practitioners issued in November 1983, November 1984, and February 1986 (as

well as any relevant notices that may supersede the same) and the Federal Financial Institutions Examination Council Call Report Instructions on Schedule RC–M—Memoranda Item on Direct and Indirect Investments in Real Estate Ventures. Under these standards certain acquisition, development, and construction loans, as well as loans with high loan to value ratios or equity participation clauses, may be considered to be equity investments.

The following interests in real estate are specifically excluded from the overall definition of equity interest in real estate: (1) Interests in real property primarily used, or intended to be used in the future, by a savings association, its subsidiaries, or its affiliates as offices (or related facilities) for the conduct of its business; (2) an interest in real property acquired in satisfaction of a previously contracted debt or at sales under judgments, etc. provided the property is not intended to be held for investment purposes by is expected to be disposed of in a timely fashion as permitted by applicable law; and (3) interests in real property that are primarily in the nature of charitable contributions to community development.

"Equity security" is defined in the rule to mean any stock, certificate of interest, or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, or voting-trust certificate; any security immediately convertible at the option of the holder without payment of substantial additional consideration into such a security; any security carrying any warrant or right to subscribe to or purchase any such security; and any certificate of interest or participation in, temporary or interim certificate for, or receipt for any of the foregoing. The term "equity security" does not include any of the foregoing, however, if it is acquired through foreclosure or settlement in lieu of foreclosure. The definition in the interim rule is in keeping with the legislative history of the Act which indicates that the prohibitions of § 28(c) are intended to extend to "any type of equity investment including common stock and preferred stock (whether voting or non-voting), options, warrants, and interests in partnerships (whether general or limited)." 135 Cong. Rec. S4091, daily ed. April 18, 1989, excerpts from Report accompanying S. 774.

"Service corporation" as used in the rule means any corporation the stock of which may only be purchased by savings associations.

"Subsidiary" as defined in the rule means any corporation, partnership, business trust, association, joint venture, pool, syndicate or other similar business organization directly or indirectly controlled by a savings association. For the purposes of § 303.13(f), an "insured depository institution" is excluded from the definition of subsidiary.

"Significant risk" to the deposit insurance fund is present under the rule whenever it is likely that either of the deposit insurance funds administered by the FDIC may suffer any loss whatever. Although the statute and the regulation use the term "significant" in conjunction with the word "loss", the test of significant risk is met if there is a likelihood of any loss whatsoever regardless of how small. Therefore, the amount, or the relative or absolute size of the loss that may result from a state savings association engaging in an activity is not probative. What is relevant, rather, is the likelihood that some loss may occur. Joint Explanatory Statement of the Committee of Conference, p. 402–403. Additionally, it is not necessary that the conduct of a certain activity may result in the failure or threatened failure of a savings association before the conduct of such activity is considered to pose a significant risk of loss to either fund. For example, the ownership and operation of a motor hotel or a ski lodge and the related investment(s) in such ventures may be minimal on both an absolute and relative size basis vis-a-vis a particular savings association, however, such activities could still be presumed to present a significant risk to the deposit insurance funds.

"Qualified affiliate" as defined in the rule means, in the case of a stock savings association, an affiliate other than a subsidiary or an insured depository institution; and in the case of a mutual savings association, a subsidiary other than an insured depository institution, so long as all of the savings association's investments in, and extensions of credit to, the subsidiary are deducted from the savings association's capital. This definition conforms to that found in section 28(d) of the FDI Act.

8. *Delegations of authority and reconsideration of denied applications*

Under the rule the authority to act on all applications and notices filed pursuant to § 303.13 is delegated to the Director of the Division of Supervision, and where confirmed in writing, to an Associate Director of the Division of Supervision or regional director or deputy regional director. The procedures set forth in § 303.6(e) are to be used in the event an applicant wishes to obtain reconsideration of a denial.

9. *Adoption of interim rule without opportunity for comment*

The FDIC is amending part 303 of its regulations ("Applications, Requests, Submittals, Delegations of Authority, and Notices of Acquisition of Control") by adding a new § 303.13 that establishes interim notice and application requirements in order to implement the provisions described above. Comments are being requested, however, for 60 days after its publication. Inasmuch as the majority of the provisions of FIRREA implemented by these procedures were effective immediately upon enactment of the statute on August 9, 1989 and the prohibition regarding the conduct of activities impermissible for federal savings associations takes effect January 1, 1990, the Board of directors has determined that there is good cause to dispense with opportunity for public comment with regard to these amendments and to make them immediately effective upon publication in the **Federal Register**. These regulations provide guidance to affected institutions as to the meaning of the statute and the FDIC's opinion as to what is and is not a permissible activity and what investments are permissible for state savings associations in the context of FIRREA. All savings associations have an affirmative obligation to divest themselves of nonconforming equity investments and junk bonds which they now hold. Unless and until the FDIC reviews each individual savings association's plan to comply with that requirement, each savings association can continue to hold those investments and bonds without an objective assessment of the effect of doing so on the institution's safety and soundness. In light of the fact that the number of investments which must be divested (and the volume of junk bonds) could be very large on an industry-wide basis, it is imperative for the FDIC to oversee the divestiture with the broader picture in mind as well. It is therefore in the public interest to have these procedures in place as soon as possible. It is in the best interests of the institutions as well to provide guidance on these matters as soon as possible so that institutions can have some certainty in the conduct of their ongoing operations as well as in their future ventures.

In view of the foregoing, opportunity for public comment is impracticable and there is good cause for the procedures

established hereby to be immediately effective. The FDIC will, however, accept comment for a period of 60 days after the interim rule is published and will republish the rule with whatever changes are appropriate based upon the comments as soon as possible after the close of the comment period.

Regulatory Flexibility Analysis

As the amendment to part 303 is not required to be published for public comment, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

In addition, pursuant to the FDIC's statement of policy on the drafting of regulations, it has been determined that a cost-benefit analysis, including a small bank impact statement, is not required.

List of Subjects in 12 CFR Part 303:

Administrative practice and procedure, authority delegations (Government agencies), Bank deposit insurance, Banks, banking, Insured depository institutions, Savings associations.

In consideration of the foregoing, the FDIC hereby amends part 303 of title 12 of the Code of Federal Regulations to add new § 303.13 as follows:

PART 303—APPLICATIONS, REQUESTS, SUBMITTALS, DELEGATIONS OF AUTHORITY, AND NOTICES OF ACQUISITION OF CONTROL

1. The authority citation for part 303 is revised to read as follows:

Authority: 12 U.S.C. 378, 1813, 1815, 1816, 1817(j), 1818, 1819 ["Seventh" and "Tenth"], 1828, Pub. L. No. 101-73, sec. 221, 103 Stat. 183, 267-268 (1989) (12 U.S.C. 1828(m)); Pub. L. No. 101-73, sec. 222, 103 Stat. 183, 269-273 (1989) (12 U.S.C. 1831e); 15 U.S.C. 1607.

2. Section 303.13 is added to read as follows:

§ 303.13 Applications and notices by savings associations.

(a) Definitions. For the purposes of this section, the following definitions apply:

(1) As used in paragraphs (b) and (c) of this section, the term "activity" includes acquiring or retaining any investment other than an equity investment.

(2) "Control" means the power to vote, directly or indirectly, 25 per centum or more of any class of the voting stock of a company, the ability to control in any manner the election of a majority of a company's directors or trustees, or the ability to exercise a controlling influence over the management and policies of a company.

(3) "Corporate debt securities not of investment grade" refers to any corporate debt security that when acquired was not rated among the four highest rating categories by at least one nationally recognized statistical rating organization. The term shall not include any obligation issued or guaranteed by a corporation that may be held by a federal savings association without limitation as to percentage of assets under subparagraphs (D), (E), or (F) of section 5(c)(1) of the Home Owners' Loan Act (12 U.S.C. 1464(c)(1)).

(4) "Equity investment" means any equity security as defined herein; any partnership interest; any equity interest in real estate as defined herein; and any transaction which in substance falls into any of these categories, even though it may be structured as some other form of business transaction.

(5) "Equity interest in real estate" means any form of direct or indirect ownership of any interest in real property (whether in the form of an equity interest, partnership, joint venture or other form) which is accounted for as an investment in real estate or real estate joint ventures under generally accepted accounting principles or is otherwise determined to be an investment in a real estate venture under Federal Financial Institutions Examination Council instructions for the preparation of reports of condition. The term "equity interest in real estate" shall not include:

(i) An interest in real property that is primarily used or intended to be used for future expansion by a savings association, its subsidiaries, or its affiliates as offices or related facilities for the conduct of its business;

(ii) An interest in real property that is acquired in satisfaction of a debt previously contracted in good faith or acquired in sales under judgments, decrees, or mortgages held by a savings association, provided that the property is not intended to be held for real estate investment purposes but is expected to be disposed of in a timely fashion as permitted by applicable law; and

(iii) Interests in real property that are primarily in the nature of charitable contributions to community development.

(6) "Equity security" means any stock, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, or voting-trust certificate; any security immediately convertible at the option of the holder without payment of substantial additional consideration into such a security; any security carrying any warrant or right to subscribe to or purchase any such security; and any certificate of interest or participation in, temporary or interim certificate for, or receipt for any of the foregoing. The term "equity security" does not include any of the foregoing if it is acquired through foreclosure or settlement in lieu of foreclosure.

(7) "Qualified affiliate" means, in the case of a stock savings association, an affiliate other than a subsidiary or an insured depository institution; and, in the case of a mutual savings association, a subsidiary other than an insured depository institution, so long as all of the savings association's investments in, and extensions of credit to, the subsidiary are deducted from the savings association's capital.

(8) The term "service corporation" means any corporation the capital stock of which is available for purchase only by savings associations.

(9) A "significant risk" is present whenever it is likely that any insurance fund administered by the FDIC may suffer any loss whatever.

(10) "Subsidiary" means any corporation, partnership, business trust, association, joint venture, pool, syndicate or other similar business organization directly or indirectly controlled by a savings association. For the purposes of § 303.13(f), the term does not include an "insured depository institution" as that term is defined in section 3(c)(2) of the Federal Deposit Insurance Act, ("FDI Act," 12 U.S.C. 1813(c)(2)).

(b) Engaging other than as agent on behalf of customers in activities not permissible for federal savings associations.

(1) After January 1, 1990, no state savings association may directly engage, other than as agent on behalf of its customers, in an activity that is not expressly authorized by statute or regulation adopted by the Office of Thrift Supervision ("OTS") for all federal savings associations unless the state savings association obtains the approval of the FDIC. Any state savings association that wishes to obtain approval to initiate or continue such an activity, as well as any state savings association that wishes to make, or already has, nonresidential real property loans in an amount exceeding that described in section 5(c)(2)(B) of the Home Owners' Loan Act ("HOLA") (12 U.S.C. 1464(c)(2)(B)) must file a letter application with the regional director for the Division of Supervision for the region in which the state savings association's principal office is located.

The letter application should contain the following information:

(i) A brief description of the activity and the manner in which it is (or will be) conducted;

(ii) A copy, if available, of any feasibility study, management plan, financial projections, business plan, or similar document concerning the conduct of the activity;

(iii) An estimate of the present or expected dollar volume of the activity;

(iv) Resolutions by the board of directors (or the board of trustees in a mutual association) of the savings association authorizing the conduct of such activity and the filing of this submission;

(v) A current statement of the association's assets, liabilities, and capital on both a consolidated and a non-consolidated basis, respectively;

(vi) A discussion by management of its analysis regarding the impact of the proposed activity on the association's earnings, capital adequacy, and general condition;

(vii) A statement by the savings association of whether or not it is in compliance with the fully phased-in capital standards prescribed under section 5(t) of HOLA (12 U.S.C. 1464(t)), including a calculation of the relevant capital ratio; and

(viii) A statement of the authority the savings association is relying upon for the conduct of the activity in the amount set forth in the letter application.

The regional director may request that the state savings association provide such other information as the director deems appropriate. Approval will not be granted if it is determined by the FDIC that engaging in the activity poses a significant risk to the affected deposit insurance fund. Furthermore, no savings association will be granted approval unless it is in compliance with the fully phased-in capital standards prescribed in section 5(t) of HOLA. Consequently, no application to engage in an activity after January 1, 1990 should be filed if a state association is not in compliance with the fully phased-in capital requirements.

(2) Paragraph (b)(1) of this section shall not be read to require the divestiture by a state savings association of any asset it had on its books prior to August 9, 1989 despite the fact that such asset may be held in connection with the conduct of an activity for which the state savings association must obtain the FDIC's approval under § 303.13(b)(1). A notice describing the activities and those assets is nevertheless required by this section.

(c) Engaging other than as agent on behalf of customers in activities authorized for federal savings associations but to an extent not so authorized.

(1) *Activities conducted as of December 29, 1989.* (i) Any state savings association which as of December 29, 1989 is directly engaging, other than as agent on behalf of its customers, in an activity expressly authorized to all federal savings associations by statute or regulation adoped by OTS in an amount in excess of that permitted to federal savings associations and intends to continue to do so after January 1, 1990, must file a notice, return receipt requested, with the regional director for the Division of Supervision for the region in which the state savings association's principal office is located. The notice must contain the same information that is required to be included in a letter application filed pursuant to § 303.13(b)(1). The regional director may request such other information as the regional director deems appropriate. The notice must be received by the regional director no later than January 29, 1990.

(ii) A state savings association which is, and continues to be, in compliance with the fully phased-in capital standards prescribed under section 5(t) of HOLA and which has filed notice with the FDIC pursuant to paragraph (c)(1)(i) of this section may continue the activities that are the subject of the 30-day notice in the amount set forth in the notice unless the FDIC notifies the state savings association to the contrary. No state savings association will be permitted to continue the activities at the level described in a notice filed pursuant to this section if it is determined that to do so poses a significant risk to the affected deposit insurance fund. A state savings association which is not in compliance with the fully phased-in capital standards as of December 29, 1989 must decrease the level of the activity to that allowed to a federal savings association in order for continuation of the activity to be permissible.

(iii) Paragraph (c)(1) of this section shall not be read to require the divestiture by a state savings association of any asset it had on its books before August 9, 1989. A notice describing those assets is nevertheless required by this section if the assets are held in connection with the conduct of an activity in an amount that triggers notice under § 303.13(c)(1)(i).

(2) *Initiation of activities after December 29, 1989.* Any state savings association that intends to initiate activities of a type and in an amount described in paragraph (c)(1)(i) of this section must file a notice, return receipt requested, with the regional director for the Division of Supervision for the region in which the state savings association's principal office is located at least 60 days prior to the initiation of the level of the activity described in the notice. Unless the FDIC notifies the state savings association to the contrary, a state association that files a 60-day notice may initiate the level of activity as described in its notice 60 days after the FDIC's receipt thereof (or in less than 60 days if so notified), provided that the state association is, and continues to be, in compliance with the fully phased-in capital standards prescribed under section 5(t) of HOLA. Consequently, no application should be filed if a state savings association is not in compliance with the fully phased-in capital standards. The notice must contain the same information required by § 303.13(b)(1). The regional director may request such other information as the regional director deems appropriate.

The 60-day period may be extended upon notice to the state savings association if the notice as received is incomplete or the notice raises issues that require additional information or time for analysis. If the 60-day period is extended, the state savings association may begin the conduct of the activities only upon receipt of written notification to that effect. No state savings association will be permitted to initiate activities subject to this paragraph if it is determined that to do so would pose a significant risk to the affected deposit insurance fund.

(d) *Equity investments.* (1) *General.* No state savings association may directly acquire or retain any equity investment after August 9, 1989 of a type or in an amount that is not expressly authorized by statute or regulation adopted by OTS for all federal savings associations. Any state savings association which, as of August 9, 1989, had one or more such equity investments must file an application, return receipt requested, with the regional director for the Division of Supervision for the region in which the state savings association's principal office is located no later than 30 days from December 29, 1989. The application shall:

(i) Describe the obligor, type, amount and book and market values of the equity investment;

(ii) Set forth the association's plans to comply with the requirements of section 28(c) of the FDI Act to divest the investment as quickly as prudently

possible, but in any event not later than July 1, 1994;

(iii) Describe the anticipated gain or loss (anticipated or realized) from the sale of the investment and the impact thereof on the association's capital (including capital ratios before and after their sale);

(iv) Include a copy of a resolution by the board of directors, or board of trustees in the case of a mutual association, authorizing the filing of this submission; and

(v) Request the FDIC's permission to accomplish divestiture in accordance with said plans.

The regional director may request such additional information as the regional director deems appropriate. Upon review of the application and such additional information as requested, and at any time during the divestiture period thereafter, the FDIC may impose such conditions and requirements as it deems appropriate in its sole discretion with regard to the divestiture of the equity investment, including requiring completion of divestiture in advance of July 1, 1994.

(2) *Service corporations.* (i) *General.* Section 303.13(d)(1) notwithstanding, a state savings association may acquire or retain an equity investment in a service corporation, provided that the service corporation's activities are limited solely to those expressly authorized either by statute or by regulation adopted by OTS for all service corporations owned by federal savings associations *and* provided that the investment in such service corporation does not exceed that permissible for a federal savings association pursuant to statute or regulation of OTS. If either of these two conditions does not exist, the state association must file a letter application under paragraph (d)(2)(ii) with the regional director for the Division of Supervision for the region in which the state savings association's principal office is located requesting permission to acquire or retain the equity investment in the service corporation in question.

(ii) *Content and filing of application.* An application requesting permission to retain an equity investment in a service corporation in which a federal association could not invest that was held as of August 9, 1989 must be filed with the regional office no later than January 29, 1990. Approval of the acquisition or retention of an equity investment in a service corporation in which a federal association could not invest will not be granted if the state association is not in compliance with the fully phased-in capital standards prescribed by section 5(t) of HOLA. Consequently, no application to acquire or retain an equity investment in such a service corporation should be filed if a state association is not in compliance with these capital requirements. In addition, approval of the retention or acquisition of such investments will not be granted if the acquisition or retention is determined to pose a significant risk to the affected deposit insurance fund. If an application to retain an investment is denied, the state association must file a divestiture plan with the regional director requesting the FDIC's permission to accomplish divestiture in accordance with said plan.

The letter application required hereby should contain the information required by § 303.13(b)(1), as it relates both to the service corporation and to its parent state savings association. In addition, the application should contain: A listing of the officers (contemplated officers) of the service corporation, a listing of any other shareholders of the service corporation (existing or prospective) and their respective holdings, and a listing of the locations (expected locations) of all of the offices of the service corporation. The regional director may request such other information as the regional director deems appropriate.

(e) *Corporate debt securities not of investment grade.* Notwithstanding anything to the contrary in § 303.13, no state or federal savings association may, directly or through a subsidiary (other than a subsidiary that is a qualified affiliate), acquire or retain after August 9, 1989 any corporate debt security that is not of investment grade. Any state or federal savings association which, as of August 9, 1989, held corporate debt securities not of investment grade must divest those securities as quickly as can prudently be done, but in no event later than July 1, 1994. Any state or federal savings association that must divest corporate debt securities shall file an application with the regional director for the Division of Supervision for the region in which the state or federal savings association's principal office is located not later than 30 days from December 29, 1990. The application shall:

(1) Describe the obligor, type, amount, and book and market values of the corporate debt securities;

(2) Set forth the state or federal association's plans to comply with the requirements of § 28(d) of the FDI Act to divest the securities as quickly as prudently possible, but in any event not later than July 1, 1994;

(3) Describe the gain or loss (anticipated or realized) from the sale of the securities and the impact thereof on the association's capital (including capital ratios before and after the sale);

(4) Include a copy of the resolution by the board of directors, or the board of trustees in the case of a mutual association, authorizing the filing of this submission; and

(5) Request the FDIC's permission to accomplish divestiture in accordance with said plans.

The regional director may request such additional information as the regional director deems appropriate. Upon review of the application and such additional information as requested, and at any time during the divestiture period thereafter, the FDIC may impose such conditions and requirements as it deems appropriate in its sole discretion with regard to the divestiture of the debt securities, including requiring completion of divestiture in advance of July 1, 1994.

(f) *Notice of acquisition or establishment of a subsidiary or the conduct of new activities through a subsidiary.* (1) No insured savings association may establish or acquire a subsidiary, or conduct any new activity through a subsidiary, without providing the regional director for the Division of Supervision for the region in which the insured savings association's principal office is located prior notice of the association's intent to do so. Notice must be sent return receipt requested and be received by the regional director at least 30 days prior to the establishment or acquisition of the subsidiary or the commencement of the new activity. The notice shall contain the same information required to be in a letter application filed pursuant to § 303.13(b)(1) plus the following:

(i) A description of how the activities of the subsidiary will be funded;

(ii) The amount of the insured savings association's investment in the subsidiary and the form of the investment;

(iii) The percentage ownership the insured savings association will have in the subsidiary;

(iv) A listing of the other owners of the subsidiary if any; and

(v) In the case of the acquisition of an existing concern, the terms and conditions of the acquisition including an appraisal, assessment of value, or other substantiation of the purchase price and operating statements for the previous three years (if applicable).

If the insured savings association's filing with the OTS under section 18(m)(1) of the FDI Act contains all of the information required, that filing may be submitted to the FDIC in satisfaction

of this provision. In any case, the regional director may request such additional information as the regional director deems appropriate. In all such cases, the 30-day period will not begin to run until the response to the request for additional information is complete.

(2) Any federal savings bank that was chartered prior to October 15, 1982 as a savings bank under state law, and any savings association that acquired its principal assets from such an institution, is not required to file prior notice in accordance with paragraph (f)(1) of this section.

(3) Any insured savings association that had one or more subsidiaries prior to August 9, 1989 must file a notice with the regional director for the Division of Supervision for the region in which the insured savings association's principal office is located within 30 days from December 29, 1989. The notice should set forth the name, location, and type of activity conducted by the subsidiary and the amount of the insured savings association's investment in the subsidiary.

(g) *Notice by federal savings associations conducting grandfathered activities.* Any federal savings association authorized by § 5(i)(4) of HOLA (12 U.S.C. 1464(i)(4)) to make any investment or engage in any activity not otherwise generally authorized to federal savings association by section 5 of HOLA must file a notice with the regional director for the Division of Supervision for the region in which the federal savings association's principal office is located within 30 days after December 29, 1989 or within 30 days after the date the federal savings association is first able to rely upon section 5(i)(4) of HOLA as a result of the acquisition of an association that is covered by such section. The notice should briefly describe the activity or investment.

(h) *Delegations.* The authority to act on applications and notices filed pursuant to § 303.13, and to make any and all determinations called for in regard to the same, is delegated to the Director of the Division of Supervision, and where confirmed in writing by the Director, to an associate director of the Division of Supervision or the regional director (Division of Supervision) or deputy regional director (Division of Supervision).

By Order of the Board of Directors. Dated at Washington, DC this 12th day of December, 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89-30248 Filed 12-28-89; 8:45 am]

BILLING CODE 6714-01-M

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12 CFR Part 303

RIN 3064-AA98

Applications, Requests, Submittals, Delegations of Authority, and Notices of Acquisition of Control

AGENCY: Federal Deposit Insurance Corporation ("FDIC" or "Corporation").

ACTION: Final rule.

SUMMARY: The FDIC is amending its regulation respecting applications, requests, submittals, delegations of authority, and notices of acquisition of control (part 303) to reflect the changes in part 303 necessitated by virtue of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA").

The FDIC is also amending this regulation to clarify and, in some cases, to modify its delegations of authority for acting on a variety of applications (*e.g.*, mergers, insurance fund conversions, branches, relocations, deposit insurance, trust and other banking powers, changes in control, management interlocks, and other applications). These amendments are designed to clarify and define certain provisions of the delegations and to correct certain ambiguities in the delegations that have come to light since the delegations were substantially revised in September 1987 (52 FR 35396). The amendments do not alter any rights or obligations of any person, depository institution, or other applicant.

EFFECTIVE DATE: December 12, 1989.

FOR FURTHER INFORMATION CONTACT: Jesse G. Snyder, Assistant Director, Office of Supervision and Applications, Operations Branch, Division of Supervision (202) 898-6915, or F. Douglas Birdzell, Special Counsel to the Deputy General Counsel, Legal Division (202) 898-3716, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC, 20429.

SUPPLEMENTARY INFORMATION:

Reason for Adoption Without Prior Notice and Comment

I. Immediate adoption of this final rule is necessary in the public interest to conform to the provisions of FIRREA placing savings associations under the FDIC's authority for a number of applications covered under part 303. As the changes in part 303 are essentially dictated by FIRREA, and due to the necessity for advising savings associations of the requirements of part 303 applicable to them at the earliest possible time, so that applications can be processed with minimum delay, the notice and public participation provisions of the Administrative Procedure Act (5 U.S.C. 553) were not followed in connection with this action.

II. Furthermore, the amendments are being published in final form without opportunity for public comment under authority of 5 U.S.C. 553(b)(A) (Administrative Procedure Act), which exempts from required publication for comment interpretive rules, general statements of policy, and rules of agency practice and procedure.

All of the amendments, which constitute nonsubstantive changes to the FDIC's rules of practice and procedure, are being made immediately effective inasmuch as the requirement found in 5 U.S.C. 553(d) that substantive rules be published not less than 30 days prior to their effective date has been dispensed with, the Board having found, for good cause, that making the regulation effective immediately will pose no compliance problem or otherwise adversely affect the public interest, and will serve to expedite the applications process.

Background

On August 9, 1989, FIRREA was signed into law. This statute made massive changes in the body of Federal law regulating financial institutions by abolishing the Federal Home Loan Bank Board (the former savings and loan regulator), and replacing it with the Office of Thrift Supervision ("OTS") under the Department of the Treasury. The Federal Savings and Loan Insurance Corporation ("FSLIC"), the deposit insurance agency formerly under the FHLBB was dismantled, and its functions transferred to the FDIC. Because of this restructuring, the FDIC has assumed a number of responsibilities with respect to savings and loan associations in addition to its traditional role as insurer of bank deposits and regulator of insured state nonmembers banks.

Because of this increased responsibility, part 303 of FDIC's regulations is being substantially revised to reflect the changes brought about by FIRREA.

The principal changes relfect the fact that savings associations now apply to FDIC for insurance under a special fund, the so-called "SAIF" or Savings Association Insurance Fund. The Bank Merger Act, as amended by FIRREA,

now covers mergers between insured savings associations and insured banks.

New provisions are also contained in the revised regulation to deal with conversions from the Bank Insurance Fund ("BIF"), applicable to banks, and the SAIF fund mentioned above, and vice versa.

The substance of these and other amendments are summarized in greater detail below.

I. FIRREA Amendments

By virtue of FIRREA, the FDIC is given, along with the Office of Thrift Supervision, regulatory authority over savings associations formerly under the supervisory jurisdiction of the Federal Home Loan Bank Board and/or the Federal Savings and Loan Insurance Corporation. That authority requires savings associations to file with the FDIC a number of applications formerly filed with the Federal Home Loan Bank Board, such as applications for deposit insurance, mergers with noninsured institutions, and insurance fund conversions. The amended regulation reflects the changes occasioned by the enactment of FIRREA.

Specifically, pursuant to FIRREA, state and federal savings and loan associations must now apply to the FDIC for insurance. Part 303 is amended to provide for deposit insurance applications to be received from state and federal savings associations, and for such applications to be processed by the FDIC in substantially the same manner as other deposit insurance applications filed with the Corporation.

It is also provided in FIRREA that, in the event that the FDIC denies an application for deposit insurance by a savings association seeking a federal charter, the Director of the Office of Thrift Supervision ("OTS") must be notified with a statement of the reasons for the denial. Section 303.6 reflects this requirement by specifically providing that the FDIC will send a notice of denial and a written statement of the reasons therefor to the Director of the Office of Thrift Supervision.

By virtue of amendments to the Bank Merger Act contained in FIRREA, savings associations are subject to provisions mandating that an application be filed with the FDIC where an FDIC-insured institution intends to merge with a noninsured institution. Previously, only FDIC-insured banks were subject to this application requirement. Section 303.3 is amended to reflect that an FDIC-insured savings association also must file an application with the FDIC when any such institution intends to merge with a noninsured institution.

The regulation also provides procedures and delegations for permissible insurance fund conversions. Normally, fund conversions are prohibited. However, FIRREA provides certain exceptions where the conversion affects an insubstantial portion of the deposits, or where the conversion occurs in connection with the acquisition of an insured institution in default or in danger of default. In such cases, the FDIC must approve the conversion transaction. A parallel delegation of authority to the Director (Supervisor), and the appropriate associate director, regional director, or deputy regional director (Supervision) permit the delegates to act on such applications. Additional changes are (1) rewording of section 19 applications; (2) a delegation to the Director, Division of Supervision, subject to redelegation, to act on applications for exemption from the statutory prohibition against acceptance of brokered deposits by troubled depository institutions, and (3) a delegation of authority to the Director, Division of Supervision, to comment on notices of membership or resumption of business under section 4 of the Act (12 U.S.C. 1814). The enforcement delegations in part 303 contain technical changes, e.g., position titles. They are not, however substantively changed. Amendments to the enforcement provisions of part 303 necessitated by FIRREA will be made at a later time.

The remaining changes are mainly housekeeping in nature. For example, where appropriate, the term "bank" or "banks" has been changed to "depository institution" or "depository institutions." The regulation is also amended to reflect that the factors set out in section 6 of the Federal Deposit Insurance Act (12 U.S.C. 1816), which must be considered in determining whether to approve an application for deposit insurance, and certain other applications have been increased in number from six to seven, adding as an element, risk to the insurance fund.

II. Other Amendments

In 1987, part 303 of the FDIC's regulations was revised to redelegate to the divisions and regions authority to act on applications formerly exercised by the Board of Review. The delegations of authority were revised to make better use of the FDIC's resources by processing applications more efficiently and promptly. As discussed below, in addition to those amendments being made in response to FIRREA, the amendments to the delegations of authority being adopted herein clarify and modify some delegations and eliminate certain other ambiguities which have been brought to our attention since the earlier revision.

Section 303.0 Scope and Definitions

Section 303.0(b) is amended by adding a new paragraph to define and clarify the meaning of the word "protest". The newly added definition of the word "protest" makes it clear that, with certain exceptions, any comment from the public which raises a negative issue relative to the Community Reinvestment Act ("CRA") is to be considered a protest whether or not a hearing is requested and whether or not the comment is labeled a "protest". However, negative CRA comments filed for competitive reasons by other financial institutions, comments which the regional director determines to be frivolous or to have been filed primarily as a means of delaying action on the application, or comments raising issues which have been resolved as between the protester and the applicant will not be regarded as "protests". If a CRA protest is filed, then the authority to act on such applications is not delegated to the regional directors and deputy regional directors; rather, the application is to be forwarded to Washington for action.

Section 303.0(b) is also amended to list certain "standard conditions" that a delegate may include as a routine matter in an order or other document approving an application. These include time limits for completing the transaction which is the subject of the application, requirements that the applicant obtain all necessary regulatory approvals, and retention by the FDIC of the right to withdraw its conditional approval should interim circumstances so warrant. In the case of merger transactions, a waiting period is included as a "standard condition."

Section 303.2 Application by Insured State Nonmember Bank to Establish a Branch or Move its Main Office or Branch

Special procedures for remote service facilities. Section 303.2(c)(1) is amended to clarify that the notice referred to in the fourth sentence is the notice to the appropriate regional director that the applicant intends to establish an additional remote service facility or to relocate an existing facility.

Section 303.6 Applications Procedures

Notice of filing an application. Section 303.6(f) has been revised to provide that an insurance application in connection with the acquisition of an institution either in default, or in danger of default, need not be published.

Section 303.7 Delegation of Authority to the Director of the Division of Supervision, Associate Directors, Regional Directors and Deputy Regional Directors To Act on Certain Applications, Requests, and Notices of Acquisition of Control

Branch and relocation applications. Section 303.7(a)(1), which addresses branch and relocation applications, currently does not expressly include applications of domestic banks to establish foreign branches as applications upon which a delegate may act. Section 303.8(a)(1) is amended to expressly incorporate foreign branches of domestic banks as an additional type of application which may be acted upon by the Director, associate directors, regional directors and deputy regional directors. Although applications for consent to establish foreign branches were intended to be included in the earlier revision, an express reference to them was inadvertently omitted, so it is now being made clear that they are included in the delegations relating to branch applications generally.

Trust and other banking power applications. Section 303.7(a)(2), which discusses applications for consent to exercise trust and other banking powers, currently does not include a provision regarding standard conditions which may be imposed by a delegate in approving applications. Section 303.7(a)(2) is amended by adding a phrase at the end of paragraph (a)(2)(i) to include the "standard conditions" provision. Delegates may thus approve trust and other banking power applications subject to the usual standard conditions.

Merger applications. Section 303.7(b), which provides for delegates to approve applications for merger transactions, is being clarified. Paragraph (b)(1) is amended to clarify that, in conformity with the language of the Bank Merger Act, the delegations of authority apply not only to mergers or consolidations of insured depository institutions where the resulting institution is a state nonmember bank, but also to mergers of an insured depository institution with any uninsured depository institution or other uninsured institution.

Paragraph 303.7(b) is further amended by adding a new paragraph (b)(5). Paragraph (b)(5) makes it clear that the authority to approve a merger application may not be subdelegated to a regional director or deputy regional director where a protest has been filed under CRA. Such cases are to be forwarded to Washington, where the Director or an associate director has authority to take action.

Section 303.7(b) is also amended by adding paragraph (b)(6) to clarify the Board's intention that the delegation of authority criteria relative to market share percentages do not apply when the merging institutions operate in different relevant market areas. When the merging institutions are ones which operate in different market areas, the delegations of authority are exercisable regardless of the market share percentages. This amendment reflects the Board's determination that market share and competitive factor limitations are not necessary when the merger presents no market consequences.

Section 303.7(b) is also amended by adding paragraph (b)(7). Paragraph (b)(7) reflects the Board's intention that delegated authority for mergers may only be exercised upon favorable resolution of the statutory factors contained in section 18(c)(5) of the FDI Act, and that delegated authority for mergers may only be exercised after compliance with the National Environmental Policy Act and the Community Reinvestment Act.

Paragraph (b)(8) reflects the intent of the Board of Directors that a delegate may approve a merger-type application subject to standard conditions.

Deposit insurance applications. Section 303.7(d), which deals with deposit insurance applications, is amended to delete the general reference to the FDIC's policy statement "Applications for Deposit Insurance." The particular requisites to obtaining approval of a deposit insurance application are unchanged; the only change is the reference to the FDIC policy statement. Section 303.7(d) is also amended by adding to paragraph (d)(1)(iii) a parenthetical which directs the reader to refer to the newly added definition of the term "protest".

Section 303.7(d)(2), which states that authority is delegated to the division and regions to approve applications for deposit insurance by operating noninsured or nonfederally insured institutions, is redundant. For purposes of the FDIC's rules and regulations, "noninsured depository institution" means any institution not insured pursuant to the provisions of the FDI Act. Therefore, the phrase "noninsured or nonfederally insured institutions" is amended to read "noninsured depository institutions." Further, § 303.7(d)(2) could be read as excluding applications of state and privately insured institutions from those applications upon which a delegate may act. Section 303.7(d)(2) is therefore amended to clarify that a delegate may act on deposit insurance applications by state or privately insured institutions.

"Section 19" applications. Section 303.7(e) is amended to add paragraph (e)(3) to permit a delegate to impose two conditions for approval of section 19 applications. The two conditions that a delegate may impose are that an employee shall be bonded to the same extent as others in similar positions and, when deemed necessary by the appropriate regional director, that the prior consent of the regional director shall be required for any proposed significant changes in duties and/or responsibilities of the individual occurring within 12 months subsequent to the approval of the application.

Phantom merger applications. Section 303.7(f)(1)(v) is amneded to provide that a delegate may approve phantom bank mergers and corporate reorganizations subject to the applicant fulfilling "standard conditions." A delegate may also impose any other condition to which the applicant has agreed in writing.

Management interlock requests. Section 303.7(f)(1)(vii) currently provides that the delegations of authority apply to requests to establish a management official interlock pursuant to 12 CFR 348.4(b)(3). One exemption is provided by 12 CFR 348.4(b)(3) under which an otherwise prohibited interlocking relationship can be formed. The amendment to § 303.7(f)(1)(vii) broadens the scope of the existing delegation by providing that regional directors and deputy regional directors, where confirmed in writing by the Director, have authority to approve requests pursuant to any of the five exemptions allowed in 348.4(b) and that they only have authority to deny a request pursuant to the exemption embodied in § 348.4(b)(3). Section 303.7f(1)(vii) is further broadened to provide delegations for section 205(8) of the Depository Institutions Management Interlocks Act.

Section 303.7(f)(2) is amended to provide the Director and an associate director, where confirmed in writing by the Director, with the authority to deny requests pursuant to the other exemptions listed in § 348.4(b).

Applications to terminate or modify removal or prohibition orders. Section 303.7(f) is amended by adding a new paragraph (3) delegating authority to approve or deny applications to terminate or modify section 8(e) removal and prohibition orders and to obtain the prior written approval of the FDIC to participate in the conduct of the affairs of a bank by an individual subject to a removal or prohibition order. Under this

new provision, an application to terminate a section 8(e) removal or prohibition order and an application to obtain the prior written approval of the FDIC is delegated to the Director or associate director. The Director or associate director may approve or deny such an application only in conjunction with the concurrent certification by the Deputy General Counsel for Supervision and Legislation or the Associate General Counsel for Compliance and Enforcement.

Section 303.8 Other Delegations of Authority.

Section 303.8(a), relating to extensions of time, is amended by adding a new paragraph (a)(2). Paragraph (a)(2) clarifies that a delegate may exercise authority to deny a request for an extension of time within which to perform acts or meet conditions required by prior FDIC action on an application only if the delegate had authority to deny the underlying application. Considering that the denial of an extension of time has the same practical effect as a denial of the original application, this clarification precludes the delegate from indirectly denying an application that he or she could not have denied directly.

Section 303.8(e) is revised to expand the delegations of authority to permit delegates to furnish reports to the Board of Governors of the Federal Reserve System or the Comptroller of the Currency on the competitive factors involved in any merger required to be approved by either of those agencies, with the exception of a proposed merger in which the division is of the opinion that the transaction would have a substantially adverse effect on competition. Currently, § 303.8(e) provides that delegates may furnish reports on the competitive factors if the division is of the view that the proposed merger would have no significant effect on competition. The expansion of the delegated authority is viewed by the Board to be desirable in the interests of efficiency and economy.

Section 303.9 Delegation of Authority To Act on Certain Enforcement Matters

Section 303.9 is amended to reflect a reorganization of the FDIC Legal Division by changing: Deputy General Counsel for Regional and Corporate Affairs to Deputy General Counsel for Financial Institutions Operations and Liquidations; Deputy General Counsel for Litigation, Legislation and Regulation to Deputy General Counsel for Supervison and Legislation; and Assistant General Counsel for Compliance and Enforcement to Associate General Counsel for Compliance and Enforcement.

Section 303.9(e)(2) is amended to provide that the certification of an order issued pursuant to section 8(g) of the Act, 12 U.S.C. 1818(g), by the Deputy General Counsel for Supervision and Legislation or the Associate General Counsel for Compliance and Enforcement will also certify that the section 8(g) order is enforceable in a United States District Court pursuant to 12 U.S.C. sections 8(i) and (j).

A new provision is added to 12 CFR 303.9 concerning delegations of authority in investigations undertaken pursuant to section 10(c) of the Act, 12 U.S.C. 1820(c). The new provision appears as § 303.9(i) and delegates authority to the Director of the Division of Supervision or his designee to issue a section 10(c) Order of Investigation in conjunction with the General Counsel or his designee. It should be noted that the Director and the General Counsel or their respective designees must issue the Order concurrently.

Another new provision, 12 CFR 303.9(k), is added. This provision concerns the delegation of authority to the Director or an associate director to accept, deny, or enter into negotiations where a unilateral settlement offer has been made by a depository institution or any institution-affiliated party. This authority can only be exercised upon the concurrent certification by the Deputy General Counsel for Open Bank Regulation and Legislation or the Associate General Counsel for Compliance and Enforcement.

Other revisions to 12 CFR 303.9 involve making all of the section numbers correspond with the above-described changes, and changing the word "petitions" in 12 CFR 303.9(j)(2)(ii) to "applications."

Section 303.10 Applications and Enforcement Matters Where Authority is not Delegated

Section 303.10(b) is amended by deleting the old paragraph (b)(1)(iii) and adding a new paragraph (b)(1)(iii) to clarify that the Board retains authority to act on bank mergers (including phantom mergers and reorganizations) when the application falls within the "probable failure" or "emergency" provisions of section 18(c)(6) of the Act, or when the resulting bank does not meet the minimum capital requirements of part 325.

Section 303.10(b)(2)(i) is amended to add that, regardless of whether an applicant has agreed in writing to comply with any conditions imposed by the FDIC, the standard conditions listed in § 303.7(d)(4) may be imposed.

Regulatory Flexibility Analysis

Because no notice of proposed rulemaking is required under section 553 of the Administrative Procedure Act or any other law, the Regulatory Flexibility Act (5 U.S.C. 601–602) does not apply.

List of Subjects in 12 CFR Part 303

Applications, Bank deposit insurance, Banks/banking, Federal Deposit Insurance Corporation, Savings and loan associations, Savings associations.

For the reasons set out in the preamble and pursuant to the FDIC's authority under Public Law No. 101–73, 103 Stat. 183 (August 9, 1989), title 12, chapter III, subchapter A, part 303 of the Code of Federal Regulations is amended as follows:

PART 303—APPLICATIONS, REQUESTS, SUBMITTALS, DELEGATIONS OF AUTHORITY, AND NOTICES OF ACQUISITION OF CONTROL

1. The table of contents for §§ 303.0 through 303.12 is revised to read as follows:

Sec.

303.0 Scope and definitions.
303.1 Application by nonmember bank, state savings association, and Federal savings association for deposit insurance.
303.2 Application by insured state nonmember bank to establish a branch or move its main office or branch.
303.3 Application for conversion, merger, consolidation, assumption and sale of asset transactions.
303.4 Change in bank control.
303.5 Insurance fund conversions and other applications.
303.6 Application procedures.
303.7 Delegation of authority to the Director of the Division of Supervision and to the associate directors, regional directors and deputy regional directors to act on certain applications, requests, and notices of acquisition of control.
303.8 Other delegations of authority.
303.9 Delegation of authority to act on certain enforcement matters.
303.10 Applications and enforcement matters where authority is not delegated.
303.11 Confirmation, limitations, rescissions and special cases.
303.12 OMB control number assigned pursuant to the Paperwork Reduction Act.

2. The authority citation for part 303 is revised to read as follows:

Authority: Pub. L. No. 101–73, 103 Stat. 183 (August 9, 1989); 12 U.S.C. 378, 1813, 1815, 1816, 1817(j), 1818, 1819 ("Seventh") and "Tenth"), 1828, 1829; 15 U.S.C. 1607.

3. Sections 303.0 through 303.12 are revised as follows:

§ 303.0 Scope and definitions.

(a) *Scope.* This part prescribes:

(1) Where applications, requests, and notices of acquisition of control (hereinafter, collectively, "applications") should be filed;

(2) The contents of the application when the application is to be made by letter; and

(3) The location where forms and instructions may be obtained when the application is to be made on a form. Part 303 also prescribes procedures to be followed by both the FDIC and applicants during the process of consideration of an application. Finally, this part sets forth delegations of authority by the FDIC's Board of Directors to the Director of the Division of Supervision, and to the associate directors of the Division of Supervision and to the regional directors and deputy regional directors to act on certain applications and other matters and the conditions, where applicable, that limit such delegations.

(b) *Definitions.* For purposes of this part 303:

(1) The terms "Corporation", or "FDIC" shall mean the Federal Deposit Insurance Corporation.

(2) The term "division" shall mean the Division of Supervision.

(3) The term "Director" shall mean the Director of the Division of Supervision, or in the event the title of Director becomes obsolete, any official of comparable authority within the division.

(4) The term "associate director" shall mean any associate director of the Division of Supervision, or in the event the title of associate director becomes obsolete, any official of comparable authority within the division.

(5) The term "regional director" shall mean any regional director of the Division of Supervision, or in the event the title "regional director" becomes obsolete, any official of comparable authority within the division.

(6) The term "regional counsel" shall mean a regional counsel (Supervision), or in the event the title of regional counsel becomes obsolete, any official of comparable authority within the Office of the General Counsel. The duties and responsibilities of a regional counsel may be performed by the associate general counsel or a counsel in the Compliance and Enforcement Section of the Office of the General Counsel in the FDIC's Washington, DC office.

(7) The term "deputy regional director" shall mean a deputy regional director (Supervision), or in those FDIC regions where there is no deputy regional director, an assistant regional director (Supervision). In the event the title of deputy regional director or assistant regional director becomes obsolete, the term "deputy regional director" shall then mean any official of comparable authority within the same FDIC region of the division.

(8) The terms "appropriate FDIC region", "appropriate FDIC regional office," "appropriate regional director", "appropriate deputy regional director" and "appropriate regional counsel" shall refer to the FDIC region, the regional director (Supervision), the deputy regional director (Supervision), and the regional counsel (Supervision), respectively, of the FDIC region in which:

(i) The applicant depository institution, the proposed or newly organized nonmember bank or savings association, the insured branch of a foreign bank, the resulting or assuming depository institution, or the bank in which stock is being acquired, as appropriate, is or will be located, or

(ii) A depository institution.

(A) which is the subject of an administrative action; or

(B) with which an individual who is the subject of an administrative action is associated, is located.

(9) The term "the Act" shall mean the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*).

(10) The term "order of correction" shall mean findings of unsafe or unsound practices or condition and an order of correction issued under section 8(a) of the Act (12 U.S.C. 1818(a)).

(11) The term "section 8(a) order" shall mean an order terminating insured status under section 8(a) of the Act (12 U.S.C. 1818(a)).

(12) The term "notice of charges" shall mean a notice of charges and of hearing setting forth the allegations of unsafe or unsound practices and/or violations and fixing the time and place of the hearing issued under section 8(b) of the Act (12 U.S.C. 1818(b)).

(13) The terms "section 8(b) order" and "cease-and-desist order" shall mean a final order to cease and desist issued under section 8(b) of the Act (12 U.S.C. 1818(b)).

(14) The terms "section 8(c) order" and "temporary cease-and-desist order" shall mean a temporary order to cease and desist issued under section 8(c) of the Act (12 U.S.C. 1818(c)).

(15) The term "section 8(e) order" shall mean a final order of removal or prohibition issued under section 8(e) of the Act (12 U.S.C. 1818(e)).

(16) The term "section 8(e)(3) order" and "temporary section 8(e) order" shall mean a temporary order of suspension or prohibition issued under section 8(e)(3) of the Act (12 U.S.C. 1818(e)(3)).

(17) The term "section 8(g) order" shall mean an order of suspension or prohibition issued under section 8(g) of the Act (12 U.S.C. 1818(g)).

(18) The term "remote service facility" shall mean an automated teller machine, cash dispensing machine, point-of-sale terminal, or other remote electronic facility where deposits are received, checks paid, or money lent.

(19) The term "notice of assessment of civil money penalties" shall mean a notice of assessment of civil penalties issued pursuant to section 7(j)(15), 8(i) or 18(j) of the Act (12 U.S.C. 1817(j)(15), 1818(i), or 1828(j)), section 106(b) of the Bank Holding Company Act (12 U.S.C. 1972), or section 910(d) of the International Lending Supervision Act of 1983 (12 U.S.C. 3909).

(20) The term "final order to pay" shall mean an order to forfeit and pay civil money penalties which has become final and which has been issued pursuant to section 7(j)(15), 8(i), or 18(j) of the Act (12 U.S.C. 1817(j)(15), 1818(i), or 1828(j)), section 106(b) of the Bank Holding Company Act (12 U.S.C. 1972), or section 910(d) of the International Lending Supervision Act of 1983 (12 U.S.C. 3909).

(21) The term "book capital" shall mean total equity capital (comprised of perpetual preferred stock, common stock, surplus, undivided profits and capital reserves) plus allowance for loan and lease losses, as those items are defined in the instructions of the Federal Financial Institutions Examination Council ("FFIEC") for the preparation of Consolidated Reports of Condition and Income for insured banks.

(22) The term "adjusted primary capital" shall mean adjusted primary capital as calculated and reflected in the FDIC's Reports of Examination.

(23) The term "total assets" shall mean total assets plus allowance for loan and lease losses as those terms are defined in the instructions of the FFIEC for the preparation of Consolidated Reports of Condition and Income for insured banks.

(24) The term "adjusted part 325 total assets" shall mean adjusted part 325 total assets as calculated as reflected in the FDIC's Reports of Examination.

(25) The term "protest" shall include any comment from the public which raises a negative issue relative to the Community Reinvestment Act, whether or not it is labeled a "protest" and whether or not a hearing is requested; however, the term "protest" shall not include any such comment which the regional director determines to be

frivolous, or to have been filed for competitive reasons by a financial institution, or to have been filed primarily as a means of delaying action on the application, or any comment which raises negative Community Reinvestment Act issues that have been resolved as between the commenter and the applicant.

(26) The term "standard conditions" refers to conditions that any delegate may include as a matter of routine in an order approving an application, whether or not the applicant has agreed to their inclusion. The following conditions, or variations thereof, are "standard conditions":

(i) That the applicant has obtained all necessary and final approvals from the appropriate state authority or other applicable authority;

(ii) That if the transaction does not take effect within a specified time limit, or unless, in the meantime, a request for an extension of time has been approved, the consent granted shall expire at the end of the said time period;

(iii) That until the conditional commitment of the FDIC becomes effective, the FDIC retains the right to alter, suspend or withdraw its commitment should any interim development be deemed to warrant such action; and

(iv) In the case of a "merger transaction" (as defined in § 303.7(b)(1)), including a phantom merger or reorganization, that the proposed transaction not be consummated before the thirtieth calendar day after the date of the order approving the merger.

(27) Any use of the masculine, feminine, or neuter gender shall be read as encompassing all three, if such use would be appropriate.

§ 303.1 Application by nonmember bank, state savings association, and Federal savings association for deposit insurance.

Application for deposit insurance by an existing or proposed nonmember bank,[1] state savings association or Federal savings association should be filed with the appropriate regional director. The relevant application forms and instructions may be obtained from the appropriate FDIC regional office.

§ 303.2 Application by insured state nonmember bank to establish a branch or move its main office or branch.

(a) Application by an insured state nonmember bank (except a District bank) to establish and operate a new branch [2] (including a remote service facility) or to move its main office or branch should be filed with the appropriate regional director. The application shall be mailed or delivered to the regional director on the date on which the notice required in § 303.6(f)(1) is published or not more than 30 days subsequent to the first required publication of notice. The application shall be in letter form and shall contain the following information:

(1) The exact location of the proposed site, including street address (unless one has not been assigned to the location);

(2) Details concerning any involvement in the proposal by an insider (a director, an officer, or a shareholder who directly or indirectly controls 5 or more percent of any class of the applicant's outstanding voting stock, or the associates and interests of any such person) of the bank, including any financial arrangements relating to fees, the acquisition of property, leasing of property, and construction contracts;

(3) The impact of the proposal on the human environment, specifically, information on compliance with local zoning laws and regulations and the effect on traffic patterns;

(4) A statement as to whether or not the site is included in or is eligible for inclusion in the National Register of Historic Places, including evidence that clearance has been obtained from the State Historic Preservation Officer;

(5) Comments on any changes in services to be offered, the community to be served, or any other effect the proposal may have on the applicant's compliance with the Community Reinvestment Act; and

(6) The name and address of and the date of publication in the newspaper in which notice required by § 303.6(f)(1) is published.

In cases in which additional information is necessary for evaluation of the application, the applicant may be required to furnish specific information on an individual basis.

(b) The appropriate regional director may delay processing, including extending the comment period, for good cause.

(c) *Special procedures for remote service facilities.* (1) For the purpose of this section, "establishing" means owning or leasing a remote service facility, either individually or jointly. An establishing bank or a foreign bank with an insured state branch shall file a letter with the appropriate regional director giving full particulars of the proposal, including the matters listed in paragraph (a) of this section, to establish an initial remote service facility and comply with the provisions of § 303.6(f). Once this application has been approved, an establishing bank or a foreign bank with an insured state branch may establish additional remote service facilities or relocate existing facilities without formal application by notifying the appropriate regional director in writing of the intended action and complying with the provisions of § 303.6(f). This notification shall include the matters listed in § 303.2(a) of this part and shall be deemed to be an application for the purposes of §§ 303.6, 303.7, and 303.11. In the case of additional remote service facilities, unless notified otherwise within 15 days of the last publication of notice as required by § 303.6(f) or within 15 days after the regional office's receipt of the notice, whichever is later, or in the case of relocations, unless otherwise notified within 21 days of the last publication of notice as required by § 303.6(f) or within 21 days after the regional office's receipt of the notification, whichever is later, the additional remote service facility or relocation will be considered approved. If it is determined that the proposal warrants further consideration, the regional director will notify the applicant within the 15- or 21-day period that the remote service facility should not be established or relocated until further action is taken by the FDIC.

(2) An establishing bank or foreign bank with an insured state branch having one or more remote service facilities established under preexisting regulations may establish additional remote service facilities or relocate existing remote service facilities without formal application by following the procedures set forth in paragraph (c)(1) of this section.

§ 303.3 Application for conversion, merger, consolidation, assumption and sale of asset transactions.

(a) *Merger, consolidation, asset acquisition or assumption transaction between insured depository institutions.* Application by an insured depository institution for the consent of the Corporation to merge or consolidate with, acquire the assets of, or assume the liability to pay any deposits made in, another insured depository institution—when the resulting or assuming depository institution is to be an insured state nonmember bank (except a District bank or a savings bank supervised by the Director of the Office of Thrift Supervision), together with copies of all

[1] A nonmember bank is a bank which is not a member of the Federal Reserve System.

[2] The term "branch" includes any "domestic branch" or "foreign branch" as those terms are defined in section 3(o) of the Act, as amended (12 U.S.C. 1813(o)).

agreements or proposed agreements relating thereto, including the charter or articles of incorporation of the resulting or assuming depository institution, should be filed with the appropriate regional director.

(b) *Merger of Insured depository institution with noninsured bank or institution.* Application by an insured depository institution for the consent of the Corporation to merge or consolidate with a noninsured bank or institution, or to convert into a noninsured institution, or to assume liability to pay any deposits made in, or similar liabilities of, any noninsured bank or institution, or to transfer assets to any noninsured bank or institution in consideration of the assumption of liability for any portion of the deposits made in such insured depository institution, together with copies of all agreements or proposed agreements relating thereto, should be filed with the appropriate regional director.

(c) *Conversion with diminution of capital or surplus.* Application for the consent of the Corporation to convert into an insured state nonmember bank (except a District bank), when the conversion will result in the converted bank's having less capital stock or surplus than the converted bank at the time of the shareholders' meeting approving such conversion, together with copies of the charter and/or articles of association of the converted bank, should be filed with the appropriate regional director.

(d) The appropriate application forms and instructions, as well as instructions concerning notice to depositors, may be obtained upon request from the office of said regional director.

§ 303.4 Change in bank control.

(a) *Acquisition of control.*[3] Under the Change in Bank Control Act of 1978, acquisitions by a person [4] or persons acting in concert with the power to vote 25 percent or more of a class of voting securities of an insured depository institution, unless exempted, require prior notice to the Corporation. In addition, a purchase, assignment, transfer, pledge, or other disposition of voting stock through which any person will acquire ownership, control, or the power to vote ten percent or more of a class of voting securities of an insured depository institution will be presumed to be an acquisition by such person of the power to direct that institution's management or policies if:

(1) The institution has issued any class of securities subject to the registration requirements of section 12 of the Securities Exchange Act of 1944 (15 U.S.C. 781); or

(2) Immediately after the transaction, no other person will own a greater proportion of that class of voting securities.

Other transactions resulting in a person's control of less than 25 percent of a class of voting shares of an insured depository institution would not result in control for purposes of the Act. An acquiring person may request an opportunity to contest any presumption established by this paragraph (a) of this section with respect to a proposed transaction. The Corporation will afford the person an opportunity to present views in writing, or, where appropriate, orally before its designated representatives either at informal conference discussions or at informal presentations of evidence.

(b) *Notices.* (1) Notice of a proposed acquisition of control should be filed with the regional director of the FDIC region in which the depository institution in which stock is being acquired is located. The FDIC will not accept a notice unless the information provided is responsive to every item specified in paragraph 6 of the Change in Bank Control Act of 1978 (12 U.S.C. 1817(j)(6)) and every item prescribed in the appropriate FDIC forms. With respect to personal financial statements required by paragraph 6(b) of the Change in Bank Control Act of 1978, an acquiring person may include a current statement of assets and liabilities, as of a date not more than ninety days prior to the date the notice is filed, a brief income summary, and a statement of material changes since the date of the statement. The appropriate regional director, the Director of the Division of Supervision, or the Board of Directors may require additional information with respect to personal financial statements.

(2)(i) Except as otherwise provided in paragraph (b)(2)(ii) or (b)(2)(iii) of this section, within ten days after receiving confirmation that the appropriate FDIC regional office has accepted the notice, the acquiring person(s) shall publish an announcement of such acceptance in the business section of a newspaper having general circulation in the community in which the home office of the depository institution whose stock is sought to be acquired is located. Promptly thereafter, the acquiring person(s) shall send a copy of the newspaper announcement and the publisher's affidavit of publication to the regional director of the FDIC region in which the subject depository institution is located. The newspaper announcement shall contain the name(s) of the proposed acquirer(s), the name of the depository institution whose stock is sought to be acquired, and the date of acceptance by the FDIC of the notice of acquisition of control. The announcement shall also state that any person wishing to comment on the proposed change in control may do so by submitting written comments to the regional director of the FDIC at (give address of the regional office) within twenty days following the required newspaper publication or, if the FDIC has shortened the public comment period pursuant to paragraph (b)(3) of this section, within such shorter period.

(ii) In a community in which there is no daily or weekly community newspaper, the acquiring person(s) may satisfy the publication requirement contained in paragraph (b)(2)(i) of this section by publishing the required newspaper announcement in either a county-wide newspaper (in the county in which the bank's home office is located) or, if there is no county-wide newspaper, in a state-wide newspaper.

(iii) In the case of a notice filed in contemplation of a public tender offer subject to the requirements of the Securities Exchange Act of 1934 (15 U.S.C. 78m and 78n) and the FDIC's regulations governing tender offers (12 CFR 335.501–335.530), the acquiring person(s) shall publish the required newspaper announcement not later than the earliest of:

(A) The commencement of the tender offer under § 335.502 of the FDIC's regulations (12 CFR 335.502);

(B) Other public announcement of the tender offer; or

(C) Thirty-four days after the FDIC's acceptance of the notice of acquisition of control.

(3)(i) In acting upon a proposed change in control, the FDIC shall consider all public comments received within twenty days following the required newspaper publication. At the FDIC's option, comments received after this twenty-day period may be, but need not be, considered.

(ii) If the FDIC determines in writing that the newspaper publication or comment solicitation requirements of this paragraph would seriously threaten the safety or soundness of the depository institution to be acquired, including situations where the FDIC

[3] Control is defined in section 7(j)(8)(B) of the Act as "the power, directly or indirectly, to direct the management or policies of an insured bank or to vote over 25 percent or more of any class of voting securities of an insured bank." 12 U.S.C. 1817(j)(8)(B).

[4] Person is defined in section 7(j)(8)(A) of the Act as "an individual or a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity not specifically listed herein." 12 U.S.C. 1817(j)(8)(A).

must act immediately in order to prevent the probable failure of the bank to be acquired, then the FDIC may:

(A) Waive the publication requirement;

(B) Waive the public comment solicitation requirement; or

(C) Act on the proposed change in control prior to the expiration of the public comment period.

(iii) In other circumstances, for good cause, the FDIC may shorten the public comment period to a period of not less than ten days. Such good cause will exist only if the FDIC determines that circumstances beyond the control of the acquiring person or persons warrant a shorter period.

(4) A notice of acquisition of control that is filed in contemplation of a public tender offer subject to sections 13(d) and 14(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m and 78n) and the FDIC's regulations governing tender offers (12 CFR 335.501–335.530) may be given confidential treatment for up to thirty-four days after the notice is accepted if:

(i) The filing party requests confidential treatment under this rule and represents that a public announcement of the tender offer and the filing of appropriate forms with the FDIC will occur within thirty-four days from the acceptance of the notice; and

(ii) The FDIC determines, in its discretion, that it is in the public interest to grant confidential treatment. In its discretion, the FDIC may grant confidential treatment under other circumstances when consistent with the purposes of the Change in Bank Control Act of 1978.

(5) Nothing in this regulation shall affect any obligation which the acquiring person(s) may have to comply with the federal securities laws or any other laws.

(6)(i) Whenever a notice of a proposed acquisition of control is not filed in accordance with the Change in Bank Control Act of 1978 and these regulations, the acquiring person(s) shall, within ten days of being so directed by the FDIC, publish an announcement of the acquisition of control in the business section of a newspaper having general circulation in the community in which the home office of the depository institution involved is located. In a community in which there is no daily or weekly community newspaper, the required newspaper announcement may be published in a county-wide newspaper (in the county in which the depository institution's home office is located) or, if there is no county-wide newspaper, in a statewide newspaper.

(ii) The newspaper announcement shall contain the name(s) of the acquire(s), the name of the depository institution involved, and the date of the acquisition of the stock. The announcement shall also contain a statement indicating that the FDIC is currently reviewing the acquisition of control. The announcement shall also state that any person wishing to comment on the change in control may do so by submitting written comments to the regional director of the FDIC at (give address of the regional office) within twenty days following the required newspaper publication.

(c) *Exempt transactions.* The following transactions are not subject to the prior notice requirements of the Change in Bank Control Act of 1978:

(1) The acquisition of additional shares of an insured depository institution by a person who continuously since March 9, 1979, held power to vote 25 percent or more of the voting shares of that institution, or by a person who has acquired and maintained control of that institution after complying with the procedures of the Change in Bank Control Act;

(2) The acquisition of additional shares of an insured depository institution by a person who under paragraph (a) of this section would be presumed to have controlled that institution continuously since March 9, 1979, if:

(i) The transaction will not result in that person's direct or indirect ownership or power to vote 25 percent or more of any class of voting securities of the institution; or

(ii) In other cases, the Corporation determines that the person has controlled the institution since March 9, 1979;

(3) The acquisition of shares in satisfaction of a debt previously contracted in good faith or through testate or intestate succession or bona fide gift; *Provided,* The acquirer advises the appropriate regional director within thirty days after the acquisition and provides such of the information specified in paragraph 6 of the Change in Bank Control Act as the regional director requests;

(4) A transaction subject to approval under section 3 of the Bank Holding Company Act, section 18 of the Act or section 10 of the Home Owners' Loan Act;

(5) A transaction described in sections 2(a)(5) or (3)(a)(5)(A) or (B) of the Bank Holding Company Act, (12 U.S.C. 1841(a)(5) or 1842 (a)(5)) by a person there described;

(6) A customary one-time proxy solicitation and receipt of pro-rata stock dividends; and

(7) The acquisition of shares in foreign banks which have an insured branch or branches in the United States; *Provided, however,* That this exemption does not extend to the reports and information required under sections 7(j)(9), (10), and (12) of the Act.

§ 303.5 Insurance fund conversions and other applications.

(a) *Conversion involving transfer of deposits between the Savings Association Insurance Fund ("SAIF") and the Bank Insurance Fund ("BIF").* Application by any depository institutions to participate in a conversion transaction involving the transfer of deposits from the SAIF Fund to the BIF Fund or *vice versa* should be filed with the appropriate regional director. The application shall be in letter form, signed by representatives of each institution participating in the transaction, and shall contain the following information:

(1) A description of the transaction;

(2) A statement of condition of each institution as of the date of application;

(3) A statement of condition of each institution as of May 1, 1989, with a notation as to the amount of net interest credited to total deposits during the period beginning May 1, 1989, and ending on the expected date of transfer;

(4) The amount of deposits involved in the conversion transaction;

(5) A pro forma balance sheet and income statement for each institution upon consummation of the transaction;

(6) A listing of any other conversion in which either institution has participated since August 9, 1989, or any other conversion transaction in process at the time of filing; and

(7) Any other information that the regional director may from time to time require.

(b) Except as otherwise provided by rule or regulation, all applications, requests, and submittals for which no form of application has been prescribed by the Corporation should:

(1) Be in writing;

(2) (i) Be signed by the president, cashier, or managing officer of the depository institution in the case of:

(A) An application by a depository institution whose insured status has been terminated under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) for permission to continue or resume its status as an insured depository institution; or

(B) An application made by an insured depository institution under part 328 of this title; or

(ii) Be signed by the applicant or a duly authorized agent in all other cases;

(3) Contain a statement of the applicant's interest therein, a complete and concise statement of the action requested, and the reasons and facts relied upon as the basis for such requested action; and

(4) (i) Be addressed to the appropriate regional director in the case of an application, request, or notice of acquisition of control from or relating to a particular bank or institution; or

(ii) The Executive Secretary of the Corporation at the Corporation's Washington, DC headquarters in all other cases.

The applicant shall furnish such other pertinent information as may be required by the Corporation. Forms to be executed in conjunction with an application for consent to exercise trust powers may be obtained from the appropriate FDIC regional office.

(c) In addition to the foregoing, an application by a depository institution whose insured status has been terminated under section 8 of the Act for permission to continue or resume its status as an insured depository institution should:

(1) Be accompanied by a certified copy of the resolution of its board of directors; and

(2) Contain a statement that the depository institution's insured status has been terminated (including the date thereof and the basis therefor) and that the insurance of its deposits has not ceased.

(d) Applications under § 347.4 of this chapter to acquire or hold stock or other evidence of ownership in a foreign bank or other financial entity shall be submitted to the appropriate regional director in letter form and, unless otherwise directed by the Corporation, shall contain full information concerning the foreign bank or other financial entity including (unless previously furnished):

(1) The cost, number, class of shares to be acquired, and the proposed carrying value of such shares on the books of the insured state nonmember bank;

(2) A recent balance sheet and income statement of the foreign bank or other financial entity;

(3) A brief description of the foreign bank's or other financial entity's business (including full information concerning any direct or indirect business transacted in the United States);

(4) Lists of directors and principal officers (with address and principal business affiliation of each) and of all shareholders known to the issuing bank holding 10 percent or more of any class of the foreign bank's or other financial entity's stock or other evidence of ownership, and the amount held by each; and

(5) Information concerning the rights and privileges of the various classes of shares outstanding.

§ 303.6 Application procedures.

(a) *Scope of section.* Paragraphs (f) through (n) of this section apply to:

(1) Applications for deposit insurance by proposed new depository institutions or operating non-insured institutions;

(2) Applications by insured state nonmember banks to establish branches, including remote service facilities; [5]

(3) Applications by insured nonmember banks to relocate their main or branch offices, including remote service facilities;

(4) Applications to merge or to consolidate with, acquire the assets of, or assume the liability to pay any deposits made in, a bank or institution, when the resulting or assuming depository institution is to be an insured state nonmember bank, and all other applications to merge or to consolidate with, or to assume liabilities, which require the Corporation's prior approval under the Bank Merger Act (12 U.S.C. 1828(c)); [6] and

(5) Any other applications, requests or submittals which the Board of Directors of the FDIC in its sole discretion deems appropriate.

In the case of applications, requests, or submittals which come within § 303.6(a)(5), the applicant will be notified at the time its application is accepted for filing that the procedures set forth in this section shall be followed in connection therewith.

(b) *Investigations and examinations.* With respect to all applications, requests, or submittals, the Board of Directors, or the Director, the associate director or the appropriate regional director or deputy regional director acting under delegated authority, may require any investigation or examination, or both, to be performed as deemed appropriate. Upon receipt of the report of any investigation or examination and any recommendations based on the report, the Board of Directors, or the Director, the associate director, the regional director, or the deputy regional director acting within the scope of delegated authority, will take any action determined necessary or appropriate under the circumstances.

(c) *Opportunity to present views.* With respect to any application, the Corporation may afford the applicant or other properly interested persons, including government agencies, an opportunity to present views orally or in writing before or to its designated representative or representatives, either at informal conference discussions or at informal presentations of evidence.

(d) *Notice of disposition of applications.* Prompt notice will be given of the grant or denial, in whole or in part, of any written application, petition, or other request of any interested person made in connection with any agency proceeding. In the case of a denial of an application by a federal savings association for deposit insurance, such notice will be sent to the Director of the Office of Thrift Supervision, and will be accompanied by a written statement giving specific reasons for the Corporation's determination with reference to the factors described in paragraphs (1), (2), (3), (4) and (5) of section 6 of the Act (12 U.S.C. 1816). In the case of any other denial, except in affirming a prior denial, or where the same is self-explanatory, such notice will be accompanied by a simple statement of the reasons therefor.

(e) *Opportunity to petition for reconsideration of a denied application, petition, or other request.* (1) Within 15 days of its receipt of notice that its application, petition, or request has been denied, any applicant may petition the FDIC for reconsideration of such application, petition, or request (except an application, petition or request already previously denied upon reconsideration). The petition must be in writing and should:

(i) Specify reasons why the FDIC should reconsider its action; and

(ii) Set forth relevant, substantive information that for good cause was not previously set forth in the application, petition, or request to be reconsidered.

The petition should be filed with the appropriate regional director. If a particular insured depository institution or insured branch of a foreign bank was not the subject of the application.

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[5] For purposes of this section, unless the Corporation determines otherwise, an off-premises electronic facility which receives deposits for more than one depository institution is deemed to constitute a branch only of the bank or banks which own or lease the facility.

[6] Except as otherwise provided in paragraph (f)(1) of this section, the provisions of this § 303.6 shall not be applicable to any proposed merger or assumption transaction which the Board of Directors of the Corporation determines must be acted upon immediately to prevent the probable default of one of the institutions involved or must be handled with expeditious action due to an existing emergency condition, as permitted by the Bank Merger Act (12 U.S.C. 1828(C)(6)).

petition, or request on which reconsideration is sought, the petition should be filed with the Executive Secretary of the FDIC at the FDIC's Washington, DC headquarter office.

(2) (i) The Director or, where confirmed in writing by the Director, an associate director or the appropriate regional director or deputy regional director, or, in the case of a petition for reconsideration filed with the Executive Secretary, the General Counsel or designee, shall determine whether the petition for reconsideration satisfied paragraphs (e)(1)(i) and (e)(1)(ii) of this section and shall promptly notify the petitioner of such determination.

(ii) If, pursuant to paragraph (e)(2)(i) of this section, a petition for reconsideration is determined not to satisfy paragraphs (e)(1)(i) and (e)(1)(ii) of this section, an applicant may appeal such decision to the Director, and where confirmed in writing by the Director, to an associate director, or, in the case of a petition for reconsideration filed with the Executive Secretary, to the Chairman of the FDIC or his or her designee. An applicant may not submit additional information or evidence with the appeal and the determination by the Director or associate director, or the chairman of the FDIC or his or her designee whether the petition satisfies paragraphs (e)(1)(i) and (e)(1)(ii) of this section is final, and not appealable to the Board of Directors.

(iii) If a petition for reconsideration is determined to satisfy paragraphs (e)(1)(i) and (e)(1)(ii) of this section, then the previously denied application, petition, or request will be reconsidered:

(A) By the Board of Directors if originally denied by the Board of Directors; or

(B) By the Director, or where confirmed in writing by the Director, by an associate director, if originally denied by the Director, associate director, regional director or deputy regional director.

The decisions by the Director or associate director on petitions for reconsideration are final and not appealable to the Board of Directors.

(f) *Notice of filing of application*—(1) *Notice by publication.* (i) In the case of applications in connection with a "merger transaction" (as defined by the Bank Merger Act, 12 U.S.C. 1828(c)(3)), unless the Board of Directors determines it must act immediately in order to prevent the probable failure of one of the depository institutions involved, the applicant must publish notice of the proposed transaction. This notice shall be published in a newspaper of general circulation in the community or communities where the main offices of the banks or institutions involved are located, or if there is no such newspaper in the community, then in the newspaper of general circulation published nearest thereto. Publication shall be made at least once each week on the same day for five consecutive weeks and, when published in a daily newspaper, one additional publication shall be made on the thirtieth day from the date of the first publication. Where the Board of Directors of the Corporation determines that an emergency exists which requires expeditious action, then notice shall be required to be published daily during a period of at least 10 calender days. The published notice shall include the name and main office location of all banks or institutions involved in the transactions and the subject matter of the application. If it is contemplated that the continuing bank will operate the offices of the other depository institution(s) as branches, the following statement shall be added to the notice:

It is contemplated that all of the offices of the above named institutions will continue to be operated (with the exception of [identity and location of each office which will not be operated]).

(ii) In the case of all other applications described in paragraph (a) of this section, on the date the deposit insurance application form or the letter application required in § 303.2 is mailed or delivered to the regional director or not more than 30 days prior to that date, the applicant shall publish notice or begin publication of notice if more than one notice is required, of the proposed transaction. *Provided however,* That no publication shall be required in connection with the granting of insurance to a new depository institution established pursuant to the resolution of a failed institution situation. Publication of notice shall be made at least once each week on the same day for two consecutive weeks for relocation applications and once for other applications described in paragraph (a) of this section and shall be in a newspaper of general circulation in the community or communities referred to below:

(A) *Applications to establish a branch. Domestic Branch:* In the communities in which the home office and the domestic branch to be established are located; *Foreign Branch:* In the community in which the home office is located.

(B) *Applications to relocate an office.* In the communities in which the home office, office to be closed, and office to be opened are located, provided that a foreign bank having an insured branch need only publish such notice in the communities in which the insured branch is located and is to be relocated.

(C) *Applications for deposit insurance.* In the community in which the home bank office is or will be located, provided that a foreign bank making application for an insured branch need only publish such notice in the community in which the insured branch is to be located.

The published notice required by (f)(1) of this section shall include the name of the applicant, the subject matter of the application, and the location or locations at which the applicant proposes to engage in business.

(iii) In all instances, immediately after final publication, the applicant shall advise the appropriate regional director that the publication requirements have been met.

(2) *Notice by posting.* In the case of applications to relocate home offices or branch offices, in addition to the notice by publication described in paragraph (f)(1) of this section, notice of the application shall be posted in the public lobby of the office(s) to be relocated, if such public lobby exists, for at least 21 days beginning with the date of the last published notice required by paragraph (f)(1) of this section.

(3) *Comments.* Anyone who wishes to comment on an application may do so by filing comments in writing with the appropriate regional director at any time before the FDIC has completed processing the application. Processing will be completed, for applications other than home or branch office relocation and remote service facility relocation applications and merger applications, not less than 15 days after the publication of the notice required by paragraph (f)(1) of this section or 15 days after FDIC's receipt of the application, whichever is later; for home or branch office relocation and remote service facility relocation applications, not less than 21 days after the last publication or 21 days after FDIC's receipt of the application, whichever is later; for merger applications, not less than 30 days after the first publication or 30 days after FDIC's receipt of the application, whichever is later. This time period may be extended by the appropriate regional director for good cause. Such regional director shall report the reasons for such action to the Board of Directors.

(4) *Notice of right to comment.* In order to fully apprise the public of its rights under paragraph (f)(3) of this section, the notice described in paragraph (f)(1) of this section shall include a statement describing the right

to comment upon, or protest the granting of, the application. This notice shall consist of the following statement:

Any person wishing to comment on this application may file his or her comments in writing with the regional director of the Federal Deposit Insurance Corporation at its regional office (address of the regional office) before processing of the application has been completed. Processing will be completed no earlier than the (relocations—21st, mergers—30th, other applications described in paragraph (a) of this section—15th) day following either the date of the (merger applications—first, all other applications described in paragraph (a)—last) required publication or the date of receipt of the application by the FDIC, whichever is later. The period may be extended by the regional director for good cause. The nonconfidential portion of the application file is available for inspection within one day following the request for such file. It may be inspected in the Corporation's regional office during regular business hours. Photocopies of information in the nonconfidential portion of the application file will be made available upon request. A schedule of charges for such copies can be obtained from the regional office.

(5) *Solicitation of comments by regional director.* Whenever he deems it appropriate, the regional director may solicit comments from any person or institution which, in his opinion, might have an interest in or be affected by the pending application.

(g) *Public access to application file*—(1) *Inspection of application file.* Any person may inspect the nonconfidential portions of an application file. For a period extending until 180 days after final disposition of an application, the nonconfidential portions of the file will be available for inspection in the regional office of the FDIC in which an application has been filed. During this period, the nonconfidential portion of the file will be produced for review not more than one working day after receipt by the regional office of the request (either written or oral) to see the file. Photocopies of the nonconfidential portions of the file will be available, upon request, to any person. A charge for making copies will be made in accordance with the fee schedule contained in § 309.5(b) of this chapter. No charge will be imposed for the search for, and review of, the application file. One hundred and eighty (180) days after the final disposition of an application, the nonconfidential portions of an application file will be made available in accordance with the provisions of § 309.5 of this chapter.

(2) *Nonconfidential portions of application file.* Subject to the provisions of paragraph (g)(3) of this section, the following information in an application file will be available for public inspection:

(i) The application with supporting data and supplementary information.

(ii) Data, comments, and other information submitted by interested persons in favor of, or in opposition to, such application.

(iii) Those portions of the investigation report prepared by the Corporation's field examiner in connection with the application which cover the convenience and needs of the community to be served by the applicant or applicants and either the future earnings prospects or the future prospects of the applicant or applicants.

(iv) A summary assessment of the applicant or applicants, based on their Community Reinvestment Act examination.

(v) Where a hearing has been held pursuant to paragraph (i) of this section, any evidence submitted pursuant to paragraph (j)(3) of this section and the hearing transcript described in paragraph (j)(5) of this section.

(3) *Withholding of confidential information.* No material described in paragraph (g)(2) of this section shall be available if it is determined to be confidential under the provisions of 5 U.S.C. 552. The following information generally is considered confidential:

(i) Personal information, the release of which would constitute a clearly unwarranted invasion of privacy.

(ii) Commercial or financial information, the disclosure of which would result in substantial competitive harm to the submitter.

(iii) Information the disclosure of which could seriously affect the financial condition of any financial institution.

(h) *Proceedings*—(1) *Requests for hearing or other proceeding.* Anyone who has made a formal comment within the period specified in paragraph (f)(3) of this section may request a hearing or an oral presentation at the time of making the formal comment. If a hearing or an oral presentation is requested, the request must be accompanied by a brief statement by the person requesting the hearing or presentation of his or her interest in the application and of the matters which he or she wishes to discuss. If the Corporation determines that a hearing or other form of oral presentation should be allowed, the person making the request will be advised of the date, time, and location of the hearing or oral presentation.

(2) *Form of proceeding.* The Corporation may, at its discretion, decide to hold a hearing on the application in accordance with paragraph (i) of this section; it may decide to hold an informal proceeding in accordance with paragraph (h)(3) of this section; or it may decide not to hold a hearing or an informal proceeding in which case, where there has been a request for an opportunity to be heard pursuant to paragraph (h)(1) of this section, it will so advise the applicant and all persons who requested an opportunity to be heard. A decision as to the form of proceeding to be held will be made not more than 30 days after a request for a hearing or oral presentation has been made pursuant to paragraph (h)(1) of this section.

(3) *Informal proceedings.* If the Corporation decides to hold an informal proceeding, the regional director shall, not less than 10 days prior thereto, notify the applicant and each person who requested a hearing, or oral presentation in accordance with paragraph (h)(1) of this section, of the date, time, and place of the proceeding. The regional director may, if he deems it advisable, notify other persons who have expressed an interest in the application and invite them to attend. The proceeding may assume any form, including a meeting with Corporation representatives, at which the participants will be asked to present their views orally. The regional director shall also have the discretion to hold separate meetings with each of the participants where he deems it desirable.

(i) *Hearings.* Hearings of the kind provided for in this paragraph will not generally be afforded the participants if they have had the opportunity to participate in prior hearings before the appropriate State authority which covered essentially the same issues or if the regional director determines that less formal proceedings would be adequate.

(1) *Notice of hearing*—(i) *Contents.* If the Corporation determines that a hearing on the application is warranted, the regional director shall, not less than 10 days prior thereto, give notice of the scheduling of the hearing, and shall set forth in the notice the subject matter of the application, the significant issues to be presented, and the date, time, and place at which the hearing shall be held.

(ii) *To whom sent.* The above notice shall be sent by registered or certified mail to the applicant and to each person who requested a hearing in accordance with paragraph (h)(1) of this section. The regional director may also notify other persons who have expressed an interest in the application and invite them to participate in the hearing.

(2) *Attendance at hearing.* Each interested person who wishes to attend

the hearing shall notify the regional director accordingly with 5 days after the date upon which he recieves the above notice. Unless he has already done so, he shall submit a brief written summary of the matters which he wishes to cover at the hearing, together with the number and names of witnesses he wishes to present. The applicant and other interested persons attending the hearing may be represented by counsel.

(3) *Presiding officer.* The presiding officer at the hearing shall be the regional director, his designee, or such other person as may be named by the Board of Directors or the Director. The presiding officer shall have the authority to appoint a panel to assist him.

(j) *Hearing rules*—(1) *Order of presentation.* The following schedule is intended to serve as a general guide to the conduct of the hearing. It is not fixed and may be varied at the discretion of the presiding officer. The presiding officer shall determine the order of opening and closing statements and presentations to be followed by all participants other than the applicant who in each instance shall have the opportunity to speak first.

(i) *Opening statements.* The applicant and each other participant may make opening statements which should concisely state what the participant intends to show.

(ii) *Applicant's presentation.* Following the opening statement(s), the applicant shall present its data and materials orally or in writing.

(iii) *Requester's presentation.* Following the applicant's presentation, each person who requested the hearing shall present his data and materials orally or in writing. Those who requested the hearing may agree, with the approval of the presiding officer, to have one of their number make their presentation.

(iv) *Other interested persons.* Following the evidence of the applicant and the requesters, the presiding officer will recognize other interested persons who may present their views with respect to the application under consideration.

(v) *Summary statement.* After all the above presentations have been concluded, the applicant and each other participant may make a short concise rebuttal.

(2) *Witnesses.* Each participant is responsible for providing his own witnesses, including the payment of all expenses associated with their appearance at the hearing. All witnesses will be present on their own volition, but any person appearing as a witness may be subject to questioning by any participant, by the presiding officer, or by any member of the panel. The refusal of a witness to answer questions may be considered by the Corporation in determining the weight to be accorded the testimony of that witness. Witnesses shall not be sworn.

(3) *Evidence.* The presiding officer shall have the authority to exclude data or materials which he deems to be improper, irrelevant, or repetitive. Formal rules of evidence shall not be applicable to these hearings. Documentary material submitted as evidence must be of a size consistent with ease of handling, transportation, and filing. Three copies of all such documentary material shall be furnished to the regional director, and any participant who specifically requests the same shall be furnished a copy at his own expense. While large exhibits may be used during the hearing, copies of such exhibits must be provided by the person in reduced size for submission as evidence.

(4) *Procedural questions.* The presiding officer, or any designated member of the panel, shall determine all procedural questions not governed by this section. The presiding officer shall have the authority to limit the number of witnesses to be used by any person and to impose reasonable time limitations.

(5) *Transcript.* A transcript of each hearing will be arranged for by the Corporation. The person or persons who requested the hearing will be expected to pay all the expenses of such service, including the furnishing of one copy of the transcript to the regional director. *Provided, however,* That the Corporation may, for good cause, waive this requirement in individual cases. Where a hearing is held at the Corporation's initiative, the Corporation shall bear the expense of such service. Copies of the transcript will be furnished to any interested person requesting the same at that person's expense.

(6) *The hearing record*—(i) *Contents.* The nonconfidential portions of the application, as described in paragraph (c) of this section, shall automatically be a part of the hearing record.

(ii) *Closing the hearing record—additional statements.* Any person who participates in the hearing may request that the hearing record remain open for 10 days following receipt of the transcript by the regional director during which time the person may submit corrected copies of the transcript, or additional written statements or materials which he agreed to furnish at the hearing, to the regional director. Such person shall simultaneously mail or have delivered copies of the corrected transcript or additional statements or materials to all other persons who participated in the hearing.

(k) *Disposition and notice thereof.* (1) The final disposition of any application or other matter under this section need not be determined exclusively by, or be limited to, the information contained in the public file established by paragraph (g) of this section.

(2) The applicant, and any other person who so requests in writing, shall be notified by the Board of Directors of the final disposition of the application or other matter. The Board of Directors shall also provide a statement of the reasons for the final disposition made.[7]

(l) *Computation of time.* Section 308.22 shall govern the computation of any period of time prescribed or allowed by this section.

(m) *Retained authority.* In acting upon any particular application, the Board of Directors may by resolution adopt procedures which differ from this section when it deems it necessary and in the public interest to do so. Such resolution shall be made available for public inspection and copying in the Office of the Executive Secretary of the Corporation in accordance with the requirements of 5 U.S.C. 552(a)(2).

§ 303.7 Delegation of authority to the Director of the Division of Supervision and to the associate directors, regional directors and deputy regional directors to act on certain applications, requests, and notices of acquisition of control.

The Board of Directors of the FDIC has delegated to officials in the Division of Supervision and other employees of the FDIC the authority on behalf of the Board of Directors to act (subject to the provisions of § 303.10 of this part) on the following applications, requests, and notices of acquisition of control.

(a) *Applications for branches (including remote service facilities, courier services, foreign branches of domestic banks), relocations, and for trust and other banking powers*—(1) *Branch and relocation applications.* (i) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to approve applications for consent to establish branch facilities (including remote service facilities, courier services and foreign branches of domestic banks) or

[7] Where final authority to dispose of an application or other matter has been delegated to the Director, an associate director, the regional directors and the deputy regional directors pursuant to § 303.7, the delegate will provide the notice and statement described in this paragraph (k)(2).

relocations where the applicant satisfies the requisites listed in paragraph (a)(1)(iii) of this section and agrees in writing to comply with any condition imposed by the delegate other than those standard conditions listed in § 303.0(b)(26).

(ii) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director:

(A) To deny applications for consent to establish branch facilities (including remote service facilities, courier services and foreign branches of domestic banks) or relocations; and

(B) To approve such applications where the applicant satisfies the requisites listed in paragraph (a)(1)(iii) of this section but does not agree in writing to comply with any condition imposed by the delegate.

(iii) The requisites which must be satisfied before the authority delegated by paragraphs (a)(1)(i) and (a)(1)(ii)(B) of this section to approve applications for consent to establish branch facilities or relocations may be exercised are:

(A) The seven factors set forth in section 6 of the Act (12 U.S.C. 1816) have been considered and favorably resolved (except that this requisite does not apply to applications to establish courier services);

(B) The applicant meets the capital requirements set forth in 12 CFR part 325 and the FDIC's "Statement of Policy on Capital" or agrees in writing to increase capital so as to be in compliance with the requirements of 12 CFR part 325 before or at the consummation of the transaction which is the subject of the application, except that this requisite does not apply to applications to establish courier services, remote service facilities, and relocations of branches or main offices;

(C) Any financial arrangements which have been made in connection with the proposed branch or relocation and which involve the applicant's directors, officers, major shareholders, or their interests, are fair and reasonable in comparison to similar arrangements that could have been made with independent third parties; and

(D) The requirements of the National Historic Preservation Act (16 U.S.C. 470), the National Environmental Policy Act (42 U.S.C. 4321), and the Community Reinvestment Act of 1977 (12 U.S.C. 2901–2905) and its applicable implementing regulation (12 CFR part 345) have been considered and favorably resolved (except that this requisite does not apply to applications to establish foreign branches): *Provided, however,* That the authority to approve an application may not be subdelegated to a regional director or deputy regional director where a protest (as that term is defined in § 303.0(b)(25)) under the Community Reinvestment Act is filed.

(2) *Applications for consent to exercise trust and other banking powers.* (i) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to approve applications for the FDIC's consent to exercise trust or other banking powers where the applicant satisfies the requisites listed in paragraph (a)(2)(iii) of this section and agrees in writing to comply with any other conditions imposed by the delegate other than those standard conditions listed in § 303.0(b)(26).

(ii) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director:

(A) To deny applications for trust or other banking powers; and

(B) To approve such applications where the applicant satisfies the requisites listed in paragraph (a)(2)(iii) of this section but does not agree in writing to comply with any condition required by the delegate other than those standard conditions listed in § 303.0(b)(26).

(iii) The requisites which must be satisfied before the authority delegated by paragraphs (a)(2)(i) and (a)(2)(ii)(B) of this section to approve applications for trust or other banking powers may be exercised are:

(A) The seven factors set forth in section 6 of the Act (12 U.S.C. 1816) have been considered and favorably resolved;

(B) The proposed management of the trust or other banking business is determined capable of satisfactorily handling the anticipated business; and

(C) In regards to trust applications only, the applicant's board of directors has formally adopted Form 114—"Statement of Principles of Trust Department Management".

(b) *Merger transactions.* (1) Except as provided in paragraphs (b)(4) and (b)(5) of this section and in § 303.10(b) of this part, authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, or the appropriate regional director or deputy regional director, to approve any application for permission to merge or consolidate with any other bank or institution or, either directly or indirectly, to acquire the assets of, or assume the liability to pay any deposits made in any other bank, institution, or branch of a foreign bank (hereafter "merger transaction") where the applicant satisfies the requisites listed in paragraph (b)(7) of this section and (subject to paragraph (b)(6) of this section) where:

(i) The resulting institution, upon consummation of the merger transaction, would not have more than 15% of the individual, partnership and corporate deposits held by commercial banks and/or thrift institutions, as may be appropriate, in the relevant market(s); or

(ii) The resulting institution, upon consummation of the merger transaction, would not have more than 25% of the individual, partnership and corporate deposits held by commercial banks and/or thrift institutions, as may be appropriate, in the relevant market(s), and the Attorney General has determined that the proposed merger transaction would not have a significantly adverse effect on competition.

(2) Except as provided in paragraph (b)(4) of this section, authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, to approve applications for merger transactions where the resulting institution, upon consummation of the merger transaction, would not have more than 35% of the individual, partnership and corporate deposits held by commercial banks and/or thrift institutions, as may be appropriate, in the relevant market(s), and the Attorney General has determined that the proposed merger transaction would not have a significantly adverse effect on competition.

(3) In cases where applicable, the delegate will review any reports on the competitive factors involved in the merger transaction that the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Director OTS and the Attorney General may have provided in response to a request for such reports by the FDIC. In the absence of a formal written opinion by the Attorney General, the delegate may also request the FDIC's General Counsel or designee to provide a formal written opinion on the question whether the merger transaction may have a significantly adverse effect on competition. However, the authority delegated under paragraphs (b)(1)(ii) and (b)(2) of this section may not be exercised in the absence of a formal written opinion by the Attorney General where the resulting bank, upon consummation of the merger transaction, would have more than 15% of the individual, partnership, and corporate deposits held by commercial banks and/or thrift institutions, as may

be appropriate, in the relevant market(s).

(4) The delegations contained in paragraphs (b)(1) and (b)(2) of this section to approve applications for merger transactions do not extend to such applications:

(i) Falling within the scope of the "probable failure" or "emergency" provisions of 12 U.S.C. 1828(c)(6); or

(ii) Where the resulting institution, upon consummation of the merger transaction, does not meet the capital requirements set forth in 12 CFR part 325 and the FDIC's "Statement of Policy on Capital." (If the applicant is a foreign bank, the delegated authority to approve does not extend to instances where, upon consummation of the merger transaction, the foreign bank's insured branch is not in compliance with 12 CFR part 346.)

(5) The authority to approve an application may not be subdelegated to a regional director or deputy regional director where a protest (as that term is defined in § 303.0(b)(25)) under the Community Reinvestment Act is filed.

(6) Where the merging institutions operate in different relevant market areas, then the limitations relative to market share percentages set forth in paragraphs (b)(1) and (b)(2) of this section do not apply.

(7) The requisites which must be satisfied before the authority delegated by paragraphs (b)(1) and (b)(2) of this section to approve applications for merger transactions may be exercised are:

(i) That the statutory factors contained in section 18(c)(5) (12 U.S.C. 1828(c)(5) of the Act have been considered and favorably resolved; and

(ii) Compliance with the National Environmental Policy Act (42 U.S.C. 4321), the Community Reinvestment Act (12 U.S.C. 2901–2905) and the applicable implementing regulation (12 CFR part 345 or any other applicable implementing regulation) have been considered and favorably resolved.

(8) In approving an application for a merger transaction under this section, a delegate may impose any of the standard conditions listed in § 303.0(b)(26), or any other condition to which the applicant has agreed in writing.

(9) Notwithstanding any limitation or condition imposed by this section, the Director, and where confirmed in writing by the Director, an associate director, or the appropriate regional director or deputy regional director is authorized to approve any transaction involving a merger facilitated by the Resolution Trust Corporation under its authority to assist savings associations in default or in danger of default, provided that the resulting entity from the merger is a state-chartered insured non-member bank.

(c) *Notices of acquisition of control.* (1) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to issue a written notice of the FDIC's intent not to disapprove an acquisition of control of an insured depository institution.

(2) The authority delegated by paragraph (c)(1) of this section shall include the power:

(i) To act in situations where information is submitted on acquisitions arising out of testate or intestate succession, bona fide gifts, or foreclosure;

(ii) To extend notice periods;

(iii) To determine the informational adequacy of a notice;

(iv) To determine whether a notice should be filed under section 7(j) of the Act (12 U.S.C. 1817(j)) by a person acquiring less than 25 percent of any class of voting securities of an insured depository institution; and

(v) To waive publication, waive or shorten the public comment period, or act on a proposed acquisition of control prior to the expiration of the public comment period, as provided in 12 CFR 303.4(b)(3).

(3) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, to disapprove an acquisition of control of an insured state depository institution.

(d) *Deposit insurance applications—* (1) *Proposed or newly organized depository institutions.* (i) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, or subject to the limitations set forth in paragraph (d)(1)(iii) of this section, to the appropriate regional director or deputy regional director, to approve applications for deposit insurance by proposed or newly organized depository institutions, where the applicant satisfies the requisites listed in paragraph (d)(1)(ii) of this section, and agrees in writing to comply with any condition imposed by the delegate, other than those listed in paragraph (d)(4) of this section. *Provided however;* That the requisites listed in paragraph (d)(1)(ii) of this section do not apply to any transaction facilitated by the Resolution Trust Corporation under its authority to assist savings associations in default or in danger of default.

(ii) The requisites which must be satisfied before the authority delegated by paragraph (d)(1)(i) of this section to approve applications for deposit insurance by proposed or newly organized depository institutions may be exercised are:

(A) (*1*) As to Federal savings associations, factors (1) through (5) of the seven factors set forth in section 6 of the Act (12 U.S.C. 1816) have each been considered and favorably resolved, and the FDIC has received from the Director of the Office of Thrift Supervision the certificate required under section 5 of the Act (12 U.S.C. 1815);

(*2*) As to all other depository institutions, each of the seven factors set forth in section 6 of the Act (12 U.S.C. 1816) has been considered and favorably resolved; and

(B) The requirements set forth below are met:

(*1*) Equity capital is not less than $1,000,000;

(*2*) Legal fees and other expenses incurred in connection with the proposal are determined to be reasonable;

(*3*) No unresolved "management interlocks," as prohibited by the Depository Institution Management Interlocks Act (12 U.S.C. 3201 et seq.), part 348 of this chapter (12 CFR part 348) or any other applicable implementing regulation, exist;

(*4*) The projected ratio of equity capital and reserves to assets, including projected profits and losses, is at least 10 percent at the end of the third year of operations;

(*5*) Profitable operations are projected at least for the third year of operations;

(*6*) The proposed aggregate direct and indirect investment in fixed assets is determined to be reasonable relative to the applicant's proposed equity capitalization, projected earnings capacity, and other pertinent bases of consideration;

(*7*) Any financial arrangements made or proposed in connection with the proposed depository institution involving the applicant's directors, officers, 5 percent shareholders or their interests are determined to be fair and made on substantially the same terms as those prevailing at the time for comparable transactions with noninsiders and do not involve more than normal risk or present other unfavorable features. The applicant also must have fully disclosed, or agreed to disclose fully, any such arrangement to all of its proposed directors and shareholders prior to the opening of the depository institution;

(*8*) Stock financing arrangements, fidelity coverage and accrual accounting

conform to the guidelines established in the FDIC's policy statement on "Applications for Deposit Insurance;" and

(9) Compliance with the National Historic Preservation Act (16 U.S.C. 470), the National Environmental Policy Act (42 U.S.C. 4321), and the Community Reinvestment Act of 1977 (12 U.S.C. 2901 through 2905) and the applicable implementing regulation (12 CFR part 345 or any other implementing regulation) is adequate and favorably resolved.

(iii) The authority to approve an application may not be subdelegated to a regional director or deputy regional director where:

(A) A protest (as that term is defined in § 303.0(b)(25)) under the Community Reinvestment Act is filed; or

(B) (1) There is direct or indirect financing, by proposed directors and officers and 5 percent or more shareholders, of more than 75 percent of the purchase price of the stock subscribed to by any one shareholder;

(2) There is aggregate financing of stock subscriptions in excess of 50 percent of the total capital offered, or

(3) Warehoused or trusteed stock exceeds 10 percent of initial capital funds.

(2) *Operating noninsured depository institutions and state or privately insured institutions.* (i) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, or, for applicant institutions with total assets of less than $250,000,000, to the appropriate regional director or deputy regional director, to approve applications for deposit insurance by operating noninsured depository institutions, or state-insured or privately insured institutions where the applicant satisfies the requisites listed in paragraph (d)(2)(ii) of this section and agrees in writing to comply with any condition imposed by the delegate other than those listed in paragraph (d)(4) of this section.

(ii) The requisites which must be satisfied before the authority delegated by paragraph (d)(2)(i) of this section to approve applications for deposit insurance by operating noninsured depository institutions may be exercised are:

(A) The applicant is determined to be eligible for federal deposit insurance for the class of institution to which the applicant belongs in the state (as defined in 12 U.S.C. 1813(a)) in which the applicant is located;

(B) The seven factors set forth in section 6 of the Act (12 U.S.C. 1816) have been considered and favorably resolved;

(C) The applicant meets the minimum capital requirements as set forth in part 325 of this chapter (12 CFR part 325) and the FDIC's "Statement of Policy on Capital" or agrees in writing to increase capital so as to be in compliance with the requirements of 12 CFR part 325 before or at the time deposit insurance becomes effective;

(D) All "management interlocks" as prohibited by Part 348 of this chapter (12 CFR part 348) or any other applicable implementing regulation have been resolved; and

(E) The applicant has no fewer than five directors.

(3) *Banks withdrawing from Federal Reserve System.* Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director and deputy regional director, to approve applications for deposit insurance by state nonmember banks that have withdrawn from membership in the Federal Reserve System where the applicant agrees in writing to comply with any condition imposed by the delegate other than those listed in paragraph (d)(4) of this section and satisfies the following requisites;

(i) The seven factors set forth in section 6 of the Act (12 U.S.C. 1816) have been considered and favorably resolved; and

(ii) The bank has agreed to continue any corrective program imposed by the Board of Governors of the Federal Reserve System or previously agreed to by the bank where the bank is not in material compliance with that corrective program.

(4) *Conditions for exercise of delegated authority.* The conditions which may be imposed by a delegate in approving applications for deposit insurance without affecting the authority granted under paragraphs (d)(1), (d)(2), and (d)(3) of this section are:

(i) The applicant has provided a specific amount and a specific allocation of beginning paid-in capital;

(ii) Any changes in proposed management or proposed ownership to the extent of 5 or more percent of stock, including new acquisitions of or subscriptions to 5 or more percent of stock shall be approved by the FDIC prior to the opening of the depository institution;

(iii) The applicant adopts an accrual accounting system for maintaining the books of the depository institution;

(iv) Where applicable, federal deposit insurance will not become effective until the applicant has been established as a state bank (not a member of the Federal Reserve System), has authority to conduct a banking business, and its establishment and operation as a bank have been fully approved by the state banking authority;

(v) Where applicable, federal deposit insurance will not become effective until the applicant has been established as a state savings association, has authority to conduct a savings association business, and its establishment and operation as a savings association have been fully approved by the appropriate state supervisory authority;

(vi) Where applicable, a registered or proposed bank holding company, or a registered or proposed thrift holding company, has obtained approval of the Board of Governors of the Federal Reserve System to acquire voting stock control of the proposed bank prior to its opening;

(vii) Where applicable, the applicant, has submitted any proposed contracts, leases, or ageements relating to construction or rental of permanent quarters to the appropriate regional director for review and comment;

(viii) Where applicable, full disclosure has been made to all proposed directors and stockholders of the facts concerning the interest of any insider (one who is or stands to be a director, an officer, or an incorporator of an applicant or shareholder who directly or indirectly controls 5 or more percent of any class of the applicant's outstanding voting stock, or the associates and interests of any such person) in any transactions being effected or then contemplated, including the identity of the parties to the transaction and the terms and costs involved;

(ix) The person(s) selected to serve as the principal operating officer(s) shall be acceptable to the regional director;

(x) The applicant has obtained adequate blanket bond coverage;

(xi) That the depository institution obtain an audit of its financial statements by an independent public accountant annually for at least the first three years after deposit insurance is effective, furnish a copy of any reports by the independent auditor (including any management letters) to the appropriate FDIC regional office within 15 days after their receipt by the depository institution and notify the appropriate FDIC regional office within 15 days when a change in its independent auditor occurs; and

(xii) Any standard condition (as defined in § 303.0(b)(26)).

(e) *Applications pursuant to section 19 of the Act.* (1) Authority is delegated to the Director, or where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to

approve applications made by insured depository institutions pursuant to section 19 of the Act (12 U.S.C. 1829) for participation, directly or indirectly, in any manner in the conduct of the affairs of an insured depository institution by any person who has been convicted or is hereafter convicted of any criminal offense involving dishonesty or a breach of trust; *Provided however,* That authority may not be delegated to the regional director or deputy regional director where the applicant depository institution's primary supervisory authority interposes any objection to such application.

(2) (i) Authority is delegated to the Director, and where confirmed by writing by the Director, to an associate director, to deny applications made by insured depository institutions pursuant to section 19 of the Act.

(ii) The authority delegated under paragraph (e)(2)(i) of this section shall be exercised only upon the concurrent certification by the Deputy General Counsel Supervision and Legislation, or the Associate General Counsel for Compliance and Enforcement that the action taken is not inconsistent with section 19 of the Act.

(iii) An applicant may still request a hearing following a denial of the application under this paragraph in accordance with the provisions of part 308 of this chapter (12 CFR part 308).

(3) The conditions which may be imposed by a delegate in approving applications pursuant to section 19, without affecting the authority granted under paragraph (e)(1) of this section are:

(i) That an employee shall be bonded to the same extent as others in similar positions; and

(ii) That, when deemed necessary, the prior consent of the appropriate regional director shall be required for any proposed significant changes in duties and/or responsibilities of the individual occurring within 12 months subsequent to the approval of the application.

(f) *Other applications and insurance fund conversions.* (1) Authority is delegated to the Director, and where confirmed in writing by the Director, to an assiciate director, or to the appropriate regional director or deputy regional director, to approve or to deny the following applications, requests or petitions:

(i) Applications to establish and operate any new teller's window, drive-in facility, or any like office, as an adjunct to a main office or a branch office (including offices not considered branches under state law);

(ii) Applications to operate temporary banking facilities as a public service for a period not to exceed ninety days during conventions, state and local fairs, college registration periods, and similar occasions, as well as during emergencies;

(iii) Applications to reduce the amount or retire any part of common or preferred capital stock, or retire any part of capital notes or debentures;

(iv) Requests for approval of any deviations from requirements prescribed by prior delegated action (to be acted upon by the delegate who acted previously in the matter);

(v) Except as provided in § 303.10(b)(1)(iii) of this part, applications for "phantom mergers" [8] and other mergers which are corporate reorganizations, *i.e.,* transactions involving institutions controlled by the same holding company or transactions involving institutions and their subsidiaries which would have no effect on competition or otherwise have significance under relevant statutory standards as set forth in 12 U.S.C. 1828(c);

(vi) Applications for deposit insurance filed by proposed state nonmember banks or savings associations which are formed in connection with a phantom merger;

(vii) Requests to establish management official interlocks pursuant to 12 CFR 348.4(b) of this chapter or section 205(8) of the Depository Institutions Management Interlocks Act (except that a regional director or deputy regional director may deny such a request only if the request was made pursuant to 12 CFR 348.4(b)(3)); and

(viii) Applications pursuant to section 29 of the Act (12 U.S.C. 1831) for waiver of the prohibition on the acceptance or renewal of brokered deposits by troubled insured depository institutions.

(2) Authority is delegated to the Director, and where confirmed in writing by the director, to an associate director:

(i) To deny a request to establish a management official interlock pursuant to any provision of either 12 CFR 348.4(b) of this chapter, or section 205(8) of the Depository Institutions Management Interlocks Act; and

(ii) To approve or to deny applications for the acquisition and holding of stock or other evidences of ownership in a foreign bank or other financial entity that results in less than 25 percent ownership interest in such bank or entity.

(3)(i) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, to approve an application made by an applicant pursuant to section 8(j) of the Act 12 U.S.C. 1818(j)) for the termination or modification of a removal or prohibition order, which was issued by the Board after a hearing, on default, or by consent.

(ii) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, to consent to an application pursuant to section 8(j) of the Act (12 U.S.C. 1818(j)) to obtain the prior written approval of the FDIC to participate in the conduct of the affairs of a bank filed by an individual subject to a removal or prohibition order.

(iii) Authority is delegated to the Director, or where confirmed in writing by the Director, to an associate director, to deny an application made by an applicant pursuant to section 8(j) of the Act.

(iv) The authority delegated under paragraphs (f)(3)(i), (f)(3)(ii), and (f)(3)(iii) of this section shall be exercised only upon the concurrent certification by the Deputy General Counsel for Supervision and Legislation, or the Associate General Counsel for Compliance and Enforcement that the action taken is not inconsistent with section 8(j) of the Act.

(4)(i) Authority is delegated to the Director and, where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director to approve or deny conversions involving transfers of deposits between the SAIF and BIF funds; *Provided however,* That where the basis for the conversion is that the transaction affects an insubstantial portion of the deposits of each institution, authority is not delegated to the regional director or deputy regional director where the total deposits transferred to or from either institution, accumulated with all other insurance fund transfers involving that institution since August 9, 1989, exceeds the lesser of 35 percent of total deposits of either institution on May 1, 1989, plus net interest credited to the expected date of transfer, or the amount equal to total deposits of either institution on the expected date of transfer.

(ii) The conditions that may be imposed in approving applications for insurance fund conversions without affecting the authority granted in § 303.7(f)(4) of this section are:

[8] As used in this part 303, the term "phantom merger" applies to any merger or other transaction involving an existing operating institution and a newly chartered institution or corporation which is for the purpose of corporate reorganization and which would have no effect on competition or otherwise have significance under the relevant statutory standards as set forth in 12 U.S.C. 1828(c).

(A) That, upon consummation, the deposits involved in the transaction do not exceed 35%, on a cumulative basis with other deposits transferred between the SAIF and BIF funds, for either of the institutions involved, of the lesser of (*1*) total deposits as of May 1, 1989, plus net interest credited during the period from May 1, 1989, to the date of transfer of the deposits, or (*2*) total deposits of the institution as of the date of transfer of the deposits; and

(B) That applicable entrance and exit fees be paid pursuant to FDIC regulations.

(5) In approving an application, request or petition under any provision of this paragraph, a delegate may impose any of the standard conditions listed in § 303.0(b)(26), or any other condition to which the applicant has agreed in writing.

§ 303.8 Other delegations of authority.

(a) *Extensions of time.* (1) Except as provided in paragraph (a)(2) of this section, authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to approve and to deny requests for extensions of time, not to exceed one year on any one request relating to the same application, within which to perform acts or conditions required by prior FDIC action on depository institution applications.

(2) Notwithstanding the delegations in paragraph (a)(1) of this section, no delegate shall have the authority to deny an extension of time request unless that delegate had authority to deny the original application upon which the extension of time is predicated.

(b) *Disclosure laws and regulations.* (1) Except as provided in paragraph (b)(2) of this section, authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to act on disclosure matters under and pursuant to sections 12, 13, 14, 17 and 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78) or parts 335 and 341 of this chapter (12 CFR parts 335 and 341).

(2) Authority to act on disclosure matters is retained by the Board of Directors when such matters involve:

(i) Exemption from disclosure requirements pursuant to section 12(h) of the Securities Exchange Act of 1934 (15 U.S.C. 781(h));

(ii) Exemption from tender offer requirements pursuant to section 14(d)(8) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(d)(8)); or

(iii) Exemption from registration requirements pursuant to section 17A(c)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1(c)(1)).

(c) *Security devices and procedures and bank service arrangements.* Authority is delegated to the Director and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to administer the provisions of part 326 of this chapter (12 CFR part 326).

(d) *In emergencies.* For the purpose of assuring performance of, and continuity in the management functions and activities of the FDIC, the Board of Directors has delegated, to the extent deemed necessary, authority with respect to the management of the FDIC's affairs, to certain designated offices, such authority to be exercised only in the event of an emergency involving an enemy attack on the continental United States or other warlike occurrence which renders the Board of Directors unable to perform the management functions and activities normally performed by it.

(e) *Competitive factor reports.* Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, or to the regional director or deputy regional director in the appropriate FDIC region in which the applicant depository institution [9] is located, to furnish required reports to the Board of Governors of the Federal Reserve System, or the Comptroller of the Currency on the competitive factors involved in any merger required to be approved by one of those agencies, if the delegate is of the view that the proposed merger would not have a substantially adverse effect on competition.

(f) *Agreements for pledge of assets by foreign banks.* (1) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to enter into pledge agreements with foreign banks and depositories in connection with the pledge of asset requirements pursuant to 12 CFR 346.19. This authority shall also extend to the power to revoke such approval and require the dismissal of the depository.

(2) Authority is delegated to the General Counsel or designee to modify the terms of the model deposit agreement used for such deposit agreements.

(g) *National Historic Preservation Act.* (1) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to enter into memoranda of agreement pursuant to regulations of the Advisory Council of Historic Preservation which implement the National Historic Preservation Act (16 U.S.C. 470).

(2) The Director may limit the delegation of authority to the associate director, the regional director or deputy regional director to applications wherein the applicant has agreed in writing to conditions relating to the National Preservation Act which may be imposed by the FDIC.

(h) *Applications or notices for membership or resumption of business.* Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to provide comments on applications or notices for membership or commencement or resumption of business to the appropriate Federal banking agency pursuant to section 4 of the Act (12 U.S.C. 1814). Such comments, if provided, shall be provided within a reasonable time, not to exceed 30 days from the time such application or notice is received by the delegate. In the event that circumstances preclude comment within 30 days, the delegate shall so notify the appropriate Federal banking agency within 30 days, giving an estimate of when comments may reasonably be expected.

§ 303.9 Delegation of authority to act on certain enforcement matters.

(a) *Actions pursuant to section 8(a) of the Act (12 U.S.C. 1818(a)).* (1) Authority is delegated to the Director, and where confimed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to issue orders of correction when the respondent bank's book capital is less than 3% of total assets; *Provided however,* That authority may not be delegated to the regional director or deputy regional director whenever the respondent bank has issued any mandatory convertible debt or any form of secondary capital (such as limited life preferred stock/subordinated notes and debentures).

(2) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate

[9] As used in paragraph (e) of this section, the term "applicant depository institution" means the institution which is applying for merger approval to the Board of Governors of the Federal Reserve System the Comptroller of the Currency, or the Director of OTS, whichever is appliable.

director, to issue orders of correction when the respondent bank's adjusted primary capital is less than 3% of adjusted part 325 total assets.

(3) The authority delegated under paragraphs (a)(1) and (a)(2) of this section shall be exercised only upon the concurrent certification by the Deputy General Counsel for Supervision and Legislation, or the Associate General Counsel for Compliance and Enforcement, or, in cases where a regional director or deputy regional director issues orders of correction, by the appropriate regional counsel, that the allegations contained in the findings of unsafe or unsound practices or conditions, if proven, constitute a basis for the issuance of an order of correction pursuant to section 8(a) of the Act (12 U.S.C. 1818(a)).

(b) *Actions pursuant to section 8(b) of the Act (12 U.S.C. 1818(b)).* (1) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to issue:

(i) Notices of charges; and

(ii) Cease-and-desist orders (with or without a prior notice of charges) where the respondent bank or individual respondent consents to the issuance of the cease-and-desist order prior to the filing by an administrative law judge or proposed findings of fact, conclusions of law and recommended decision with the Executive Secretary of the FDIC.

(2) The authority delegated under paragraph (b)(1) of this section shall be exercised only the concurrent certification by the Deputy General Counsel for Supervision and Legislation or a person with the equivalent authority, or the Associate General Counsel for Compliance and Enforcement, or person with equivalent authority or, in cases where a regional director or deputy regional director issues the notice of charges or the stipulated cease-and-desist order, by the appropriate regional counsel, that the allegations contained in the notice of charges, if proven, constitute a basis for the issuance of a notice of charges pursuant to section 8(b) of the Act (12 U.S.C. 1818(b)), or that the stipulated cease-and-desist order is authorized under section 8(b) of the Act and is a cease-and-desist order which has become final for purposes of enforcement pursuant to the Act.

(c) *Actions pursuant to section 8(c) of the Act (12 U.S.C. 1818(c)).* (1) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, to issue temporary cease-and-desist orders.

(2) The authority delegated under paragraph (c)(1) of this section shall be exercised only upon the concurrent certification by the Deputy General Counsel for Supervision and Legislation or the Associate General Counsel for Compliance and Enforcement that the action is not inconsistent with section 8(c) of the Act (12 U.S.C. 1818(c)) and the temporary cease-and-desist order is enforceable in a United States District Court.

(d) *Actions pursuant to section 8(e) of the Act (12 U.S.C. 1818(e)).* (1) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, to issue:

(i) Notices of intent to remove an individual from office or to prohibit an individual from office or to prohibit an individual from further participation in the conduct of the affairs of an insured depository institution pursuant to sections 8(e)(1), (2), and (3) of the Act (12 U.S.C. 1818(e)(1), (2), and (3)); and

(ii) Orders of removal, suspension or prohibition from participation in the conduct of the affairs of an insured depository institution where the individual consents to the issuance of such orders prior to the filing by an administrative law judge of proposed findings of fact, conclusions of law and a recommended decision with the Executive Secretary of the FDIC.

(2) The authority delegated under paragraph (d)(1) of the this section shall be exercised only upon the concurrent certification by the Deputy General Counsel for Supervision and Legislation or the Associate General Counsel for Compliance and Enforcement that the allegations contained in the notice of intent, if proven, constitute a basis for the issuance of a notice of intent pursuant to section 8(e) of the Act, or that the stipulated section 8(e) order is not inconsistent with section 8(e) of the Act and is an order which has become final for purposes of enforcement pursuant to the Act.

(e) *Actions pursuant to section 8(g) of the Act (12 U.S.C. 1818(g)).* (1) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, to issue orders of suspension and prohibition to an indicted director, officer or person participating in the conduct of the affairs of an insured depository institution when such director, officer or person consents to the suspension or removal.

(2) The authority delegated under paragraph (e)(1) of this section shall be exercised only upon the concurrent certification by the Deputy General Counsel for Supervision and Legislation, or the Associate General Counsel for Compliance and Enforcement that the action taken is not inconsistent with section 8(g) of the Act (12 U.S.C. 1818(g)) and the order is enforceable in a United States District Court pursuant to sections 8(i) and 8(j) of the Act (12 U.S.C. 1818 (i) and (j)).

(f) *Actions pursuant to section 8(p) of the Act (12 U.S.C. 1818(p)).* (1) Authority is delegated to the Executive Secretary to issue consent orders terminating the insured status of insured depository institutions that have ceased to engage in the business of receiving deposits other than trust funds pursuant to section 8(p) of the Act (12 U.S.C. 1818(p)).

(2) The authority delegated under paragraph (f)(1) of this section shall be exercised only upon the recommendation and concurrence of the Director or associate director and the Deputy General Counsel for Supervision and Legislation, or the Associate General Counsel for Compliance and Enforcement that the action taken is not inconsistent with section 8(p) of the Act.

(g) *Civil money penalities.* (1)(i) Except as provided for in paragraph (g)(2) of this section, authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, to issue notices of assessment of civil money penalties.

(ii) The authority delegated under paragraph (g)(1)((i) of this section shall be exercised only upon the concurrent certification by the Deputy General Counsel for Supervision and Legislation, or the Associate General Counsel for Compliance and Enforcement that the allegations contained in the notice of assessment, if proven, constitute a basis for assessment of civil money penalties.

(2) Authority is delegated to the General Counsel or designee for the levying and enforcement of civil money penalties under section 7(a)(1) of the Act (12 U.S.C. 1817(a)(1)) for the late filing of Reports of Condition and Report of Income, and such other reports as the Board of Directors may require under the authority of that section. In the exercise of the delegated authority, the General Counsel or designee shall consult with the Director or associate director before imposing any penalty.

(h) *Capital directives.* (1) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to issue:

(i) Notices of intent to issue directives; and

(ii) Directives to insured state nonmember banks that fail to maintain capital in accordance with the

requirements contained in part 325 of this chapter (12 CFR part 325).

(2) The authority delegated under paragraph (h)(1) of this section shall be exercised only upon the concurrent certification by the Deputy General Counsel for Supervision and Legislation or the Associate General Counsel for Compliance and Enforcement, or in cases where a regional director or deputy regional director issues the notice of intent to issue a capital directive or directives, by the appropriate regional counsel, that the action taken is not inconsistent with the Act and part 325.

(i) *Investigations pursuant to section 10(c) of the Act (12 U.S.C. 1820(c).* (1) Authority is delegated to the Director of the Division of Supervision or the Director of the Division of Liquidation, and where confirmed in writing by either Director, to an associate director, or to the appropriate regional director or deputy regional director, to issue an order of investigation pursuant to section 10(c) of the Act (12 U.S.C. 1820(c)) and 12 CFR 308.87–308.93.

(2) Authority is delegated to the General Counsel, and where confirmed in writing by the General Counsel, to his designee to issue an order of investigation pursuant to section 10(c) of the Act (12 U.S.C. 1820(c)) and 12 CFR 308.87–308.93.

(3) The authority delegated under paragraph (i)(1) and (i)(2) of this section shall be exercised only upon the concurrent execution of the order of investigation by both the appropriate Director or designee and the General Counsel or designee.

(j) *Truth in Lending Act.* (1) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to deny requests for relief from the requirements for reimbursement under section 608(a)(2) of the Truth in Lending Simplification and Reform Act (15 U.S.C. 1607(e)(2)); *Provided however,* That a regional director or deputy regional director is not authorized to deny any request where the estimated amount of reimbursement is greater than $10,000.

(2) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director;

(i) To grant request for relief from the requirements for reimbursement under section 608(a)(2) of the Truth in Lending Simplification and Reform Act (15 U.S.C. 1670(a)(2)); and

(ii) To act on applications for reconsideration of any action taken under paragraphs (j)(1) and (j)(2) of this section.

(3) The authority delegated under paragraphs (j)(1) and (j)(2) of this section shall be exercised only upon the concurrent certification by the Deputy General Counsel for Supervision and Legislation, or the Associate General Counsel for Compliance and Enforcement, or, in cases where a regional director or deputy regional director denies requests for relief, by the appropriate regional counsel, that the action taken is not inconsistent with the Truth in Lending Simplification and Reform Act.

(k) *Unilateral settlement offers.* (1) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, to accept, deny or enter into negotiations for unilateral settlement offers with insured depository institutions, or with an institution-affiliated party, pertaining to a proceeding under 12 CFR part 308.

(2) The authority delegated under paragraph (k)(1) of this section shall be exercised only upon the concurrent certification by the Deputy General Counsel for Supervision and Legislation or the Associate General Counsel for Compliance and Enforcement that the action taken is not inconsistent with the Act.

(l) *Acceptance of written agreements.* (1) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, to accept or enter into any written agreements with insured depository institutions, or any institution-affiliated party (as defined in section 3(u) of the Act (12 U.S.C. 1813(u)) pertaining to any matter which may be addressed by the FDIC pursuant to sections 8 (a) and (b) of the Act (12 U.S.C. 1818 (a) and (b)).

(2) The authority delegated under paragraph (j)(1) of this section shall be exercised only upon the concurrent certification by the Deputy General Counsel for Supervision and Legislation, or the Associate General Counsel for Compliance and Enforcement that the action taken is not inconsistent with section 8 (a) and (b) of the Act.

(m) *Modifications and terminations of enforcement actions.* (1) *Upon failure or merger of depository institution.* Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to terminate outstanding section 8(a), section 8(b) and section 8(c) orders and to terminate actions which are pending pursuant to sections 8(a), 8(b), and 8(c) of the Act (12 U.S.C. 1818 (a), (b), (c)) when the depository institution is closed by a Federal or state authority or merges into another institution.

(2) *Section 8(a) actions (12 U.S.C. 1818(a)).* (i) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, to modify or terminate orders of correction issued by the Board of Directors pursuant to section 8(a) of the Act (12 U.S.C. 1818(a)) where either the respondent depository institution is in material compliance with the order of correction or for good cause shown.

(ii) In cases where the Board of Directors has issued a notice of intent to terminate insured status pursuant to section 8(a) of the Act (12 U.S.C. 1818(a)), authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, to terminate the actions pending pursuant to that notice of intent to terminate insured status where either the respondent depository institution is in material compliance with the applicable order of correction or for good cause shown.

(3) *Section 8(b) orders issued by the Board of Directors.* Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to terminate outstanding section 8(b) orders issued by the Board of Directors where either material compliance with the section 8(b) order has been achieved by the respondent depository institution or individual respondent or for good cause shown.

(4) *Section 8(g) orders issued by the Board of Directors.* Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, to approve requests for modifications or terminations of section 8(g) orders issued by the Board of Directors.

(5) *Other matters not specifically addressed.* For all other outstanding orders or pending actions not specifically addressed in paragraphs (m)(1), (m)(2), (m)(3) and (m)(4) of this section, the delegations of authority contained in paragraphs (a)(1), (a)(2), (b)(1), (c)(1), (d)(1), (e)(1), (g)(1), (g)(2), (h)(1), (l)(1), (l)(2), and (n) of this section shall be construed to include the authority to modify or terminate any outstanding order, directive or agreement, as may be appropriate, issued pursuant to delegated authority, and to terminate any pending action (including withdrawal of notice of charges) initiated pursuant to delegated authority.

(6) *Certification.* Any modifications or terminations pursuant to paragraphs (m)(1), (m)(2), (m)(3), (m)(4), and (m)(5) of this section shall be exercised only upon the concurrent certification by the Deputy General Counsel for Supervision and Legislation, or the Associate General Counsel forn Compliance and Enforcement, or in cases where a regional director or deputy regional director acts under delegated authority, by the appropriate regional counsel, that the action taken is not consistent with the Act.

(n) *Enforcement of outstanding orders.* After consultation with the Director, or associate director, or the appropriate regional director or deputy regional director, as may be appropriate, the General Counsel or designee is authorized to initiate and prosecute any action to enforce any effective and outstanding order or temporary order issued under 12 U.S.C. 1817, 1818, 1820, 1828(i), 1829, 1972, or 3909(d), or any provision thereof, in the appropriate United States District Court.

§ 303.10 Applications and enforcement matters where authority is not delegated.

(a) *Authority not specifically delegated is retained by the Board of Directors.* (1) Except as otherwise provided in this part, or with respect to matters which generally involve conditions or circumstances requiring prompt action in the field for the better protection of the interests of the FDIC and to achieve flexibility and expedition in its operations and in the exercise of its functions in connection with the FDIC's litigation and liquidation matters and with the payment of claims for insured deposits, the Board of Directors does not delegate its authority and no delegations of final authority are made by the Board of Directors. Any person having a proper and direct concern therein may ascertain the scope of authority of any officer, agent or employee of the FDIC by communicating with the Executive Secretary of the FDIC.

(2) In all cases where authority to act on applications, requests or enforcement matters listed in this part is not delegated to the Director, or to an associate director or a regional director or deputy regional director, the authority to act on such applications, requests, or enforcement matters remains vested in the Board of Directors of the FDIC. In addition, the Board of Directors retains the authority to act on any application, request or enforcement matter upon which any member of the Board of Directors wishes to act even if the authority to act on such application, request or enforcement matter has been delegated.

(b) *Applications and requests.* Without limiting the Board of Directors' authority, the Board of Directors has retained the authority to act upon the following applications and requests:

(1) Except as provided in § 303.7(b)(9) of this part to deny applications for merger transactions, and to approve applications for merger transactions where:

(i) The applicant does not agree in writing to comply with any conditions imposed by the FDIC (other than the standard condition listed in § 303.0(b)(26) which may be imposed without the applicant's written agreement); or

(ii) The resulting bank, upon consummation of the merger transaction, would have more than 35% of the individual, partnership and corporate deposits held by commercial banks and/or thrift institutions, as may be appropriate, in the relevant market(s); or

(iii) Irrespective of the resulting market share, the Attorney General has determined that the proposed merger transaction may have a significantly adverse effect on competition; or

(iv) The application (including an application for phantom bank merger or reorganization) falls within the "probable failure" or "emergency" provisions of section 18(c)(6) of the FDI Act, or the resultant bank does not meet the minimum capital requirements of part 325.

(2) To deny applications for deposit insurance, and to approve applications for deposit insurance where:

(i) The applicant does not agree in writing to comply with any condition imposed by the FDIC (other than the standard conditions listed in §§ 303.0(b)(26), and 303.7(d)(4), which may be imposed without the applicant's written agreement), or

(ii) The applicant depository institution is a United States branch of a foreign bank; and

(3) To consider an application made by an insured depository institution pursuant to section 19 of the Act (12 U.S.C. 1829) for participation, directly or indirectly, in any manner in the conduct of the affairs of an insured depository institution or any person who has been convicted or is hereafter convicted of any criminal offense involving dishonesty or a breach of trust following a hearing held in accordance with the provisions of part 308 of this chapter (12 CFR part 308).

(c) *Enforcement matters.* Without limiting the Board of Directors' authority, the Board of Directors has retained the authority to act upon the following enforcement matters:

(1) To issue:

(i) Orders of correction when the respondent bank's book capital is at or above 3% of total assets and adjusted primary capital is at or above 3% of adjusted part 325 total assets;

(ii) Notices of intent to terminate insured status; and

(iii) Orders terminating insured status, pursuant to section 8(a) of the Act (12 U.S.C. 1818(a));

(2) To issue cease-and-desist orders pursuant to section 8(b) of the Act (12 U.S.C. 1818(b)) when the respondent depository institution or individual does not consent to the issuance of such orders;

(3) To issue:

(i) Temporary orders of suspension and prohibition pursuant to section 8(e) of the Act (12 U.S.C. 1818(e)); and

(ii) Orders of removal, suspension or prohibition from participation in the conduct of the affairs of an insured depository institution pursuant to section 8(e) of the Act (12 U.S.C. 1818(e)) when the individual does not consent to the issuance of such orders;

(4) To issue orders of suspension or prohibition to an indicted director, officer or person participating in the conduct of the affairs of an insured depository institution and orders of removal or prohibition to a convicted director, officer or person participating in the conduct of the affairs of an insured depository institution pursuant to section 8(g) of the Act (12 U.S.C. 1818(g)) when such director, officer or person does not consent to the suspension or removal;

(5) To issue final orders to pay civil money penalties where respondents do not consent to the assessment of civil money penalties and hearings have been held; and

(6) To deny requests for modifications or terminations of orders issued pursuant to section 8(g) of the Act (12 U.S.C. 1818(g)).

§ 303.11 Confirmation, limitations, rescissions and special cases.

(a) *Written confirmation, limitations or subsequent rescission.* (1) The authority delegated in §§ 303.7, 303.8 and 303.9 of this part by the Board of Directors to the associate director, the appropriate regional director or deputy regional director is subject, as to each associate director, regional director and deputy regional director, to written confirmation, limitations, or subsequent rescission of any confirmation, by the Director. Such written confirmation,

limitations or rescissions shall be filed with the Executive Secretary of the FDIC at its offices in Washington, DC, and at the office of the regional director or deputy regional director concerned, and shall be available for public inspection by interested parties.

(2) The conditions set forth in this part to which the exercise of delegated authority is subject are procedural in nature only, and shall not be construed as standards or criteria which will be used in determining the merits of a specific application, petition, request or enforcement matter.

(b) *Action under delegated authority not mandated.* (1) The Director may, in writing, rescind the authority of an associate director, regional director or deputy regional director to act on an application, request, notice of acquisition of control or enforcement matter, and may himself act on the same.

(2)(i) An associate director, regional director or deputy regional director may, in writing, recommend that the authority to act on an application, request, notice of acquisition of control or enforcement matter not be exercised by him; in such cases, the authority to act on such application, request, notice of acquisition of control or enforcement matter may be exercised by the Director. The Director may, in writing, recommend that the authority to act on an application, request, notice of acquisition of control or enforcement matter may not be exercised by him; in such cases the Board of Directors will act on the application, request, notice of acquisition of control or enforcement matter.

(ii) A regional counsel may, in writing, recommend that the authority to act on an application made by insured depository institutions pursuant to section 19 of the Act (12 U.S.C. 1829) or an enforcement matter not be exercised by him; in such cases the authority to act in such enforcement matters may be exercised by the Deputy General Counsel for Supervision and Legislation, or the Associate General Counsel for Compliance and Enforcement. The Deputy General Counsel for Supervision and Legislation, or the Associate General Counsel for Compliance and Enforcement may, in writing, recommend that the authority to act on an application pursuant to section 19 of the Act or enforcement matter not be exercised by him; in such cases, the Board of Directors will act on the application or enforcement matter.

(iii) Upon determining not to act upon the application, request, notice of acquisition of control or enforcement matter under delegated authority, the deputy regional director, regional director, associate director or the Director, and/or the regional counsel, or the Associate General Counsel for Compliance and Enforcement, or the Deputy General Counsel for Supervision and Legislation, as the case may be, shall forward the application, request, notice of acquisition of control or enforcement matter, together with his recommendations as to the disposition of such application, request, notice of acquisition of control or enforcement matter to the appropriate authority as determined by the rules set forth in paragraphs (b)(2)(i) and/or (b)(2)(ii) of this section.

(c) *Request for review.* Any aggrieved party or person may request the Board of Directors to review any action taken under authority delegated in §§ 303.7, 303.8 and 303.9 of this part.

§ 303.12 OMB control number assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This section collects and displays the control numbers assigned to information collection requirements of this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). The FDIC intends that this section comply with section 3507(f) of the Paperwork Reduction Act (44 U.S.C. 3507(f)), which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget for each agency information collection requirement.

(b) *Display.*

Section of 12 CFR part 303 where identified and described	Current OMB control No.
303.1	3064.0001
303.1	3064.0069
303.2	3064.0070
303.3	3064.0016
303.4(b)	3064.0019

By order of the Board of Directors.

Dated at Washington, DC, this 12th day of December, 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89–30176 Filed 12–28–89; 8:45 am]

BILLING CODE 6714-01-M

12 CFR Part 335

RIN 3064–AA45

Securities of Nonmember Insured Banks

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The rule amends the Federal Deposit Insurance Corporation's ("FDIC") securities disclosure regulations issued under The Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78 et seq.) in order to bring them into substantial similarity with those of the Securities and Exchange Commission ("SEC"). Section 12(i) of the Exchange Act requires that the FDIC issue regulations substantially similar to those of the SEC or publish its reasons for not doing so. The amendment is intended to comply with section 12(i) and to update the regulation. It covers the following: (1) Independent audit requirement, (2) compensation, (3) small transaction exemption, (4) issuer tender offers, (5) comprehensive review of proxy rules, (6) all holders and best price rules for tender offers, (7) shareholder communications, and (8) non-bank companies financial disclosure in merger-type transactions.

DATES: Effective January 29, 1990, except for the requirement that bank financial statements be audited by independent public accountants, which shall become effective for periods ending after December 15, 1990.

FOR FURTHER INFORMATION CONTACT: William F. Sullivan, Senior Financial Analyst, Division of Supervision (202) 898–8903 or Gerald J. Gervino, Senior Attorney, Legal Division (202) 898–3723.

SUPPLEMENTARY INFORMATION:

A. Paperwork Reduction Act

The collections of information contained herein have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)).

The collections of information in this regulation are grouped under the title Securities of Insured Nonmember Banks (OMB No. 3064–0030) and are contained in §§ 335.212, 335.213, 335.221, 335.309a, 335.309b, 335.312, 335.321, 335.331, 335.332, 335.407, 335.408, 335.413, 335.414, 335.512, 335.513, and 335.627. This information is collected from insured nonmember banks that are subject to the securities registration requirements of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78), and from their shareholders. The required information is considered necessary for actual and potential investors making investment decisions concerning the securities issued by the reporting banks.

The estimated annual reporting burden for the collections of information

in this regulation is summarized as follows:

Number of Respondents: 5,058.

Number of Responses Per Respondent: 1.09.

Total Annual Responses: 5,500.

Hours Per Response: 10.48.

Total Annual Burden Hours: 57,629.

B. Background

Section 12(i) of the Exchange Act vests the powers, functions, and duties of the SEC to administer and enforce sections 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Act with respect to nonmember banks in the FDIC. The same section requires the FDIC to issue regulations substantially similar to regulations issued by the SEC unless the FDIC finds that implementation of such regulations with respect to insured banks is not necessarily appropriate in the public interest, or for protection of investors, and the FDIC publishes the findings in the **Federal Register**. The rule is intended to satisfy that requirement.

C. Amendments to Part 335

1. Independent Audit Requirement

Since 1964 most banks have generally had the option of using verification statements which express the opinion of a bank's principal accounting officer or internal auditor. On July 19, 1971, the SEC required all corporations reporting to it under the Exchange Act to have their financial statements audited by independent public accountants. SEC Rel. No. 34–9253, 36 FR 13915 (July 28, 1971).

On September 30, 1975, the FDIC reviewed the question of requiring audits of banks' financial statements filed under Part 335.40 FR 47346 (October 8, 1975). At that time, less than half of those banks whose securities were registered filed certified financial statements. Currently, only eight banks reporting under Part 335 do not file certified financial statements.

In order to make reporting requirements for publicly held banks consistent with those requirements for all other publicly held corporations, the FDIC is amending Part 335 of its regulations to eliminate the use of verification statements and to require that bank financial statements be audited by independent public accountants. This requirement is effective for financial statements issued for periods ending after December 15, 1990. The FDIC is amending §§ 335.602 and 335.603 to conform to the SEC rule.

2. Compensation

On September 23, 1983, the SEC adopted an amended and retitled item of Regulation S–K, item 402, providing for uniform disclosure of the compensation paid to certain executive officers and directors. The amendment was intended to simplify the current disclosure requirements, reduce compliance burdens and allow SEC registrants greater flexibility in selecting a presentation format while providing investors and security holders with more comprehensive information concerning executive compensation. SEC Rel. No. 34–20220, 43 FR 44467 (Sept. 29, 1983), corrected 48 FR 46012, (Oct. 11, 1983). The FDIC is amending its regulations in a similar fashion to provide greater flexibility in format and to otherwise conform with newer SEC requirements. A noteworthy change is an increase in the threshold for disclosure of individual compensation of executive officers from $50,000 to $60,000. The FDIC is amending § 335.212 item 7 to accomplish this result. Changes in other aspects of items 6 and 7 relating to directors, officers, and insider transactions, as modified by the SEC on December 13, 1982, SEC Rel. No. 34–19290, 47 FR 55861 (December 13, 1982) are also made except for certain provisions governing disclosure of insider loans for banks which have historically been governed by more specific regulations in Part 335.

3. Small Transaction Exemption

SEC. Rel. No. 34–18853, 47 FR 29652 (July 8, 1982) increased the reporting exemption for small "insider trading" reports from $3,000 to $10,000 in market value for any six-month period. The FDIC is amending § 335.410(h) to conform to the SEC change.

4. Issuer Tender Offers

On July 28, 1983, the SEC amended its issuer tender offer regulation (SEC rule 13(e)(4) to except from its requirements, offers by issuers to purchase shares from their security holders who own a specified number of shares (less than 100) as of a specified date prior to the announcement of the offer. A companion amendment was made to SEC rule 13(e)(3) (the "going private rule"). SEC Rel. No. 34–23789, 48 FR 34253 (July 28, 1983). The FDIC has applied SEC rules 13(e) (3) and (4) to nonmember bank transactions by a statement of policy. 46 FR 25295 (May 5, 1981). Since the time of adoption of this policy, issuer tender offers and going private transactions have become more frequent among nonmember banks. Thus, a specific rule in the FDIC's regulations applying SEC rules 13(e)(3) and 13(e)(4) to nonmember banks is desirable. The FDIC is amending §§ 335.409 and 335.521 to reflect the application of these rules to registered nonmember banks.

5. Comprehensive Review of Proxy Rules

On November 10, 1986 the SEC adopted amendments to its proxy rules in order to bring to the proxy context the benefits of the SEC's existing integrated disclosure system. The amendments provided for simplified disclosure of compensation plans. The amendments also require new registrants to provide disclosure concerning prior changes in accountants and any related disagreements. In addition, certain changes updated the rules to comport with current SEC practice, interpretations and other changes of laws and rules. 51 FR 42048 (November 20, 1986).

The FDIC is adopting technical changes made by the SEC which fit the regulatory scheme of part 335. A major difference is that the FDIC does not repeat many regulations in a separate information statement regulation. Reference to the Securities Act of 1933 filings is eliminated, since banks are exempt from the Securities Act of 1933, 15 U.S.C. 77a *et seq.* (1982) ("Securities Act").

The amendments primarily revise Subpart B of Part 335.

6. All Holders and Best Price Rules in Tender Offers

On July 11, 1986, the SEC adopted amendments to its tender offer rules providing that a bidder's or issuer's tender offer must be open to all holders of the class of securities subject to the tender offer and that any security holder must be paid the highest consideration paid to any other security holder during the tender offer. In addition, the SEC amended existing rules concerning minimum offering periods and withdrawal rights. SEC Rel. No. 34–23421, 51 FR 25873 (July 17, 1986).

The FDC is adopting the SEC amendments in substantially the form adopted by the SEC except that the issuer tender offer rules are brought into play by the cross referencing regulation in paragraph 4. Sections 335.507, 335.509(a), and 335.510 are amended as set forth below.

7. Shareholder Communications

On November 25, 1986, the SEC adopted its new rule 14b–2 under the Exchange Act and related amendments to rules 14a–1, 14a–13, 14c–1 and 14c–7 in order to implement provisions of the

Shareholder Communications Act of 1985 (Pub. L. 99–222, 99 Stat. 1737 (1985)). New rule 14b–2 governs banks as intermediaries and is administered by the SEC. Rules 14a–1, 14a–13, 14c–1 and 14c–7 would apply to nonbank issuers and are thus subject to our consideration under section 12(i) of the Exchange Act. The rules govern the process by which the registrants communicate with the beneficial owners of their securities that are registered in the name of a bank, its nominee, a broker, or other entity acting as agent, custodian or fiduciary (i.e., held in street name). The FDIC is amending its regulations with respect to those provisions that deal with the bank as issuer. Appropriate amendments are made to §§ 335.203 and 335.214.

8. Companies

SEC Rel. No. 34–23789, discussed in paragraph 4 above, also allows the incorporation by reference of information meeting the requirements of the proxy regulations that has already been filed under the Securities Act.

The FDIC is amending its regulations to allow the incorporation by reference of filings on SEC forms where the person incorporating filings by reference is a holding company or nonbank company filing with the SEC. All filings incorporated by reference must be filed with the FDIC. Section 335.212, items 14 and 15 are amended as set forth below.

9. Supplementary Statistical Disclosure

Pursuant to the SEC's Industry Guide 3, supplemental statistical disclosures of material lending and deposit activities may be relevant and useful to an understanding of the bank's operations. The management's discussion and analysis of financial condition and results of operations sections of the annual report and registration statement (Forms F–2 and F–1, respectively) are expanded to include statistical information similar to that required by Securities Exchange Act Industry Guide 3. Information about yields and costs of various assets and liabilities, maturities and repricing characteristics of various assets and liabilities and risk elements in the lending portfolio are required. SEC Rel. No. 69, 52 FR 18200 (May 8, 1987). The FDIC is amending sections 335.309a and 335.312 to provide for informative disclosures by nonmember banks as appropriate.

D. Comments Received and Resulting Changes

On May 16, 1989 the FDIC solicited comments on proposed amendments to Part 335 of its regulations concerning securities of insured nonmember banks. 54 FR 30976 (July 25, 1989). The comments received and our disposition are set forth below.

One bank commentator felt that the proposal would add significantly to the cost of preparing its annual report to security holders without a significant additional benefit. This commentator is currently reporting under the Exchange Act with uncertified statements and would be required to certify its financial statements under the proposed rule. We feel it is no longer possible to delay a certification requirement for banks, since this requirement has been in effect for bank holding companies filing with the SEC for over 18 years. Thus, the FDIC is adopting its proposed amendment to 12 CFR 335.602 and 335.603 in order to require an independent audit for banks filing under the Exchange Act.

Another comment requested that the FDIC permit the use of 8½×11 inch paper or justify the requirement for a different size. Section 335.360 requires reports to be filed on 8½×13 inch paper, insofar as practicable. The FDIC interprets "insofar as practicable" as allowing for other reasonably sized papers to be filed, and therefore permits the use of 8½×11 inch paper under its current rules.

A commentator from outside the banking industry indicated disapproval of our refusal to adopt changes to the shareholder proposal rule which have been made by the SEC. The commentator expressed fear that industry restructuring, consumer interest in banks, and potential proxy fights might cause a bank to be confronted by a large number of shareholder proposals. We stated in connection with our proposal that our existing rules had not presented any major problems in administering and enforcing the proxy solicitation rules. Thus, we feel that banks need not be subjected to learning a new rule and will retain our existing 12 CFR 335.211.

Two commentators felt that banks filing "routine" proxy material should be excluded, at their option, from filing preliminary proxy material in order to reduce the costs of proxy solicitations. The staff of the FDIC has found that banks filing preliminary proxy material with it almost always occasion staff comments. This circumstance may be caused by the number of transactions requiring disclosure that a bank may enter because of the nature of its business and also by the extent of information available to bank regulatory staff reviewing the preliminary material. We do not feel that proxy review can rest on the hard choices required by after-the-fact enforcement actions. Post solicitation remedies may be confined to court enforcement actions, cumbersome administrative proceedings or instructions admonishing banks to refrain from similar activity in subsequent years. The FDIC does not receive the prohibitive volume of reports that the SEC receives, whose numbers alone preclude analysis of many ordinary filings. The FDIC, unlike the SEC does not impose filing fees which might otherwise be saved if the routine preliminary proxy filings were no longer required. Although cost estimates were requested in our notice of proposed rulemaking, none were received. In the absence of new evidence, we do not believe that preliminary filing of proxy solicitation material represents a material cost to banks. As proposed, the FDIC is not incorporating the above described exclusion into Subpart B of Part 335 of its regulations.

The language of § 335.203 has been amended to eliminate confusion as to whether restatement of the previously required schedule of changes in financial position for years ending before July 15, 1988 is permitted. Section 335.203 does permit that restatement.

The comment was made that the proposal requires disclosures similar to the SEC's Securities Exchange Act Industry Guide 3. The commentator felt that the guide's requirement of daily averages should be liberalized to weekly or month-end averages, where the collection of data on a daily average basis would involve unwarranted or undue burden or expense and the averages are representative of the operations of the registrant. The FDIC has adjusted the language of the final 12 CFR 335.312, Item 7, to accomplish this result.

Other comments favored adoption of the following proposals, which are being adopted: (1) Independent audit requirement; (2) changes in compensation disclosure requirements; (3) an increase in the exemption for small "insider trading" reports; (4) formalization of issuer tender offer regulation; (5) comprehensive proxy rule changes; (6) all holders and best price rules in tender offers; (7) shareholder communications; (8) nonbank disclosure; and (9) areas of supplemental statistical disclosure not discussed above.

E. Miscellaneous

The regulations have been updated to reflect changes in the Call Reports and in other minor technical respects.

The period for reporting changes in a bank's certifying accountant or the resignation of members of the bank's board of directors has been shortened to

five business days after the event to be reported. Section 335.321 of the regulations is amended accordingly. Amendment of the Form F–11A is no longer required if no change in ownership occurs from the previous filing. Section 335.402 is accordingly amended.

F. Certain Factors

1. Alternatives Considered

Section 12(i) of the Act requires the FDIC to issue regulations substantially similar to those of the SEC or publish its reasons for not doing so. The FDIC believes that the reasons for the SEC regulations being adopted are equally applicable to the banking industry.

2. Cost-Benefit Analysis

As noted above, the amendments are required by statute. Therefore, a cost-benefit analysis was not prepared. The FDIC feels that at this time it is not appropriate to utilize a flexible regulatory approach (small bank/large bank) since shareholders and investors in small banks have the need for the same quality information provided to shareholders and investors of large banks.

3. Regulatory Flexibility Act

The FDIC certifies that the regulations do not have a significant economic impact on a substantial number of small banks or other entities. Of the banks affected by the proposal less than 60 banks have individual assets no greater than $25 million.

List of Subjects in 12 CFR Part 335

Accounting, Banks, Banking, Reporting and recordkeeping requirements, Securities.

Chapter III of title 12 of the Code of Federal Regulations is amended as follows:

PART 335—SECURITIES OF NONMEMBER INSURED BANKS

1. The authority citation for part 335 continues to read as follows:

Authority: Sec. 12(i), Securities Exchange Act of 1934, as amended (15 U.S.C. 78l(i)).

§ 335.101 [Amended]

2. Section 335.101 is amended by closing the parenthesis in the last sentence after "3064–0030", placing a period after that parenthesis, and removing the rest of that sentence.

3. Section 335.102 is amended by:

(A) Redesignating paragraphs (dd) through (jj) as paragraphs (mm) through (ss); paragraph (cc) as paragraph (ii); paragraphs (p) through (bb) as paragraphs (v) through (hh); paragraph (o) as paragraph (u); paragraphs (i) through (n) as paragraphs (o) through (t); paragraphs (f) through (h) as paragraphs (j) through (l); paragraph (e) as paragraph (g); paragraphs (b) through (d) as paragraphs (c) through (e);

(B) Revising newly designated paragraphs (u), (ii), and (rr);

(C) Adding new paragraphs (b), (f), (h), (i), (m), (n), (jj), (kk), and (ll); and

(D) Removing and reserving newly designated paragraph (l), as follows:

§ 335.102 Definitions

* * * * *

(b) *Accountants report.* The term "accountant's report," when used in regard to financial statements, means a document in which an independent public or certified public accountant indicates the scope of the audit (or examination) which he has made and sets forth his opinion regarding the financial statements taken as a whole, or an assertion to the effect that an overall opinion cannot be expressed. When an overall opinion cannot be expressed, the reasons therefor shall be stated.

* * * * *

(f) *Audit (or examination).* The term "audit" (or "examination"), when used in regard to financial statements, means an examination of the statements by an accountant in accordance with generally accepted auditing standards for the purpose of expressing an opinion thereon.

* * * * *

(h) *Call Report.* The term "Call Report" means the Consolidated Reports of Condition and Income for insured banks (FFIEC forms 031, 032, 033 and 034).

(i) *Certified.* The term "certified," when used in regard to financial statements, means examined and reported upon with an opinion expressed by an independent public or certified public accountant.

* * * * *

(l) [Reserved]

(m) *Employee benefit plan.* For purposes of §§ 335.203 and 335.214, the term "employee benefit plan" means any purchase, savings, option, bonus, appreciation, profit sharing, thrift, incentive, pension or similar plan solely for employees, directors, trustees or officers, and the term "exempt employee benefit plan securities" means:

(1) Securities of the bank held by an employee benefit plan, as defined in this paragraph (m), where such plan is established by the bank or

(2) if notice regarding the current solicitation has been given pursuant to § 335.214 (a)(1)(ii)(C) or if notice regarding the current request for a list of names, addresses and securities positions of beneficial owners has been given pursuant to § 335.214(b)(3), securities of the bank held by an employee benefit plan, as defined in this paragraph (m), where such plan is established by an affiliate of the bank.

(n) *Entity that exercises fiduciary powers.* The term "entity that exercises fiduicary powers" means any entity that holds securities in nominee name or otherwise on behalf of a beneficial owner but does not include a clearing agency registered pursuant to section 17A of the Act or a broker or a dealer.

* * * * *

(u) *Last fiscal year.* The term "last fiscal year" of the bank means the last fiscal year of the bank ending prior to the date of the meeting for which proxies are to be solicited or an information statement is required to be distributed or, if the solicitation or information statement involves written authorizations or consents in lieu of a meeting, the earliest date they may be used to effect corporate action.

* * * * *

(ii) *Qualified stock option, restricted stock option, and employee stock purchase plan.* The terms "qualified stock option," "restricted stock option," and "employee stock purchase plan" have the meanings given them in sections 422 through 424 of the Internal Revenue Code of 1986, as amended. For the purposes of this regulation, an option which meets all of the conditions of section 424(b) of the Internal Revenue Code of 1986 as amended, other than the date of issuance, shall be deemed to be a "restricted stock option."

(jj) *Record date.* The term "record date" means the date as of which the record holders of securities entitled to vote at a meeting or by written consent or authorization shall be determined.

(kk) *Record holder.* For purposes of §§ 335.203 and 335.214 the term "record holder" means any broker, dealer, voting trustee, bank, association or other entity that exercises fiduciary powers which holds securities of record in nominee name or otherwise or as a participant in a clearing agency registered pursuant to section 17A of the Act.

(ll) *Respondent bank.* For purposes of §§ 335.203 and 335.214, the term "respondent bank" means any bank, association or other entity that exercises fiduciary powers which holds securities on behalf of beneficial owners and deposits such securities for safekeeping

with another bank, association or other entity that exercises fiduciary powers.

* * * * *

(rr) *Verified.* The term "verified" when used in regard to financial statements, has the same meaning as "certified."

* * * * *

4. Section 335.201 is amended by revising paragraphs (a) and (b) to read as follows:

§ 335.201 Requirement of statement.

(a) *Proxy statements.* No solicitation of a proxy (See 12 CFR 335.102(gg) and (oo)) with respect to a security of a bank registered under section 12 of the Act shall be made unless each person solicited is concurrently furnished or has previously been furnished with a written proxy statement containing the information required by Form F–5.

(b) *Information statements.* If any bank having such a security outstanding fails to solicit proxies from the holders of any such security in a manner requiring the furnishing of a proxy statement, the bank shall transmit to all holders of record of such security a statement containing the information required by Form F-5A. The "information statement" required by the preceding sentence shall be transmitted:

(1) At least 20 calendar days prior to any annual or other meeting of the holders of such security at which the holders are entitled to vote or.

(2) In the case of corporate action taken with the written authorization or consent of security holders, at least 20 days prior to the earliest date on which the corporate action may be taken.

The "information statement" shall be transmitted to every security holder of the class that is entitled to vote or give an authorization or consent in regard to any matter to be acted upon and from whom a proxy, authorization or consent is not solicited on behalf of the bank pursuant to section 14(a) of the Act: *Provided, however,* that in the case of a class of securities in unregistered or bearer form, such statements need be transmitted only to those security holders whose names are known to the bank.

* * * * *

5. Section 335.203 is amended by:

a. Revising paragraph (a) introductory text, (a)(1) and (a)(7); the note to paragraph (a)(1) remains unchanged;

b. Adding new notes after paragraphs (a)(9) and (b)(2); and the last sentence of paragraph (b) is designated as concluding text;

c. Revising paragraph (a)(11); and

d. Removing the word "Six" and adding in its place the word "Three" in paragraph (b), introductory text as follows:

§ 335.203 Annual report to security holders to accompany statements.

(a) Any statement furnished on behalf of the bank that relates to an annual meeting (or special meeting in lieu of annual meeting) of security holders at which directors are to be elected shall be accompanied or preceded by an annual report to such security holders.

(1) The report shall include, for the bank and its subsidiaries, consolidated balance sheets as of the end of each of the two most recent fiscal years, and statements of income, changes in capital accounts and changes in financial position and/or cash flows for each of the three most recent fiscal years, prepared and audited in substantial compliance with Subpart F of this part. Any financial statement schedules (except schedule VI) or exhibits or separate financial statements which may otherwise be required in filings with the FDIC may be omitted.

* * * * *

(7) The report shall identify each of the bank's directors and officers, and shall indicate the principal occupation or employment of each such person and the name and principal business of any organization by which such person is so employed. See the definition of "officers" at § 335.102(y).

* * * * *

(9) * * *

Note to paragraph (a)(9): Pursuant to the undertaking required by paragraph (a)(9) of this section, a bank shall furnish a copy of its annual report on Form F-2 (§ 355.312) to a beneficial owner of its securities upon receipt of a written request from such person. Each request must set forth a good faith representation that, as of the record date for the solicitation requiring the furnishing of the annual report to security holders pursuant to paragraph (a) of this section, the person making the request was a beneficial owner of securities entitled to vote.

* * * * *

(11) This § 335.203 shall not apply, however, to solicitations made on behalf of the bank before the financial statements are available if solicitation is being made at the time in opposition to the bank and if the bank's statement includes an undertaking in boldface type to furnish such annual report to all persons being solicited at least 20 calendar days before the date of the meeting or, if the solicitation refers to a written consent or authorization in lieu of a meeting, at least 20 calendar days prior to the earliest date on which it may be used to effect corporation action.

* * * * *

(b) * * *

Note to paragraph (b)(2): To assist the staff, managements of banks are requested to indicate in a letter transmitting to the FDIC copies of their annual reports to security holders or in a separate letter at or about the time the annual report is furnished to the FDIC, whether the financial statements in the report reflect a change from the preceding year in any accounting principles or practices or in the method of applying any such principles or practices.

* * * * *

6. Section 335.204 is amended by:

a. Adding Note 1 and Note 2 at the end of paragraph (a);

b. Changing the word "holidays" to "federal holidays" in paragraph (b);

c. Removing the word "Six" and adding in its place the word "Three" in the first sentence of paragraph (c);

d. Redesignating paragraphs (e) through (j) as (f) through (k) and adding a new paragraph (e);

e. Revising newly designated paragraphs (f) through (i).

§ 335.204 Material required to be filed.

(a) * * *

Note 1 to paragraph (a): The filing of revised material does not recommence the ten day time period unless the revised material contains material revisions or material new proposal(s) that constitute a fundamental change in the proxy material.

Note 2 to paragraph (a): The officials responsible for the preparation of the preliminary material should make every effort to verify the accuracy and completeness of the information required by the applicable rules. The preliminary material should be filed with the FDIC at the earliest practicable date.

* * * * *

(e) All preliminary material filed pursuant to paragraph (a) or (b) of this section shall be accompanied by a statement of the date on which definitive copies therefor filed pursuant to paragraph (c) of this section are intended to be released to security holders. All definitive material filed pursuant to paragraph (c) of this section shall be accompanied by a statement of the date on which copies of such material have been released to security holders, or, if not released, the date on which copies thereof are intended to be released. All material filed pursuant to paragraph (d) of this section shall be accompanied by a statement of the date on which copies thereof are intended to be released to the individual who will make the actual solicitation.

(f) All copies of material filed under paragraphs (a) and (b) of this section shall be clearly marked "Preliminary Copies" and shall be for the information of the FDIC only and shall not be considered available for public inspection before definitive material has

been filed with the FDIC, except that such material may be disclosed to any department or agency of the U.S. Government and to the Congress. The FDIC may make such inquiries or investigation with respect to the material as may be necessary for an adequate review thereof.

(g) Copies of replies to inquiries from security holders requesting further information and copies of communications that do no more than request that forms of proxy theretofore solicited be signed, dated, and returned need not be filed under this section.

(h) Notwithstanding the provisions of § 335.204 (a) and (b), § 335.205(b) and § 335.220(e), copies of soliciting material in the form of speeches, press releases, and radio or television scripts may, but need not, be filed with the FDIC prior to use or publication. Definitive copies, however, shall be filed with or mailed for filing to the FDIC as required by § 335.204(c) not later than the date such material is used or published. The provisions of § 335.204 (a) and (b), § 335.205(b) and § 335.220(e) shall apply, however, to any reprints or reproductions of all or any part of such material.

(i) Where any statement, form of proxy, or other material filed pursuant to this section is revised, two of the copies of such amendment or revised material filed under § 335.204(c) shall be marked to indicate clearly the changes. If the amendment or revision alters the text of the material, the changes in such text shall be indicated by means of underscoring or in some other appropriate manner.

* * * * *

§ 335.206 [Amended]

7. Section 335.206 is amended by changing the word "paragraph" to "section" in the second sentence in paragraph (a).

8. Section 335.207 is amended by revising paragraph (d) to read as follows:

§ 335.207 Requirements as to proxy.

* * * * *

(d) No proxy shall confer authority:

(1) To vote for the election of any person to any office for which a bona fide nominee is not named in the proxy statement;

(2) To vote at any annual meeting other than the next annual meeting (or any adjournment thereof) to be held after the date on which the proxy statement and form of proxy are first sent or given to security holders;

(3) To vote with respect to more than one meeting (and any adjournment thereof) or more than one consent solicitation; or

(4) To consent to or authorize any action other than the action proposed to be taken in the proxy statement or matters referred to in paragraph (c) of this section.

A person shall not be deemed to be a bona fide nominee and he shall not be named as such unless he has consented to being named in the proxy statement and to serve if elected.

* * * * *

9. Section 335.209 is amended by revising paragraph (e) as follows:

§ 335.209 Presentation of information in statement.

* * * * *

(e) All proxy statements shall disclose on the first page thereof the complete mailing address, including zip code, of the principal executive offices of the bank and the approximate date on which the proxy statement and form of proxy are first sent or given to security holders. If action is to be taken by written consent, state the date by which consents are to be submitted if state law requires that such a date be specified or if the person soliciting intends to set a date.

* * * * *

10. Section 335.210 is amended by revising paragrahs (b)(2) and (b)(3) as follows:

§ 335.210 Mailing communications for security holders.

* * * * *

(b) * * *

(2) Any material that is furnished by the security holder shall be mailed with reasonable promptness by the bank after receipt of a tender of the material to be mailed, of envelopes or other containers therefor, of postage or payment for postage. The bank need not, however, mail any such material that relates to any matter to be acted upon at an annual meeting of security holders prior to the earlier of:

(i) A day corresponding to the first date on which the bank's proxy soliciting material was released to security holders in connection with the last annual meeting of security holders, or

(ii) The first day on which solicitation is made on behalf of the bank. With respect to any material that relates to any matter to be acted upon by security holders otherwise than at an annual meeting, the material need not be mailed prior to the first day on which solicitation is made on behalf of the bank management.

(3) The bank shall not be responsible for the proxy statement, form of proxy, or other communication.

* * * * *

11. Section 335.212 is amended by:

a. Revising the first paragraph under General Instructions;

b. Revising paragraph (b)(2) of Item 4, and paragraphs (a) and (d) of Item 5; and removing the Instructions to paragraph (d) of Item 5;

c. Removing paragraph (e) and redesignating paragraph (f) and its instructions as paragraph (e) of Item 5;

d. Redesignating paragraph (g) as paragraph (f) and removing the Instruction to newly designated paragraph (f) of Item 5;

e. Adding instructions 1 through 7 of Item 5 at the end of Item 5;

f. Revising paragraph (e) of Item 6; the note to paragraph (e) of Item 6 remains unchanged;

g. Revising Item 7 in its entirety;

h. Revising the heading, introductory text and paragraphs (a) and (b) of Item 9 and adding Instructions at the end of Item 9; removing Items 10 and 11, and redesignating Items 12 through 22 as Items 10 through 20;

i. Revising newly designated Item 12 and paragraphs (a)–(c) of newly designated Item 13;

j. Revising the Option Disclosure Instruction that follows redesignated Item 20.

§ 335.212 Form for proxy statement (Form F–5).

Form F–5—Proxy Statement

General Instructions

Each proxy statement shall, to the extent applicable, include the information called for under each of the items below. In the preparation of the statement, particular attention should be given to the definitions in § 335.102.

* * * * *

Item 4—Interest of Certain Persons in Matters To Be Acted Upon

* * * * *

(b) * * *

(2) With respect to any person, other than a director or principal officer of the bank acting solely in that capacity, who is a party to an arrangement or understanding pursuant to which a nominee for election as director is proposed to be elected, describe any substantial interest, direct or indirect, by security holdings or otherwise, that he has in any matter to be acted upon at the meeting, and furnish the information

called for by Item 4(b) and (c) of Form F–6.

* * * * *

Item 5—Voting Securities and Principal Holders Thereof

(a) As to each class of voting securities of the bank entitled to be voted at the meeting (or by written consents or authorizations if no meeting is held) state the number of shares outstanding and the number of votes to which each class is entitled.

* * * * *

(d)(1) Furnish the following information, as of the most recent practicable date, substantially in the tabular form indicated, with respect to any person (including any "group" as that term is used in section 13(d)(3) of the Act) who is known to the bank to be the beneficial owner of more than five percent of any class of the bank's voting securities. The address given in column (2) may be a business, mailing or residence address. Show in column (3) the total number of shares beneficially owned and in column (4) the percentage of class so owned. Of the number of shares shown in column (3), indicate by footnote or otherwise the amount known to be shares with respect to which such listed beneficial owner has the right to acquire beneficial ownership as specified in § 335.403(d)(1).

(1)	(2)	(3)	(4)
Title of class	Name and address of beneficial owner	Amount and nature of beneficial ownership	Percent of class

(2) *Security ownership of management.* Furnish the following information, as of the most recent practicable date, in substantially the tabular form indicated, as to each class of equity securities of the bank or any of its parents or subsidiaries other than directors' qualifying shares, beneficially owned by all directors and nominees, naming them, and directors and officers of the bank as a group, without naming them. Show in column (3) the total number of shares beneficially owned and in column (4) the percent of class so owned. Of the number of shares shown in column (3), indicate, by footnote or otherwise, the amount of shares with respect to which such persons have the right to acquire beneficial ownership as specified in § 335.403(d)(1).

(1)	(2)	(3)	(4)
Title of class	Name of beneficial owner	Amount and nature of beneficial ownership	Percent of class

* * * * *

Instructions to Item 5. 1. The percentages are to be calculated on the basis of the amount of outstanding securities, excluding securities held by or for the account of the bank or its subsidiaries, plus securities deemed outstanding pursuant to § 335.403(d)(1). For purposes of paragraph (2), if the percentage of shares beneficially owned by any director or nominee, or by all directors and officers of the bank as a group does not exceed one percent of the class so owned, the bank may, in lieu of furnishing a precise percentage, indicate this fact by means of an asterisk and explanatory footnote or other similar means.

2. For the purpose of this Item, beneficial ownership shall be determined in accordance with § 335.403. Include such additional subcolumns or other appropriate explanation of column (3) necessary to reflect amounts as to which the beneficial owner has (A) sole voting power, (B) shared voting power, (C) sole investment power, or (D) shared investment power.

3. The bank shall be deemed to know the contents of any statements filed with the FDIC pursuant to section 13(d) or 13(g) of the Exchange Act. When applicable, a bank may rely upon information set forth in the statements unless the bank knows or has reason to believe that such information is not complete or accurate or that a statement or amendment should have been filed and was not.

4. For purposes of furnishing information pursuant to paragraph (d)(1), the bank may indicate the source and date of such information.

5. Where more than one beneficial owner is known to be listed for the same securities, appropriate disclosure should be made to avoid confusion. For purposes of paragraph (2), in computing the aggregate number of shares owned by directors and officers of the bank as a group, the same shares shall not be counted more than once.

6. Paragraph (f) of this Item does not require a description of ordinary default provisions contained in the charter, trust indentures or other governing instruments relating to securities of the bank.

7. Where the holder(s) of voting securities reported pursuant to paragraph (1) hold more than five percent of any class of voting securities of the bank pursuant to any voting trust or similar agreement, state the title of such securities, the amount held or to be held pursuant to the trust or agreement (if not clear from the table) and the duration of the agreement. Give the names and addresses of the voting trustees and outline briefly their voting rights and other powers under the trust or agreement.

Item 6—Director and Principal Officers

* * * * *

(e) *Certain business relationships.* Describe any of the following relationships regarding directors or nominees for director that exist, or have existed during the bank's last fiscal year, indicating the identity of the entity with which the bank has such a

relationship, the name of the nominee or director affiliated with such entity and the nature of such nominee's or director's affiliation, the relationship between such entity and the bank and the amount of the business done between the bank and the entity during the bank's last full fiscal year or proposed to be done during the bank's current fiscal year:

(1) If the nominee or director is, or during the last fiscal year has been a principal officer of, or owns, or during the last fiscal year has owned, of record or beneficially in excess of a ten percent equity interest in, any business or professional entity that has made during the bank's last full fiscal year, or proposes to make during the bank's current fiscal year, payments to the bank or its subsidiaries for property or services in excess of five percent of (i) the bank's consolidated gross revenues for its last full fiscal year, or (ii) the other entity's consolidated gross revenues for its last full fiscal year;

(2) If the nominee or director is, or during the last fiscal year has been, a principal officer of, or owns, or during the last fiscal year has owned, of record or beneficially in excess of a ten percent equity interest in, any business or professional entity to which the bank or its subsidiaries has made during the bank's last full fiscal year, or proposes to make during the bank's current fiscal year, payments for property or services in excess of five percent of (i) the bank's consolidated gross revenues for its last full fiscal year, or (ii) the other entity's consolidated gross revenues for its last full fiscal year;

(3) If the nominee or director is, or during the last fiscal year has been, a principal officer of, or owns, or during the last fiscal year has owned, of record or beneficially in excess of a ten percent equity interest in, any business or professional entity to which the bank or its subsidiaries was indebted at the end of the bank's last full fiscal year in an aggregate amount in excess of five percent of the bank's total consolidated assets at the end of such fiscal year;

(4) If the nominee or director is, or during the last fiscal year has been, a member of, or of counsel to, a law firm that the bank has retained during the last fiscal year or proposes to retain during the current fiscal year; *Provided, however,* that the dollar amount of fees paid to a law firm by the bank need not be disclosed if such amount does not exceed five percent of the law firm's gross revenues for that firm's last full fiscal year;

(5) If the nominee or director is, or during the last fiscal year has been, a partner or principal officer of any investment banking firm that has performed services for the bank, other than as a participating underwriter in a syndicate, during the last fiscal year or that the bank proposes to have perform services during the current year; *Provided, however,* that the dollar amount of compensation received by an investment banking firm need not be disclosed if such amount does not exceed five percent of the investment banking firm's consolidated gross revenues for that firm's last full fiscal year; or

(6) Any other relationships that the bank is aware of between the nominee or director and the bank that are substantially similar in nature and scope to those relationships listed in paragraph (b) (1) through (5).

Instructions to Paragraph (e) of Item 6

1. In order to determine whether payments or indebtedness exceed five percent of the consolidated gross revenues of any entity, other than the bank, it is appropriate to rely on information provided by the nominee or director.

2. In calculating payments for property and services the following may be excluded:

A. Payments where the rates or charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a common contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority;

B. Payments that arise solely from the ownership of securities of the bank and no extra or special benefit not shared on a pro rata basis by all holders of the class of securities is received; or

C. Payments made or received by subsidiaries other than significant subsidiaries as defined in § 335.102(nn), provided that all such subsidiaries making or receiving payments, when considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary as defined in § 335.102(nn).

3. In calculating indebtedness the following may be excluded:

A. Debt securities that have been publicly offered, admitted to trading on a national securities exchange, or quoted on the automated quotation system of a registered securities association;

B. Amounts due for purchases subject to the usual trade terms; or

C. Indebtedness incurred by subsidiaries other than significant subsidiaries as defined in § 335.102(nn), provided that all such subsidiaries incurring indebtedness, when considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary as defined in § 335.102(nn).

4. No information called for by paragraph (b) need be given respecting any director who is no longer a director at the time of filing the registration statement or report containing such disclosure. If such information is being presented in a proxy or information statement, no information need be given respecting any director whose term of office as a director will not continue after the meeting to which the statement relates.

* * * * *

Item 7—Compensation and Other Transactions With Management and Others

Furnish the information called for by this item if action is to be taken with respect to: (i) The election of directors, (ii) any bonus, profit sharing or other compensation plan, contract or arrangement in which any director, nominee for election as a director, or officer of the bank will participate, (iii) any pension or retirement plan in which any such person will participate, or (iv) the granting or extension to any such person of any options, warrants or rights to purchase any securities, other than warrants or rights issued to security holders, as such, on a pro rata basis. However, if the solicitation is made on behalf of persons other than the management, the information required need be furnished only as to nominees for election as directors and as to their associates.

(a)(1) *Cash compensation.* Furnish, in substantially the tabular form specified, all cash compensation paid to the following persons through the latest practicable date for services rendered in all capacities to the bank and its subsidiaries during the bank's last fiscal year:

(i) *Five principal officers.* Each of the bank's five most highly compensated principal officers whose cash compensation required to be disclosed pursuant to this paragraph exceeds $60,000, naming each such person; and

(ii) *All principal officers.* All principal officers as a group, stating the number of persons in the group without naming them.

(2) *Bonuses and deferred compensation.* The Cash Compensation Table also shall include:

(i) All cash bonuses to be paid to the named individuals and group for services rendered in all capacities to the bank and its subsidiaries during the last fiscal year unless such amounts have

not been allocated at such time as compensation disclosure is filed:

(ii) All cash bonuses paid during the last fiscal year for services rendered in all capacities to the bank and its subsidiaries in a previous fiscal year, less any amount relating to the same contract, agreement, plan or arrangement included in the Cash Compensation Table for a prior fiscal year and less any amount that would have been so included but for the fact that the individual was not included in the Cash Compensation Table, as a named individual or as a member of the group, for such prior fiscal year; and

(iii) All compensation that would have been paid in cash to the named individuals and group for services rendered in all capacities to the bank and its subsidiaries during the last fiscal year but for the fact that the payment of such compensation was deferred.

CASH COMPENSATION TABLE

(A)	(B)	(C)
Name of individual or number in group	Capacities in which served	Cash compensation

Instructions to paragraph (a) of Item 7

1. *Cash Compensation Table.* (A) The bank may include additional columns in the Cash Compensation Table. For example, the bank may segregate cash bonuses and deferred compensation from cash salaries and fees.

(B) Amounts deferred pursuant to section 401(k) of the Internal Revenue Code are to be included in paragraph (a) for the fiscal year during which they are accrued.

(C) Banks need list in Column (B) of the Cash Compensation Table only those principal capacities served by each of the identified individuals. The cash compensation disclosed, however, must include cash compensation received in *all* capacities.

2. *Persons covered.* (A) Paragraph (a) of this item applies to any individual who was a principal officer of the bank at any time during the last fiscal year. Information need not be disclosed, however, for any portion of the period during which such individual was not a prinicpal officer of the bank, provided a statement to that effect is made. With respect to an individual who becomes for the first time an individual whose compensation is to be reported in the Cash Compensation Table, it is not necessary to report compensation that would have been reported in the Table had the individual been included in prior years.

(B) Banks should be flexible in determining which individuals should be named in the Cash Compensation Table in order to ensure that disclosure is made with respect to key policy making members of management. Consideration should be given to the question of whether an individual's level of executive responsibilities, viewed in conjunction with such individuals' actual level of cash compensation is such that the bank reasonably may conclude that the person is among its five most highly compensated, key policy making principal officers. Under this standard, it may be appropriate, in certain circumstances, to include a principal officer of a subsidiary in the cash Compensation Table.

(C) In certain circumstances, it may be appropriate for a bank not to include in the Cash Compensation Table an individual who is one of the bank's five most highly compensated principal officers. Among the factors that should be considered in determining not to name an individual are: (i) The distribution or accrual of an unusually large amount of cash compensation (such as a bonus or commission) that is not part of a recurring arrangement and is unlikely to continue; and (ii) the payment of amounts of cash compensation relating to overseas assignments that may be attributed predominantly to such assignments.

(b)(1) *Compensation pursuant to plans.* Describe briefly all plans, pursuant to which cash or non-cash compensation was paid or distributed during the last fiscal year, or is proposed to be paid or distributed during the last fiscal year, or is proposed to be paid or distributed in the future, to the named individuals and group specified in paragraph (a) of this item. Information need not be given with respect to any group life, health, hospitalization, medical reimbursement or relocation plans that do not discriminate, in scope, terms or operation, in favor of officers or directors of the bank and that are available generally to all salaried employees. The description of each plan shall include the following, except that the description of any defined benefit or actuarial plans need not include the information specified in paragraphs (b)(1)(vi) and (b)(1)(vii) of this item and the description of any stock option and stock appreciation right plan need not include the information specified in paragraph (b)(1)(vii) of this item;

(i) A summary of how the plan operates and who is covered by the plan;

(ii) The criteria used to determine amounts payable, including any performance formula or measure;

(iii) The time periods over which the measurement of benefits will be determined;

(iv) Payment schedules;

(v) Any recent material amendments to the plan;

(vi) Amounts paid or distributed pursuant to the plan to the named individuals and the group during the last fiscal year less any amount relating to the same plan which previously has been disclosed as accrued pursuant to paragraph (b)(1)(vii) of this item or a predecessor provision; and

(vii) Amounts accrued pursuant to the plan for the accounts of the named individuals and group during the last fiscal year, the distribution or unconditional vesting of which are not subject to future events.

(2) *Pension table.* As to defined benefit and actuarial plans, other than any defined benefit or actuarial plan under which benefits are not determined primarily by final compensation (or average final compensation) and years of service, include, as the payment schedule required by paragraph (b)(1)(vi) of this item, a separate Pension Table showing estimated annual benefits payable upon retirement (including amounts attributable to any defined benefit supplementary or excess pension award plans) to persons in specified compensation and years-of-service classifications. In addition, in furnishing the information required by paragraphs (b)(1)(i)–(v) of this item, include:

(i) The compensation covered by the plan, including the relationship of such

covered compensation to the compensation reported in the Cash Compensation Table pursuant to paragraph (a) of this item, and state the current compensation covered by the plan for any individuals named in the Cash Compensation Table whose covered compensation differs substantially (by more than 10 percent) from that set forth in the Cash Compensation Table;

(ii) The estimated credited years of service for each of the individuals named in the cash Compensation Table; and

(iii) A statement as to the basis upon which benefits are computed (*e.g.*, straight life annuity amounts) and whether or not the benefits listed in the Pension Table are subject to any deduction for Social Security or other offset amounts.

EXAMPLE OF PENSION TABLE OF SERVICE—

Remuneration	15	20	25	30	35
125,000	xxx	xxx	xxx	xxx	xxx
150,000	xxx	xxx	xxx	xxx	xxx
175,000	xxx	xxx	xxx	xxx	xxx
200,000	xxx	xxx	xxx	xxx	xxx
225,000	xxx	xxx	xxx	xxx	xxx

(3) *Alternative pension plan disclosure.* In furnishing the information required by paragraphs (b)(1)(i)–(v) of this item with respect to defined benefit or actuarial plans under which benefits are not determined primarily by final compensation (or average final compensation) and years of service, include:

(i) The formula by which benefits are determined; and

(ii) The estimated annual benefits payable upon retirement at normal retirement age for each of the individuals named in the Cash Compensation Table pursuant to paragraph (a) of this item.

(4) *Stock option and stock appreciation right plans.* In addition to providing the information required by paragraphs (b)(1)(i)–(vi) of this item, furnish:

(i) With respect to stock options granted during the last fiscal year: (A) The title and aggregate amount of securities subject to options; (B) the average per share exercise price; and (C) if such option exercise price was less than 100 percent of the market value of the security on the date of grant, such fact and the market price on such date. The title and aggregate amount of such securities subject to options, if any, which are in tandem with stock appreciation rights should be set forth separately.

(ii) With respect to the exercise or realization of options or stock appreciation rights held in tandem with options, state the net value of securities (market value less any exercise price) or cash realized during the last fiscal year.

(iii) With respect to plans pursuant to which stock appreciation rights not in tandem with options were granted during the last fiscal year: (A) the number of rights granted; and (B) the average per share base price thereof.

(iv) With respect to the exercise or realization of stock appreciation rights not in tandem with options, state the net value of the shares (market price) or cash realized during the last fiscal year.

Instructions to paragraph (b) of Item 7

1. *Format.* With the exception of those pension plans disclosed pursuant to paragraph (b)(2), the bank may use either a narrative, tabular or other format or combination of formats provided the information so disclosed is clear and understandable. Disclosure required by paragraph (b)(2), pertaining to certain defined benefit and actuarial plans, is required to be presented in the Pension Table format set forth in that paragraph.

2. *Cash paid pursuant to plans.* The cash compensation paid pursuant to a plan need not be disclosed as amounts paid or distributed pursuant to paragraph (b)(1)(vi) of this item if such compensation was included in the Cash Compensation Table pursuant to paragraph (a) of this item and a statement to that effect is made. Similarly, the cash compensation deferred under a deferred compensation plan need not be disclosed as amounts accrued pursuant to paragraph (b)(1)(vii) of this item if such compensation was included in the Cash Compensation Table and a statement to that effect is made.

3. *Definition of "plan".* The term "plan" includes, but is not limited to the following: any plan, contract, authorization or arrangement, whether or not set forth in any formal documents, pursuant to which the following may be received: cash, stock, restricted stock, phantom stock, stock options, stock appreciation rights, stock options in tandem with stock appreciation rights, warrants, convertible securities, performance units and performance shares. A plan may be applicable to one person.

4. *Pension levels.* Compensation set forth in the Pension Table pursuant to paragraph (b)(2) of this item shall allow for reasonable increases in existing compensation levels; alternatively, banks may present as the highest compensation level in the Pension Table an amount equal to 120 percent of the amount of covered compensation of the most highly compensated individual named in the Cash Compensation Table pursuant to paragraph (a) of this item.

5. *Definition of "normal retirement age".* The term "normal retirement age" means normal retirement age as defined in a pension or similar plan or, if not defined therein, the earliest time at which a participant may retire without any benefit reduction because of age.

(c) *Other compensation.* Describe, stating amounts, any other compensation not covered by paragraph (a) or (b) of this item that was paid or distributed during the last fiscal year to the named individuals and group specified in paragraph (a) of this item unless:

(1) With respect to any named individual, the aggregate amount of such other compensation is the lesser of $25,000 or 10 percent of the compensation reported in the Cash Compensation Table for such person pursuant to paragraph (a) of this item or.

(2) With respect to the group, the aggregate amount of such other compensation is the lesser of $25,000 times the number of persons in the group or 10 percent of the compensation reported in the Cash Compensation Table for the group pursuant to paragraph (a) of this item and a statement to that effect is made.

Instructions to paragraph (c) of Item 7

1. *Scope.* Compensation to be disclosed pursuant to this paragraph may include, among other things: (a) Personal benefits or; (b) securities or property that were paid or distributed other than pursuant to a plan. It does not, in any event, include cash, which is to be disclosed pursuant to either paragraph (a) or (b).

2. *Threshold.* If the amount of other compensation for a named individual or the group exceeds the established thresholds, the entire amount of such other compensation must be disclosed pursuant to this paragraph.

3. *Valuation.* Compensation within paragraph (c) shall be valued on the basis of the bank's and subsidiaries' aggregate incremental cost.

(d) *Compensation of directors*—(1) *Standard arrangements.* Describe any standard arrangement, stating amounts, pursuant to which directors of the bank are compensated for all services as a director, including any additional amounts payable for committee participation or special assignments.

(2) *Other arrangements.* Describe any other arrangements pursuant to which any director of the bank was compensated during the bank's last fiscal year for services as a director, stating the amount paid and the name of the director.

(e) *Termination of employment and change of control arrangement.* Describe any compensatory plan or arrangement, including payments to be received from the bank, with respect to any individual named in the Cash Compensation Table pursuant to paragraph (a) of this item for the latest or then next preceding fiscal year if such a plan or arrangement results or will result from the resignation, retirement or any other termination of such individual's employment with the bank and its subsidiaries or from a change in control of the bank or a change in the individual's responsibilities following a change in control and the amount involved, including all periodic payments or installments, exceeds $60,000.

General Instructions to Paragraphs (a) through (e) of Item 7

1. *Transactions with third parties.* Paragraphs (a)–(e) of Item 7 include transactions between the bank and a third party where the primary purpose of the transaction is to furnish compensation to any named individual or the group specified in paragraph (a) of this item. No information need be given in response to any paragraph of this item as to any transaction if the transaction has been reported in response to another paragraph of Item 7(a).

2. *Exclusions.* No information need be given pursuant to this Item with respect to interest on deferred compensation provided that the rate of interest does not exceed prevailing market interest rates either: (1) At the time the interest is accrued or (2) at the time the plan pursuant to which the compensation is deferred was established. Similarly, dividends awarded on restricted stock need not be disclosed provided that the restricted stock is not of a particular class available only to certain employees on a discriminatory basis.

(f) *Indebtedness of management.* (1) State as to each of the following specified persons ("specified persons"), who was indebted to the bank at any time since the beginning of its last fiscal year:

(i) The largest aggregate amount of indebtedness (in dollar amounts, and as a percentage of total equity capital accounts at the time), including extensions of credit or overdrafts, endorsements and guarantees outstanding at any time during that period;

(ii) The amount thereof outstanding as of the latest practicable date;

(iii) The nature of the indebtedness and of the transaction in which it was incurred; and

(iv) The rate of interest paid or charged:

(A) Each director or principal officer of the bank;

(B) Each nominee for election as a director;

(C) Each security holder who is known to the bank to own of record or beneficially more than five percent of any class of the bank's voting securities ("principal security holder"); and

(D) Each associate of any such director, principal officer, nominee or principal security holder.

Instructions. 1. Include the name of each person whose indebtedness is described and the nature of the relationship by reason of which the information is required to be given.

2. Generally, no information need be given under this item 7(f) unless any of the following are present:

(a) The extension(s) of credit were not made on substantially the same terms, including interest rates, collateral and repayment terms as those prevailing at the time for comparable transactions with other than the specified persons.

(b) The extension(s) of credit were not made in the ordinary course of business.

(c) The extension(s) of credit have involved or presently involve more than a normal risk of collectibility or other unfavorable features including the restructuring of an extension of credit, or a delinquency as to payment of interest or principal.

(d) The aggregate amount of extensions of credit outstanding at any time from the beginning of the last fiscal year to date to a person specified in (A), (B), and (C) of this paragraph (f)(1) together with the person's associates, exceeded 10% of the equity capital accounts of the bank at the time or $5 million, whichever is less.

Note to instruction 2(d): For purposes of this instruction 2(d) only: (1) The information called for by paragraphs (f)(1)(iii) and (iv) of this item 7 need not be furnished; (2) A principal security holder shall mean each security holder known to the bank to own of record or beneficially more than ten (10) percent of any class of the bank's voting securities; and (3) The name of any associate need not be furnished.

(2) If aggregate extensions of credit to the specified persons as a group exceeded 20 percent of the equity capital accounts of the bank at any time since the beginning of the last fiscal year:

(i) The aggregate amount of such extensions of credit shall be disclosed, and

(ii) A statement shall be included, to the extent applicable, that the bank has had and expects to have in the future, banking transactions in the ordinary course of its business with directors, officers, principal stockholders, and their associates, on substantially the same terms, including interest rates and collateral on loans, as those prevailing at the same time for comparable transactions with others and did not involve more than the normal risk of collectibility or present other unfavorable features.

(3) If any indebtedness required to be described arose under section 16(b) of the Act and had not been discharged by payment, state the amount of any profit realized, that such profit will inure to the benefit of the bank and whether suit will be brought or other steps taken to recover such profit. If in the opinion of counsel a question reasonably exists as to the recoverability of such profit, it will suffice to state all facts necessary to describe the transaction, including the prices and number of shares involved.

(g) *Transactions with management.* Describe briefly any transactions since the beginning of the bank's last fiscal year or any presently proposed transactions, to which the bank was or is to be a party, in which any of the following persons had or is to have a direct or indirect material interest, naming such person and stating his relationship to the bank, the nature of his interest in the transaction and, where practicable, the amount of such interest:

(1) Any director or principal officer of the bank;

(2) Any nominee for election as a director;

(3) Any security holder who is known to the bank to own of record or beneficially more than five percent of any class of the bank's voting securities; and

(4) Any associate of any of the foregoing persons.

Instructions. 1. No information need be given in response to this item 7(g) as to any compensation or other transaction reported in response to item 7(a), (b), (c), (d), (e) or (f), or as to any transaction with respect to which information may be omitted under instruction (b)(1) to item 7(a).

2. No information need be given in answer to this item 7(g) as to any transaction where:

(a) The rates or charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a common or contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority;

(b) The transaction involves services as a bank depositary of funds, transfer agent, registrar, trustee under a trust indenture, or similar services;

(c) The amount involved in the transaction or series of similar transactions, including all periodic installments in the case of any lease or other agreement providing for periodic payments or installments, does not exceed $60,000; or

(d) The interest of the specified person arises solely from the ownership of securities of the bank and the specified person receives no extra or special benefit not shared on a pro rata basis by all holders of securities of the class.

3. It should be noted that this item calls for disclosure of indirect, as well as direct, material interests in transactions. A person who has a position or relationship with a firm, corporation, or other entity, which engages in a transaction with the bank or its subsidiaries may have an indirect interest in such transaction by reason of such position or relationship. However, a person shall be deemed not to have a material indirect interest in a transaction within the meaning of this item 7(g) where:

(a) The interest arises only: (i) From such person's position as a director of another corporation or organization (other than a partnership) which is a party to the transaction, or (ii) from the direct or indirect ownership by such person and all other persons specified in subparagraphs (1) through (4) above, in the aggregate, of less than a 10 percent equity interest in another person (other than a partnership) which is a party to the transaction, or (iii) from both such position and ownership;

(b) The interest arises only from such person's position as a limited partner in a partnership in which he and all other persons specified in (1) through (4) above had an interest of less than 10 percent; or

(c) The interest of such person arises solely from the holding of an equity interest (including a limited partnership interest, but excluding a general partnership interest), or a creditor interest in another person which is a party to the transaction with the bank or any of its subsidiaries and the transaction is not material to such other person.

4. The amount of the interest of any specified person shall be computed without regard to the amount of the profit or loss involved in the transaction. Where it is not practicable to state the approximate amount of the interest, the approximate amount involved in the transaction shall be indicated.

5. In describing any transaction involving the purchase or sale of assets by or to the bank or any of its subsidiaries, otherwise than in the ordinary course of business, state the cost of the assets to the purchaser and, if acquired by the seller within two years prior to the transaction, the cost thereof to the seller. Indicate the principle followed in determining the bank's purchase or sale price and the name of the persons making such determination.

6. Include the name of each person whose interest in any transaction is described and the nature of the relationship by reason of which such interest is required to be described. Where it is not practicable to state the approximate amount of the interest, the approximate amount involved in the transactions shall be indicated.

7. Information shall be furnished in answer to this item with respect to transactions not excluded above which involve remuneration from the bank or its subsidiaries, directly or indirectly, to any of the specified persons for services in any capacity unless the interest of such persons arises solely from the ownership individually and in the aggregate of less than 10 percent of any class of equity securities of another corporation furnishing the services to the bank.

8. The foregoing instructions specify certain transactions and interests as to which information may be omitted in answering this item. There may be situations where, although the foregoing instructions do not expressly authorize nondisclosure, the interest of a specified person in the particular transaction or series of transactions is not a material interest. In that case, information regarding such interest and transaction is not required to be disclosed in response to this item. The materiality of any interest or transaction is to be determined on the basis of the significance of the information to investors in light of all of the circumstances of the particular case. The importance of the interest to the person having the interest, the relationship of the parties to the transaction to each other and the amount involved in the transaction are among the factors to be considered in determining the significance of the information to investors.

(h) *Transactions with pension or similar plans.* Describe briefly any transactions since the beginning of the bank's last fiscal year or presently proposed transactions, to which any pension, retirement, savings or similar plan provided by the bank, or any of its parents or subsidiaries was or is to be a party, in which any of the following persons had or is to have a direct or indirect material interest, naming such person and stating his relationship to the bank, the nature of his interest in the transaction and, where practicable, the amount of such interest:

(1) Any director or principal officer of the bank;

(2) Any nominee for election as a director;

(3) Any security holder who is known to the bank to own of record or beneficially more than five (5) percent of the outstanding voting securities of the bank;

(4) Any associate of any of the foregoing persons; and

(5) The bank or any of its subsidiaries.

Instructions. 1. Instructions 2, 3, 4 and 5 to item 7(g) shall apply to this item 7(h).

2. Without limiting the general meaning of the term "transaction" there shall be included in answer to this item 7(h) any compensation received or any loans received or outstanding during the period, or proposed to be received.

3. No information need be given in answer to paragraph (h) with respect to

(a) Payments to the plan, or payments to beneficiaries, under the terms of the plan;

(b) Payment of compensation for services not in excess of five (5) percent of the aggregate compensation received by the specified person during the bank's last fiscal year from the bank; or

(c) Any interest of the bank which arises solely from its general interest in the success of the plan.

(i) *Legal proceedings.* Briefly describe any material legal proceeding to which any director, any nominee for election as a director, principal officer of the bank, any owner of record or beneficially of more than five (5) percent of any class of voting securities of the bank, or any associate of any such director, nominee, officer or security holder is a party adverse to the bank.

* * * * *

Item 9—Compensation Plans

If action is to be taken with respect to any plan pursuant to which cash or noncash compensation may be paid, furnish the following information:

(a) *All Plans.* (1) Describe briefly the material features of the plan being acted

upon, identify each class of persons who will be eligible to participate therein, indicate the approximate number of persons in each such class and state the basis of such participation.

(2) State the benefits or amounts which will be received by or allocated to each of the following under the plan being acted upon, if such benefits or amounts are determinable:

(i) Each person (stating name and position) specified in paragraph (a)(1)(i) of Item 7 of this Form F–5; (ii) all current principal officers as a group; (iii) all other current officers and directors who are not principal officers as a group; and (iv) all employees as a group. If such benefits or amount are not determinable, state the benefits or amounts which would have been received by or allocated to each of the following for the last fiscal year if the plan had been in effect, if such benefits or amounts may be determined:

(i) Each person (stating name and position) specified in paragraph (a)(1)(i) of Item 7 of this Form F–5; (ii) all current principal officers as a group; (iii) all other current officers and directors who are not principal officers as a group; and (iv) all employees as a group.

(3) Furnish the information called for by Item 7(b) of this Form F–5 with respect to all compensation plans now in effect or in effect during the last three years except that information called for in paragraphs (b)(1) (vi) and (vii) and (b)(4) of Item 7(b) of this Form F–5 should be furnished with respect to the last three fiscal years for the following: (i) Each person (stating name and position) specified in Item 7(a)(1)(i) of this Form F–5; (ii) all current principal officers as a group; (iii) all other current officers and directors who are not principal officers as a group, if such persons may participate in the plan; and (iv) all employees as a group, if such persons may participate in the plan. The information called for by paragraph (b)(4)(ii) of Item 7 of this Form F–5 need not be provided for all employees as a group. The information required by this paragraph (a)(3) is in lieu of the information otherwise called for by Item 7(b) of this Form F–5.

(4) If the plan to be acted upon can be amended, otherwise than by a vote of security holders, to increase the cost thereof to the bank or to alter the allocation of the benefits as between the groups specified in paragraph (a)(3), state the nature of the amendments which can be so made.

(b) *Specific plans.* (1) With respect to any pension or retirement plan submitted for security holder action, state: (i) The approximate total amount necessary to fund the plan with respect to past services, the period over which such amount is to be paid and the estimated annual payments necessary to pay the total amount over such period; and (ii) the estimated annual payment to be made with respect to current services. In the case of a pension or retirement plan, information called for by paragraph (a)(2) of this Item may be furnished in the format specified by paragraphs (b) (2) and (3) of Item 7 of this Form F–5.

(2) With respect to any specific grant of or any plan containing options, warrants or rights submitted for security holder action, (i) state: (A) The title and amount of securities called for or to be called for by such options, warrants or rights; (B) the prices, expiration dates and other material conditions upon which the options, warrants or rights may be exercised; (C) the consideration received or to be received by the bank or subsidiary for the granting or extension of the options, warrants or rights; (D) the market value of the securities called for or to be called for by the options, warrants or rights as of the latest practicable date; and (E) in the case of options, the federal income tax consequences of the issuance and exercise of such options to the recipient and the bank; and (ii) state separately the amount of such options received or to be received by the following persons if such benefits or amounts are determinable: (A) Each person (stating name and position) specified in paragraph (a)(1)(i) of Item 7 of this Form F–5; (B) all current principal officers as a group; (C) all other current officers and directors who are not principal officers as a group; (D) each nominee for election as a director; (E) each associate of any such directors, principal officers or nominees; (F) each other person who received or is to receive 5 percent of such options, warrants or rights, and (G) all employees as a group.

* * * * *

Instructions to Item 9.

1. The term "plan" as used in this Item means any plan as defined in Instruction 3 of paragraph (b) of item 7 of this Form F–5.

2. If action is to be taken with respect to a material amendment or modification of an existing plan, the item shall be answered with respect to the plan or modified and shall indicate any material as proposed to be amended differences from the existing plan.

3. If the plan to be acted upon is set forth in a written document, three copies thereof shall be filed with the FDIC at the time preliminary copies of the proxy statement and form of proxy are filed pursuant to paragraph (a) of § 335.204

4. Paragraphs (a)(3) and (b)(2)(ii) do not apply to warrants or rights to be issued to security holders as such on a pro rata basis.

* * * * *

Item 12. Mergers, Consolidations, Acquisitions and Similar Matters

If action is to taken with respect to any transaction involving (i) the merger or consolidation of the bank into or with any other person or of any other person into or with the bank, (ii) the acquisition by the bank or any of its security holders of securities of another person, (iii) the acquisition by the bank of any other going business or of the assets thereof, (iv) the sale or other transfer of all or any substantial part of the assets of the bank, or (v) the liquidation or dissolution of the bank, furnish the following information:

(a) Information about the transaction. Furnish the following information concerning the bank and (unless otherwise indicated) each other person: which is to be merged into the bank or into or with which the bank is to be merged or consolidated; the business or assets of which are to be acquired; which is the issuer of securities to be acquired by the bank in exchange for all or a substantial part of the bank's assets; or which is the issuer of securities to be acquired by the bank or its security holders:

(1) The name, complete mailing address (including ZIP Code) and telephone number (including the area code) of the principal executive offices.

(2) A brief description of the general nature of the business conducted by the other person.

(3) A summary of the material features of the proposed transaction. If the transaction is set forth in a written document, file three copies thereof with the FDIC at the time preliminary copies of the proxy satement and form of proxy are filed pursuant to § 335.204. The summary shall include, where applicable.

(i) A brief summary of the terms of the transaction agreement;

(ii) The reasons for engaging in the transaction;

(iii) An explanation of any material differences in the rights of security holders of the bank as a result of this transaction;

(iv) A brief statement as to the accounting treatment of the transaction;

(v) The federal income tax consequences of the transaction; and

(vi) The information required in the description of securities in a registration

statement (Form F–1, Item 14) filed under this part, for a security being issued in connection with the transaction if the security holders entitled to vote or give an authorization or consent with regard to the transaction will receive such securities, unless: (i) the issuer of the securities is not a bank and would meet the requirements for use of the SEC's Form S–3 and elects to furnish information in accordance with the provisions of paragraph (b)(1); (ii) capital stock is to be issued and (iii) securities of the same class are registered under section 12 of the Exchange Act and either (a) are listed for trading or admitted to unlisted trading privileges on a national securities exchange; or (b) are securities for which bid and offer quotations are reported in an automated quotations sysem operated by a national securities association.

(4) A brief statement as to dividends in arrears or defaults in principal or interest in respect of any securities of the bank or of such other person and as to the effect of the transaction thereon and such other informationa may be appropriate in the particular case to disclose adequately the nature and effect of the proposed action.

(5) Furnish in comparative columnar form on a historical and (if material) pro-forma basis the selected financial data for the bank referred to below, for

(a) Each of the last five fiscal years of the bank (or for the life of the bank and its predecessors, if less), and

(b) Any additional fiscal years necessary to keep the information from being misleading.

Instructions to paragraph (a)(5).

1. The purpose of the selected financial data shall be to supply in a convenient and readable format selected financial data which highlight certain significant trends in the bank's financial condition and results of operations.

2.The following items shall be included in the table of financial data: net interest income; other operating income; provision for loan and lease losses; income (loss) from continuing operations; income (loss) from continuing operations per common share; total assets; long-term obligations and redeemable preferred stock and cash dividends declared per common share. Banks may include additional items which they believe would enhance an understanding of and would highlight other trends in their financial condition and results of operations.

Briefly describe, or cross-reference to a discussion thereof, factors such as accounting changes, business combinations or dispositions of business operations, that materially affect the comparability of the information reflected in selected financial data. Discussion of, or reference to, any material uncertainties should also be included where such matters might cause the data reflected herein not to be indicative of the bank's future financial condition or results of operations.

3. All references to the bank in the table of selected financial data and in this Item shall mean the bank and its subsidiaries consolidated.

4. If interim period financial statements are included, or are required to be included, banks should consider whether any or all of the selected financial data need to be updated for such interim periods to reflect a material change in the trends indicated; where such updating information is necessary, banks shall provide the information on a comparative basis unless not necessary to an understanding of such updating information.

(6) In comparative columnar form, historical and pro forma per share data of the bank and historical and equivalent pro forma per share data of the other person for the following information items:

(i) Book value per share as of the date selected financial data is presented;

(ii) Cash dividends declared per share for the periods for which selected financial data is presented; and

(iii) Income (loss) per share for the periods for which selected financial data is presented.

Instruction to paragraphs (a)(5) and (a)(6).

For a business combination accounted for as a purchase, the financial information required by paragraphs (a)(5) and (a)(6) shall be presented only for the most recent fiscal year and interim period. For a business combination accounted for as a pooling, the financial information required by paragraphs (a)(5) and (a)(6) (except for information with regard to book value) shall be presented for the most recent three fiscal years and interim period. For a business combination accounted for as a pooling, information with regard to book value shall be presented as of the end of the most recent fiscal year and interim period. Equivalent pro forma per share amounts shall be calculated by multiplying the pro forma income (loss) per share before non-recurring charges or credits directly attributable to the transaction, pro forma book value per share, and the pro forma dividends per share of the bank by the exchange ratio so that the per share amounts are equated to the respective values for one share of the other person.

(7) Pro forma financial information with respects to the transaction, in accordance with § 335.628.

(8) A statement as to whether any federal or state regulatory requirements must be complied with or approval must be obtained in connection with the transaction and if so the status of such compliance or approval.

(9) If a report, opinion or appraisal materially relating to the transaction has been received from an outside party, and such report, opinion or appraisal is referred to in the proxy statement, furnish the same information as would be required by Item 9(b) (1) through (6) of the SEC's Schedule 13E–3 (§ 240.13e–100 of 17 CFR).

(10) A description of any past, present or proposed material contracts, arrangements, understandings, relationships, negotiations for transactions during the periods for which financial statements are presented or incorporated by reference pursuant to this Item between the other person or its affiliates and the bank or its affiliates such as those concerning a merger, consolidation or acquisition; a tender offer or other acquisition of securities; an election of directors; or a sale or other transfer of a material amount of assets.

(11) As to each class of securities of the bank or of the other person which is admitted to trading on a national securities exchange or with respect to which a market otherwise exists, and which will be materially affected by the transaction, state the high and low sale prices (or in the absence of trading in a particular period, the range of the bid and asked prices) as of the date preceding public announcement of the proposed transaction, or if no such public announcement was made, as of the day preceding the day the agreement or resolution with respect to the action was made.

(12) A statement as to whether or not representatives of the principal accountants for the current year and for the most recently completed fiscal year

(i) Are expected to be present at the security holders' meeting;

(ii) will have the opportunity to make a statement if they desire to do so; and

(iii) Are expected to be available to respond to appropriate questions.

(b) *Information about the bank and other persons.* Furnish the information specified below for the bank and for other persons designated in paragraph (a) of this Item, if applicable (hereinafter all references to the bank should be read to include a reference to such other

person unless the context otherwise indicates):

(1) Information required by Item 1 of this Form F–5, description of business;

(2) Information required by Item 3 of this Form F–5, description of property;

(3) Information required by Item 3 of Form F–2 (§ 335.312 of this part), legal proceedings;

(4) Information required by Item 5 of Form F–2 (§ 335.312 of this part), market price of and dividends on the bank's common equity and related stockholder matters;

(5) Financial statements meeting the requirements of subpart F of this part (12 CFR 335.601 *et seq.*), including financial information required with respect to transactions other than that as to which action is to be taken as described in this proxy statement;

(6) Item 6 of Form F–2 (§ 335.312 of this part), selected financial data;

(7) Item 8 of Form F–2 (§ 335.312 of this part), financial statements and supplementary data;

(8) Item 7 of Form F–2 (§ 335.312 of this part), management's discussion and analysis of financial condition and results of operations; and

(9) Item 8 of this Form F–5, changes in and disagreements with accountants on accounting and financial disclosure.

(c) If the other person is not subject to the reporting requirements of either section 13(a) or 15(d) of the Exchange Act, furnish:

(1) The financial statements that would have been required to be included in an annual report to security holders pursuant to § 335.203 of this part had the company been required to furnish such a report: *Provided, however,* That the balance sheet for the year preceding the latest full fiscal year and the income statements for the two years preceding the latest full fiscal year need not be audited if they have not previously been audited. In any case, such financial statements need be audited only to the extent practicable.

(2) The quarterly financial and other information that would have been required had the company been required to file Form F–4 (§ 335.331 of this part) for the most recent quarter for which such a report would have been on file at the time the proxy statement is mailed or for a period ending as of a more recent date.

(3) A brief description of the business done by the company which indicates the general nature and scope of the business.

(4) The information required by paragraphs (b)(4) and (6)–(8) of this Item 12 and the information required by Item 8 of this Form F–5.

(5) Schedule VI—Allowance for Possible Loan and Lease Losses.

(d) *Additional method of incorporation by reference.* In lieu of the provision of information about the bank and other persons required in paragraph (b) of this Item, the bank may incorporate by reference into the proxy statement the information required by this Item if it is contained in an annual report sent to security holders pursuant to the requirement of § 335.203 of this part with respect to the same meeting or solicitation of consents or authorizations as that to which the proxy statement relates, provided such information substantially meets the requirements of the appropriate portions of paragraph (b)(3) of this Item.

(e) *Certain nonbank persons.* Where a party to the transaction (other than the bank) is eligible to use SEC Form S–2 or S–3, the bank may comply with this Item by providing the information for the other party that would be required by SEC Schedule 14A (17 CFR 240.14a–101).

Instructions to Item 12. 1. One copy of the definitive proxy statement filed with the FDIC shall include a manually signed copy of the accountant's report. If the financial statements are incorporated by reference, a manually signed copy of the accountant's report shall be filed with the definitive proxy statement.

2. Any or all of the required financial statements and related information which are not material for the exercise of prudent judgment in regard to the matter to be acted upon may be omitted.

3. If the bank or any of its securities or assets is to be acquired by other persons, the information regarding the other persons is required by this Item, other than information required by paragraphs (a) (1)–(3) and (a) (9)–(11) of this Item, need be provided only to the extent that: (1) The bank or its security holders who are entitled to vote or give an authorization or consent with regard to the action will become or remain security holders of the other persons; or (2) such information is otherwise material to an informed voting decision.

4. If the plan being voted on involves only the bank and one or more of its totally held subsidiaries and does not involve a liquidation of the bank or a spin-off, the information required by this Item, other than information required by paragraphs (a) (1)–(4) and (a) (8)–(11) of this Item, may be omitted.

Item 13—Financial Statements

(a) If action is to be taken with respect to any matter specified in items 10, 11, or 12 above, furnish audited financial statements of the bank and its subsidiaries such as would be required in a registration statement filed under this part. In addition, the latest available interim date balance sheet and statement of income for the interim period between the end of the last fiscal year and the interim balance sheet date, and comparable prior period, shall be furnished. All schedules, except schedule VI—Allowance for Possible Loan and Lease Losses may be omitted.

(b) If action is to be taken with respect to any matter specified in item 12, furnish for each person specified therein, other than the bank, financial statements such as would be required in a registration statement filed under this part. In addition, the latest available interim date balance sheet and statement of income for the interim period between the end of the last fiscal year and the interim balance sheet date, and comparable prior period, shall be furnished. However, the following may be omitted: (1) All schedules, except schedule VI—Allowance for Possible Loan and Lease Losses; and

(2) Statements for a subsidiary, all of the stock of which is owned by the bank, that is included in the consolidated statement of the bank and its subsidiaries. Such statements shall be audited, if practicable.

(c) Notwithstanding the provisions of this Item, any or all of the information required by paragraph (a) of this Item, not material for the exercise of prudent judgment in regard to the matter to be acted upon may be omitted. In the usual case the information is deemed material to the exercise of prudent judgment where the matter to be acted upon is the authorization or issuance of a material amount of senior securities, but the information is not deemed material where the matter to be acted upon is the authorization or issuance of common stock, otherwise than in an exchange, merger, consolidation, acquisition or similar transaction, the authorization of preferred stock without present intent to issue or the authorization of preferred stock for issuance for cash in an amount constituting fair value.

* * * * *

Option Disclosure Instruction

The table set forth below is an illustration of the presentation in tabular form of the information required by item 7(b)(4) and instruction 3(c) to item 9(d), which also applies to items 10(d) and 11(c). If only item 7(b)(4) applies and item 9 is inappropriate, information need only be furnished for the period specified in item 7(b)(4), information as to shares sold may be omitted and the reference at the foot of the table to options granted to employees may be

omitted. Other tabular presentations are, of course, acceptable if they include the necessary data. Tabular presentations may not be needed if only a very few options have been granted.

The following tabulation shows as to certain directors and officers and as to all directors and officers as a group (i) the amount of options granted since the beginning of the fifth previous full fiscal year, (ii) the amount of shares acquired since that date through the exercise of options granted since that date or prior thereto, (iii) the amount of shares sold during such period of the same class as those so acquired, and (iv) the amount of shares subject to all unexercised options held as of ____ (Insert date).

Common shares[1]	John Jones	James Smith	Richard Roe	All directors and officers as a group
Granted—19____ to date:				
Number of shares				
Average per share option price	$	$	$	$
Exercise—19____ to date: Number of shares				
Aggregate option price of options exercised	$	$	$	$
Aggregate market value of shares on date options exercised	$	$	$	[2]
Sales—19____ to date: Number of shares				
Unexercised at ____ 19____ Number of shares				
Average per share option price	$	$	$	$

[1] All common share figures have been adjusted in accordance with the terms of the options to reflect the stock split in 19____ and where applicable, to give effect to share dividends.

[2] Sales by directors and officers who exercised options during the period 19____ to date.

Note: In addition, during the period employees were granted options for____ shares at an average option price per share of $____

12. Section 335.214 is added to read as follows:

§ 335.214 Obligation of banks in communicating with beneficial owners.

(a) If the bank knows that securities of any class entitled to vote at a meeting (or by written consents or authorizations if no meeting is held) with respect to which the bank intends to solicit proxies, consents or authorizations are held of record by a broker, dealer, voting trustee, bank, association, or other entity that exercises fiduciary powers in nominee name or otherwise, the bank shall:

(1) By first class mail or other equally prompt means:

(i) Inquire of each such record holder:

(A) Whether other persons are the beneficial owners of such securities and if so, the number of copies of the proxy and other soliciting material necessary to supply such material to such beneficial owners;

(B) In the case of an annual (or special meeting in lieu of the annual) meeting, or written consents in lieu of such meeting, at which directors are to be elected, the number of copies of the annual report to security holders necessary to supply such report to beneficial owners to whom such reports are to be distributed by such record holder or its nominee and not by the bank; and

(C) If the record holder has an obligation under 17 CFR 240.14b–1(c) or 17 CFR 240.14b–2 (e)(2) and (e)(3), whether an agent has been designated to act on its behalf in fulfilling such obligation and, if so, the name and address of such agent; and

(D) Whether it holds the bank's securities on behalf of any respondent bank and, if so, the name and address of each such respondent bank; and

(ii) Indicate to each such record holder:

(A) Whether the bank, pursuant to paragraph (c) of this section, intends to distribute the annual report to security holders to beneficial owners of its securities whose names, addresses and securities positions are disclosed pursuant to 17 CFR 240.14b–1(c) and 17 CFR 240.14b–2 (e)(2) and (e)(3);

(B) The record date; and

(C) At the option of the bank, any employee benefit plan established by an affiliate of the bank that holds securities of the bank that the bank elects to treat as exempt employee benefit plan securities;

(2) Upon receipt of a record holder's or respondent bank's response indicating, pursuant to 17 CFR 240.14b–2(a)(1), the names and addresses of its respondent banks, within one business day after the date such response is received, make an inquiry of and give notification to each such respondent bank in the same manner required by paragraph (a)(1) of this section; *Provided, however,* the inquiry required by paragraphs (a)(1) and (a)(2) of this section shall not cover beneficial owners of exempt employee benefit plan securities;

(3) Make the inquiry required by paragraph (a)(1) of this section at least 20 business days prior to the record date of the meeting of security holders, or (i) if such inquiry is impracticable 20 business days prior to the record date of a special meeting, as many days before the record date of such meeting as is practicable or, (ii) if consents or authorizations are solicited, and such inquiry is impracticable 20 business days before the earliest date on which they may be used to effect corporate action, as many days before that date as is practicable, or (iii) at such later time as the rules of a national securities exchange on which the class of securities in question is listed may permit for good cause shown; *Provided, however,* that if a record holder or respondent bank has informed the bank that a designated office(s) or department(s) is to receive such inquiries, the inquiry shall be made to such designated office(s) or department(s); and

(4) Supply, in a timely manner, each record holder and respondent bank of whom the inquiries required by paragraphs (a)(1) and (a)(2) of this section are made with copies of the proxy, other proxy soliciting material, and/or the annual report to security holders, in such quantities, assembled in such form and at such place(s), as the record holder or respondent bank may reasonably request in order to send such material to each beneficial owner of securities who is to be furnished with such material by the record holder or respondent bank; and

(5) Upon the request of any record holder or respondent bank that is supplied with proxy soliciting material and/or annual reports to security holders pursuant to paragraph (a)(4) of this section, pay its reasonable expenses for completing the mailing of such material to beneficial owners.

Note 1 to paragraph (a): If the bank's list of security holders indicates that some of its securities are registered in the name of a clearing agency registered pursuant to Section 17A of the Act (e.g.,

"Cede & Co.," nominee for the Depository Trust Company), the bank shall make appropriate inquiry of the clearing agency and thereafter of the participants in such clearing agency who may hold on behalf of a beneficial owner or respondent bank, and shall comply with the above paragraph with respect to any such participant (*see* 17 CFR 240.14a–1(i)).

Note 2 to paragraph (a): The attention of banks is called to the fact that each broker, dealer, bank, association and other entity that exercises fiduciary powers has an obligation pursuant to 17 CFR 240.14b–1(b) and 17 CFR 240.14b–2(b) (except as provided therein with respect to employee benefit plan securities held in nominee name) and, with respect to brokers and dealers, applicable self-regulatory organization requirements to obtain and forward, within the time periods prescribed therein, (a) proxies (or in lieu thereof requests for voting instructions) and proxy soliciting materials to beneficial owners on whose behalf it holds securities, and (b) annual reports to security holders to beneficial owners on whose behalf it holds securities, unless the bank has notified the record holder or respondent bank that it has assumed responsibility to mail such material to beneficial owners whose names, addresses and securities positions are disclosed pursuant to 17 CFR 240.14b–1(c) and 17 CFR 240.14b–2 (e)(2) and (e)(3).

Note 3 to paragraph (a): The attention of banks is called to the fact that banks have an obligation, pursuant to paragraph (d) of this section, to cause proxies (or in lieu thereof requests for voting instructions), proxy soliciting material and annual reports to security holders to be furnished, in a timely manner, to beneficial owners of exempt employee benefit plan securities.

(b) Any bank requesting pursuant to 17 CFR 240.14b–1(c) and 17 CFR 240.14b–2 (e)(2) and (e)(3) a list of names, addresses and securities positions of beneficial owners of its securities who either have consented or have not objected to disclosure of such information shall:

(1) By first class mail or other equally prompt means, inquire of each record holder and each respondent bank identified to the bank pursuant to 17 CFR 240.14b–2(e)(1) whether such record holder or respondent bank holds the bank's securities on behalf of any respondent banks and, if so, the name and address of each such respondent bank;

(2) Request such list to be complied as of a date no earlier than five business days after the date of bank's request is received by the record holder or respondent bank; *Provided, however,* that if the record holder or respondent bank has informed the bank that a designated office(s) or department(s) is to receive such requests, the request shall be made to such designated office(s) or department(s);

(3) Make such request to the following persons that hold the bank's securities on behalf of beneficial owners: all brokers, dealers, banks, associations and other entities that exercise fiduciary powers; *Provided, however,* such request shall not cover beneficial owners of exempt employee benefit plan securities as defined in 17 CFR 240.14a–1(d)(1); and, at the option of the bank, such request may give notice of any employee benefit plan established by an affiliate of the bank that holds securities of the bank that the bank elects to treat as exempt employee benefit plan securities;

(4) Use the information furnished in response to such request exclusively for purposes of corporate communications; and

(5) Upon the request of any record holder or respondent bank to whom such request is made, pay the reasonable expenses, both direct and indirect, of providing beneficial owner information.

Note to paragraph (b): A bank will be deemed to have satisfied its obligations under paragraph (b) of this section by requesting consenting and non-objecting beneficial owner lists from a designated agent acting on behalf of the record holder or respondent bank and paying to that designated agent the reasonable expenses of providing the beneficial owner information.

(c) A bank, at its option, may mail its annual report to security holders to the beneficial owners whose identifying information is provided by record holders and respondent banks, pursuant to 17 CFR 240.14b–1(c) and 17 CFR 240.14b–2 (e)(2) and (e)(3), provided that such bank notifies the record holders and respondent banks, at the time it makes the inquiry required by paragraph (a) of this section, that the bank will mail the annual report to security holders to the beneficial owners so identified.

(d) If a bank solicits proxies, consents or authorizations from record holders and respondent banks who hold securities on behalf of beneficial owners, the bank shall cause proxies (or in lieu thereof requests for voting instructions), proxy soliciting material and annual reports to security holders to be furnished, in a timely manner, to beneficial owners of exempt employee benefit plan securities.

13. Section 335.220 is amended by revising paragraph (b)(1)(iii) to read as follows:

§ 335.220 Special provisions applicable to election contests.

* * * * *

(b) * * *

(1) * * *

(iii) Any committee or group which solicits proxies, any member of the committee or group, and any person whether or not named as a member who, acting alone or with one or more other persons directly or indirectly takes the initiative, or engages, in organizing, directing, or arranging for the financing of any such committee or group.

* * * * *

§ 335.307 [Amended]

14. Section 335.307 is amended by removing the word "remuneration" from paragraph (b)(3) and inserting in its place the word "compensation."

15. Section 335.309a is amended by:

a. Removing the word "six" and adding in its place the word "three" in the first sentence in the second paragraph of "General Instructions";

b. Revising the title in Item 2;

c. Revising Instructions 2, 3, 6, 12 and 13 to Item 2;

d. Removing Instructions 19 and 20 and redesignating Instruction 21 as Instruction 19 under Item 2;

e. Revising Item 5;

f. Revising Item 7;

g. Removing Item 8;

h. Redesignating Item 9 as Item 8 and revising newly designated Item 8;

i. Redesignating Items 10 and 11 as Items 9 and 10 and revising newly designated Item 10;

j. Redesignating Items 12, 13, 14 as Items 11, 12, 13 and revising newly designated Item 13;

k. Removing items 15 and 16 and redesignating Items 17, 18, 19 as 14, 15 and 16; and

l. Amending in newly designated Item 16 the Instructions as to Financial Statements by revising the introductory test, paragraphs A, B, C, E.10 and E.17; as follows:

§ 335.309a Form for registration of securities of a bank under section 12(b) or section 12(g) of the Securities Exchange Act of 1934 (Form F–1).

* * * * *

Item 2—Selected Financial Data; Management's Discussion and Analysis of Financial Condition and Results of Operations, and Other Statistical Disclosure

* * * * *

Instructions

* * * * *

2. The following items shall be included in the table of financial data: Net interest income; other operating income; provision for loan and lease losses; income (loss) from continuing operations; income (loss) from continuing operations per common share; total assets; long term obligations and redeemable preferred stock and cash dividends declared per common share. Banks may include additional items which they believe would enhance an understanding of and would highlight other trends in their financial condition and results of operations. Briefly describe, or cross reference to a discussion thereof, factors such as accounting changes, business combinations or dispositions of business operations, that materially affect the comparability of the selected financial data. Discuss any material uncertainties which might cause the data not to be indicative of the bank's future financial condition or results of operations.

3. Those banks which provide five-year summary information in accordance with SFAS 89* may combine such information with the selected financial data appearing pursuant to this item.

* * * * *

6. Discuss the bank's financial condition, changes in financial condition and results of operations. The discussion shall provide information as specified in instructions 5 (a), (b) and (c) to this item 2 with respect to liquidity, capital resources, and results of operations, and should also provide such other information which the bank believes to be necessary to an understanding of its financial condition, changes in financial condition and results of operations. Discussions of liquidity and capital resources may be combined whenever the two topics are interrelated. Where in the bank's judgment a discussion of segment information or of other subdivisions of the bank's business would be appropriate to an understanding of such business, the discussion would focus on each relevant, reportable segment or other subdivision of the business and on the bank as a whole.

* * * * *

12. Set forth the same information as is required to be furnished by Instruction 7 to Item 7 of Form F–2 at § 335.312.

13. The bank's discussion and analysis shall be of the financial statement and of other statistical data which the bank believes will enhance a reader's understanding of its financial condition, changes in financial condition, cash flows and results of operations. Generally, the discussion should cover the three-year period covered by the financial statements and should utilize year-to-year comparisons or any other formats which in the bank's judgment enhance a reader's understanding. However, where trend information is relevant, reference to the five-year selected financial data appearing in Item 6 of a Form F–2 may be necessary.

* * * * *

Item 5—Security Ownership of Certain Beneficial Owners and Management

Set forth the same information as is required to be furnished by items 5 (d)(1), (d)(2), and (f) of Form F–5 at § 335.212.

Note: The information required by item 5 (d)(2) of Form F–5 need not be included for any nominee for election as a director.

* * * * *

Item 7—Compensation of Directors and Officers

Set forth the same information as is required to be furnished by item 7 (a), (b), (c) and (d) of Form F–5 at § 335.212.

Item 8—Interest of Management and Others in Certain Transactions

(a) Set forth the same information for the past three years, as is required to be furnished by items 7 (f), (g) and (h) of Form F–5 at § 335.212.

Note: The information required by item 7 (f), (g) and (h) of Form F–5 need not be included for any nominee for election as a director.

* * * * *

Item 10—Number of Equity Security Holders

State in the tabular form indicated below, the approximate number of holders of record of each class of equity securities of the bank as of the end of the last fiscal year.

(1)	(2)
Title of class	Number of record holders

Instructions. 1. Attention is directed to the definitions of the term "equity security" in section 3(a)(11) of the Act and to the definition of the term "held of record" in § 335.102(p)(1).

2. Information need not be given with respect to the number of holders of "restricted stock options", "qualified stock options", or options granted pursuant to a plan qualified as an "employee stock purchase plan", as those terms are defined in sections 422 through 424 of the Internal Revenue Code of 1986, as amended.

* * * * *

Item 13—Securities Being Registered

(a) *Capital stock.* If capital stock is to be registered, state the title of the class and describe such of the matters listed in paragraphs (a) (1) through (5) as are relevant. A complete legal description of the securities need not be given.

(1) Outline briefly: (i) Dividend rights; (ii) terms of conversion; (iii) sinking fund provisions; (iv) redemption provisions; (v) voting rights, including any provisions specifying the vote required by security holders to take action; (vi) any classification of the Board of Directors, and the impact of such classification where cumulative voting is permitted or required; (vii) liquidation rights; (viii) preemption rights; and (ix) liability to further calls or to assessment by the bank and for liabilities of the bank imposed on its stockholders under state statutes (e.g., to laborers, servants or employees of the bank), unless such disclosure would be immaterial because the financial resources of the bank or other factors make it improbable that liability under such state statutes would be imposed; (x) any restriction on alienability of the securities to be registered; and (xi) any provision discriminating against any existing or prospective holder of such securities as a result of such security holder owning a substantial amount of securities.

(2) If the rights of holders of such stock may be modified otherwise than by a vote of a majority or more of the shares outstanding, voting as a class, so state and explain briefly.

(3) If preferred stock is to be registered, describe briefly any restriction on the repurchase or redemption of shares by the bank while there is any arrearage in the payment of dividends or sinking fund installments. If there is no such restriction, so state.

(4) If the rights evidenced by, or amounts payable with respect to, the shares to be registered are, or may be, materially limited or qualified by the rights of any other authorized class of securities, include the information regarding such other securities as will enable investors to understand such limitations or qualifications. No

*SFAS 89—Statement of Financial Accounting Standards No. 89, Financial Reporting and Changing Prices, published by the Financial Accounting Standards Board.

information need be given, however, as to any class of securities all of which will be retired, provided appropriate steps to ensure such retirement will be completed prior to or upon delivery by the bank of the shares.

(5) Describe briefly or cross-reference to a description in another part of the document, any provision of the bank's charter or bylaws that would have an effect of delaying, deferring or preventing change in control of the bank and that would operate only with respect to an extraordinary corporate transaction involving the bank [or any of its subsidiaries], such as a merger, reorganization, tender offer, sale or transfer of substantially all of its assets, or liquidation. Provisions and arrangements required by law or imposed by governmental or judicial authority need not be described or discussed pursuant to this paragraph (a)(5). Provisions or arrangements adopted by the bank to effect, or further, compliance with laws or governmental or judicial mandate are not subject to the immediately preceding sentence where such compliance did not require the specific provisions or arrangements adopted.

(b) *Debt securities.* If debt securities are to be registered, state the title of such securities, the principal amount being offered, and, if a series, the total amount authorized and the total amount outstanding as of the most recent practicable date; and describe the matters listed in paragraphs (b) (1) through (10) as are relevant. A complete legal description of the securities need not be given. For purposes solely of this Item, debt securities that differ from one another only as to the interest rate or maturity shall be regarded as securities of the same class. Outline briefly:

(1) Provisions with respect to maturity, interest, conversion, redemption, amortization, sinking fund, or retirement;

(2) Provisions with respect to the kind and priority of any lien securing the securities, together with a brief identification of the principal properties subject to such lien;

(3) Provisions with respect to the subordination of the rights of holders of the securities to other security holders or creditors of the bank. Where debt securities are designated as subordinated in accordance with Instruction 1 to this Item, set forth the aggregate amount of outstanding indebtedness as of the most recent practicable date that by the terms of such debt securities would be senior to such subordinated debt and describe briefly any limitation on the issuance of such additional senior indebtedness or state that there is no such limitation;

(4) Provisions restricting the declaration of dividends or requiring the maintenance of any asset ratio or the creation or maintenance of reserves;

(5) Provisions restricting the incurrence of additional debt or the issuance of additional securities; in the case of secured debt, whether the securities being registered are to be issued on the basis of unbonded bondable property, the deposit of cash or otherwise; as of the most recent practicable date, the approximate amount of unbonded bondable property available as a basis for the issuance of bonds; provisions permitting the withdrawal of cash deposited as a basis for the issuance of bonds; and provisions permitting the release or substitution of assets securing the issue; *Provided, however,* That provisions permitting the release of assets upon the deposit of equivalent funds or the pledge of equivalent property, the release of property no longer required in the business, obsolete property, or property taken by eminent domain or the application of insurance moneys, and other similar provisions need not be described;

(6) The general type of event that constitutes a default and whether or not any periodic evidence is required to be furnished as to the absence of default or as to compliance with the terms of the indenture;

(7) Provisions relating to modification of the terms of the security or the rights of security holders;

(8) If the rights evidenced by the securities to be registered are, or may be, materially limited or qualified by the rights of any other authorized class of securities, the information regarding such other securities as will enable investors to understand the rights evidenced by the securities to the extent not otherwise disclosed pursuant to this Item; no information need be given, however, as to any class of securities all of which will be retired, provided appropriate steps to ensure such retirement will be completed prior to or upon delivery by the bank;

(9) If debt securities are to be offered at a price such that they will be deemed to be offered at an "original issue discount" as defined in paragraph (a) of section 1273 of the Internal Revenue Code (26 U.S.C. 1273), or if a debt security is sold in a package with another security and the allocation of the offering price between the two securities may have the effect of offering the debt security at such an original issue discount, the tax effects thereof pursuant to sections 1271–1278;

(10) The name of the trustee(s) and the nature of any material relationship with the bank or with any of its affiliates; the percentage of securities of the class necessary to require the trustee to take action; and what indemnification the trustee may require before proceeding to enforce the lien.

(c) *Warrants and rights.* If the securities described are to be offered pursuant to warrants or rights state:

(1) The amount of securities called for by such warrants or rights;

(2) The period during which and the price at which the warrants or rights are exercisable;

(3) The amount of warrants or rights outstanding;

(4) Provisions for changes to or adjustments in the exercise price; and

(5) Any other material terms of such rights or warrants.

(d) *Other securities.* If securities other than capital stock, debt, warrants or rights are to be registered, include a brief description (comparable to that required in paragraphs (a), (b) and (c) of this Item 13) of the rights evidenced thereby.

(e) *Market information for securities other than common equity.* If securities other than common equity are to be registered and there is an established public trading market for the securities, provide market information with respect to the securities comparable to that required by Item 12 of this Form F–1.

Instructions to Item 13. 1. Wherever the title of securities is required to be stated, there shall be given such information as will indicate the type and general character of the securities, including the following:

A. In the case of shares, the par or stated value, if any; the rate of dividends, if fixed, and whether cumulative or non-cumulative; a brief indication of the preference, if any; and if convertible or redeemable, a statement to that effect;

B. In the case of debt, the rate of interest; the date of maturity or, if the issue matures serially, a brief indication of the serial maturities, such as "maturing serially from 1955 to 1960"; if the payment of principal or interest is contingent, an appropriate indication of such contingency; a brief indication of the priority of the issue; and, if convertible or callable, a statement to that effect; or

C. In the case of any other kind of security, appropriate information of comparable character.

2. Where convertible securities or stock purchase warrants are being registered that are subject to redemption or call, the description of the conversion

terms of the securities or material terms of the warrants shall disclose:

A. Whether the right to convert or purchase the securities will be forfeited unless it is exercised before the date specified in a notice of the redemption or call;

B. The expiration or termination date of the warrants;

C. The kinds, frequency and timing of notice of the redemption or call, including the cities or newspapers in which notice will be published (where the securities provide for a class of newspapers or group of cities in which the publication may be made at the discretion of the bank, the bank should describe such provision); and

D. In the case of bearer securities, that investors are responsible for making arrangements to prevent loss of the right to convert or purchase in the event of redemption of call, for example, by reading the newspapers in which the notice of redemption or call may be published.

* * * * *

Item 16 * * *

Instructions as to Financial Statements

These instructions specify the balance sheets and statements of income required to be filed as part of a registration statement on this form. Subpart F governs the certification, form, and content of the balance sheets and statements of income required, including the basis of consolidation, and prescribes the statement of changes in capital accounts, statement of changes in financial position, statement of cash flows, and the schedules to be filed in support thereof.

A. Financial Statements of the Bank

1. *Balance Sheets.* (a) The bank shall file an audited balance sheet as of the close of its latest fiscal year unless such fiscal year has ended within 90 days prior to the date of filing the registration statement, in which case the balance sheet may be as of the close of the preceding fiscal year.

(b) If the latest fiscal year of the bank has ended within 90 days prior to the date of filing the registration statement and the balance sheet required by paragraph (a) is filed as of the end of the preceding fiscal year, there shall be filed as an amendment to the registration statement, within 120 days after the date of filing, an audited balance sheet of the bank as of the end of the latest fiscal year.

2. *Statements of Income.* (a) The bank shall file audited statements of income for each of the three fiscal years preceding the date of the balance sheet required by instruction 1(a).

(b) There shall be filed with each balance sheet filed under instruction 1(b) an audited statement of income of the bank for the fiscal year immediately preceding the date of the balance sheet.

3. *Omission of Banks' Financial Statements in Certain Cases.* Notwithstanding instructions 1 and 2, the individual financial statements of the bank may be omitted if consolidated statements of the bank and one or more of its subsidiaries are filed.

B. Consolidated Statements

4. *Consolidated Balance Sheets.* (a) There shall be filed an audited consolidated balance sheet of the bank and its majority-owned: (i) Bank premises subsidiaries, (ii) subsidiaries doing a foreign banking business, and (iii) significant subsidiaries, as of the close of the latest fiscal year of the bank unless such fiscal year has ended within 90 days prior to the date of filing the registration statement, in which case this balance sheet may be as of the close of the preceding fiscal year.

(b) If the latest fiscal year of the bank has ended within 90 days prior to the date of filing the registration statement, and the balance sheet required by paragraph (a) is filed as of the end of the preceding fiscal year, there shall be filed as an amendment to the registration statement, within 120 days after the date of filing an audited consolidated balance sheet of the bank and such subsidiaries as of the end of the latest fiscal year.

5. *Consolidated Statement of Income.* (a) There shall be filed audited statements of income of the bank and its majority-owned (i) bank premises subsidiaries, (ii) subsidiaries doing a foreign banking business, and (iii) significant subsidiaries, for each of the three fiscal years preceding the date of the consolidated balance sheet required by instruction 4(a).

(b) There shall be filed with each balance sheet filed under instruction 4(b), an audited consolidated statement of income of the bank and such subsidiaries for the fiscal year immediately preceding the date of the balance sheet.

C. Unconsolidated Subsidiaries and Other Persons

6. *Separate Statements of Unconsolidated Subsidiaries and Other Persons.* There shall be filed such other audited financial statements with respect to unconsolidated subsidiaries and other persons as are material to a proper understanding of the financial position and results of operations of the total enterprise. For purposes of this item, "other persons" include 50 percent owned persons and unconsolidated persons in which the bank takes up equity in undistributed earnings.

* * * * *

E. Historical Financial Information

10. *Scope of Part E.* The information required by part E shall be furnished for the seven-year period preceding the period for which statements of income are filed, as to the accounts of each person whose balance sheet is filed. The information is to be given as to all of the accounts specified whether they are presently carried on the books or not. Part E does not call for certification but only for a survey or review of the accounts specified. It should not be detailed beyond a point material to an investor.

* * * * *

17. *Omission of Certain Information.* (a) No information need be furnished as to any subsidiary, whether consolidated or unconsolidated, for the period prior to the date on which the subsidiary became a majority-owned subsidiary of the bank or of a predecessor for which information is required above.

(b) No information need be furnished hereunder as to any one or more unconsolidated subsidiaries for which separate financial statements are filed if all subsidiaries for which the information is so omitted, considered in the aggregate, would not constitute a significant subsidiary.

(c) Only the information specified in instruction 16 need be given as to any predecessor or any subsidiary thereof if immediately prior to the date of succession thereto by a person for which information is required, the predecessor or subsidiary was in insolvency proceedings.

* * * * *

§ 335.310 [Amended]

16. Section 335.310(c) is amended by removing the word "registrant's" from the first sentence and replacing it with the word "bank's".

17. Section 335.312 is amended by:

a. Removing the word "registrant" and replacing it with the word "bank" each time it appears in paragraph D of General Instructions, and removing the word "Six" and adding in its place the word "Three" in the first sentence of paragraph D;

b. Revising the heading of Part I and adding a sentence to the end of Item 1(c) of Part I immediately preceding Item 1(d);

c. Removing the phrase "items 5 (d), (e) and (g) of Form F–5" and replacing it with "items 5 (d)(1), (d)(2) and (f) of Form F–5" in Item 4 and replacing "item

5(e) of Form F–5" with "item 5(d)(2) of Form F–5" in the note to Item 4;

d. In Part II, revising instructions 2, 3 and 5(a) in Item 6.

e. Amending Item 7 by removing the last sentence from paragraph (c); revising Instruction 7; adding a note to Instruction 7; removing Instruction 8 and redesignating Instructions 9 and 10 as Instructions 8 and 9;

f. Revising Item 8 introductory text and paragraphs (a) through (c);

g. In Part III, revising the title in Items 9 and 10; and

h. Removing the phrase "in § 335.102(ee)" and replacing it with "in § 335.102(nn)" in paragraph (9) of Item 11.

§ 335.312 Form for annual report of bank (Form F–2).

Form F–2—Annual Report Under Section 13 of the Securities Exchange Act of 1934

* * * * *

Part I (See General Instruction F–2)

Item 1—Business

(c) * * *

The term "revenue" includes the total of the amounts reported in items (1), (6) and (7) of the income statement (Format F–9B).

* * * * *

Part II—(See General Instruction F–2)

* * * * *

Item 6—Selected Financial Data

* * * * *

Instructions

* * * * *

2. The following items shall be included in the table of financial data: net interest income; other operating income; provision for loan and lease losses; income (loss) from continuing operations; income (loss) from continuing operations per common share; total assets; long-term obligations and redeemable preferred stock and cash dividends declared per common share. Banks may include additional items which they believe would enhance an understanding of and would highlight other trends in their financial condition and results of operations. Briefly describe, or cross reference to a discussion thereof, factors such as accounting changes, business combinations or dispositions of business operations, that materially affect the comparability of the selected financial data. Discuss any material uncertainties which might cause the data not to be indicative of the bank's future financial condition or results of operations.

3. Those banks which provide five-year summary information in accordance with SFAS 89 may combine such information with the selected financial data appearing pursuant to this item.

* * * * *

5. In addition, (a) if debt securities are registered under section 12 of the Act, the bank shall show in tabular form for each fiscal year the ratio of earnings to fixed charges. If appropriate, the ratio of earnings to fixed charges for such periods shall also be shown on a total enterprise basis in a position of equal prominence with the ratio for the bank or the bank and its consolidated subsidiaries.

* * * * *

Item 7—Management's Discussion and Analysis of Financial Condition and Results of Operations

* * * * *

Instructions

* * * * *

7. Banks should furnish statistical information similar to that required by Securities Exchange Act Industry Guide 3 [Statistical disclosure by bank holding companies] SEC Rel. No. 34–23846, 51 FR 43599 (November 25, 1986), 17 CFR part 241 (1988) ("Guide 3") for each of the last three fiscal years of the bank, except, if the bank had assets of less than $200,000,000 or net worth of $10,000,000 or less as of the end of its latest fiscal year, information may be furnished for each of the last two fiscal years with respect to all items. If a material change in the information presented or the trend evidenced thereby has occurred, it may be appropriate to furnish statistical information for an additional interim period to keep the information from being misleading.

The information should be presented in tabular form and include descriptions of: I. Distribution of Assets, Liabilities, and Stockholder's Equity; Interest Rates and Interest Differentials; II. Investment Portfolio; III. Loan Portfolio; IV. Summary of Loan Loss Experience; V. Deposits; VI. Return on Equity and Assets; and VII. Short-Term Borrowings. Although no specific guidance as to the form and content is provided, relevant data, material to a description of lending and deposit activities, should include information about (a) yields and costs of various assets and liabilities, (b) maturities and repricing characteristics of various assets and liabilities and (c) risk elements, such as nonaccrual and past-due items in the lending portfolio. Generally, statistical information called for by Guide 3 should be based on average daily amounts. However, weekly or month-end averages may be used if compiling daily information is too costly or difficult as long as it is representative of operations. Banks are not required to justify, but are required to disclose, which method of computing averages is selected.

Note to instruction 7 of Item 7: If any such information is not reasonably available to the bank, the bank may present comparable information. Where information required by Guide 3 is substantially similar to that required by Call Report schedules (i.e.—Guide 3 items II and III, Investment Portfolio and Loan Portfolio, etc.), the Call Report schedule information may be presented instead.

* * * * *

Item 8—Financial Statements and Supplementary Data

These instructions specify the balance sheets and statements of income required to be filed as a part of annual reports on this form. Subpart F governs the certification, form, and content of the balance sheets and statements of income required, including the basis of consolidation, and prescribes the statement of changes in capital accounts, statement of changes in financial position, and/or statement of cash flows and the schedules to be filed in support thereof.

(a) Financial Statements of the Bank. (1) There shall be filed for the bank, in comparative columnar form, audited balance sheets as of the close of the last two fiscal years and audited statements of income for each of the three fiscal years preceding the date of the most recent balance sheet being filed.

(2) Notwithstanding paragraph (1), the individual financial statements of the bank may be omitted if consolidated statements of the bank and one or more of its subsidiaries are filed.

(b) *Consolidated Statements.* There shall be filed for the bank and its majority-owned: (1) Bank premises subsidiaries, (2) subsidiaries doing a foreign banking business, and (3) significant subsidiaries, in comparative columnar form, audited consolidated balance sheets as of the close of the last two fiscal years of the bank and audited consolidated statements of income for three fiscal years.

(c) *Separate Statements of Unconsolidated Subsidiaries and Other Persons.* There shall be filed such other audited financial statements with respect to unconsolidated subsidiaries and other persons as are material to a proper understanding of the financial

position and results of operations of the total enterprise. For purposes of this item, "other persons" include 50 percent owned persons and unconsolidated persons in which the bank takes up equity in undistributed earnings.

* * * * *

Part III—(See General Instruction F (3))

Item 9—Directors and Principal Officers of the Bank

* * * * *

Item 10—Management Compensation and Transactions

* * * * *

§ 335.321 [Amended]

18. Section 335.321 is amended a. by adding the phrase "except for items 10 or 11" at the end of the second sentence of paragraph B of the General Instructions, and inserting the following sentence immediately thereafter: "A report of an event specified in items 10 or 11 is to be filed within 5 business days after the occurence of the event; if the event occurs on a Saturday, Sunday, or holiday on which the FDIC is not open for business, then the 5 business day period shall begin to run on and include the first business day thereafter."; b. by removing the word "registrant" and substituting the word "bank" in the first sentence in paragraph (a) of Item 1; c. by removing the word "verified" and replacing it with the word "audited" wherever it appears in paragraph 2 under Financial Statements of Businesses Acquired, and d. by removing "a" in paragraph 2(a) in the last sentence, under Financial Statements of Businesses Acquired and replacing it with "an".

19. Section 335.331 is amended by a. removing the word "Six" and replacing it with the word "Three" in the first sentence in paragraph E; b. removing the words "verified financial statements" wherever they appear in paragraph (a)(5) of Item 1 and replacing them with the words "audited financial statements"; c. removing the words "registrant's" from the second sentence in paragraph (b)(5) of Item 1 and replacing it with the word "bank's"; and d. revising paragraphs (a)(4) and (c)(3) of Item 1 and adding a note to paragraph (c)(3) of Item 1 as follows:

§ 335.331 Form for quarterly report of a bank (Form F-4).

Form F-4

* * * * *

Item 1—Financial Statements

(a) * * *

* * * * *

(4) The statement of changes in financial position and/or statement of cash flows may be abbreviated, as appropriate.

* * * * *

(c) * * *

(3) Interim statements of cash flows/changes in financial position (See Statement of Financial Accounting Standards No. 95, Statement of Cash Flows) and statements of changes in capital accounts shall be provided for the period between the end of the preceding fiscal year and the end of the most recent fiscal quarter, and for the corresponding period of the preceding fiscal year. Such statements may also be presented for the cumulative twelve-month period ending during the most recent fiscal quarter and for the corresponding preceding period.

Note to paragraph (c)(3): Restatement of prior years' statements of financial position is encouraged but is not required.

* * * * *

§ 335.332 [Amended]

20. Section 335.332 is amended by: a. removing the word "registrant's" from the introductory text and paragraph B of General Instructions and replacing it with the word "bank's"; b. removing the word "registrant" from paragraphs B and C of General Instructions and SIGNATURES and replacing it with the word "bank"; and c. removing the word "Six" from the second sentence of paragraph C of General Instructions and replacing it with the word "Three".

§ 335.359 [Amended]

21. Section 335.359 is amended by removing the word "six" and adding in its place the word "three" in the first sentence of paragraph (a).

§ 335.401 [Amended]

22. Section 335.401 is amended by removing the word "Six" from the last sentence in paragraphs (a) and (c) and replacing it with the word "Three".

§ 335.402 [Amended]

23. Section 335.402 is amended by a. removing the word "Six" from the last sentence of paragraph (a) and the second sentence of paragraph (b), and replacing it with the word "Three"; and b. removing the phrase ", or if there are no changes from the previous filing, a signed statement to that effect under cover of Form F-11A" from the first sentence of paragraph (b).

§ 335.407 [Amended]

24. Section 335.407 is amended by removing the word "Six" from the Note and replacing it with the word "Three".

§ 335.408 [Amended]

25. Section 335.408 is amended by removing the word "Six" from the Note at the end of the section and replacing it with the word "Three".

26. New § 335.409 is added as follows:

§ 335.409 Going private transactions by a bank or its affiliates.

A bank or its affiliates (as defined in 17 CFR 240.13e-3) shall not engage in a Rule 13e-3 transaction (as defined in 17 CFR 240.13e-3) unless it meets the requirements of 17 CFR 240.13e-3, except that all filings shall be made with the FDIC and be titled with the name of the FDIC instead of the Securities and Exchange Commission.

§ 335.410 [Amended]

27. Section 335.410 is amended by changing "$3,000" to "$10,000" in paragraphs (h)(1) and (h)(2).

§ 335.503 [Amended]

28. Section 335.503 is amended by removing the word "six" from paragraph (a)(1) and the first sentence in paragraph (b), and replacing it with the word "three".

29. Section 335.507 is amended by revising the introductory text of paragraph (a) as follows:

§ 335.507 Additional withdrawal rights.

(a) *Rights.* In addition to the provisions of section 14(d)(5) of the Act, any person who has deposited securities pursuant to a tender offer has the right to withdraw any such securities during the following period such offer, request or invitation remains open.

* * * * *

§ 335.509 [Amended]

30. Section 335.509 is amended by removing the word "six" in paragraphs (a)(1) and (b)(1) and replacing it with the word "three".

31. New § 335.509a is added to read as follows:

§ 335.509a Equal treatment of security holders.

(a) No bidder shall make a tender offer unless:

(1) The tender offer is open to all security holders of the class of securities subject to the tender offer; and

(2) The consideration paid to any security holder pursuant to the tender offer is the highest consideration paid to any other security holder during the tender offer.

(b) Paragraph (a)(1) of this section shall not:

(1) Affect dissemination under § 335.505; or

(2) Prohibit a bidder from making a tender offer excluding all security holders in a state where the bidder is prohibited from making the tender offer by administrative or judicial action pursuant to a state statute after a good faith effort by the bidder to comply with such statute.

(c) Paragraph (a)(2) of this section shall not prohibit the offer of more than one type of consideration in a tender offer, provided that:

(1) Security holders are afforded equal rights to elect among each of the types of consideration offered; and

(2) The highest consideration of each type paid to any security holder is paid to any other security holder receiving that type of consideration.

(d) If the offer and sale of securities constituting consideration offered in a tender offer is prohibited by the appropriate authority of a state after a good faith effort by the bidder to register or qualify the offer and sale of such securities in such state:

(1) The bidder may offer security holders in such state an alternative form of consideration; and

(2) Paragraph (c) of this section shall not operate to require the bidder to offer or pay the alternative form of consideration to security holders in any other state.

(e) This section shall not apply to any tender offer with respect to which the FDIC, upon written request or upon its own motion, either unconditionally or on specified terms and conditions, determines that compliance with this section is not necessary or appropriate in the public interest or for the protection of investors.

32. Section 335.510 is amended by revising paragraph (b) as follows:

§ 335.510 Unlawful tender offer practices.

* * * * *

(b) Increase or decrease the percentage of the class of securities being sought or the consideration offered or the dealers' soliciting fee to be given in a tender offer unless such tender offer remains open for at least ten business days from the date that notice of such increase or decrease is first published or sent or given to security holders: *Provided, however,* That, for purposes of this paragraph, the acceptance for payment of an additional amount of securities not to exceed two percent of the class of securities that is the subject of the tender offer shall not be deemed to be an increase. For purposes of this paragraph, the percentage of a class of securities shall be calculated in accordance with section 14(d)(3) of the Act.

* * * * *

§ 335.512 [Amended]

33. Section 335.512 is amended by removing the word "four" from the initial Instruction and replacing it with the word "one".

§ 335.513 [Amended]

34. Section 335.513 is amended by removing the word "Six" from the initial Instruction and replacing it with the word "Three".

35. New § 335.521 is added as follows:

§ 335.521 Tender offers by issuers.

A bank or its affiliates shall not make an "issuer tender offer" unless the offer meets the requirements of 17 CFR 240.13e–4, except that all filings shall be made with the FDIC and be titled with the name of the FDIC instead of the Securities and Exchange Commission.

36. The undesignated centerheading preceding § 335.602 and § 335.602 are revised as follows:

Qualifications and Reports of Accountants

§ 335.602 General rules.

Every accountant's report with respect to financial statements filed under this part shall be dated, shall be signed manually, shall indicate the city and State where issued, and shall identify without detailed enumeration the financial statements covered by the report.

§ 335.603 [Removed and Reserved]

37. Section 335.603 is removed and reserved.

38. Section 335.604 is amended by revising paragraphs (a) (1) and (2) as follows:

(a) * * * (1) The FDIC will not recognize any person as a certified public accontant who is not duly registered and in good standing as such under the laws of the place of his/her residence or principal office. The FDIC will not recognize any person as a public accountant who is not in good standing and entitled to practice as such under the laws of the place of his/her residence or principal office.

(2)(i) The FDIC will not recognize any certified public accountant or public accountant as independent who is not in fact independent. For example, an accountant will be considered not independent with respect to any person or any of its parents, its subsidiaries, or other affiliates (A) in which, during the period of his/her professional engagement to examine the financial statements being reported on or at the date of his report, the firm or a member of the firm had, or was committed to acquire a direct financial interest or any material indirect financial interest or (B) with which during the period of his/her professional engagement to examine the financial statements being reported on, at the date of the report or during the period covered by the financial statements, the firm or a member of the firm was connected as a promoter, underwriter, voting trustee, director, officer, or employee. A firm will be deemed independent in regard to a particular person if a former officer or employee of the person is employed by the firm and the individual has been completely disassociated from the person and its affiliates and does not participate in auditing financial statements of the person or its affiliates covering any period of his/her employment by the person.

(ii) For the purposes of this section, the term "member" means (A) all partners, shareholders, and other principals in the firm, (B) any professional employee involved in providing any professional service to the person, its parents, subsidiaries, or other affiliates, and (C) any professional employee having managerial responsibilities and located in the engagement office or other office of the firm which participates in a significant portion of the audit.

* * * * *

§ 335.610 [Amended]

39. Section 335.610 is amended by revising the first sentence to read as follows: "Financial statements shall be prepared in accordance with the applicable requirements of Formats 9 A, B, C, and D."

40. Section 335.618 is revised as follows:

§ 335.618 Foreign activities.

If assets, revenue, or income (loss) before taxes and securities gains (losses), or net income (loss) associated with foreign activities, exceeded 10 percent of the corresponding amount in the related financial statements, the following disclosures concerning foreign activities shall be furnished in a note to the financial statements. The term "revenue" includes the total of the amounts reported in items (1), (6) and (7) of the income statement, Format F–9B.

(a) Loans. State separately loan categories as prescribed by schedule A column C of Consolidated Report of Condition, Schedule RC–C, FFIEC 031, as applicable. Categories of less than 10 percent of total loans related to foreign activities may be grouped with all other loans.

(b) Balances with banks in foreign countries. State separately balances with foreign branches of other U.S.

banks and with other banks in foreign countries. (See lines 3 (a) and (b) of Scheduled RC–A of the Consolidated Report of Condition, FFIEC 031. Also furnish the amount of interest-bearing balances included above.

(c) Deposit liabilities. Furnish deposit information as prescribed in Schedule RC–E, Part II of Consolidated Report of Condition, FFIEC 031. State also the amount of interest-bearing deposits in denominations of $100,000 or more.

(d) Other borrowings. State separately short-term borrowings, other liabilities for borrowed money, and other indebtedness related to foreign activities corresponding to the amounts reported on Schedule RC, FFIEC 031, items 14, 16, 17, 18, and 19.

(e) Income and expense summary. For each period for which an income statement is filed, furnish information as prescribed in part 1, column B and part 2 of the Statement of Income, Schedule RI–D, Part I, FFIEC 031. State in a note the basis of pricing money transfers and the policy governing allocation of income and expenses to foreign activities.

(f) Allowance for possible loan and lease losses. For each period for which a statement of income is filed, furnish in a note a reconciliation of changes in the allowance for possible loan and lease losses applicable to loans related to foreign activities.

(g) If disclosure above is required, state separately in a note for each significant geographic area, and in the aggregate for all other geographic areas not deemed significant, the following:

(1) Total assets (net of valuation allowances;

(2) Total net interest income;

(3) Provisions for loan and lease losses and for allocated transfer risk;

(4) Other net noninterest income (expense) including gains (losses) on securities not held in trading accounts; and

(5) Net income (loss).

Note to paragraph (g): A "significant geographic area" is one whose assets, operating income, or net income exceed 10 percent of the comparable amount as reported in the related financial statements.

§ 335.621 [Amended]

41. Section 335.621(e) is amended by changing "26(b)" to "22(b)".

42. Section 335.622 is amended by adding paragraph (d)(4) and revising paragraph (g)(2)(i) as follows:

§ 336.622 General notes to statement of income.

* * * * *

(d) * * *

"(4) Those banks adopting SFAS No. 96, Accounting for Income Taxes, should disclose such adoption and provide appropriate income tax expense disclosure as therein required, in lieu of paragraph (d)(1) of this section.

* * * * *

(g) * * *

(2) * * *

(i) Disclosure shall be made in a note to financial statements of total interest income, total interest expense, net interest income, provision for loan and lease losses, other income (expense) net, income before extraordinary items and cumulative effect of a change in accounting, net income, and per share data based upon such income for each full quarter within the two most recent fiscal years and any subsequent interim period for which income statements are presented.

* * * * *

§ 335.623 [Amended]

43. Section 335.623(g) is amended by changing the word "Board" in the first sentence to "FDIC".

44. Section 335.625 is revised as follows:

§ 335.625 Statement of changes in financial position, and/or statement of cash flows.

A statement of changes in financial position and/or statement of cash flows, as appropriate, shall be filed with each statement of income filed pursuant to this part.

45. Section 335.626 is amended by revising paragraph (a) as follows:

§ 335.626 Schedules to be filed.

(a) The following schedules shall be filed with each balance sheet filed under this part: Schedule I—Securities; Schedule III—Loans and Lease Financing Receivables; and Schedule IV—Bank Premises and Equipment.

* * * * *

46. Section 335. 627 is amended by:

a. Amending the table of contents at the beginning of the section by removing the entries for D. and E. and replacing them with "D. Schedules (Format F–9D);

b. Removing D. Statement of Changes in Financial Position (Format F–9D);

c. Redesignating E. Schedules as D. Schedules and revising the heading of newly designated D. to read "D. Schedules (Format F–9D)";

d. Revising General Instruction 1;

e. Revising A. Balance Sheet in its entirety;

f. Revising B. Statement of Income in its entirety;

g. Revising Schedules I and III of newly designated D in their entirety.

§ 335.627 Format F–9 financial statements.

* * * * *

General Instructions

1. *Preparation of Financial Statements.*—The formats are intended to serve as guides for preparation of financial statements required to be filed under this part. The formats are recommended presentations, but financial statements may be filed in such form and order as will best indicate their significance and character. Requirements for inclusion of financial statements in certain other guideline forms required by Part 335 are found in the instructions to such forms.

The formats for the statements of changes in financial position and cash flows are not set forth herein. Refer to SFAS No. 95 "Statement of Cash flows", Appendix C for an illustrative example of an acceptable format for banks.

Banks have the option of conforming their financial statement formats to the provisions of Article 9 of Regulation S–X of the SEC (17 CFR 210.9) in lieu of the formats set forth herein. Savings banks are encouraged to utilize Call Report formats for the Balance Sheet, Statement of Income, Statement of Changes in Equity Capital, and appropriate schedules.

* * * * *

A. Balance Sheet

The Balance Sheet shall be prepared in accordance with the instructions for the preparation of the Consolidated Report of Condition (FFIEC 031, 032, 033, 034 as applicable) except to the extent revised or expanded financial data presentation is necessary to meet the disclosure standards of the Securities Exchange Act of 1934, as amended.

Note: Banks subject to this part are required to report on the accrual basis of accounting.

The following captions and added *supplemental* instructions shall be observed in the preparation of the Balance Sheet required under this part.

Assets

1. *Cash and balances due from depository institutions.* (a) State separately (1) interest-bearing balances in other banks and (2) noninterest-bearing balances and cash.

(b) Any withdrawal and usage restrictions (including requirements of the Federal Reserve to maintain certain average reserve balances) or compensating balance requirements should be disclosed.

2. *Securities.* (a) Include securities held for investment only. Disclose the aggregate book value of investment

securities: show on the balance sheet parenthetically the aggregate market value at balance sheet date. The aggregate amounts should include securities pledged, loaned or sold under repurchase agreements and similar arrangements; borrowed securities and securities purchased under resale agreements or similar arrangements should be excluded.

(b) Disclose in a note the carrying value and market value of securities of (1) the U.S. Treasury and other U.S. Government agencies and corporations; (2) states of the U.S. and political subdivisions; and (3) other securities.

3. *Federal funds sold and securities purchased under agreements to resell.* These amounts should be presented gross and not netted against Federal funds purchased and securities sold under agreements to repurchase.

4. *Loans and lease financing receivables.* Disclose separately (1) total loans and lease financing receivables, (2) the related allowance for losses and (3) unearned income.

(a) Disclose on the balance sheet or in a note the amount of total loans in each of the following categories: (1) Commercial, financial and agricultural, (2) Real estate-construction, (3) Real estate-mortgage, (4) Installment loans to individuals, (5) Lease financing receivables, (6) Foreign, (7) Other. (State separately any other loan category regardless of relative size if necessary to reflect any unusual risks or uncertainties such as a substantial portion of total loans which are concentrated in one or a few industries or foreign countries).

(b) A series of categories other than those specified in (a) above may be used to present details of loans if considered a more appropriate presentation.

(c) The amount of foreign loans must be presented if the disclosures specified by § 335.618 are required.

(d) For each period for which an income statement is required, furnish in a note a statement of changes in the allowance for loan and lease losses showing the balances at beginning and end of the period, provision charged to income, recoveries of amounts charged off and losses charged to the allowance.

(e)(1)(i) For each balance sheet date, disclose in a note the aggregate dollar amount of loans (exclusive of loans to any such persons which in the aggregate do not exceed $60,000 during the latest year) made by the bank or any of its subsidiaries to directors, principal-officers, or principal holders of equity securities of the bank or any of its significant subsidiaries, or to any associate of such persons. For the latest fiscal year, an analysis of activity with respect to such aggregate loans to related parties should be provided. The analysis should include the aggregate amount at the beginning of the period, new loans, repayments, and other changes. (Other changes, if significant, should be explained).

(ii) This disclosure need not be furnished when the aggregate amount of such loans at the balance sheet date (or with respect to the latest fiscal year, the maximum amount outstanding during the period) does not exceed 5 percent of equity capital at the balance sheet date.

(2) If a significant portion of the aggregate amount of loans outstanding at the end of the fiscal year disclosed pursuant to (e)(1)(i) above relates to loans which are nonaccrual, past due (over 90 days) or restructured, as those terms are used in the Call Report, so state and disclose the aggregate amount of such loans along with such other information necessary to an understanding of the effects of the transactions of the financial statements.

(3) Notwithstanding the aggregate disclosure called for by (e)(1) above, if any loans were not made in the ordinary course of business during any period for which an income statement is required to be filed, provide an appropriate description of each such loan.

5. *Assets held in trading accounts.* Include securities or any other investments held for trading purposes only.

6. *Premises and fixed assets.*

7. *Other real estate owned.* State in a note (1) the basis at which carried, (2) the aggregate fair market value of all real estate owned other than bank premises with an explanation of the method of determining such fair market value, and (3) for each period for which an income statement is required, a reconciliation of any valuation allowance account, including the balance at the beginning and end of the period, provisions charged to income, and losses charged to the allowance.

8. *Investments in an indebtedness of unconsolidated subsidiaries and associated companies.*

9. *Customers' liability to the bank on acceptances outstanding.*

10. *Intangible assets.*

11. *Other assets.* Disclose separately on the balance sheet or in a note thereto any of the following assets or any other assets the amount of which exceeds 30 percent of equity capital. The remaining assets may be shown as one amount.

(1) Accrued interest.

(2) Net deferred tax charges.

12. *Total assets.*

Liabilities

13. *Deposits.* (a) Disclose separately the amounts of noninterest bearing deposits and interest bearing deposits. The amount of noninterest bearing deposits and interest bearing deposits in foreign banking offices must be presented if the disclosures provided by § 335.618 are required.

(b) State in a note the aggregate amount of (1) time certificates of deposit in denominations of $100,000 or more and (2) other time deposits in denominations of $100,000 or more, in domestic offices and, if § 335.618 applies, foreign offices.

14. *Federal funds purchased and securities sold under agreements to repurchase and other short term borrowings.* (a) Disclose separately on the balance sheet or in a note, amounts payable for (1) federal funds purchased and securities sold under agreements to repurchase; (2) commercial paper, and (3) other short term borrowings. Disclose any unused lines of credit for short-term financing.

(b) If the average balance outstanding during the period for any category was 30 percent or more of equity capital, provide the following information, with respect to each category, in a note:

(1) Weighted average interest rate at balance sheet date.

(2) Maximum amount of borrowings at any month-end during each period for which an end of period balance sheet is required.

(3) Approximate average borrowings outstanding during the period.

(4) Approximate weighted average interest rate for such average borrowings outstanding during the period.

15. *Demand notes issued to the U.S. Treasury.*

16. *Other borrowed money.*—See supplemental instruction to Item 14.

17. *Mortgage indebtedness and obligations under capitalized leases.* (a) Report the amount of mortgages, liens, or other encumbrances on premises and fixed assets and on other real estate owned for which the bank or its consolidated subsidiaries are liable. If the bank is the lessee on capitalized lease property, include the bank's liability for capitalized lease payments. (See the Call Report Glossary entry for "lease accounting" for a discussion of accounting with bank as lessee.)

(b) State in a note material terms and conditions of each obligation, including (but not limited to): (1) The general character of the debt; (2) the rate of interest; (3) the date of maturity or if maturing serially, a brief indication of the serial maturities; (4) if the payment of principal or interest is contingent, an appropriate indication of such contingency; (5) a brief indication of

priority; and (6) the amount outstanding at the balance sheet date.

18. *Bank's liability or acceptances executed and outstanding.* Report the amount of liability that is represented by drafts and bills of exchange that have been accepted by the reporting bank, or by others for its account, and that are outstanding. See the Call Report Glossary entry for "Bankers Acceptances" for further information.

19. *Notes and debentures subordinated to deposits.* (a) Report the amount of outstanding notes and debentures (including mandatory convertible debt) that are subordinated to the deposits of the consolidated bank (see the Call Report Glossary entry for "Subordinated Notes and Debentures").

(b) State in a note the material terms and conditions of each obligation including, but not limited to: (1) The general character of the debt; (2) the rate of interest; (3) the date of maturity, or if maturing serially, an indication of serial maturities; (4) if the payment of principal or interest is contingent, an appropriate indication of such contingency; (5) a brief indication of priority; (6) the amount outstanding at the balance sheet date; and (7) if convertible, the basis.

20. *Other liabilities.* Disclose separately on the balance sheet or in a note any of the following liabilities or any other items which are individually in excess of 25 percent of the equity capital (except that amounts in excess of 5 percent of equity capital should be disclosed with respect to item (4)). The remaining items may be shown as one amount. (1) Income taxes payable, (2) Deferred income taxes, (3) Indebtedness to affiliates and other persons the investments in which are accounted for by the equity method, (4) Indebtedness to directors, executive officers, and principal holders of equity securities of the bank or any of its significant subsidiaries, (5) Accounts payable and accrued expenses, (6) Commitments and contingent liabilities, minority interest in consolidated subsidiaries.

21. *Total Liabilities.*

22. *Limited-life preferred stock.* (a) Report the amount of any preferred stock that has a stated maturity date that can be redeemed at the option of the holder (excluding those issues of preferred stock that automatically convert into perpetual preferred stock or common stock at a stated date). State on the face of the balance sheet the title of each issue, the carrying amount and redemption amount. (If there is more than one issue, these amounts may be aggregated on the face of the balance sheet and details concerning each issue may be presented in the note required by paragraph (b) below.) Show also the dollar amount of any shares subscribed but unissued, and show the deduction of subscriptions receivable therefrom. If the carrying amount is different from the redemption amount, describe the accounting treatment for such difference in the note required by paragraph (b) below. Also state in this note or on the face of the balance sheet, for each issue, the number of shares authorized and the number of shares issued or outstanding, as appropriate.

(b) State in a separate note captioned "Redeemable Preferred Stock": (1) A general description of each issue, including its redemption features (e.g., sinking fund, at option of holders, out of future earnings) and the rights, if any, of holders in the event of default, including the effect, if any, on junior securities in the event that a required dividend, sinking fund, or other redemption payment(s) is not made; (2) the combined aggregate amount of redemption requirements for all issues each year for the five years following the date of the latest balance sheet; and (3) the changes in each issue for each period for which an income statement is required to be filed.

Equity Capital

23. *Perpetual preferred stock.* Report the amount of preferred stock that does not have a stated maturity date or that cannot be redeemed at the option of the holder (including those issues of preferred stock that automatically convert into common stock at a stated date). State on the face of the balance sheet, or if more than one issue is outstanding, state in a note, the title of each issue and the dollar amount thereof. Show also the dollar amount of any shares subscribed but unissued, and show the deduction of subscriptions receivable therefrom. State on the face of the balance sheet or in a note, for each issue, the number of shares authorized and the number of shares issued or outstanding, as appropriate. Show in a note or separate statement the changes in each class of preferred shares reported herein for each period for which an income statement is required to be filed.

24. *Common stock.* Report the aggregate par or stated value of outstanding common stock. State for each class of shares the title of issue, the number of shares authorized, issued and outstanding, the par value per share and the dollar amount thereof. Show also the dollar amount, if any, of each class of shares subscribed to but unissued, and show the deduction of subscriptions receivable therefrom. Disclose in the statement or in a note the changes in the aggregate par or stated value of outstanding common stock for each period for which an income statement is required.

25. *Surplus.*

26. *Undivided profits and capital reserves.* Report the amounts appropriated and unappropriated; restrictions which limit the payment of dividends; and the amount of undivided profits which represents undistributed earnings of 50 percent or less owned companies.

27. *Cumulative foreign currency translation adjustments.* (Not applicable to banks with domestic offices only).

28. *Total equity capital.*

29. *Total liabilities, limited-life preferred stock, and equity capital.*

B. Statement of Income

The statement of income shall conform generally to the Consolidated Report of Income (FFIEC 031, 032, 033, 034 as applicable) and related instructions thereto, except to the extent revised or expanded financial data presentation is necessary to meet the disclosure standards of the Securities Exchange Act of 1934, as amended.

Note to B: See § 335.601 for general requirements of financial reporting.

The following captions and added supplemental instructions shall be observed in the preparation of the statement of income required under this subpart.

1. *Interest income.* Include commitment and origination fees, late changes and current amortization of premium and accretion of discount on loans which are related to or are an adjustment of the loan interest rate. Disclose separately.

(a) Interest and fee income on loans.

(b) Income from lease financing receivables.

(c) Interest income on balance due from depository institutions.

(d) Interest and dividend income on securities—Disclose separately (1) taxable interest income, (2) nontaxable interest income, and (3) dividends. State in a note interest and dividend income on

(i) U.S. Treasury securities and U.S. Government agency and corporation obligations.

(ii) Securities issued by states and political subdivisions in the U.S.

(iii) Other domestic securities (debt and equity).

(iv) Foreign securities (debt and equity).

(e) Interest income from assets held in trading accounts.

(f) Interest income on federal funds sold and securities purchased under agreements to resell.

(2) *Interest Expense.* Disclose separately:

(a) Interest on deposits.

(i) Interest on time certificates of deposit of $100,000 or more.

(ii) Interest on other deposits.

(b) Expense of federal funds purchased and securities sold under agreements to repurchase.

(c) Interst on demand notes issued to the U.S. Treasury and on other borrowed money.

(d) Interest on mortgage indebtedness and obligations under capitalized leases.

(e) Interest on notes and debentures subordinated to deposits.

(3) *Net interest income.*

(4) *Provision for loan and lease losses.*

(5) *Net interest income after provision for loan and lease losses.*

(6) *Noninterest income.* Disclose separately:

(a) Income from fiduciary activities.

(b) Service charges on deposit accounts.

(c) Trading gains (losses) and fees from foreign exchange transactions.

(d) Other foreign transaction gains (losses).

(e) Gains (losses) and fees from assets held in trading account. Report the net gain or loss from the sale of assets reportable in item 5, "Assets held in trading accounts," other than those trading gains (losses) and fees relating to foreign exchange transactions reported in item 6(c) above.

(f) Other noninterest income. Report all operating income of the bank not required to be reported in item 1(a) through 1(f) and 6(a) through 6(e). State separately the dollar amount of any individual component of this item which exceeds 25 percent of the total.

7. *Gain (losses) on securities not held in trading accounts.* Report the net gain or loss. Disclose in a note the method used to determine the cost of investments sold and the related income taxes.

8. *Noninterest expense.* (a) Salaries and employee benefits.

(b) Expenses of premises and fixed assets.

(c) Other noninterest expense. See item 6(f) for threshold for disclosure of individual components.

(d) Total noninterest expense.

(e) Amortization of goodwill.

(f) Minority interest in income of consolidated subsidiaries.

9. *Income (loss) before income taxes and extraordinary items and other adjustments.*

10. *Applicable income taxes (on item 9). See § 335.622(d).*

11. *Income (loss) before extraordinary items and other adjustments.*

12. *Extraordinary items and other adjustments.*

(a) Extraordinary items and other adjustments, gross of income taxes.

(b) Applicable income taxes (on item 12(a)).

(c) Extraordinary items and other adjustments, net of income taxes.

13. *Net income (loss).* Report the sum of items 11 and 12(c).

14. *Earnings per share data.*

D. Schedules (Format F–9D)

Schedule I—Securities

Exclude assets held in trading accounts.

	Book value (Col. A)	Market value (Col. B)
1. U.S. Treasury securities		
2. U.S. Government agency and corporation obligations:		
a. All holdings of U.S. Government-issued or guaranteed certificates of participation in pools of residential mortgages		
b. All other		
3. Securities issued by states and political subdivisions in the U.S		
4. Other domestic securities (debt and equity):		
a. All holdings of private (i.e., nongovernment-issued or guaranteed) certificates of participation in pools of residential mortgages		
b. All other		
5. Foreign securities (debt and equity)		
6. Total (sum of items 1 through 5) (total of column A must equal call report schedule RC, item 2)		
7. Pledged securities		

* * * * *

Schedule III—Loans and Lease Financing Receivables

Net of unearned income and before adjustment for allowance for loan and lease losses. Excluding assets held in trading accounts.

	Book value
1. Loans secured by real estate:	
a. Construction and land development	
b. Secured by farmland (including farm residential and other improvements)	
c. Secured by 1–4 family residential properties	
d. Secured by multifamily (5 or more) residential properties	
e. Secured by nonfarm nonresidential properties	
2. Loans to depository institutions:	
a. To commercial banks in the U.S.:	
(1) To U.S. branches and agencies of foreign banks	
(2) To other commercial banks in the U.S	
b. To other depository institutions in the U.S	
b. To other depository institutions in the U.S	
c. To banks in foreign countries:	
(1) To foreign branches of other U.S. banks	
(2) To other banks in foreign countries	
3. Loans to finance agricultural production and other loans to farmers	
4. Commercial and industrial loans:	
a. To U.S. addressees (domicile)	
b. To non-U.S. addressees (domicile)	
5. Acceptance of other banks	
6. Loans to individuals for household, family, and other personal expenditures (includes purchased paper):	
a. Credit cards and related plans	
b. Other	
7. Loans to foreign governments and official institutions (including foreign central banks)	
8. Obligations (other than securities) of states and political subdivision in the U.S.:	
a. Nonrated industrial development obligations	
b. Other obligations (excluding securities)	
9. Other loans:	
a. Loans for purchasing or carrying securities (secured and unsecured)	
b. All other loans	
10. Lease financing receivables (net of unearned income)	
11. Less: Any unearned income on loans reflected in items 1–9 above	
12. Total loans and leases, net of unearned income (sum of items 1 through 10 minus item 11) (must equal call report schedule RC, item 4a)	
Note: Commercial paper included in call report schedule RC–C	

* * * * *

47. A new § 335.628 "Pro Forma Financial Information" is added to subpart F as follows:

§ 335.628 Pro forma financial information.

I. Presentation Requirements

(a) Pro forma financial information shall be furnished when any of the following conditions exist:

(1) During the most recent fiscal year or subsequent interim period for which a balance sheet is required by § 335.623 a significant business combination

accounted for as a purchase has occurred;

(2) After the date of the most recent balance sheet filed pursuant to § 335.628, consummation of a significant business combination to be accounted for by either the purchase method or pooling-of-interests method of accounting has occurred or is probable;

(3) The bank is offering its securities to the security holders of a significant business to be acquired or the proceeds from the offered securities will be applied, directly or indirectly, to the purchase of a specific significant business;

(4) The disposition of a significant portion of a business either by sale, abandonment or distribution to shareholders by means of a spin-off, split-up or split-off has occurred or is probable and such disposition is not fully reflected in the bank's financial statements included in the filing; or

(5) Other transactions or events have occurred or are probable for which disclosure of pro forma financial information would be material to investors.

(b) A business combination or disposition of a business shall be considered significant if:

(1) A comparison of the most recent annual financial statements of the business acquired or to be acquired and the bank's most recent annual consolidated financial statements filed at or prior to the date of acquisition indicates that the business would be a significant subsidiary under conditions specified in § 335.103(nn): or

(2) The business to be disposed of meets the conditions of a significant subsidiary in § 335.102(nn).

(c) When consummation of more than one transaction has occurred or is probable during a fiscal year, the tests of significance in paragraph (b) of this section shall be applied to the cumulative effect of those transactions. If the cumulative effect of the transactions is significant, pro forma financial information shall be presented.

(d) For purposes of this section the term "business" should be evaluated in light of the facts abd circumstances involved and whether there is sufficient continuity of the acquired entity's operations prior to and after the transactions so that disclosure of prior financial information is material to an understanding of future operations. A presumption exists that a separate entity, a subsidiary, or a division is a business. However, a lesser component of an entity may also constitute a business. Among the facts and circumstances which should be considered in evaluating whether an acquisition of a lesser component of an entity constitutes a business are the following:

(1) Whether the nature of the revenue-producing activity of the component will remain generally the same as before the transaction; or

(2) Whether any of the following attributes remain with the component after the transaction:

(i) Physical facilities,
(ii) Employee base,
(iii) Market distribution system,
(iv) Sales force,
(v) Customer base,
(vi) Operating rights,
(vii) Production techniques, or
(viii) Trade names.

(e) This section does not apply to transactions between a bank and its totally owned subsidiaries.

II. Preparation Requirements

(a) *Objective.* Pro forma financial information should provide investors with information about the continuing impact of a particular transaction by showing how it might have affected historical financial statements if the transaction had been consummated at an earlier time. Such statement should assist investors in analyzing the future prospects of the bank because they illustrate the possible scope of the change in the bank's historical financial position and results of operations caused by the transactions.

(b) *Form and content.* Pro forma financial information shall consist of a pro forma condensed balance sheet, pro forma condensed statements of income, and accompanying explanatory notes. Where a limited number of pro forma adjustments are required and those adjustments are easily understood, a narrative description of the pro forma effects of the transaction may be furnished in lieu of the statements described herein.

(2) The pro forma financial information shall be accompanied by an introductory paragraph which briefly sets forth a description of (i) the transaction; (ii) the entities involved, and (iii) the periods for which the pro forma information is presented. In addition, an explanation of what the pro forma presentation shows shall be set forth.

(3) The pro forma condensed financial information need only include major captions (*i.e.*, the numbered captions) prescribed by § 335.627 A and B. Where any major balance sheet caption is less than 10 percent of total assets, the caption may be combined with others. When any major income statement caption is less than 15 percent of average net income of the bank for the most recent three fiscal years, the caption may be combined with others. In calculating average net income, loss years should be excluded, unless losses were incurred in each of the most recent three years, in which case the average loss shall be used for purposes of this test. Notwithstanding these tests, *de minimis* amounts need not be shown separately.

(4) Pro forma statements shall ordinarily be in columnar form showing condensed historical statement, pro forma adjustments, and the pro forma results.

(5) The pro forma condensed income statement shall disclose income (loss) from continuing operations before nonrecurring charges or credits directly attributable to the transaction. Material nonrecurring charges or credits and related tax effects which result directly from the transaction and which will be included in the income of the Bank within the 12 months succeeding the transaction shall be disclosed separately. It should b e clearly indicated that such charges or credits were not considered in the pro forma condensed income statement. If the transaction for which pro forma financial information is presented related to the disposition of a business, the pro forma results should give effect to the disposition and be presented under an appropriate caption.

(6) Pro forma adjustments related to the pro forma condensed income statement shall be computed assuming the transaction was consummated at the beginning of the fiscal year presented and shall include adjustment which give effect to events that are (i) directly attributable to the transaction, (ii) expected to have a continuing impact on the bank, and (iii) factually supportable. Pro forma adjustments related to the pro forma condensed balance sheet shall be computed assuming the transaction was consummated at the end of the most recent period for which a balance sheet is requied by § 335.623 and shall include adjustments which give effect to events that are directly attributable to the transaction and factually supportable, regardless of whether they have a continuing impact or are nonrecurring. All adjustments should be referenced to notes which clearly explain the assumption involved.

(7) Historical, primary and fully diluted per share data based on continuing operations (or net income if the bank does not report discontinued operations, extraordinary items, securities gains (losses), or the cumulative effects of accounting changes) for the bank, and primary and

fully diluted pro forma per share data based on continuing operations before nonrecurring charges or credits directly attributable to the transaction shall be presented on the face of the pro forma condensed income statement together with the number of shares used to compute such per share data. For transactions involving the issuance of securities, the number of shares used in the calculation of the pro forma per shares outstanding during the period, adjusted to give effect to shares subsequently issued or assumed to be issued had the particular transaction or event taken place at the beginning of the period presented. If a convertible security is being issued in the transaction, consideration should be given to the possible dilution of the pro forma per share data.

(8) If the transaction is structured in such a manner that significantly different results may occur, additional pro forma presentations shall be made which give effect to the range of possible results.

Instructions

1. The historical statement of income used in the pro forma financial information shall not report operations of a segment that has been discontinued, extraordinary items, securities gains (losses), or the cumulative effects of accounting changes. If the historical statement of income includes such items, only the appropriate portion of the statement (and appropriate captions) should be used in preparing pro forma results.

2. For a purchase transaction, pro forma adjustments for the income statement shall include amortization of any intangible asset, depreciation and other adjustments based on the allocated purchase price of net assets acquired. Disclose in a note the effect which the purchase adjustment will have on the reported results of operations for each of the next five years if such adjustments:

(a) Involve a significant write-down of the historical cost of the acquired assets to their fair value at the acquisition date; and

(b) Will have a significant effect on earnings in periods immediately following the acquisition which will be progressively eliminated over a relatively short period.

3. For a disposition transaction, the pro forma financial information shall begin with the historical financial statements of the bank and show the deletion of the business to be divested along with the necessary pro forma adjustments, including adjustments relating to expenses that will be or have been incurred on behalf of the business to be divested, *e.g.*, advertising costs and personnel expenses.

4. When consummation of more than one transaction has occurred or is probable during a fiscal year, the pro forma financial information may be presented on a combined basis; however, in some circumstances, *e.g.*, where some transactions have been consummated and the others are probable, it may be more useful to present the pro forma financial information on a nonaggregated basis, even though some or all of the transactions would not meet the tests of significance individually. For combined presentations, a note should explain the various transactions and disclose the maximum variances in the pro forma financial information which would occur for any of the possible combinations. If the pro forma financial information is presented in a proxy or information statement for purposes of obtaining shareholder approval of one of the transactions, the effects of that transaction must be clearly set forth.

5. Income tax effects, if any, of pro forma adjustments normally should be calculated at the statutory rate in effect during the periods for which pro forma condensed income statements are presented and should be reflected as a separate pro forma adjustment.

(c) Periods to be presented.

(1) A pro forma condensed balance sheet as of the end of the most recent period for which a consolidated balance sheet of the bank is required by § 335.623 shall be filed, unless the transaction is already reflected in such balance sheet.

(2)(i) Pro forma condensed statements of income shall be filed for only the most recent fiscal year and for the period from the end of the most recent fiscal year to the most recent interim date for which a balance sheet is required. A pro forma condensed statement of income may be filed for the corresponding interim period of the preceding fiscal year. A pro forma condensed statement of income shall not be filed when the historical income statement reflects the transaction for the entire period.

(ii) For a business combination accounted for as a pooling of interests, the pro forma income statements (which are in effect a restatement of the historical income statements as if the combination had been consummated) shall be filed for all periods for which historical income statements of the bank are required.

(3) Pro forma condensed statements of income shall be presented using the bank's fiscal year-end. If the most recent fiscal year-end of any other entity involved in the transaction differs from the bank's most recent fiscal year-end by more than 93 days, the other entity's income statement shall be brought up to within 93 days of the bank's most recent fiscal year-end, if practicable. This updating could be accomplished by adding subsequent interim period results to the most recent fiscal year-end information and deducting the comparable preceding year interim period results. Disclosure shall be made of the periods combined and of the sales or revenues and income for any periods which were excluded from or included more than once in the condensed pro forma income statements (*e.g.*, an interim period that is included both as part of the fiscal year and the subsequent interim period).

(4) Whenever unusual events enter into the determination of the results shown for the most recently completed fiscal year, the effect of such unusual events should be disclosed and consideration should be given to presenting a pro forma condensed income statement for the most recent twelve-month period, in addition to those required in paragraph (c)(2)(i) of this section, if the most recent twelve-month period is more representative of normal operations.

III. Presentation of Financial Forecast

(a) A financial forecast may be filed in lieu of the pro forma condensed statements of income required by § 335.628 II(b)(1).

(1) The financial forecast shall cover a period of at least 12 months from the later of (i) the date of the most recent balance sheet included in the filing or (ii) the consummation date or estimated consummation date of the transaction.

(2) The forecasted statement of income shall be presented in the same degree of detail required by § 335.628 II(b)(3) for the pro forma condensed statements of income.

(3) Assumptions particularly relevant to the transaction and effects thereof should be clearly set forth.

(4) Historical condensed financial information of the bank and the business acquired or to be acquired, if any, shall be presented for at least a recent 12 month period in parallel columns with the financial forecast.

(b) Such financial forecast shall be presented in accordance with the

guidelines established by the American Institute of Certified Public Accountants.

(c) Forecasted earnings-per-share data shall be substituted for pro forma per-share data.

(d) This section does not permit the filing of a financial forecast in lieu of pro forma information required by generally accepted accounting principles.

48. Section 335.701 is amended by adding a note at the end of the section as follows:

§ 335.701 Filing of material with the FDIC.

* * * * *

Note: Official filings made at the FDIC's office in Washington, DC should be addressed as follows:

Attention: Registration and Disclosure Section, Division of Supervision, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

§ 335.702 [Amended]

49. Section 335.702 is amended by removing the words "at the New York, Chicago, and San Francisco Federal Reserve Banks and" from the second sentence.

By Order of the Board of Directors.

Dated at Washington, DC this 5th day of December, 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89-29531 Filed 12-28-89; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 799

[Docket No. 90932-9232]

Revisions to the Commodity Control List Based on COCOM Review; Chemical and Petroleum Equipment; Transportation Equipment; Electronics and Precision Instruments; Chemicals, Metalloids, Petroleum Products and Related Materials; Corrections

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule; corrections.

SUMMARY: This rule makes several corrections to the Export Administration Regulations (EAR). These corrections address inaccuracies contained in the final rule (FR Doc. 89-23559) published in the **Federal Register** (54 FR 41055-41068) on October 5, 1989. This rule, which neither expands nor limits the provisions of the EAR, affects Export Control Commodity Numbers 1416A, 1502A, 1529A, 1537A and 1585A of Supplement No. 1 to § 799.1 (the Commodity Control List).

EFFECTIVE DATE: This rule is effective December 29, 1989.

FOR FURTHER INFORMATION CONTACT: Kathryn Sullivan, Regulations Branch, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377-4479.

The following corrections are to be made:

1. On page 41057, in the third column, under item 6, in the regulatory text, in the second line of paragraph (f)(3)(ii), "20 rev/min" should read "220 rev/min".

2. On page 41060, in the first column, under item 11, in the regulatory text, in the first line of paragraph (h), "non-contract" should read "non-contact".

3. On page 41060, in the first column, in the regulatory text, under item 11, in the second to last line of paragraph (j), "exceeding I" should read "exceeding 1".

4. On page 41061, in the first column, under item 15, lines eleven and twelve of the amendatory text are corrected to read "By removing the Note immediately following the technical notes;".

5. On page 41063, in the third column, under item 18, the second to last amendatory instruction is revised to read "By redesignating Advisory Note 3, Notes 4 and 5, and (Advisory) Note 6 for the People's Republic of China to read (Advisory) Note 1, Note 2, Note 3, and (Advisory) Note 4 for the People's Republic of China, respectively;".

6. On page 41065, in the first column, under item 22, in the regulatory text, the first and second lines of Technical Note 1 are corrected to read

" "Superconductive" materials are materials (i.e., metals, alloys or compounds)".

7. On page 41065, in the first column, under item 22, in the regulatory text, the third line of Technical Note 2 is corrected to read "specific "superconductive" material is the".

8. On page 41065, in the second column, under item 24, the last amendatory instruction in the column is corrected to read "By revising in paragraph (b) the phrase "High speed" to read "Mechanical high speed";".

Dated: December 27, 1989.

Iain S. Baird,

Acting Deputy Assistant Secretary for Export Administration.

[FR Doc. 89-30339 Filed 12-28-89; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

[Regs. No. 4 and 16]

20 CFR Parts 404 and 416

RIN 0960-AC64

Determining Disability and Blindness; Substantial Gainful Activity

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: These final rules raise from $300 to $500 the average monthly earnings guidelines we use to determine whether persons with impairments other than blindness are able to do substantial gainful activity (SGA) for purposes of Social Security disability benefits provided under title II of the Social Security Act (the Act) and Supplemental Security Income (SSI) benefits based on disability provided under title XVI of the Act. They also raise the monthly earnings and monthly hours of work guidelines we use to determine whether a person has performed services for purposes of a trial work period month under title II of the Act.

The amount of average monthly earnings that ordinarily demonstrates SGA has not been increased since January 1, 1980, and the amount that shows the performance of services for a trial work period month has not been raised since January 1, 1979. We are raising these levels now after reassessing the current guidelines during our effort to improve our incentives for disabled persons to return to work and in consideration of recommendations of the Disability Advisory Council. We believe that the increase in the amount of earnings and services which constitute SGA and trial work will provide a more meaningful opportunity for title II beneficiaries to attempt to return to work.

DATES: These rules are effective January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Dave Smith, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965-1758.

SUPPLEMENTARY INFORMATION: These final rules increase the amount of earnings we use as guidelines to assist us in evaluating the work activity of claimants and beneficiaries with impairments other than blindness under title II of the Act and of claimants with impairments other than blindness under

title XVI of the Act. We use evaluation guides, including earnings guidelines, to determine whether an individual has shown the ability to do SGA. Under the previous earnings guidelines in §§ 404.1574 and 416.974, if a person claiming title II or title XVI benefits or receiving title II benefits based on disability had earnings from work activities as an employee that averaged more than $300 a month, we would ordinarily consider that the person had engaged in SGA. If a person had average earnings of less than $190 per month, we would consider that he or she had not engaged in SGA unless there was evidence to the contrary. Under the final rules, the $300 per month limit is raised to $500 per month and the $190 per month limit is raised to $300 per month beginning in calendar years after 1989.

We believe that this increase in the SGA level is a significant improvement to the existing work incentive provisions and is a fiscally responsible change.

In revising these amounts, we considered two proposals from the Disability Advisory Council. The Disability Advisory Council proposed that the SGA level be: (1) Initially adjusted to reflect the growth in average wages since it was last increased; and (2) indexed to average wage growth in future years.

While the final rules do not implement the Disability Advisory Council's proposal to index the SGA level to average wage growth in future years, we are exploring ways to provide for periodic review of our SGA levels. If the Disability Advisory Council's combined proposal to raise the SGA level and adjust it for average wage increases were adopted, it is estimated that the title II program costs over the next 5 years would increase by an additional $400 million over the cost of these final rules. If the proposed SGA level of $500 were indexed to average wage growth, it is estimated that the title II program costs would increase by an additional $230 million over the next 5 years.

These final rules also increase the monthly earnings amounts and the hours of self-employment we use to determine if work activity during a trial work period represents services under the trial work period provisions of title II of the Act. In § 404.1592(b), we define "services" as any activity, even though it is not SGA, which is done by a person in employment or self-employment for pay or profit, or is the kind normally done for pay or profit. We use this guide when reviewing work done by a person receiving Social Security disability benefits under title II of the Act during his or her trial work period.

We are amending § 404.1592(b) to increase the minimum amount of earnings that we consider shows that a person is performing or has performed services during a trial work period from $75 a month to $200 a month, and the number of hours worked in self-employment that we consider to represent services from 15 hours to 40 hours a month. We are increasing both the amount of earnings and hours in self-employment that constitute services for a trial work period month to encourage more title II beneficiaries to attempt to work without losing their benefits. We believe that both of these increases, are more representative of a normal work effort. These figures represent a judgment we have made based on our experience with these types of work efforts.

The Disability Advisory Council also recommended increasing the amount of earnings that counts toward a trial work period from $75 per month to the amount of the SGA level. Although we agree that an increase in the trial work period exempt amount as shown in these final rules is warranted, we have not adopted the Disability Advisory Council's proposal. The legislative history of the trial work period provision indicates that the Congress recognized and intended that the amount that constitutes trial work need not constitute SGA. In 1960, when the trial work period provision was enacted, the report of the House Ways and Means Committee said:

> * * * Your committee intends that any month in which a disabled person works for gain, or does work of a nature generally performed for gain, be counted as a month of trial work. Thus the services rendered in a month need not constitute substantial gainful activity in order for the month to be counted as part of the trial-work effort * * *

We estimate that raising the trial work period exempt amount as recommended by the Disability Advisory Council would increase title II program costs by $90 million over a 5-year period, as more people would be receiving benefit payments. In addition, the administrative costs would increase at the rate of an estimated $75 per beneficiary per year.

The provisions of title XVI concerning the trial work period and the cessation of disability because of the performance of SGA were eliminated as of July 1, 1987, pursuant to section 4 of the Employment Opportunities for Disabled Americans Act, Public Law No. 99-643. We are currently preparing a comprehensive notice of proposed rulemaking covering these and other changes to title XVI made by Public Law No. 99-643. These proposed rules, among other things, will include the deletion of § 416.992 governing the trial work period and § 416.992a governing the reentitlement period which, as of July 1, 1987, are no longer applicable in adjudicating continuing eligibility for SSI based on disability.

These rules were published as a Notice of Proposed Rulemaking in the **Federal Register** on July 25, 1989 (54 FR 30907). We received 243 comments from governmental agencies, special interest organizations, and private citizens.

We have grouped the comments according to the issues raised. Most commenters expressed approval of the proposed regulations, although many of those also believed that further changes ought to be made.

General Statement

A commonly expressed concern of the commenters is that the proposed SGA and trial work period earnings level are not high enough to provide for adequate income for persons with disabilities. The following discussion clarifies the intent of the SGA and trial work period levels and explains our position on work activity and the use of the work incentive provisions currently available to title II beneficiaries.

A successful return to work usually involves a progression of events, beginning with an initial attempt at work and continuing through the time a person can increase work activity to the point of being able to successfully do SGA. From the day a person with a disabling impairment begins work, he or she has almost 4 years of continued support beginning with the 9-month trial work period and progressing through the 36-month extended period of eligibility.

The intent of the trial work period is to provide a beneficiary with the opportunity to test his or her ability to work without loss of Social Security disability benefits or medical insurance. During this time, a person's disability benefits will not be terminated based on his or her work regardless of the type of the work performed, the amount of the earnings, or the number of hours worked. However, because Congress has provided that an individual is only entitled to 9 months of a trial work period, it is necessary to have standards for determining whether in a given month an individual has performed services for trial work period purposes.

At the end of the trial work period, we assess work activity to see if a person has demonstrated the ability to do SGA, which is defined as the performance of work activity for pay or profit that involves doing significant physical or

mental activities. The SGA level is the amount of average monthly earnings that we use as a guideline to assist in determining whether a person has engaged in substantial gainful activity. This level is only intended to be an indicator of the ability to work. It is not intended to represent the amount of income for a person to live on, nor is it intended as an income supplement to disability benefits. It should also be noted that factors other than earnings are considered in determining if a person has done SGA. We deduct from earnings those expenses for items and services which are related to the person's impairment and which are necessary for the person to work. In addition, we count only the value of earnings which are actually attributable to the person's ability to work. For example, if a person is paid $4 per hour, but due to the quality of work, the time it takes to get the job done, and the supervision required, the employer believes the value of the work is really only $3 per hour, we would use the $3 per hour rate in determining if the SGA level is met.

When a person demonstrates through work at the SGA earnings level that he or she is able to perform SGA, disability benefits are stopped. However, eligibility for Medicare benefits continues for at least 39 months after the end of the trial work period. There is also an extended period of eligibility for disability benefits which continues for 36 months after the end of the trial work period. If a person is unable to continue earning at the SGA level during this period, he or she will begin to get disability benefits again without the necessity of filing a new claim.

When the trial work period, extended period of eligibility and extended Medicare eligibility period (at least 4 years) have ended, there are other protections for people who become unable to continue to work and have to file a new application for disability benefits. If the new period of disability began within 5 years of the end of the prior period of disability, the person does not have to serve another 5-month waiting period in order to receive disability benefits or another 24-month waiting period to become entitled to Medicare benefits again. Both benefits will become effective with the first full month the person is found disabled.

The trial work period and SGA are just two parts of a total package of incentives and support for disabled beneficiaries who want to work. They must be viewed as part of this complete package in order to understand the level of support offered.

Comment: Several commenters favored changes in the title II program which would create more of a similarity between the title II program and the title XVI program, i.e., elimination of the trial work period and the extended period of eligibility and establishment of a one dollar offset of benefits for every two dollars earned. Some commenters believed that the current title II rules have a variety of inequities which create confusion and concern among beneficiaries.

Response: The Secretary does not have the authority to make these suggested changes to the trial work period and extended period of eligibility because they are statutory provisions. Only Congress can eliminate or alter these provisions through legislation. A disability benefit offset provision, which would create title II work incentives similar to those in the title XVI program, is currently under consideration by Congress.

Comment: Many commenters suggested increasing the minimum monthly earnings amount that counts towards the trial work period earnings level to match the SGA level. Other commenters suggested raising the trial work period earnings level to $290 (i.e., about 20 hours of work per week at minimum wage). Another commenter suggested that it be increased, but provided no alternative amount.

Response: As noted previously in this preamble, the legislative history of the trial work period provision makes it clear that Congress did not intend to link the trial work period level to the amount that constitutes SGA. Furthermore, we believe that the trial work period level should also not be associated with the amount that represents a minimum wage. The minimum wage amount is set as a level for employers to base payment for services. It does not represent an ability to work or the complexity of work but rather what the market will bear. The trial work period level is set at a level to indicate that a person is trying to work but has not necessarily regained the ability to perform SGA.

It should be noted that the trial work period level is not a limit on earnings. In fact, during the trial work period a person can have unlimited earnings. It is not until nine trial work period service months have been completed, i.e., nine months of work at earnings over the trial work period level, that the work activity is evaluated to see if it is substantial and gainful. If it is not, a beneficiary continues to receive full benefits until such time as he or she demonstrates the ability to perform SGA.

Raising the trial work period level to $290 a month would also be very costly, estimated at $26 million over a 5-year period. We believe that the increase from $75 to $200 is fiscally responsible. However, we plan to develop a procedure for review and possible adjustment of the trial work period amount.

Comment: Several other letters recommended changes to the trial work period, such as extending it to provide a longer opportunity to test the ability to work or having more than one trial work period in a period of disability.

Response: Making changes such as these would require legislative action. In June 1989, we suggested legislation which would expand the trial work period and give beneficiaries an opportunity to test their ability to work over a sustained period of time by providing that the 9-month trial work period would be exhausted *only* if services were performed in 9 months within a 60-month period. This proposal would also repeal the provision which precludes eligibility for a new trial work period for a disabled worker who became reentitled to disability benefits without having served a waiting period. In addition, we are exploring improvements and alternatives to the trial work period and the extended period of eligibility through the current Research Demonstration Program.

Comment: Most of the commenters recommended adopting some form of indexing of the earnings amounts that we consider to show that a person has performed services during a trial work period or has performed SGA, pegged either to average wage growth or the inflation rate in future years. The concern cited is that an automatic mechanism is needed to increase the trial work period and SGA amounts in response to inflation to avoid future erosion of these monetary levels.

Response: If the new SGA level of $500 were indexed to reflect average wage growth or inflation, it is estimated that the title II program costs would increase by an additional $230 million over the next 5 years.

We believe the responsible approach is to reassess the SGA and trial work period levels periodically rather than to institute automatic annual increases. During these periodic reassessments, we will try to set a level of earnings which will encourage work attempts and provide a valid indicator of ability to work while not discouraging independence from the benefit rolls.

It should be noted that there are provisions in the title II and title XVI programs that act to enhance the SGA earnings level as the cost of living rises. The SGA earnings guideline amounts apply to "countable earnings" in determining whether work is SGA. Countable earnings exclude impairment-related work expenses and earnings that do not reflect the value of a person's actual work, i.e., subsidized earnings. Because impairment-related work expenses and the value of subsidized earnings increase proportionately to inflation, greater portions of a person's total earnings will be excluded in determining countable earnings as these costs rise.

Comment: If the SGA level is not going to be indexed to reflect future inflation, then SGA should not be presumed when a disabled worker's earnings go over the level because of an increase in his or her hourly wage rate.

Response: We believe that an increase in the hourly wage rate is an indication of increased value of the work being performed and demonstrates the ability of a person to sustain work. A pay raise generally is a reflection of an improvement in a person's job performance and is an indication that the person is continuing on the way to self support.

Comment: Many commenters proposed an SGA increase above the proposed SGA amount. Some recommended that the SGA level be raised to the SGA level applicable to the blind, currently $740. Others suggested $580, an amount equal to a 40-hour work week at the Federal minimum wage rate. Another commenter proposed $700. The majority of those favoring a higher increase suggested that we adopt the Disability Advisory Council's proposal to adjust the SGA amount to reflect the growth in average wages since the last increase. If we had adopted the Advisory Council proposal, the SGA level would be increased to $550, effective January 1, 1990.

Response: Section 223(d)(4) of the Act authorizes the Secretary to prescribe the level of earnings for establishing SGA for nonblind disabled individuals. However, the same section of the Act mandates that the SGA earnings level for blind individuals may not be less than the exempt amount for retired individuals under section 203(f)(8). The distinction between the blind and nonblind disabled was consciously made by Congress. The House and Senate conference reports accompanying the Social Security Amendments of 1977 clearly stated that a different SGA amount was being established for blind persons and that the conferees did not intend that the amount be applied to the nonblind disabled. Notwithstanding the program cost involved in making the SGA level for the blind applicable to the nonblind, it should be for Congress to eliminate the distinction in the SGA levels for the blind and the nonblind that it created.

The Disability Advisory Council expressed concern that raising the SGA level to the poverty level would create a disincentive to work among low-wage persons with disabilities. Some members of the Disability Advisory Council also believe that raising SGA to a level which approaches the Federal minimum wage level would have the same effect. We share those concerns because, rather than encouraging disabled beneficiaries' efforts to leave the disability rolls, a higher SGA level could entice some to supplement their benefits with earnings from work activity held just below the SGA level. A higher SGA level could also prompt some of the working disabled to stop work and file an application for benefits. Once they were found disabled, they could return to work and retain their entitlement if they limited their work to keep their earnings below SGA. As indicated earlier in the preamble to these regulations, the SGA level is only intended to be an indicator of ability to work. If we were to further raise the SGA level, there would be less incentive for people to expand work activity and leave the benefit rolls.

Moreover, there are other work incentives in the title II program that enhance the SGA level and provide a measure of security for the disabled who are making an effort to work. The Social Security Disability Amendments of 1980 introduced the extended Medicare eligibility provision which allows Medicare coverage to continue for at least 39 months after the trial work period is completed. The continuation of hospital and medical insurance coverage is more important to many disabled workers than a higher SGA level. Another provision of the 1980 amendments allows a disabled worker to receive cash benefits for months in which earnings do not reach the SGA level during a specified period after the trial work period. In these months, the disabled worker receives both a disability benefit and the earned income without penalty. Finally, under the impairment-related work provision enacted in 1980, a disabled worker can have earnings well above the new SGA level without losing benefits if there are deductible impairment-related work expenses or subsidized earnings present to reduce countable earnings below the SGA level.

We believe the increased SGA level we are adopting is fiscally responsible and also provides an added incentive for the disabled to become economically independent from the title II program.

Comment: Three commenters expressed concern over the impact the increase in the SGA level to $500 will have on the Vocational Rehabilitation (VR) reimbursement program in which reimbursement of State vocational rehabilitation programs is based upon the number of program participants who are successfully rehabilitated.

Response: In the short term, fewer people might fit under the definition of "successful rehabilitation" and reimbursements may drop because, under the new SGA level, we will consider VR successful if the person who received the services works for 9 months at a level of at least $500 per month rather than the $300 level which had been used. However, we believe that the higher SGA level will be a good indicator of whether an individual can perform work activity that involves doing significant physical or mental activities.

Comment: Several commenters suggested that Medicare coverage be protected even after the SGA level is reached.

Response: The present extended Medicare eligibility provision provides for continuing Medicare coverage after a person's earnings reach the SGA level.

This provision permits continued hospital and medical protection for at least 39 months after the trial work period is completed. If the beneficiary has already met the 24-month waiting period for Medicare, coverage continues for the 39 months even if a person is not entitled to disability benefits because of SGA level earnings. For beneficiaries who have not yet met the 24-month waiting period, months during the extended period of eligibility count as Medicare waiting period months even though disability benefits are not paid.

In addition, Congress has recently provided for a Medicare buy-in for individuals under age 65 who continue to be disabled, but are no longer entitled to Medicare coverage solely because their earnings exceed the SGA level. They will be able to purchase Medicare coverage during specified enrollment periods for the same monthly premium as that charged for Medicare's hospital insurance (HI) benefits for uninsured individuals.

The provision allows for coverage under the HI program for months after June 1990.

Comment: One commenter recommended that § 404.1592(b) be

changed to clarify when we will exclude certain types of paid training from the trial work period.

Response: This issue will be addressed by a proposed regulation which would incorporate Social Security Rulings into the Regulations. It will be published in the Federal Register for public comment prior to any final decision.

Comment: Another commenter recommended that we allow impairment-related work expenses to be deducted during the trial work period when we decide if an individual has completed a service month.

Response: We disagree that impairment-related work expenses should be deducted from earnings during the trial work period because of the purpose of the trial work period which is to provide a period of time in which a person can test his or her ability to work without facing the loss of disability benefits, rather than to test the amount of the person's earnings potential. It should also be noted that after completion of the trial work period, impairment-related work expenses are deducted from those same earnings to determine if work is considered SGA.

Comment: Several commenters expressed concern over the accuracy of the cost estimates of additional increases in the SGA and trial work period levels and of indexing those levels for future increases.

Response: We continue to believe our cost estimates are accurate. They are based on such factors as the increased number of awards and the decreased number of terminations. The figures are based on the review of actual data. Although the estimates are as accurate as possible, they are subject to change due to possible changes in claimant and beneficiary work activity which we cannot anticipate.

Comment: Many commenters expressed their support for the proposed regulations and believed they are fair and reasonable. They believe that the changes being made by this final rule are fiscally responsible and will encourage people with disabilities to attempt to return to work.

Regulatory Procedures

Executive Order 12291

Regulatory Impact Analysis

A. *Introduction*—The Secretary has determined that these regulations require a regulatory impact analysis under Executive Order 12291 because they will result in a major increase in costs for the Federal government. Accordingly, the Department has prepared this Regulatory Impact Analysis to identify the cost impact of these changes and the various alternatives that were explored, and to inform the public of the economic considerations supporting these proposed revisions in accordance with Executive Order 12291.

Executive Order 12291 requires that a regulatory impact analysis be performed on any major rule, i.e., a rule that is 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.

B. *Nature of the Program*—Benefits to disabled and blind individuals are provided under title II and title XVI of the Act. Disability is defined under both programs as "* * * inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment * * *"

We use earnings guidelines to evaluate a person's work activity to determine whether the work activity is SGA and therefore whether that person may be considered disabled under the law. While this is only one of the tests used to determine disability, it is an important tool in disability evaluation. We evaluate the work activity of persons claiming or receiving disability benefits under title II of the Act and that of persons claiming benefits because of a disability under title XVI of the Act. These final regulations increase the amounts of those earnings guidelines.

C. *Intended Effect*—We expect that the increases in the amount of earnings and services which constitute SGA and trial work will provide a more meaningful opportunity for title II beneficiaries to return to work. In addition, the increases will permit some disabled persons with earnings in excess of the regulatory limit being changed ($300 a month) but less than the amount in these final rules, to receive benefits.

D. *Projected Costs* ($ in millions)

	Fiscal Year:					
	1990	1991	1992	1993	1994	Total
Program Costs						
Title II	$26	$42	$77	$87	$92	$324
SSI	4	13	17	20	23	77
Medicare	1	5	10	25	35	76
Medicaid	20	30	35	40	45	170
Administrative Costs						
Workyears	80	230	160	60	20	
Costs	9	23	13	5	2	52

The pattern of administrative costs reflects the one-time increase in the SGA amount. As general wage levels continue to rise while the SGA amount remains the same, there will be less incentive for working disabled persons to apply for benefits. As a result, the only large increases in claims and related workloads will occur in the first 2 or 3 years after the change. Workload increases toward the end of the estimating period will be relatively small.

Although the costs are significant, we believe that these changes are necessary improvements in existing work incentives, and that they are fiscally responsible changes.

Paper Work Reduction Act

These final rules impose no additional reporting and recordkeeping requirements subject to Office of Management and Budget clearance.

Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities since these rules affect only individuals and States. Therefore, a regulatory flexibility analysis as provided in Public

Law 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 13.802, Disability Insurance; No. 13.807, Supplemental Security Income Program.)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-age, Survivors and disability insurance.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental security income.

Dated: December 4, 1989.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: December 18, 1989.

Louis W. Sullivan,

Secretary of Health and Human Services.

Chapter III of title 20 of the Code of Federal Regulations is amended as follows:

PART 404—[AMENDED]

1. The authority citation for Subpart P of Part 404 continues to read as follows:

Authority: Secs. 202, 205(a), (b), and (d) through (h), 216(i), 221(a) and (i), 222(c), 223, 225, and 1102 of the Social Security Act; 42 U.S.C. 402, 405(a), (b), and (d) through (h), 416(i), 421(a) and (i), 422(c), 423, 425, and 1302; sec. 505(a) of Pub. L. 96–265, 94 Stat. 473; secs. 2(d)(2), 5, 6, and 15 of Pub. L. 98–460, 98 Stat. 1797, 1801, 1802, and 1808.

2. Section 404.1574 is amended by revising paragraphs (b)(2)(v), (b)(2)(vi), (b)(3)(v), (b)(3)(vi), (b)(4)(v) and (b)(4)(vi), and by adding paragraphs (b)(2)(vii), (b)(3)(vii) and (b)(4)(vii) to read as follows:

§ 404.1574 Evaluation guides if you are an employee.

* * * * *

(b) * * *

(2) * * *

(v) Your earnings averaged more than $280 a month in calendar year 1979;

(vi) Your earnings averaged more than $300 a month in calendar years after 1979 and before 1990; or

(vii) Your earnings averaged more than $500 a month in calendar years after 1989.

(3) * * *

(v) Your earnings averaged less than $180 a month in calendar year 1979;

(vi) Your earnings averaged less than $190 a month in calendar years after 1979 and before 1990; or

(vii) Your earnings averaged less than $300 a month in calendar years after 1989.

(4) * * *

(v) Your average earnings are not greater than $280 a month in calendar year 1979;

(vi) Your average earnings are not greater than $300 a month in calendar years after 1979 and before 1990; or

(vii) Your average earnings are not greater than $500 a month in calendar years after 1989.

* * * * *

3. Section 404.1592 is amended by revising paragraph (b) to read as follows:

§ 404.1592 The trial work period.

* * * * *

(b) *What we mean by services.* When used in this section, "services" means any activity, even though it is not substantial gainful activity, which is done by a person in employment or self-employment for pay or profit, or is the kind normally done for pay or profit. If you are an employee, we will consider your work to be "services" if in any calendar year after 1989 you earn more than $200 a month ($75 a month is the amount for calendar years 1979 through 1989, and $50 a month is the amount for calendar years before 1979). If you are self-employed, we will consider your activities "services" if in any calendar year after 1989, your net earnings are more than $200 a month ($75 a month is the amount for calendar years 1979 through 1989, and $50 a month is the amount for calendar years before 1979), or you work more than 40 hours a month in the business in any calendar year after 1989 (15 hours a month is the figure for calendar years before 1990). We generally do not consider work to be "services" when it is done without remuneration or merely as therapy or training, or when it is work usually done in a daily routine around the house, or in self-care.

* * * * *

PART 416—[AMENDED]

1. The authority citation for subpart I of Part 416 continues to read as follows:

Authority: Secs. 1102, 1614(a), 1619, 1631(a) and (d)(1), and 1633 of the Social Security Act; 42 U.S.C. 1302, 1382c(a), 1382h, 1383(a) and (d)(1), and 1383b; secs. 2, 5, 6, and 15 of Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808.

2. Section 416.974 is amended by revising paragraphs (b)(2)(iv), (b)(2)(v), (b)(2)(vi), (b)(3)(iv), (b)(3)(v), (b)(3)(vi), (b)(4)(v) and (b)(4)(vi), and by adding paragraphs (b)(2)(vii), (b)(3)(vii), and (b)(4)(vii) to read as follows:

§ 416.974 Evaluation guides if you are an employee.

* * * * *

(b) * * *

(2) * * *

(iv) Your earnings averaged more than $260 a month in calendar year 1978;

(v) Your earnings averaged more than $280 a month in calendar year 1979;

(vi) Your earnings averaged more than $300 a month in calendar years after 1979 and before 1990; or

(vii) Your earnings averaged more than $500 a month in calendar years after 1989.

(3) * * *

(iv) Your earnings averaged less than $170 a month in calendar year 1978;

(v) Your earnings averaged less than $180 a month in calendar year 1979;

(vi) Your earnings averaged less than $190 a month in calendar years after 1979 and before 1990; or

(vii) Your earnings averaged less than $300 a month in calendar years after 1989.

(4) * * *

(v) Your average earnings are not greater than $280 a month in calendar year 1979;

(vi) Your average earnings are not greater than $300 a month in calendar years after 1979 and before 1990; or

(vii) Your average earnings are not greater than $500 a month in calendar years after 1989.

* * * * *

[FR Doc. 89–30233 Filed 12–28–89; 8:45 am]

BILLING CODE 4190–11–M

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20 CFR Part 416

[Regs. No. 16]

RIN 0960–AC75

Supplemental Security Income for the Aged, Blind, and Disabled; Presumptive Disability and Presumptive Blindness; Categories of Impairments—AIDS Extension Date

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: We may pay benefits to a person applying for supplemental security income benefits on the basis of disability or blindness before making a formal determination when available information indicates a high probability that disability exits. These findings of presumptive disability and blindness may be made at the Social Security field offices only for specified impairment categories; at the State agencies, they may be made for any impairment

category. The presumptive disability category for acquired immunodeficiency syndrome (AIDS) was due to expire on December 31, 1989. We are extending the expiration date of the presumptive disability category for AIDS through December 31, 1991. New treatments for AIDS are now being tested, and additional time is needed to evaluate the efficacy of these treatments.

EFFECTIVE DATE: These final regulations will be effective December 28, 1989 through December 31, 1991, when they will expire, unless extended or revised and promulgated again.

FOR FURTHER INFORMATION CONTACT: William J. Ziegler, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965–1759.

SUPPLEMENTARY INFORMATION:

On February 11, 1985, we published interim regulations in the **Federal Register** (50 FR 5573) adding AIDS, as then defined by the Centers for Disease Control (CDC), to the impairment categories in § 416.934 to permit field offices to find presumptive disability for this disease. Those regulations were scheduled to expire on February 11, 1988.

In final regulations published in the **Federal Register** (53 FR 3739) on February 9, 1988, we extended the expiration date for the AIDS presumptive disability category until December 31, 1989.

Section 1631(a)(4)(B) of the Social Security Act (the Act) provides that a claimant applying for supplemental security income benefits based on disability or blindness may receive up to 3 months' payments prior to the determination of the individual's disability or blindness if he or she is presumptively disabled or blind and otherwise eligible. When a claimant, who is not working, alleges disability due to AIDS, the field office is allowed to make a finding of presumptive disability after a confirming contact has been made to ascertain that this disease with one or more manifestations (described in Appendix 1 of subpart I of 20 CFR part 416) has been diagnosed by a licensed physician. Confirmation of this diagnosis is made by contact with a physician or some other medical or treating source, such as a member of a hospital or clinic staff, who is able to confirm that such a diagnosis has been made. Presumptive disability may be found immediately upon confirmation of the diagnosis of AIDS with manifestation(s) in Appendix 1 and need not be delayed for the receipt of the actual medical reports or records. A final disability determination is made later when the State agency receives sufficient medical evidence.

We are again extending the expiration date in these final regulations. This presumptive disability category for AIDS will not be effective through December 31, 1991. Several treatments are now being tested, and additional time is needed to be able to evaluate the efficacy of these treatments. Because AIDS continues to have severe symptoms and a high mortality rate, we are extending the sunset date for an additional 2-year period.

We have made no revisions in the medical criteria used in determining the manifestations of AIDS for presumptive disability purposes. The criteria are in Appendix 1, subpart I of 20 CFR Part 416. Thus, under these amendments, the Social Security Administration will continue to use the same manifestations of AIDS that it has been using since February 9, 1988.

Because of the dynamic nature of research concerning the diagnosis, evaluation, and treatment of AIDS, we will periodically review and reassess this category. We intend to continue to carefully monitor these regulations to determine whether they will need to be revised and updated to reflect advances in scientific knowledge and treatment of this disease. Therefore, these final regulations will cease to be effective after December 31, 1991, unless extended by the Secretary or revised and promulgated again as a result of the findings from the evaluation period.

Regulatory Procedures

The Department, even when not required by statute, as a matter of policy, generally follows the Administrative Procedure Act notice of proposed rulemaking and public comment procedures specified in 5 U.S.C. 553 in the development of its regulations. The Administrative Procedure Act provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b), good cause exists for waiver of notice of proposed rulemaking and public comment procedures on these regulations because they are unnecessary. These regulations involve only the extension of the expiration date for the AIDS presumptive disability category, and make no changes to the rules for finding presumptive disability or to the medical criteria used for determining the manifestations of AIDS. The current regulations expressly provide that the AIDS category may be extended by the Secretary, as well as revised and promulgated again. Since we are not making any revisions to the current criteria being used for making findings of presumptive disability in the AIDS category, use of public comment procedures is not contemplated by the existing regulations and is unnecessary under the Administrative Procedure Act. If we decide at a later date to make any changes in the AIDS evaluation criteria after review of the results of treatment studies now in progress, we will, of course, propose any such revisions for public comment.

Executive Order 12291

This extension of the expiration date for the AIDS presumptive disability category will have no additional impact on current budget costs since it merely extends existing authority for making presumptive disability findings in AIDS cases.

The Secretary has determined that this is not a major rule under Executive Order 12291 because these regulations do not meet any of the threshold criteria for a major rule. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they only affect disability claimants under title XVI of the Act.

Paperwork Reduction Act

These regulations impose no reporting or recordkeeping requirements necessitating clearance by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Income Program)

List of Subjects in 20 CFR Part 416

Administrative Practice and Procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI).

Dated: November 30, 1989.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: December 18, 1989.

Louis W. Sullivan,

Secretary of Health and Human Services.

For the reasons set out in the preamble, part 416, subpart I, chapter III of title 20, Code of Federal Regulations, is amended as set forth below.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart I—Determining Disability and Blindness

1. The authority citation for Subpart I continues to read as follows:

Authority: Secs. 1102, 1614(a), 1619, 1631(a) and (d)(1), and 1633 of the Social Security Act; 42 U.S.C. 1302, 1382c(a), 1382h, 1383(a) and (d)(1), and 1383b; secs. 2, 5, 6, and 15 Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808.

2. Section 416.934 is amended by revising paragraph (k) to read as follows:

§ 416.934 Impairments which may warrant a finding of presumptive disability or presumptive blindness.

* * * * *

(k) Allegation of acquired immunodeficiency syndrome (AIDS) with one or more manifestations listed in Appendix 1 of this subpart, as diagnosed by a licensed physician; this category is effective only through December 31, 1991, unless extended by the Secretary or revised and promulgated again.

[FR Doc. 89–30232 Filed 12–28–89; 8:45 am]

BILLING CODE 4190–11–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2582

RIN 1210–AA31

Bonding Under The Federal Employees' Retirement System Act of 1986

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with certain technical changes, an interim rule which applies the temporary bonding regulations under the Employee Retirement Income Security Act of 1974 (ERISA) to the Thrift Savings Fund (Fund) established pursuant to the provisions of the Federal Employees' Retirement System Act of 1986 (FERSA). The interim rule being adopted as final by this document also prescribes the amount of bonds required under FERSA for fiduciaries and other persons who handle funds or other property of the Fund.

This document is being issued because the Secretary of Labor (Secretary) is required by FERSA to prescribe regulations necessary to carry out the bonding requirements of FERSA on a permanent basis. The final rule contained in this document will help to ensure that each fiduciary and each person who handles funds or other property of the Fund will be properly bonded.

EFFECTIVE DATE: This final rule is effective January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Judith Bleich Kahn, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC 20210, telephone (202) 523–7901 (FTS 523–7901); or Daniel J. Maguire, Esq., Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Washington, DC 20210, telephone (202) 523–9596.

SUPPLEMENTARY INFORMATION:

Background

The Federal Employees' Retirement System Act of 1986 (FERSA, Pub. L. 99–335, 100 Stat. 515, 5 U.S.C. 8401 *et seq.*) provides a tax-deferred savings plan ("Thrift Savings Plan") as an option for federal employees, whose contributions may be matched in part by contributions made by employing agencies of the United States Government. Contributions under the Thrift Savings Plan are invested in one or more of three separate investment funds which together comprise the Fund.

In general, the fiduciary responsibility, prohibited transaction, bonding and related rules applicable to the management of the Fund under FERSA are derived from similar rules applicable to private sector employee benefit plans under ERISA.

The bonding requirements applicable to the Fund are set forth in section 8478 of FERSA, which closely parallels section 412 of ERISA. Section 8478(a) of FERSA requires, with certain exceptions, that each fiduciary and each person who handles funds or other property of the Fund shall be bonded as provided in section 8478 against loss by reason of acts of fraud or dishonesty. In this connection, section 8478(b)(1) provides that the Secretary shall prescribe the amount of a bond required under section 8478 at the beginning of each fiscal year. Section 8478(b)(1) further provides that the amount of bond shall not be less than 10 percent of the amount of funds handled, but in no case less than $1,000 nor more than $500,000 except that the Secretary, after due notice and opportunity for a hearing to all interested parties, may prescribe a bond in excess of $500,000. Under section 8478(b)(2), in prescribing the amount of a bond for purposes of section 8478(b)(1), the amount of funds handled must be determined by reference to the amount of funds handled during the preceding fiscal year by the person, group or class to be covered by the bond (or by their predecessor or predecessors, if any), or to the amount of funds handled during the current fiscal year, estimated as provided in regulations prescribed by the Secretary.

Pursuant to section 8478(c), a bond obtained with respect to the Fund must also include the terms and conditions required by the Secretary and must have as surety thereon a corporate surety company approved for federal bonds. Any such bond, whether covering an individual or a group or class, must be in a form or of a type approved by the Secretary.

Section 8478(d) makes it unlawful for any person to whom FERSA's bonding requirements apply to handle, disburse, or otherwise exercise custody or control over Fund property without being bonded as required by section 8478. It is also unlawful under section 8478(d) for any fiduciary, or any other person having authority to direct the performance of functions involving the handling of Fund property, to permit any such function to be performed by any person to whom FERSA's bonding requirements apply if the requirements of section 8478 are not met.

Section 8478(f) of FERSA provides that the Secretary shall prescribe such regulations as may be necessary to carry out the provisions of section 8478, including regulations exempting a person or a class of persons from FERSA's bonding requirements.

Section 113 of the Federal Employees' Retirement System Technical Corrections Act of 1986 (FERSTCA, Pub. L. 99–556) authorizes the Secretary of Labor to apply with respect to the Fund, through December 31, 1989, the temporary bonding regulations under section 412 of ERISA.

ERISA section 412 requires generally that plan officials who handle funds or other property of private sector employee benefit plans be bonded. On January 10, 1975, the Department of Labor (Department) published a temporary bonding regulation under ERISA section 412 (29 CFR 2655.1, redesignated as 29 CFR 2550.412–1 on May 12, 1975, at 40 FR 20654). Temporary regulation 29 CFR 2550.412–1 references selected portions of the bonding regulations originally issued under the authority of section 13 of the Welfare and Pension Plans Disclosure Act (WPPDA), which was repealed on

January 1, 1975, and makes them applicable to plan officials under ERISA.

On June 28, 1985, the Department published a notice of final rulemaking in the **Federal Register** (50 FR 26704) which recodified the ERISA temporary bonding regulations in part 2580 of Subchapter I of Chapter XXV of CFR Title 29 and which amended temporary ERISA regulation 29 CFR 2550.412–1 to make clear that the WPPDA bonding regulations referenced therein are now located in part 2580 of CFR Title 29.

On September 23, 1987, the Department published at 52 FR 35864 an interim rule which applies the temporary bonding regulations under section 412 of ERISA to the bonding provisions of FERSA section 8478.[1] Consistent with section 113 of FERSTCA, the interim rule expressly provides that the ERISA temporary bonding regulations apply to section 8478 of FERSA until the earlier of the date of issuance by the Secretary of permanent regulations under section 8478 of FERSA or December 31, 1989.[2] The interim rule also prescribes the amount of bonds required under section 8478 of FERSA for fiduciaries and other persons who handle funds or other property of the Fund.[3] Interested persons were invited to submit written comments on the interim rule. No comments were received by the Department in response to its invitation for comments.

Discussion of the Final Rule

General

In view of the need for final bonding rules under FERSA and the absence of public comment on the interim rule published on September 23, 1987, the Department has decided to adopt the interim rule as a final rule, with certain technical changes to part 2582 of the CFR which are discussed below.

In the supplementary information accompanying the interim rule, the Department explained that it intended, in construing section 8478, to adhere to the principles contained in the ERISA temporary bonding regulations included in part 2580 of CFR Title 29. In adopting the interim rule as a final rule, the Department intends, for purposes of construing section 8478 of FERSA, to continue to adhere to the principles contained in the ERISA temporary bonding regulations.

The Department also explained in the supplementary information accompanying the interim rule that, for purposes of FERSA section 8478 and the ERISA temporary bonding regulations being applied thereto by the interim rule, any reference to section 13 of the WPPDA in the ERISA temporary bonding regulations shall be deemed to refer to section 8478 of FERSA, and that where the particular phrases set forth in FERSA are not identical to the phrases in the WPPDA, ERISA or the ERISA temporary bonding regulations, under the interim rule the phrases appearing in FERSA shall be substituted therefor. The Department further explained that where the phrases are identical but the meaning is different, under the interim rule the meaning given such phrases by FERSA shall govern. Under the final rule contained in this notice, identical principles of construction will govern the references, definitions, and meanings contained in the provisions of the ERISA temporary bonding regulations which are being applied to section 8478 of FERSA by this final rule.

With regard to the amount of a bond required under section 8478(a) of FERSA, the final rule, like the interim rule, provides that, for each fiscal year of the Fund, the amount of any such bond shall be not less than 10 percent of the amount of funds handled and that in no case shall a bond be less than $1,000 nor more than $500,000, except that the Secretary, after due notice and opportunity for hearing to all interested parties, and other consideration of the record, may prescribe an amount in excess of $500,000. It should be noted that, as with the interim rule, the Secretary will not, pursuant to the final rule, conduct a new rulemaking at the beginning of each fiscal year of the Fund, in order to prescribe the amount of a bond under section 8478. Instead, the final rule automatically establishes the amount of a bond with respect to each successive fiscal year of the Fund, unless the Secretary prescribes a maximum amount for such a bond in excess of $500,000, subject to the procedural requirements for notice and comment contained in section 8478(b)(1) of FERSA and the Administrative Procedure Act, 5 U.S.C. 551 et seq.

Technical Changes

In this notice of final rulemaking, the Department is essentially adopting the interim regulations in permanent form with only minor technical changes. Specifically, the final regulations replace references to the temporary nature of the interim rules with language which indicates that the final rules are being adopted on a permanent basis. Finally, paragraph (c) ("Effective date") of § 2582.8478–3 and paragraph (b) ("Effective date") of § 2582.8478–4 of the final rules have been changed to indicate that the final rules are effective January 1, 1990.

Effective Date

In the supplementary information accompanying the interim rule, the Department explained that the interim rule § 2582.8478–1 would become effective as of April 1, 1987 and remain effective until the earlier of the date of issuance of permanent regulations or December 31, 1989. In that notice the Department also indicated that §2582.8478–2 ("Amount of the Bond") would remain in effect until it was amended or withdrawn. This final rule provides that the above-referenced interim regulations will be adopted on a permanent basis and will become effective January 1, 1990. Thus, the interim regulations will remain effective until the date the final regulations become effective.

The undersigned has determined that good cause exists for waiving the customary requirement for delay in the effective date of a final rule for 30 days following its publication. This determination is based upon a finding by the Department that any delay in the effective date of this rule would deprive the Board of the guidance which is necessary to implement effectively the bonding provisions of section 8478 of FERSA due to the expiration of the Interim Rules (published at 29 CFR 2582.8478–1 and 2582.8478–2) as of January 1, 1990. Such guidance must be provided without delay, because section 8478(d) makes it unlawful for any person to whom FERSA's bonding requirements apply to handle Fund property without being properly bonded, and because it is also unlawful under section 8478(d) for any fiduciary with respect to the Fund to permit any person under his or her direction to handle Fund property without being properly bonded.

Regulatory Flexibility Act Statement

The Department has determined that this final rule would not have a significant economic impact on small entities. The final rule applies only to a single employee benefit plan which limits participation to employees of U.S. Government agencies. To the extent that bonding against loss by reason of acts of fraud or dishonesty is required pursuant to section 8478 of FERSA for fiduciaries with respect to the Fund or persons handling funds or other property of the

[1] This portion of the interim rule was codified at 29 CFR 2582.8478–1 ("Temporary bonding requirements").

[2] See 29 CFR 2582.8478–1(c), as set forth in the September 23, 1987 **Federal Register** notice.

[3] This portion of the interim rule was codified at 29 CFR 2582.8478–2 ("Amount of the Bond"). Paragraph (c) of § 2582.8478–2, as so codified, provided that "this section shall remain in effect until it is amended or withdrawn in accordance with section 8478(b)(1) of FERSA."

Fund, very few, if any, "small entities," as defined in 5 U.S.C. 601(6), will be affected by the final rule. This is because the Thrift Savings Plan is sponsored by the U.S. Government and because FERSA's bonding requirements are likely to affect primarily federal employees and an insubstantial number of financial institutions which may provide various services in connection with the Fund.

Paperwork Reduction Act Statement

This final rule is not subject to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501) since it does not contain any new information collection requirement.

Executive Order 12291 Statement

The Department has determined that this rule is not a "major rule" as that term is used in Executive Order 12291 because the rule will not result in: An annual effect on the economy of $100 million; a major increase in costs or prices for consumers, individual industries, 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. This action will impose no additional costs on the Thrift Savings Fund.

Statutory Authority

These regulations are adopted pursuant to the authority contained in section 8478 of FERSA (Pub. L. 99–335; 100 Stat. 515; 5 U.S.C. 8478).

List of Subjects in 29 CFR Part 2582

Employee benefit plans, Fiduciary, Federal Employees' Retirement System Act, Pension plan, Government employees, Retirement surety bonds.

Adoption of Amendment of Regulations

For the reasons set out in the preamble, part 2582, Subchapter J of Chapter XXV of Title 29 of the Code of Federal Regulations is amended as set forth below:

SUBCHAPTER J—FIDUCIARY RESPONSIBILITY UNDER THE FEDERAL EMPLOYEES' RETIREMENT SYSTEM ACT OF 1986

PART 2582—RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

1. The table of contents for part 2582 is revised to read as follows:

Subpart A—Temporary Bonding Rules

Sec.
2582.8478–1 Temporary bonding requirements.
2582.8478–2 Amount of the bond.

Subpart B—Pemanent Bonding Requirements

Sec.
2582.8478–3 Permanent bonding requirements.
2582.8478–4 Permanent amount of the bond.

2. The authority citation for part 2582 is revised to read as follows:

Authority: Sec. 101, Pub. L. 99–335, 100 Stat. 515 (5 U.S.C. 8478); sec. 113, Pub. L. 99–556; Secretary's Order 1–87, 52 FR 13139, April 21, 1987.

3. Section 2582.8478–2(b) is revised to read as follows:

§ 2582.8478–2 Amount of the bond.

(b) *Effectiveness.* This section shall remain in effect until it is amended or withdrawn in accordance with section 8478(b)(1) of FERSA, but in no event shall this section remain in effect beyond December 31, 1989.

4. Part 2582 is amended by adding new subpart B, immediately following subpart A, to read as follows:

Subpart B—Permanent Bonding Rules

§ 2582.8478–3 Permanent bonding requirements.

(a) *General.* Any fiduciary with respect to the Thrift Savings Fund (Fund) established under the Federal Employees' Retirement System Act of 1986 (FERSA) or any person who handles funds or other property of the Fund shall be deemed to be in compliance with the bonding requirements of section 8478 of FERSA if he or she is bonded in compliance with the temporary bonding regulations under section 412 of the Employee Retirement Income Security Act of 1974 (ERISA) set forth in part 2580 of Title 29 of the Code of Federal Regulations.

(b) *Application of ERISA temporary bonding rules.* For purposes of this section: (1) Any reference to section 13 of the Welfare and Pension Plans Disclosure Act, as amended (WPPDA), or any section thereof in the ERISA temporary bonding regulations shall be deemed to refer to section 8478 of FERSA or the corresponding subsection thereof; (2) where the particular phrases set forth in FERSA are not identical to the phrases in the WPPDA, ERISA or the ERISA temporary bonding regulations, the phrases appearing in FERSA shall be substituted by operation of law; and (3) where the phrases are identical but the meaning is different, the meaning given such phrases by FERSA shall govern. For example, the phrase "every administrator, officer and employee of any employee welfare benefit plan or of any employee pension benefit plan subject to this Act who handles funds or other property of such plan" which appears in the WPPDA and in the ERISA temporary bonding regulations shall be construed to mean, for purposes of this section "each fiduciary and each person who handles funds or other property of the Thrift Savings Fund," which is the term appearing in section 8478 of FERSA; the terms "employee benefit plan" and "plan" which appear in the ERISA temporary bonding regulations shall be construed to mean, for purposes of this section, "Thrift Savings Fund"; and the term "reporting year of the plan" which appears in the ERISA temporary bonding regulations shall be construed to mean, for purposes of this section, "fiscal year of the Thrift Savings Fund."

(c) *Effective date.* This section is effective January 1, 1990.

§ 2582.8478–4 Permanent amount of the bond.

(a) *General.* Under the authority of section 8478(b)(1) of the Federal Employees' Retirement System Act of 1986 (FERSA), the amount of a bond for each person, group or class to be bonded shall not be less than 10 percent of the amount of funds handled by such person, group or class with respect to any fiscal year of the Fund. In no case shall such bond be less than $1,000 nor more than $500,000. However, the Secretary of Labor reserves the authority under section 8478(b)(1) of FERSA to prescribe an amount in excess of $500,000, after due notice and opportunity for hearing to all interested parties, and other consideration of the record.

(b) *Effective date.* This section shall become effective January 1, 1990, and remain in effect until it is amended or withdrawn in accordance with section 8478(b)(1) of FERSA.

David George Ball,

Assistant Secretary for Pension and Welfare Benefits.

[FR Doc. 89–30314 Filed 12–28–89; 8:45 am]

BILLING CODE 4510–29–M

Mine Safety and Health Administration

30 CFR Part 100

Criteria and Procedures for Proposed Assessment of Civil Penalties

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Suspension of final rule provision; interim action.

SUMMARY: On February 17, 1988, the Coal Employment Project and the United Mine Workers of America challenged the Secretary of Labor's authority to assess a $20 single penalty for non-significant-and-substantial (non-s&s) violations which are timely abated (*Coal Employment Project, et al.* v. *Secretary of Labor*). On November 21, 1989, the United States Court of Appeals for the District of Columbia Circuit ordered the Mine Safety and Health Administration (MSHA) to revise its civil penalty regulations and to take immediate interim steps to correct defects in the assessment system. Accordingly, the Court remanded the record to MSHA to revise its regulations, as necessary, to comply with the order on an interim and permanent basis.

In an interim response to the Court's order, MSHA is temporarily suspending one provision in its civil penalty rules and issuing guidance to its field personnel with respect to another provision. This interim suspension action is issued to allow the Agency to take immediate steps to comply with the Court's order and to develop a permanent regulatory solution consistent with the order. During the interim period, MSHA is revising its assessment policies to instruct its field personnel to review non-s&s violations involving high negligence and an excessive history of the same type of violation for possible special assessment. In addition, all violations during the preceding two years that have been paid or finally adjudicated will be included in the history computation under the regular formula assessment.

DATE: The third sentence in 30 CFR 100.3(c) is suspended effective December 29, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, room 631, Ballston Towers No. 3; 4015 Wilson Boulevard, Arlington, Virginia 22203. Phone (703) 235-1910.

SUPPLEMENTARY INFORMATION:

I. Background and Discussion of Suspended Rule

On May 21, 1982, MSHA published revised regulations for processing civil penalties (30 CFR part 100) issued to mine operators for non-compliance with safety and health standards or any other provision of the Federal Mine Safety and Health Act of 1977 (Mine Act). These regulations set forth three methods for calculating penalties:

(1) 30 CFR 100.3—regular assessment;
(2) 30 CFR 100.4—single penalty assessment; and
(3) 30 CFR 100.5—special assessment.

Under the regular assessment procedures, the civil penalty is determined through a formula system, based upon application of the six criteria in sections 105(b) and 110(i) of the Mine Act. These six criteria include, *inter alia*, "the operator's history of previous violations." Under the single penalty assessment, a $20 civil penalty may be proposed for violations which do not significantly and substantially contribute to a mine safety or health hazard (non-s&s) and are timely abated. The special assessment provision sets forth circumstances under which MSHA will "specially assess" violations when the nature or seriousness of the violation warrants such action.

MSHA included the $20 single penalty provision in its penalty regulations to focus Agency and industry resources on serious safety and health problems by reducing the time spent in processing, conferencing and litigating non-s&s violations. Under the regular assessment procedures of § 100.3, single penalty violations which are paid in a timely manner are not included in a mine operator's history of violations for regular assessment purposes.

On February 17, 1988, the Coal Employment Project and the United Mineworkers of America challenged the Secretary's authority to assess a $20 single penalty for non-s&s violations which are timely abated (*Coal Employment Project, et al.* v. *Secretary of Labor*, D.C. Cir. No. 88-1708). On November 21, 1989, the United States Court of Appeals for the District of Columbia Circuit ordered MSHA to revise its civil penalty regulations and to take immediate interim steps to correct defects in the assessment system. In issuing its decision, the Court held that MSHA has very broad discretion in devising a scheme to implement its civil penalty responsibilities. However, the Court found unreasonable: (1) MSHA's failure to specifically take history into account in determining whether a violation qualifies for a $20 single penalty and; (2) its failure to include single penalty violations in the history computation under the regular assessment. Accordingly, the Court remanded the record to MSHA to revise its regulations, as necessary, "to comply with its order." The Court retained jurisdiction of the case to further consider the issues after remand.

In retaining jurisdiction, the Court contemplated that a final solution concerning the single penalty regulation would require some time. The Court, therefore, directed the Agency to, as an interim measure, "instruct its field personnel in assessing single penalties to consider an operator's history of non-significant-and-substantial violations, and to consider an operator's history of past single penalty assessments when imposing regular assessments * * *".

As an interim measure, pursuant to the Court's order, MSHA is immediately taking two actions: (1) Temporarily revising its assessment policies to instruct its field personnel to review non-s&s violations involving high negligence and an excessive history of the same type of violation for possible special assessment under 30 CFR 100.5; and, (2) temporarily suspending the sentence in 30 CFR 100.3(c) which excludes timely paid single penalty assessments from an operator's history of violations for regular assessment purposes. Therefore, during the interim period, MSHA enforcement personnel will review high negligence non-s&s violations when there is an excessive history of the same type of violation at the mine for possible special assessment. Further, all violations that have been paid or finally adjudicated will be included in history under the regular formula assessment.

In light of the specific instruction from the Court that MSHA immediately comply with its order, the Agency is compelled to take the interim action set forth above. Under these circumstances, it would be impracticable to comply with the requirements of notice and comment rulemaking under section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553. In making this finding, the Agency has determined that it must immediately revise its assessment policies so that penalties involving both s&s and non-s&s violations take into account an operator's complete history of violations. The range of options to accomplish the revision is limited, and timely compliance with the Court's order would not permit an opportunity for public comment. This action will ensure the continued legality of all proposed assessments and permit the Agency adequate time to carefully consider its final response to the Court of Appeals ruling. Therefore, under 5 U.S.C. 553(b)(B), the Agency is taking the action in this suspension notice. For good cause based upon these same reasons, and pursuant to 5 U.S.C. 553(d)(3), this action is excepted from the 30-day delayed effective date requirement of the APA. During the interim period, MSHA will develop a civil penalty proposal and request input from the mining community to assist the

Agency in the formulation of a permanent regulatory action to comply with the Court's order.

II. Executive Order 12291 and Regulatory Flexibility Act

In accordance with the exemption in section 8(b) of Executive Order 12291, a regulatory impact analysis and review has not been prepared. In accordance with the Regualtory Flexibility Act (5 U.S.C. 601 et seq.), the Agency has also determined that the final rule will not have a significant impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis has not been prepared.

III. Paperwork Reduction Act

The affected sections contain no recordkeeping requirements.

Dated: December 26, 1989.

Roy L. Bernard,

Deputy Assistant Secretary for Mine Safety and Health.

PART 100—CRITERIA AND PROCEDURES FOR PROPOSED ASSESSMENT OF CIVIL PENALTIES

1. The authority citation for part 100 is revised to read as follows:

Authority: 30 U.S.C. 815, 820 and 957.

§ 100.3 [Suspended in part]

2. In § 100.3(c), the third sentence is suspended effective December 29, 1989.

[FR Doc. 89-30276 Filed 12-28-89; 8:45 am]

BILLING CODE 4510-43-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 442, 447, 483, 488, 489, and 498

[BPD-664-F]

RIN 0938-AE33

Medicare and Medicaid Programs; Requirements for Long-Term Care Facilities: Delay in Effective Date of Regulations

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

ACTION: Final rule; delay of effective date.

SUMMARY: This rule changes the effective date of regulations issued in the **Federal Register** on February 2, 1989 (54 FR 5316), as amended by a rule published on July 14, 1989 (54 FR 29717), that contained new and revised requirements for long-term care facilities (skilled nursing facilities, intermediate care facilities, and effective October 1, 1990, nursing facilities) that participate in the Medicare and Medicaid programs. The effective date of January 1, 1990 is changed to October 1, 1990.

EFFECTIVE DATES: Effective January 1, 1990, the February 2, 1989, regulations are effective October 1, 1990.

FOR FURTHER INFORMATION CONTACT: Samuel W. Kidder (301) 966-4620.

SUPPLEMENTARY INFORMATION:

Background

On February 2, 1989, we published in the **Federal Register** (54 FR 5316) final regulations with a comment period that specified new and revised requirements that long term care facilities (skilled nursing facilities under Medicare, and intermediate care facilities, and, effective October 1, 1990, nursing facilities under Medicaid) must meet in order to receive Federal funds for the care of residents who are Medicare beneficiaries or Medicaid recipients.

Many of the requirements in the February 2 regulations implemented provisions of the Omnibus Budget Reconciliation Act of 1987 (OBRA 87) (Pub. L. 100-203). An effective date of August 1, 1989 was specified for the regulations. The remaining OBRA 87 requirements were to be effective on the October 1, 1990 statutory deadline. However, we determined later that the August 1, 1989 date did not give adequate implementation time, and we amended the August 1, 1989 effective date to January 1, 1990 (54 FR 29717).

On December 19, 1989, the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239) was enacted. Section 6901(a) of the Act changes the January 1, 1990 effective date of the nursing home regulations to October 1, 1990.

As a result, we are publishing this final rule to revise the January 1, 1990 effective date for certain provisions in the rule published February 2, 1989 to October 1, 1990.

Regulatory Impact Statement

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

- An annual effect on the economy of $100 million or more;
- A major increase in costs of 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 in domestic or export markets.

In the July 14, 1989 final rule announcing a delay in the effective date from August 1, 1989 to January 1, 1990 for regulations published on February 2, 1989 containing new and revised requirements for long-term care facilities, we included a regulatory impact statement that expressed our belief that the delay would not result in an impact that met the criteria contained in Executive Order 12291 (E.O. 12291) for a major rule. Also, in that statement, following the provisions of the Regulatory flexibility act (U.S.C. 601 through 612), the Secretary certified that the delay in the effective date of the regulations would not have a significant effect on a substantial number of long-term care facilities. Similarly, as required by section 1102(b) of the Act, the Secretary certified the July 14 notice would not have a significant effect on the operations of a substantial number of small rural hospitals.

Since this final rule will only further delay the effective date of the February 2, 1989 regulations, we believe the effect of this notice will be no more consequential than the July 14 notice. For this reason, we believe this notice does not meet any of the criteria of a major rule specified in E.O. 12291. Therefore, a regulatory impact analysis is not required. Similarly, the Secretary certifies that this notice will not have a significant impact on a substantial number or long-term care facilities. Also, the Secretary certifies that this notice will not have a significant effect on the operations of a substantial number of small rural hospitals.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 442

Grant programs—health, Health facilities, Health professions, Health records, Medicaid, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Part 447

Accounting, Administrative practice and procedure, Grant programs—health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, Rural areas.

42 CFR Part 483

Grant programs—health, Health facilities, Health professions, Health records, Medicaid, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Part 488

Health facilities, Survey and certification, Forms and guidelines.

42 CFR Part 489

Health facilities, Medicare.

42 CFR Part 498

Administrative practice and procedure, Appeals, Medicare practitioners, providers and suppliers.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance; and Program No. 13.774, Medical Assistance Program)

Dated: December 22, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

Approved: December 26, 1989.

Louis W. Sullivan,

Secretary.

[FR Doc. 89-30316 Filed 12-28-89; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order

[NV-930-00-4214-10; N-50818]

Withdrawal of National Forest Land for Austin Administrative Site; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 30 acres of national forest land from mining for a period of 20 years for the U.S. Forest Service to protect the Austin Administrative Site. The land has been and remains open to mineral leasing.

EFFECTIVE DATE: December 29, 1989.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, BLM, Nevada State Office, P.O. Box 12000, Reno, Nevada 89520, 702-328-6326.

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

1. Subject to valid existing rights, the following described national forest land is hereby withdrawn from location under the United States mining laws (30 U.S.C. Ch. 2), but not from leasing under the mineral leasing laws, to protect the U.S. Forest Service's Austin Administrative Site:

Mount Diablo Meridian

T. 19 N., R. 44 E.,

Sec. 18, lots 3 and 4, that portion west of Forest Road 184. The area described contains 30 acres in Lander County.

2. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated: December 21, 1989.

Frank A. Bracken,

Under Secretary of the Interior.

[FR Doc. 89-30259 Filed 12-28-89; 8:45 am]

BILLING CODE 4310-HC-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-613; RM-6483, RM-6712]

Radio Broadcasting Services; Dickson, TN; Benton and Calvert City, KY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 239A to Calvert City, Kentucky, as that community's first local FM service, at the request of Jackson Purchase Communication. This document also substitutes Channel 273C1 for Channel 273C2 at Dickson, Tennessee, and modifies the license of Station WQZQ(FM) at Dickson to specify operation on the higher class co-channel at the request of American Communications, Inc. In addition, in order to accomplish the upgrade at Dickson this action substitutes Channel 256A for Channel 272A at Benton, Kentucky, and modifies the license of Station WCBL-FM at Benton accordingly. [*See* 54 FR 4863, January 31, 1989]. A site restriction at least 12.1 kilometers (7.5 miles) northeast of Calvert City is required for Channel 239A. The coordinates are 37-07-52 and 88-17-38. A site restriction of 14.4 kilometers (9.0 miles) north of Dickson is required for Channel 273C1, at coordinates 36-12-30 and 87-23-20. Channel 256A at Benton can be used at the existing transmitter site of Station WCBL-FM. The coordinates are 36-51-30 and 88-20-13. With this action, this proceeding is terminated.

DATES: Effective February 6, 1990; The window period for filing applications on Channel 239A at Calvert City, Kentucky, will open on February 7, 1990, and close on March 8, 1990.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-613, adopted December 5, 1989, and released December 20, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Tennessee, by removing Channel 273C2 and adding Channel 273C1 at Dickson; and under Kentucky, by adding Calvert City, Channel 239A, and at Benton by removing Channel 272A and adding Channel 256A.

Karl A. Kensinger,

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

[FR Doc. 89-30205 Filed 12-28-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 201, 202, 204, 205, 207, 209, 213, 215, 219, 222, 225, 231, 232, 235, 242, 244, 245, 247, 252, 253, and Appendix N

[Defense Acquisition Circular (DAC) 88-13]

Department of Defense, Federal Acquisition Regulation Supplement; Regulatory and Miscellaneous Amendments

AGENCY: Department of Defense (DoD).

ACTION: Final rules.

SUMMARY: Defense Acquisition Circular (DAC) 88-13 amends the DoD FAR Supplement (DFARS) with respect to Determinations and Findings (D&Fs);

Head of contracting Activity (HCA) and Senior Procurement Executive Authority for On-Site Inspection Agency; distribution of procurement documents to consignees in Europe; publicizing contract actions; Agency-Head responsibilities (acquisition planning); acquisition plans/justifications and approvals supporting documentation; Intermediate-Range Nuclear Forces (INF) Treaty; small disadvantaged business evaluation preference; Small Business Competitiveness Demonstration Program (Targeted Industry); sanctions for violations of export controls; prohibition of certain contracts with foreign governments or firms for the conduct of Strategic Defense Initiative Research, Development, Test or Evaluation (RDTE); list of excluded items (NATO participating countries); public relations and advertising costs, foreign selling costs; address corrections and clarifications for DTIC; monitoring contractors' costs; Contractor Purchasing System Reviews (CPSRs), reduction of separate reviews; non-Government use of plant equipment; ocean transportation by U.S.-Flag vessels; and editorial corrections.

EFFECTIVE DATE: As specified in individual items I through XIX.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, Defense Acquisition Regulatory Council, ODASD(P)/DARS, OASD (P&L), c/o OUSD(A) (M&RS), Room 3D139, The Pentagon, Washington, DC 20301-3062, telephone (202) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

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

The October 1, 1988, revision of the CFR is the most recent edition of that title. It reflects amendments to the 1986 edition of the DoD FAR Supplement made by Defense Acquisition Circulars 86-1 through 86-16.

B. Public Comments

DAC # 88-13, Item I, II, III, V, VI, IX, X, XII, XIV, XV, XVI, XVII, and XIX

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

DAC # 88-13, Item IV

A proposed rule was published in the Federal Register on August 11, 1989 (54 FR 33045) and public comments were requested. No comments were received.

DAC # 88-13, Item VII

An interim rule was published in the Federal Register on June 6, 1988 (53 FR 20631) and public comments were solicited. Those public comments were considered in the development of this final rule.

DAC # 88-13, Item VIII

An interim rule was published in the Federal Register on May 12, 1989 (54 FR 20589) and public comments were solicited. Comments received were considered in the development of this final rule.

DAC # 88-13, Item XI

An interim rule was published in the Federal Register on April 21, 1989 (54 FR 16114) and public comments were solicited. Comments received were considered in development of this final rule.

DAC # 88-13, Item XIII

An interim rule was published in the Federal Register on December 22, 1988 (53 FR 51557) and public comments were solicited. Comments received were considered in the development of this final rule.

DAC # 88-13, Item XVIII

An interim rule was published in the Federal Register on April 21, 1989 (54 FR 16112) and public comments were solicited. Comments received were considered in the development of this final rule.

C. Regulatory Flexibility Act

DAC # 88-13, Items I, II, III, IV, V, VI, IX, X, XII, XIV, XV, XVI, XVII, and XIX

These final rules do not constitute a significant revision within the meaning of Public Law 98-577, and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected DoD FAR Supplement Subpart will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately. Please cite DAR Case 89-610D in correspondence.

DAC # 88-13, Item VII

This rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) because only a very small number of companies will be affected. An Initial Regulatory Flexibility Analysis has therefore not been performed, but comments were invited from small businesses and other interested parties. No comments were received that addressed the Regulatory Flexibility Act statement.

DAC # 88-13, Item VIII

This final rule will not have a significant economic impact on a substantial number of small entities because the preference was not in effect long enough for entities which were not competitive without the preference to have become dependent on it for business success. An interim rule was published in the Federal Register on May 12, 1989 (54 FR 20589) and public comments were solicited.

DAC # 88-13, Item XI

This final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601, et seq., because this coverage can only limit the number of contract awards to foreign governments or firms. An interim rule was published in the Federal Register on April 21, 1989 (54 FR 16112). No public comments were received that addressed the Regulatory Flexibility Act Statement published with the interim rule.

DAC #88-13, Item XIII

This final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 et seq., because most contracts awarded to small entities are awarded on a competitive fixed-price basis to which the cost principles do not apply. No comments were received that addressed the Regulatory Flexibility Act Statement.

DAC #88-13, Item XVIII

This final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 et seq., because this rule merely implements the 1904 Cargo Preference Act, and the requirements imposed on small entities are necessary to ensure compliance with the Act. The Cargo Preference Act requires that ocean shipment of covered supplies be shipped on U.S.-Flag vessels, regardless of the size of the contracting entity. A

Regulatory Flexibility Analysis has therefore not been performed. No comments were received that addressed the Regulatory Flexibility Act Statement.

D. Paperwork Reduction Act

DAC #88–13, Items I through XVII and Item XIX

The Paperwork Reduction Act does not apply because these rules do not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq., and because the items either provide information or are editorial in nature.

DAC #88–13, Item XVIII

A request for approval of a collection requirement of 65,074 hours has been submitted to OMB.

List of Subjects in 48 CFR Parts 201, 202, 204, 205, 207, 209, 213, 215, 219, 222, 225, 231, 232, 235, 242, 244, 245, 247, 252, 253, and Appendix N

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

[Defense Acquisition Circular No. 88–13]

January 30, 1990.

All DoD FAR Supplement and other directive material contained in this Defense Acquisition Circular is effective as specified in individual introductory items, in accordance with DoD FAR Supplement 201.301 (S–70) (4).

Defense Acquisition Circular (DAC) 88–13 amends the DoD Federal Acquisition Regulation Supplement (DFARS) 1988 edition and prescribes procedures to be followed. The following is a summary of the amendments and procedures.

Item I—Determinations and Findings (D&Fs) (Final Rule)

DFARS 201.704 is revised and 225.1004(a) is added to reference typical D&F formats to be used as appropriate. These revisions are effective on or before January 30, 1990.

Item II—Head of Contracting Activity (HCA) and Senior Procurement Executive Authority for On-Site Inspection Agency (Final Rule)

DFARS 202.101 is revised to designate the Director, On-Site Inspection Agency as a head of a contracting activity and senior procurement executive. Appendix N is revised to add that agency to the list of contracting activities. These revisions are effective on or before January 30, 1990.

Item III—Distribution of Procurement Documents to Consignees in Europe (Final Rule)

DFARS 204.202(c)(2) is revised to authorize the Defense Logistics Agency to prescribe alternate procedures for distributing procurement documents to consignees in Defense Subsistence Region, Europe. This revision is effective on or before January 30, 1990.

Item IV—Publicizing Contract Actions (Final Rule)

DFARS 205.101(a)(2), 205.201(S–70), and 213.106(b) are deleted as unnecessary supplementation of FAR 5.101(a)(2) and 5.201(b)(4). These revisions are effective on or before January 30, 1990.

Item V—Agency-Head Responsibilities (Acquisition Planning) (Final Rule)

DFARS 207.103 is revised to require each element of the acquisition plan be addressed and to add agency-head responsibility for ensuring compliance with DoD Directive 4210.15, Hazardous Material Pollution Prevention. These revisions are effective on or before Janaury 30, 1990.

Item VI—Acquisition Plans/ Justifications and Approvals Supporting Documentation (Final Rule)

DFARS 207.105(b)(2) is deleted to eliminate duplicate guidance on information to be included in an acquisition plan. This revision is effective on or before January 30, 1990.

Item VII—Intermediate-Range Nuclear Forces (INF) Treaty (Final Rule)

DFARS 209.103 is revised to clarify the Department's policy regarding firms subject to on-site inspection under the INF treaty and to emphasize that this policy applies to Defense subcontractors as well as prime contractors. The revised coverage also provides further guidance pertaining to denial of consideration for a Defense contract or subcontract award and the applicable procedures. These revisions are effective on or before January 30, 1990. The related clause at 252.209–7001 is revised and shall be effective for solicitations issued on or after January 30, 1990 and resultant contracts. Solicitations issued prior to that date shall not be amended.

Item VIII—Small Disadvantaged Business Evaluation Preference (Final Rule)

DFARS 219.502–3(S–70)(1) and 219.7000(a)(1)(vi) are revised and 219.502–72(b)(6) is added to exempt items purchased for commissary and exchange resale from the application of the small disadvantaged business 10 percent evaluation preference. These revisions are applicable to solicitations issued on or after January 30, 1990 and resultant contracts. Solicitations issued prior to that date shall not be amended.

Item IX—Small Business Competitiveness Demonstration Program (Targeted Industry) (Final Rule)

DFARS 219.1005(S–70) is revised to state the Army Corps of Engineers has responsibility for dredging. This revision is effective on or before January 30, 1990.

Item X—Sanctions for Violations of Export Controls (Final Rule)

Section 225.1003 (a) and (b) are added to reflect the determination authority for exceptions from the restriction on procurement imposed on Toshiba Corporation and Kongsberg Vaapenfabrikk under Section 2443 of Public Law 100–418. These revisions are effective on or before January 30, 1990.

Item XI—Prohibition of Certain Contracts With Foreign Governments or Firms for the Conduct of Strategic Defense Initiative Research, Development, Test or Evaluation (RDTE) (Final Rule)

DFARS 225.7013, Prohibition of Certain Contracts With Foreign Entities for the Conduct of Strategic Defense Initiative RDTE, is revised to implement the National Defense Authorization Act for Fiscal Years 1988 and 1989, Public Law 100–180, at Section 222 and is effective on or before January 30, 1990. The coverage, originally published as an interim rule in DAC 88–6, provides that the Department of Defense funds may not be used for any contract with a foreign government or foreign firm for research, development, test or evaluation in connection with the Strategic Defense Initiative (SDI) Program unless the Secretary of Defense certifies to Congress in writing at any time during the fiscal year that work under the contract cannot be competently performed by a United States firm at a price equal to or less than the price at which it would be performed by the foreign government or firm. The statutory prohibition does not apply to contracts awarded to a foreign government or firm if: (a) the contract is to be performed within the United States; (b) the contract is for research, development, test or evaluation in connection with antitactical ballistic missile systems; or (c) the foreign government or foreign firm agrees to share a substantial portion of the total cost. Further, the law does not apply to

contracts awarded before December 1987, nor does it apply to subcontracts. The related clause at 252.225-7028 is also revised and is effective for solicitations issued on or after January 30, 1990 and resultant contracts. Solicitations issued prior to that date shall not be amended.

An interim rule with request for comments was published in the **Federal Register** on April 21, 1989 (54 FR 16114). This final rule revises the existing DFARS coverage to reflect additional language applicable to the Secretary of Defense's yearly certification to Congress.

Item XII—List of Excluded Items (NATO Participating Countries) (Final Rule)

DFARS 225.7405 is revised to update the list of excluded items for purchase from NATO participating countries and is effective on or before January 30, 1990.

Item XIII—Public Relations and Advertising Costs, Foreign Selling Costs (Final Rule)

Section 826 of the Defense Authorization Act for Fiscal Year 1989 (Pub. L. 100-456) amended Section 2324(f) of Title 10, U.S.C. to add a new paragraph (5) which prescribes that "* * * costs to promote the export of products of the United States defense industry * * *" are allowable to the extent that certain specified conditions are met. DAC #88-3, Item VI, published an interim rule (53 FR 51557, December 22, 1988) to implement the requirements of this statute. Revisions to DFARS 231.205-1, 231.205-38 and 225.7304, as published in the interim rule, are adopted as final without change.

Item XIV—Address Corrections and Clarifications for DTIC (Final Rule)

DFARS 235.010 is revised to reflect use of Standard Form 298, Report Documentation Page, in lieu of DD Form 1473, which is now deleted. Additionally, both 232.502-1 and 235.010 are revised to correct the address for the Defense Technical Information Center. An editorial correction is made to 232.502-1(S-71)(4) to change the file name "CASHIV" to read "CASHV". These revisions are effective on or before January 30, 1990.

Item XV—Monitoring Contractors' Costs (Final Rule)

The Defense Authorization Act for Fiscal Year 1989, Title VIII, Part A, Section 809(d), amends 10 U.S.C. 133(d)(1) mandating coordination of annual audit and oversight plans among DoD components. The title for DFARS 242.7006(b) is renamed "Annual Audit Plans". The introductory paragraph of 242.7006(b) is designated as paragraph (1); the remaining subparagraphs are redesignated. A new paragraph (3) is added to require contracting and audit personnel to submit annual audit and oversight plans to the Cost Monitoring Coordinator. These revisions are effective on or before January 30, 1990.

Item XVI—Contractor Purchasing System Reviews (CPSRs); Reduction of Separate Reviews (Final Rule)

DFARS 244.301 is revised to clarify that Administrative Contracting Officers have responsibility for reviewing contractor purchasing systems and that other organizations should not perform separate reviews. This revision is effective on or before January 30, 1990.

Item XVII—Non-Government Use of Plant Equipment (Final Rule)

DFARS 245.407 states that non-Government use of Industrial Plant Equipment exceeding 25 percent requires prior approval of the Assistant Secretary of the Army, Navy, Air Force, or the Director of the Defense Logistics Agency. DFARS 245.407(a) is revised to state that this approval may be specifically delegated to the Head of a Contracting Agency. The coverage is also revised to state that this authority may not be further redelegated without formal DASD(L) approval. These revisions are effective on or before January 30, 1990.

Item XVIII—Ocean Transportation by U.S.-Flag Vessels (Final Rule)

DAC #88-6 provided revisions to Subpart 247.5 and added a clause and provision in Part 252 to implement the requirements of the Cargo Preference Act of 1904, 10 U.S.C. 2631, which applies to the ocean transportation of cargo owned by or destined for use by the Department of Defense. An interim rule with request for comments was published in the **Federal Register** on April 21, 1989 (54 FR 16112). As a result of public comments, this final rule: (a) clarifies the definition of supplies, (b) requires the solicitation provision, 252.247-7202, in all solicitations exceeding the small purchase threshold in FAR Part 13, (c) makes the clause at 252.247-7203 operative when there is an affirmative response to the representation in 252.247-7202, and (d) adds a new clause, 252.247-7204, to be incorporated in contracts when there is a negative response to the representation. These revisions shall be included in solicitations issued on or after January 30, 1990 and resultant contracts. Existing solicitations may be amended to incorporate the provisions and clauses, if it is in the Government's best interests, provided that the resultant contract is not planned for award until on or after January 30, 1990.

Item XIX—Editorial Corrections (Final Rule)

The following editorial corrections are effective on or before January 30, 1990:

(a) DFARS 205.207(e)(S-70) is revised to change the referenced Note to read "13" instead of "6".

(b) DFARS 215.806(S-70)(7) is revised to change the cite "215.903(d)" to read "FAR 15.903(d)".

(c) DFARS 215.970-2 is revised to conform with the update of DFARS 204.6 in DAC #88-9, Item I. In addition, citations are corrected by adding the DFARS "200" prefix.

(d) DFARS 219.501-70 is revised to change the fiscal years to read "1987-90" instead of "1987-89".

(e) DFARS 219.505-70 is revised to add the DFARS "200" prefix to the DFARS citation.

(f) DFARS 222.101-3 is revised to change the designation in the Reports Control Symbol to read "P&L" instead of "I&L".

(g) DFARS 225.105(S-73) and DFARS 225.7310(b)(4) are revised to change "International Acquisition" to "Foreign Contracting".

(h) DFARS Subpart 225.9 is revised to change the title and to redesignate the section numbers to make the subpart compatible with the FAR.

(i) DFARS 252.215-7003(c) is revised for clarity by removing the words "This clause is" and inserting the words "Paragraphs (d) and (e) of the clause are".

(j) DFARS 252.232-7007(a) is revised by deleting the words "other than".

(k) Updated versions of DD Forms 882, 1155 and 1155c-1 are provided in DFARS part 253.

(l) Appendix N is revised to reflect the correct address and address code for the Virginia Contracting Activity.

Adoption of Amendments

Therefore, the DoD FAR Supplement is amended as set forth below.

1. The authority for 48 CFR parts 201, 202, 204, 205, 207, 209, 213, 215, 219, 222, 225, 231, 232, 242, 244, 245, 247, 252, 253, and Appendix N continues to read as follows:

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

PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM

201.704 [Amended]

2. Section 201.704 is amended by adding a sentence to the end of the section to read: "Typical D&F formats are at 206.202(b) (S–70) (ii), 216.102(d) and 225.7310(c)(2)(i)."

PART 202—DEFINITIONS OF WORDS AND TERMS

202.101 [Amended]

3. Section 202.101 is amended by adding at the end of the introductory text, immediately preceding paragraph (a) the words "On-Site Inspection Agency, The Director, On-Site Inspection Agency."; and by adding at the end of paragraph (a) the words "FOR THE ON-SITE INSPECTION AGENCY: Director, On-Site Inspection Agency."

PART 204—ADMINISTRATIVE MATTERS

204.202 [Amended]

4. Section 204.202 is amended by substituting in paragraph (c)(2) in parentheses the words "(A transshipping terminal is not a consignee. The Defense Logistics Agency is authorized to prescribe alternate procedures for distribution of procurement documents to consignees in Defense Subsistence Region, Europe.);" in lieu of the words "(a transshipping terminal is not a consignee);".

PART 205—PUBLICIZING CONTRACT ACTIONS

205.101 [Removed]

5. Section 205.101 is removed.

205.201 [Amended]

6. Section 205.201 is amended by removing paragraph (S–70).

205.207 [Amended]

7. Section 205.207 is amended by substituting at the end of paragraph (e)(S–70) the number "13" in lieu of the number "6".

PART 207—ACQUISITION PLANNING

207.103 [Amended]

8. Section 207.103 is amended by substituting in paragraph (i) in the sentence in parentheses at the end of the Illustrative Acquisition Plan Format the citation "207.105" in lieu of the citation "7.105"; and by adding paragraph (S–70) to read:

(S–70) Ensuring compliance with Department of Defense Directive 4210.15, Hazardous Material Pollution Prevention.

207.105 [Amended]

9. Section 207.105 is amended by removing paragraph (b)(2).

PART 209—CONTRACTOR QUALIFICATIONS

10. The interim rule published on June 6, 1988 (53 FR 20631) is adopted as final with the following changes:

11. Section 209.103 is amended by revising paragraph (S–71) to read as follows:

209.103 Policy.

* * * * *

(S–71) *Acquisitions from Contractors and Subcontractors Subject to On-Site Inspection Under the Intermediate-Range Nuclear Forces (INF) Treaty.* It is DoD policy that firms subject to on-site inspection under the INF Treaty be treated fairly when competing for defense contract or subcontract awards. To ensure fair treatment, a potential contractor subject to on-site inspection shall not be denied consideration for a contract or subcontract award solely or in part because of the acutal or potential presence of Soviet inspectors at the contractor's facility unless this decision is first reviewed by the Senior Acquisition Executive of the procuring Department or Agency and approved by the Under Secretary of Defense for Acquisition. Such denial shall only be made if determined necessary for reasons of national security. A decision to deny consideration for award shall be made as early as possible in the acquisition process, consistent, however, with obtaining full information on which to base a decision, including comment from the potential contractor or subcontractor on the security issues involved. A decision not to consider a firm for award of a contract or subcontract shall be communicated in writing to that firm. Contracting officers shall insert the contract clause at 252.209–7001 in all solicitations and contracts in excess of the dollar limitation identified in FAR 13.000, except those for commercial or commercial-type products (see FAR 11.001).

PART 213—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

213.106 [Removed]

12. Section 213.106 is removed.

PART 215—CONTRACTING BY NEGOTIATION

215.806 [Amended]

13. Section 215.806 is amended by substituting in paragraph (S–70) (7) the reference "FAR 15.903(d)" in lieu of "215.903(d)".

215.970–2 [Amended]

14. Section 215.970–2 is amended by substituting in paragraph (a)(2) the citation "204.671–5(b) Item B1" in lieu of the citation "4.671–5(b)(1)"; by substituting at the end of paragraph (a)(3) the citation "204.671–5(b) Item B2" in lieu of the citation "204.671–5(b)(2)"; by placing a period in paragraph (a)(6) at the close of the parentheses and removing the remainder of the sentence; by substituting at the end of paragraph (a)(7) the citation "204.671–5(b) Item B5A"in lieu of the citation "204.671–5(b)(4)(i)"; by substituting at the end of paragraph (a)(8) the citation "204.671–5(b) Item B12A" in lieu of the citation "204.671–5(b)(8)(i)"; and by substituting at the end of paragraph (a)(9) the citation "204.671–5(b) Item B12B" in lieu of the citation "204.671–5(b)(8)(ii)"

PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

219.501–70 [Amended]

15. Section 219.501–70 is amended by changing at the end of the first sentence the years "1987–89" to read "1987–90".

219.502–3 [Amended]

16. Section 219.502–3 is amended by adding in paragraph (S–70) (1) between the word "construction" and the comma the words "and purchases for commissary or exchange resale".

219.502–82 [Amended]

17. Section 219.502–72 is amended by removing at the end of paragraph (b)(4) the word "or"; by changing the period at the end of paragraph (b)(5) to a semi-colon and adding the word "or"; and by adding paragraph (b)(6) to read:

(b) * * * (6) The acquisition is for purchase of commissary or exchange resale items."

219.505–70 [Amended]

18. Section 219.505–70 is amended by substituting between the word "and" and the word "do" the citation "219.505" in lieu of "19.505".

219.1005 [Amended]

19. Section 219.1005 is amended by revising paragraph (S–70) to read:

(S–70) Dredging (SIC 1629, FPDS V216–Z216). The Army Corps of Engineers has responsibility for dredging.

219.7000 [Amended]

20. Section 219.7000 is amended by adding in paragraph (a)(1)(vi) between

the words "commissary" and "resale" the words "or exchange".

PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

222.101-3 [Amended]

21. Section 222.101-3 is amended by changing the designation "I&L" in the last sentence to read "P&L".

PART 225—FOREIGN ACQUISITION

225.105 [Amended]

22. Section 225.105 is amended by substituting in the last sentence of paragraph (S-73) the words "(Foreign Contracting)" in lieu of the words "(International Acquisition)".

Subpart 225.9—Additional Foreign Acquisition Clauses

23. The title for subpart 225.9 is revised to read as set forth above.

24. Section 225.901 is added to read:

225.901 Omission of Examination of Records Clause.

225.903 [Amended]

25. Section 225.903 is amended by redesignating the section title as 225.901(c); and by redesignating paragraph (b) as 225.901(c)(ii).

225.904 [Redesignated]

26. Section 225.904 is redesignated as 225.901(d).

27. Subpart 225.10 is added to read as follows:

Subpart 225.10—Sanctions for Violations of Export Controls

Sec.
225.1003 Exceptions.
225.1004 Procedures.

Subpart 225.10—Sanctions for Violations of Export Controls

225.1003 Exceptions.

(a) The determination authority designee is the head of the contracting activity.

(b) The determination authority designee is the contracting officer.

225.1004 Procedures.

(a) Use the format at 206.202(b)(S-70)(G)*3*(ii), 216.102(d), or 225.7310(c)(2)(i).

28. The interim rule published on April 21, 1989 (54 FR 16114) is adopted as final with the following change:

29. Section 225.7013 is amended by changing the title of paragraph (b) to read "Prohibition" in lieu of "Policy"; by adding at the end of the second sentence of paragraph (b) the word "below"; by adding in the third sentence of paragraph (b) between the words "of" and "DoD" a comma and the word "the"; by adding in the first sentence of paragraph (c)(1)(iii) between the words "or" and "firm" the word "foreign"; by adding paragraph (d)(1)(ii); and by substituting in the first sentence of paragraph (d)(2) the reference "FAR Subpart 6.3" in lieu of "FAR 6.3"; to read as follows:

225.7013 Prohibition of certain contracts with foreign entities for the conduct of strategic defense initiative RDTE.

* * * * *

(d) * * *

(i) * * *

(ii) When a BAA or Program Research and Development Announcement (PRDA) is used, or when the determination is otherwise not based on direct competition between foreign and domestic proposals, the determination must not be merely conclusory. The determination must contain a specific explanation of the basis for the determination including a description of the method used to determine the competence of U.S. firms and a description of the cost or price analysis that has been performed to support the determination. Alternately, the determination may contain a finding, including the basis for such finding, that the proposal was submitted solely in response to the terms of a BAA or PRDA, or other solicitation document without any technical guidance from the program office; and a finding, including the basis for such finding, that disclosure of the information in the proposal for the purpose of conducting a competitive procurement would be prohibited.

* * * * *

30. The interim rule published on December 22, 1988 (53 FR 51557) is adopted as final without change.

225.7310 [Amended]

31. Section 225.7310 is amended by substituting at the end of the last sentence of paragraph (b)(4) the words "Foreign Contracting, OASD (P&L) (P)" in lieu of the words "International Acquisition, OASD (P&L) (P) (IA)".

32. Section 225.7405 is amended by substituting in the third sentence of the introductory text the words "be made" in lieu of the word "occur"; and by revising the list, to read as follows:

225.7405 List of excluded items.

* * * * *

Army

L.A.P.

Manufacturing and testing of projectiles (5.56 mm through 8 inch), mines, dispensers, rockets, pyrotechnic devices, grenades, demolition charges, small arms ammunition and components.

Maintenance of idle portions of 22 GOCO facilities.

Air Inflatable Retarders

BSU-49/B, BSU-50/B

Black Powder

Classes 2, 3, 7

Bomb Bodies

MK82, MK83, MK84, MK118-0, BDU-45/B, BDU-50/B

Bomb Practice

BDU-33D/B

Bomblet

MK118

Box, Metal

M2A1, M19A1, M548

Box, Plastic

M621, (25 mm)

Cable Assemblies

M72, M73

Cartridges

50 CAL—M1, M8, M17, M20, M33
5.56mm—M193, M855 (Ball)
7.62mm—M80
20mm—M55A2, M56A4
25mm—M791, M792, M793, MK210, PGU-20, PGU-23, PGU-25, HEI-T, XM910
30mm—M788, M789, PGU-13/B, 14/B, 15/B. (GAU-8)
TANK—MK11-0, MK14-3
IMPULSE—M796 (F/M206)
MISC—MK4-3 Bomb Sig PB, Body Assy. M430
81mm—M301A3, M821, M853, M889
84mm—M136(AT-4)
105mm—M774, M833, M456A2, M490A1, M724A1.
4.2in—M329A2.
120mm—M829, M830, M831, M865.
misc—Signal MK4-3, Grenade, Smoke M76

Cartridge Cases

40mm—M118, M169
76mm—Steel
105mm—M148A1B1, M115B1
5"/38—MK10-1
5"/54—MK79-1

Casings, Burster

81mm—M158
4.2"—M14

Castings & Forgings

Gun Tube & Preforms Forgings (105mm—M2A2, M68A1, M137A1; 120mm—M256; 155mm—M1A2, M185, M199; 165mm—M135; 8"—M201A1)
Breech Ring Forgings (105mm—M2A2, M68A1, M137A1; 120mm—M256; 155mm—M1A2, M199; 8"—M201A1)
Breech Block Forgings (120mm—M256)
Cast Muzzle Brakes (155mm—M185, M199; 8"—M201A1)
Housing Castings (155mm—M199) Base Plate Forgings

Charge, Demo

MK75–0 MK138–1 (Chrg. Assy), 40 lb. Cratering, 151 lb. Cratering, M118 Demo Block

Chemical

M8A1 Chemical Agent Alarm

Containers, Ammo

CNU–238/E, CNU–319/E, CNU–327/E, CNU–332, CNU–335A/E, CNU–336A/E, ALS, Increment Container F/81mm M205
Charge Tank CTC—MK11–0 (F/76mm), MK14–3 (F/5"/54)

Dispenser

MK7–3 F/ROCKEYE, MK7–4 F/ROCKEYE

FASCAM Mine Components

GATOR Body Assy, GEMSS Body Assy, GATOR Extended Range Tripline Sensor, GEMSS Extended Range Tripline Sensor, FASCAM Battery, ADAM Housing, Timing, & Fuzing Assy, RAAM Safe & Arming Device, GEMSS Safe & Arming Device, GATOR Safe & Arming Device, RAAM Electronic Lens Assy, GEMSS Electronic Lens Assy, GATOR Electronic Lens Assy

Fin Assemblies

60mm Steel, M27 F/60mm, M24 F/81mm, BSU–86/B, MK15–4, MK84

Firing Devices

M142 MP

Flares

LUU–2/B, M206, MJU–2B, MJU–7B, MJU–8B, MJU–10B, MK46–1C, SUU–25 F/A

Fuzes

FMU–130/B, FMU–139/A, FMU–139/B, M201A1, M213, M223, M228, M230, M403, M418, M423, M427, M439, M505A3, M509A2, M549, M550, M567, M577A1, M582A1, M732A1, M734, M739A1, M758, M935, M936, MK1–0, MK54, MK72–17, MK73–13, MK339–1, MK342–1, MK352–2, MK393–0, MK395, MK396, MK403, MK404–0, MK407–1, MK417–0, MK418

Fuze Components

PS–115 F/Fuze Prox M732

Guns & Receivers

M2 Machine Gun (Fixed or Flex), M60/M60D Machine Guns, M240 Machine Gun, 9mm Pistol, 20mm Cannon (M249 (SAW) Squad Auto Weapon)

Grenades

M42E2 (155mm), M46E1 (155mm), M42E2 (8"), M46E1 (8"), M509 (8" MLRS), M77, XM77 Body, Cones (F/M42E2, M46E1, M77) BLU–91B Body Assembly, BLU–92B Body Assembly

Helicopter

LHX (DEM/VAL)

Launchers

M203 (40mm)

Links

M9 (50 CAL), M15A2 (50 CAL), M22, M27 (5.56mm), M13 (7.62mm), M10 (20mm), M14A2 (20mm), M16A2 (40mm)

Periscopes/Vision Blocks

M17, M27, M37, M45, 15 Degree Up-Look, 20 Degree Up-Look, Periscope F/M1 Tank

Plugs

MK11–1, MK12–3

Primers

MK41–0, MK45–1, MK153, MK161, MK28B2

Projectiles

155mm—M483, M483A1, M892, M712, M718, M731, M741
8"—M509A1 ICM, M509, M650
16"/50—MK142

Projectiles/Shell Metal Parts

20mm—MK68, M55A2, M56A4
40mm—Projectile MPTS F/M430, F/M433
60mm—Projectile MPTS F/M720
76mm—Projectile Body
81mm—M374A1
105mm—M456A2 (Spike Assy Spike Cap Assy Cone) M833 (Projectile Assy Core) M724A1
120mm—Projectile Assy Core F/M829
155mm—M107, M549 Motor Body M864, M485A2, M692/M731, M712, M718/M741/M718A1/M741A
8.0in—M106, M650 (AFT & FWD), M509A1
4.2"—Shell F/M328A1, F/M329A2, F/M335A2
5/54—MK48–1, MK61–0, MK64–1, MK82 (AFT & FWD)

Propellants/Explosives (or Equal)

COMP D–2, HPC–2, HPC 13 M200 BIK
LK, 1030 M813 (40mm), 1100 PBX–9501, WC–814, WC–818, WC–844, WC–844T, WC–844 REFER, WC–846, WC–860, WC–872, WC–875, COMP D–2, HMX Bulk, RDX Bulk

Protective Masks Chemical/Biological Protective Masks

M40 Chemical/Biological Protective Filters/Canisters (For Masks) C2 Canister

Radius

AN/VRC–12 RSF Spare Parts

Rangefinder

Laser Rangefinder

Reserve Energizers

MK38–0, MK40–0, MK43–0

Rifle

M16A2

Rockets

M73 (35mm SUB–CAL)

Rocket Motor

MK25–1, Rocket Assist F/M650 (8")

Rocket Motors Tubes

MK66 (HYDRA 70), MK71–1 w/Contact Band (Zuni)

Rocket Fin & Nozzle Assy

MK66–2 (HYDRA 70)

Safe and Arming Devices

M114, S&A F/M739 FZ

Satellite COMM

AN/TSG SAT COMM TERM

Signals

MK79–0 (Personal Distress Kit)

Single Channel Ground/Air Radio System (SINCGARS)

AN/PRC–119, AN/VRC–87, AN/VRC–88, AN/VRC–89, AN/VRC–90, AN/VRC–91, AN/VRC–92, AN/ARC–201

Suspension Lugs

MK3, MK–14–0
TOW MISSILE
TOW NIGHT SIGHT
HAWK
AAWS–M
PATRIOT
PATRIOT MISSILE CANISTERS
CAMOUFLAGE SCREENING SYSTEMS
BA–5598, BA–5567, BA–5590
MX–9644
RADAR WARNING RECEIVER, AN/APR–39A (V)1
INERTIA NAVIGATION SET, AN/ASN–86
NIGHT VISION GOGGLES, AN/PVS–5
AVIATORS NV IMAGING SYSTEM, AN/AVS–6
IMAGE INTENSIFIER ASSY, MX–10160
INDIVIDUAL SERVED WEAPON NIGHT VISION SIGHT, AN/PVS–4
CREW SERVED WEAPON NIGHT VISION SIGHT, AN/TVS–5
DRIVERS VIEWER, AN/VVS–2
NIGHT VISION GOGGLES, MONOCULAR
RADAR SIGNAL DETECTING SET, AN/APR–39A (V)2
ARTILLERY LOCATING RADAR, AN/TPQ–37 (V)4
ROAD WHEELS FOR COMBAT AND COMBAT SUPPORT VEHICLES
ROUGH TERRAIN CONTAINER CRANE
HEMTT (HEAVY EXPANDED MOBILITY TAC. TRUCK)
M939A1 5 TON TRUCKS
M1A1 TANK
TADS/PNVS
HOVER INFRARED SUPPRESSOR SYSTEMS
MAST MOUNTED SIGHT FOR SHIP
AIR TO AIR STINGER
AH–64
AN/TPQ–36
BATTERY, STORAGE, 4HN, 6TN

Navy

Missile and Missile Components:

AIM/RIM–7M SPARROW Missile—Guidance Control Section with Wings and Fins, MK–58 MOD 4 and 5 Rocket Motor, MK–108 Inert Rocket Motor, MK–33, MOD 0 Safe and Arm Device, WEU/3B Warhead (Empty), WAU–17A/B Warhead (Loaded), and Telemetric Data Transmitting Set AN/DKT–38, AN/DKT–37(D), and AN/DKT–61;
AIM 54C PHOENIX Missile—WPU–3/B Propulsion Section (with MK–47 MOD 1 Rocket Motor and FSU–10/A Composite Fuze), DSU–28D/B Target Detecting Device, MD–13 MOD 0 Fuze Triggering Device, WDU–29/B Warhead, MK–60 MOD 2 Fuze Booster;
AIM–9M SIDEWINDER Missile—WGU–4A/B Guidance and Control Section, MK–36 MOD 11 Reduced Smoke Rocket Motor, WDU–17/B Loaded Warhead, DSU–15A/B or B/B Active Optical Target Detector, MK–13 MOD 2 Safe and Arm Device, MK–1

MOD 2 Wing Assembly, BSU-32/B Fin Assembly;
TOMAHAWK Cruise Missile—including Guidance Section, F-107 and F-402 Engine (including spares), Reference Measuring Unit and Computer (including spares), Cruise Missile Radar Altimeter (including spares), MK-106 MOD 0 and EX-111 IRM (MK-111 Rocket Motors (including spares)); Digital Scene Matching Area Correlation (DSMAC), FMU-136/B Fuze, FZU-43/B Air Valve, Capsule Launching System (CLS), AN/SWG-2 (V) and AN/SWG-3 (V) Common Weapon Control System (CWCS)
TRIDENT II, MK-6 Guidance and Components, Inertial Measurement Unit (IMU), IMU Electronics, Electronics Assemblies, Camera Detector Assembly;
Tactical Rocket Motors and Inert Rocket Motors for High Speed Anti-Radiation Missile (HARM);
Standard Missile Two Block II Guidance, Control and Autopilot/Battery Sections and all-up-rounds for Aegis, Terrier and Tartar Class Ships;
Standard Missile II MK-45 MOD 8 Target Detection Device, MK-70 Booster, MK-104 Dual Thrust Rocket Motor, MK-115 Warhead, MK-70 Inert Parts; and Standard Missile Two Block II A Vertical Launch Configuration

Avionics

AN/AYK-14 (V) Computers

Surface Ship and Submarine Systems:

Type 18B/D Periscope System, TR-155, K-33 Transducers, Periscope Tubes, Noise Tested Bearings
MK-45 Mod 1 Gun Mounts; MK-6 Ammunition Hoists; MK-41 Vertical Launch System; Phalanx CIWS MK-15 Block 1 Weapon Systems and Block 1 ORDALT kits
AWS T-1348/SPG Radar (CWI) Transmitter
Ship Propulsion Shafts, Ring Forging for Bull Gears greater than 120 inches in diameter, Anchor Chains

Engines

F404-GE-400D Engines

Guns

MK19 MOD 3 Machine Gun and MK 64 Gun Mounts

Sonobuoys:

AN/SSQ-36, AN/SSQ-53D, AN/SSQ-62B, AN/SSQ-77A; AN/SSQ-103 (Low Cost Sonobuoy)

Standard Missile:

MK-51 MOD 0 Safety Arming Device
MK-76 MOD 0 Safety Arming Device

Air Force

MAC Commercial Airlift

Defense Logistics Agency

Chemical Protective Suits (Army)
Chemical Protective (BUTYL) Gloves
Dress Coats
Helmets PASGT
Meal, Ready-to-Eat (MRE)
Nerve Agent Antidotes
Rabies Immune Globulin
Shirts: Navy Chambray (Work) & Army Dress
Surgical and Dental Instruments
Surgical Gloves
Tetracycline

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

33. The interim rule published on December 22, 1988 (53 FR 51557) is adopted as final without change.

PART 232—CONTRACT FINANCING

232.502-1 [Amended]

34. Section 232.502-1 is amended by changing the last word in the first sentence of paragraph (S-71) (4) to read "CASHV" in lieu of "CASHIV"; and by changing the fourth sentence of paragraph (S-71) (4) to read: "Contractors who are registered with the Defense Technical Information Center (DTIC) may obtain copies of the DoD Cash Flow Computer Model User's Guide (ADA148-247) from the Defense Technical Information Center, Cameron Station, Alexandria, VA 22304-6145."

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

35. Section 235.010 is amended by revising paragraphs (a) and (b) to read as follows:

235.010 Scientific and technical reports.

(a) Scientific and technical reports record results obtained from and recommendations made on scientific and technical activities relating to a single project, task or contract, or relating to a small group of closely connected efforts within the Department of Defense Research and Development Program. A completed Report Documentation Page (SF 298) is to be included in each copy of a scientific or technical report required by the contract (see FAR Part 53). Whenever a scientific or technical report is required as a product of the Research, Development, Test and Evaluation Effort, the contracting officer will assure that the requirement for a completed SF 298 is clearly stated and that a completed SF 298 is included with each copy of the required scientific and technical report. Further information on the SF 298 can be obtained from the Defense Technical Information Center, Attn: DTIC-HDB, Cameron Station, Alexandria, VA 22304-6145. If the SF 298 is not available, the bibliographic information can be supplied on a separate sheet of paper. Contact DTIC-HDB for further instructions. Scientific and technical reports should be reproduced as economically as practicable, consistent with the reporting needs of the Government. For the submission of reports in other than paper copy for archival or secondary distribution purposes, contact the Defense Technica Information Center, Attn: DTIC-FDAC, Cameron Station, Alexandria, VA 22304-6145.

(b) Organizations eligible to use DTIC services can register in accordance with Defense Logistics Agency Regulation 4185.10, Certification and Registration for Access to DoD Scientific and Technical Information which is available from the Defense Technical Information Center, Cameron Station, Alexandria, VA 22304-6145. Requirements for eligibility can be obtained from the Defense Technical Information Center, ATTN: DTIC-FDRB, Cameron Station, Alexandria, VA 22304-6145.

PART 242—CONTRACT ADMINISTRATION

242.7004 [Amended]

36. Section 242.7004 is amended by adding at the end of paragraph (b)(1) before the semi-colon the words "(see also 242.7006)".

37. Section 242.7006 is amended by changing the title of paragraph (b) to read "Annual Audit Plans" in lieu of "Planning for Reviews"; by designating the undesignated paragraph at the beginning of paragraph (b) as paragraph (b)(1); by redesignating paragraphs (b)(1) through (b)(3) as (b)(1)(i) through (b)(1)(iii) respectively; by designating the undesignated paragraph at the end of paragraph (b) as paragraph (b)(2); and by adding paragraph (b)(3) to read as follows:

242.7006 Procedures.

* * * * *

(b) * * *

(3) Audit organizations, program offices, contracting activities, and any other organizations within DoD with responsibility for reviewing contractor operations for the purpose of monitoring contractor policies, procedures, and practices to control costs, shall submit to the cognizant CMC, an annual schedule of planned and tentative visits, oversight reviews, and audits to be performed at contractor's facilities meeting the criteria in 242.7002. The CMC shall incorporate these reviews in the annual audit plan. Any revisions to scheduled visits or audit plans shall be submitted to the CMC within 30 days of issuance.

PART 244—SUBCONTRACTING POLICIES AND PROCEDURES

38. Section 244.301 is amended by designating the undesignated paragraph

as paragraph (a); and by adding paragraph (b) to read as follows:

244.301 Objective.

* * * * *

(b) The ACO is responsible for reviewing the contractor's purchasing system. Members of other organizations such as audit organizations or a Program Manager's Office, should not conduct separate reviews of a contractor's purchasing system, but may participate in the review conducted under the authority of the ACO. If a problem appears to exist, these organizations may recommend to the ACO that an additional review be performed. If the ACO agrees, the additional review will be performed as part of an ACO initiated special review (see 244.302(b)(3)).

PART 245—GOVERNMENT PROPERTY

245.407 [Amended]

39. Section 245.407 is amended by adding before the period at the end of the first sentence of paragraph (a) a comma and the words "unless specifically delegated to the Head of a Contracting Activity"; by substituting in the second sentence of paragraph (a) the designation "OASD(P&L)(DASD (Logistics))" in lieu of the designation "DASD(P&L)(PS)"; and by removing in the third sentence of paragraph (a) the words "requiring Departmental level approval".

PART 247—TRANSPORTATION

40. The interim rule published on April 21, 1989 (54 16112) is adopted as final with the following changes:

247.571 [Amended]

41. Section 247.571 is amended by adding a sentence at the end of the definition entitled "Supplies" to read: "An item is readily identifiable for eventual use by the armed services if, for example, the contract documentation contains a reference to a DoD contract number, or a Military Specification, or a military destination."

42. Section 247.573–1 is amended by revising paragraphs (a), (b), (b)(1), and (b)(2); by redesignating the existing paragrah (c) as paragraph (e); by adding paragraphs (c) and (d); and by substituting in the second sentence of paragraph (3) of the redesignated paragraph (e) the word "foreign" in lieu of the word "foreign-flag"; to read as follows:

247.573–1 Purchase of ocean transportation incidental to a contract for supplies, services, or construction.

(a) This subsection applies to those acquisitions where ocean transportation is not the purpose of the contract.

(b) The contracting officer shall obtain assistance from the cognizant transportation activity (see 247.105) in developing the following:

(1) The Government estimate for transportation costs, irrespective of whether freight will be paid directly by the Government;

(2) Appropriate shipping instructions and delivery terms for inclusion in solicitations and contracts that may involve transportation by sea of supplies.

(c) The contracting officer shall ascertain from each offeror whether the supplies will be transported by sea under the resulting contract (see 247.574(a)).

(1) When the successful offeror indicates in the response to the solicitation, that ocean transportation will be used, the contractor must comply with the requirements of the Cargo Preference Act of 1904.

(2) If the successful offeror's response to the solicitation provision is that the offeror does not anticipate that supplies will be transported by sea, there still remains the possibility that during contract performance the contractor will discover that ocean transportation must be used. In that event the terms of the statute still apply to the contractor, requiring the contractor to use U.S.-flag vessels unless certain narrow conditions exist (see 247.572(b) above). The contractor must notify the Government of the changed circumstances, i.e., that it intends to use ocean transportation, and comply with the requirements of the Cargo Preference Act.

(d) When the successful offeror indicates in accordance with the solicitation provision at 252.247–7202, Representation of Extent of Transportation of Supplies by Sea, that supplies will be transported by sea under the resulting contract or subcontract, the contracting officer shall within 30 days of award forward one copy of the first page of the DD Form 350 for that contract to the Chief, Division of National Cargo, U.S. Maritime Administration, 400–7th Street, SW., Washington, DC 20590.

* * * * *

247.573–2 [Amended]

43. Section 247.573–2 is amended by adding in paragraph (c)(2) a comma after the acronym "MSC"; and by changing the comma to a semi-colon in paragraph (c)(2) between the word "representative" and the word "or".

247.574 [Amended]

44. Section 247.574 is amended by changing in the title the word "Clause" to read "Clauses"; by placing in paragraph (a) a period after the reference "FAR Part 13" and removing the remainder of the sentence; by adding within commas in paragraph (b) between and word "contracts" and the word "other" the words "in full text"; by redesignating the existing paragraph (c) as paragraph (d); and by adding paragraph (c) to read: "The contracting officer shall insert the clause at 252.247–7204, Notification of Transportation of Supplies by Sea, in full text, in all contracts for which the offeror made a negative response to the inquiry in the provision at 252.247–7202."

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

45. Section 252.209–7001 is revised to read as follows:

252.209–7001 Acquisitions from subcontractors subject to on-site inspection under the Intermediate-Range Nuclear Forces (INF) Treaty.

As prescribed at 209.103(S–71), insert the following clause:

Acquisitions From Subcontractors Subject to On-Site Inspection Under the Intermediate-Range Nuclear Forces (INF) Treaty (Jan 1990)

(a) The Contractor shall not deny consideration for a subcontract award under this contract to a potential subcontractor subject to on-site inspection under the INF Treaty solely or in part because of the actual or potential presence of Soviet inspectors at the subcontractor's facility unless the decision is approved by the Contracting Officer.

(b) The Contractor shall incorporate this clause, with appropriate changes to identify properly the contracting parties, including this paragraph (b), in all solicitations and contracts in excess of the dollar limitation identified at FAR 13.000, except those for commercial or commercial-type products (see FAR 11.001).

(End of clause)

252.215–7003 [Amended]

46. Section 252.215–7003 is amended by changing the date of the clause to read "(JAN 1990)" in lieu of "(FEB 1989)"; and by substituting at the beginning of the second sentence of paragraph (c) of the clause the words "Paragraphs (d) and (e) of the clause are" in lieu of the words "This clause is".

252.225.7028 [Amended]

47. Section 252.225–7028 is amended by changing the date of the provision to read "(JAN 1990)" in lieu of "(MAR 1989)"; by adding in the second sentence of paragraph (b) of the provisions between the word "of" and the acronym "DoD" a comma and the words "Department of Defense", and placing the acronym "DoD" in parentheses.

252.232–7007 [Amended]

48. Section 252.232–7007 is amended by removing in the second sentence of paragraph (a) of the introductory text the words "other than".

49. Section 252.247–7202 is amended by placing in the introductory text a colon after the word "provision" and removing the remainder of the introductory text; by changing the date of the provision to read "(JAN 1990)" in lieu of "(MAR 1989)"; by revising in the provision the undesignated paragraph following the introductory text; and by adding a second undesignated paragraph following the introductory text; to read as follows:

252.247–7202 Representation of extent of transportation by sea.

* * * * *

_____ The Offeror represents that it does anticipate that supplies, as defined in the clause at 252.247–7203, Transportation of Supplies by Sea, will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

_____ The Offeror represents that it does not anticipate that supplies, as defined in the clause at 252.247–7203, Transportation of Supplies by Sea, will be transported by sea in the performance of any contract or subcontract resulting from this solicitation. If the Offeror represents that it will not use ocean transportation, the clause at 252.247–7204 will also be inserted in the resulting contract.

* * * * *

50. Section 252.247–7203 is amended by adding in the introductory text at the end of the reference "247.574" the letter "(b)"; by placing in the introductory text a colon after the word "clause" and removing the remainder of the introductory text; by changing the date of the clause to read "(JAN 1990)" in lieu of "(MAR 1989)"; by enclosing in commas in the first sentence of paragraph (a)(6) of the clause the words "except land and interests in land"; by adding at the end of paragraph (a)(6) of the clause a sentence reading: "An item is clearly identifiable for eventual use by the armed services if, for example, the contract documentation contains a reference to a DoD contract number, or a Military Specification, or a military destination."; by changing the first sentence of paragraph (d) of the clause to read: "The request for use of other than U.S.-flag vessels because of matters concerning freight charges or matters concerning vessel availability must be submitted in writing by or through the Prime Contractor to the Contracting Officer at least forty-five (45) days prior to the sailing date for the shipper to meet its delivery schedules."; and by adding in the second sentence of paragraph (d) of the clause a comma between the word "possible" and the word "but".

51. Section 252.247–7204 is added to read as follows:

252.247–7204 Notification of transportation of supplies by sea.

As prescribed in 247.574(c), insert the following clause:

Notification of Transportation of Supplies by SEA (Jan 1990)

(a) The Contractor has indicated by the response to the solicitation provision at 252.247–7202, Representation of Extent of Transportation of Supplies by Sea, that it did not anticipate transporting by sea any supplies, as defined in the clause at 252.247–7203, Transportation of Supplies by Sea, in the performance of this contract. If, however, after the award of this contract, the Contractor should learn that supplies will be transported by sea, the Contractor shall notify the Contracting Officer of the fact that transportation by sea will be used and hereby agrees to comply with all the terms and conditions of the clause at 252.247–7203, entitled "Transportation of Supplies by Sea", contained in this contract.

(b) The Contractor shall include this clause, including this paragraph (b), revised as necessary to reflect the relationship of the contracting parties, in all subcontracts hereunder.

(End of clause)

PART 253—FORMS

52. The list of forms following section 253.204–70 is amended by removing between the listing "253.303–70–DD–1425 DD Form 1425: Specifications and Standards Requisition" and the listing "253.303–70–DD–1484 DD Form 1484: Post-Award Conference Record" the listing "253.303–70–DD–1473 DD Form 1473: Report Documentation Page".

APPENDIX N—ACTIVITY ADDRESS NUMBERS

53. Appendix N is amended by substituting in the listing between "MDA907 and MDA946" following the listing "MDA908 Virginia Contracting Activity" the designation "2X" in lieu of the designation "F3"; by substituting in the address for the same listing "P.O. Box 46563" in lieu of "P.O. Box 46353"; and by adding between the address for the listing "MDA972" and the heading "STRATEGIC DEFENSE INITIATIVE ORGANIZATION" the listing to read: "ON-SITE INSPECTION AGENCY OSIA01 On-Site Inspection Agency, Attn: Acquisition Management, Washington/Dulles International Airport, Washington, DC 20041–0498".

[FR Doc. 89–29807 Filed 12–28–89; 8:45 am]

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1801, 1803, 1804, 1808, 1813, 1814, 1815, 1817, 1819, 1832, 1852, 1853, and 1870

[NASA FAR Supplement Directive 89–2]

RIN 2700–AA91

Acquisition Regulation; Miscellaneous Amendments to NASA FAR Supplement

AGENCY: Office of Procurement, Procurement Policy Division, NASA.

ACTION: Final rule.

SUMMARY: This document amends the NASA Federal Acquisition Regulation Supplement (NFS) to reflect a number of miscellaneous changes implementing higher level issuances and other changes dealing with the NASA internal or administrative matters.

EFFECTIVE DATE: December 31, 1989.

FOR FURTHER INFORMATION CONTACT: W. A. Greene, Chief, Regulations Development Branch, Procurement Policy Division (Code HP), Office of Procurement, NASA Headquarters, Washington, DC 20546, Telephone: (202) 453–8923.

SUPPLEMENTARY INFORMATION:

Background

The major changes involve: (1) Utility services; (2) the commercial credit card program; (3) the five-year contract limitation, and (4) payments to the Canadian Commercial Corporation. The NASA FAR Supplement, of which this rule is a part, is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Cite GPO Subscription Stock Number 933–003–00000–1. It is not distributed to the public, either in whole or in part, directly by NASA.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The

regulations herein are in the exempted category. NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The regulation imposes no burdens on the public within the ambit of the Paperwork Reduction Act, as implemented at 5 CFR part 1320.

List of Subjects in 48 CFR Parts 1801, 1803, 1804, 1808, 1813, 1814, 1815, 1817, 1819, 1832, 1852, 1853, and 1870

Government procurement.

S. J. Evans,

Assistant Administrator for Procurement.

1. The authority citation for 48 CFR parts 1801, 1803, 1804, 1808, 1813, 1814, 1815, 1817, 1819, 1832, 1852, 1853, and 1870 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1801—FEDERAL ACQUISITION REGULATIONS SYSTEM

Subpart 1801.2—[Amended]

2. Subpart 1801.2 is amended as set forth below:

a. The table of contents for subpart 1801.2 is revised to read as follows:

Subpart 1801.2—Administration

1801.270 Amendment of regulation.
1801.270–1 Revisions.
1801.270–2 Procurement notices.
1801.270–3 Effective date.
1801.270–4 Numbering.
1801.271 NASA procedures for FAR and NFS changes.
1801.272 Procurement information circulars.
1801.272–1 Responsibility.
1801.272–2 Format and distribution.
1801.272–3 Expiration.

b. Section 1801.270 is revised to read as follows:

1801.270 Amendment of regulation.

This Regulation is amended as needed to set forth policies and procedures intended to reduce contract preparation time, simplify and standardize contract forms, otherwise improve the contracting process, and reflect changes in statutes, Executive orders, the FAR, and other mandatory policies. Acquisition personnel are encouraged to make informal suggestions, based on operating experience, for improving and simplifying this Regulation and the procedures set forth in it. Such comments, including correction of errors, should be directed to the Procurement Policy Division (Code HP) or to a Code HP analyst responsible for the applicable subject matter. Formal recommendations for changes are governed by 1801.271.

c. Section 1801.271 is revised to read as follows:

1801.271 NASA procedures for FAR and NFS changes.

(a) Responsibilities. (1) NASA is represented on the Defense Acquisition Regulatory Council (DARC) by a policy member from the Procurement Policy Division (Code HP) and a legal member from the Office of General Counsel (Code GK). NASA staff members are also assigned to standing and ad hoc DARC committees in their areas of expertise. The DARC policies and procedures for initiating and reviewing FAR changes shall be followed by the assigned individuals. However, any NASA element or individual may suggest a FAR revision.

(2) The Procurement Policy Division (Code HP) is responsible for the receipt and formal processing of changes to the NFS. A Code HP procurement analyst—a subject matter specialist—is assigned to and responsible for ensuring all necessary actions are taken. It is advisable to contact the appropriate Code HP analyst (see the Procurement Information Circular entitled "Headquarters Points of Contact for Policy and Operational Information") to determine if a similar regulatory change is already underway or for further advice as to the simplest means of preparing a formal request.

(b) *Documentation.* (1) Formal requests for changes to the FAR or the NFS must be written and contain, at a minimum:

(i) A concise description of the problem the suggested revision is designed to cure or ameliorate,

(ii) The revision in the form of a marked-up copy of the current FAR or NFS language or the text of any additional language,

(iii) The consequences of making no change and the benefits to be expected from a change, and

(iv) Any other information necessary for understanding the situation, such as relationship between FAR and NFS coverage, legal opinions, coordination with other offices, and existing agreements.

(2) Formal requests for FAR and NFS changes shall be sent to the Assistant Administrator for Procurement (Code HP). Requests from headquarters offices involving the NFS should originate at the division level or higher, while installation requests must be signed at the procurement officer or higher level.

d. Sections 1801.272, 1801.272–1, 1801.272–2 and 1801.272–3 are added to read as follows:

1801.272 Procurement Information Circulars.

The Procurement Information Circular (PIC) shall be used for broad internal dissemination of procurement-related information and directives not suitable for inclusion in the NFS. While material contained in PICs is non-regulatory and will not be published in the Code of Federal Regulations (CFR), it may be mandatory or be of general interest or importance to its recipients. The PIC is also the preferred mechanism for broadly announcing pending regulatory changes; for providing interim guidance regarding forthcoming regulatory changes; for giving advice; and for providing broadly applicable, but short-lived, procedural information to the NASA procurement community.

1801.272–1 Responsibility.

The Procurement Policy Division (Code HP) is responsible for establishing necessary operational guidelines, preparing, coordinating, issuing, and distributing PICs on behalf of Code H or other requesting NASA elements.

1801.272–2 Format and distribution.

PICs shall be as brief as possible; however, pertinent documents may be included as enclosures, provided they are of reasonable length. PICs shall be numbered on a calendar year basis, beginning with number 1, prefixed by the last two digits of the year. Distribution conforms to 1801.104–370(a) and (b).

1801.272–3 Expiration.

PICs are intended to relate to matters of current interest. To ensure periodic review, PICs normally will automatically expire on December 31 of the year of issuance. Code HP will contact the originating office regarding revalidation before the expiration date.

3. Subpart 1801.3 is amended as set forth below:

a. Section 1801.302 which contains only a section heading, is added.

1801.302 Limitation.

1801.302–70 [Amended]

b. Section 1801.302–70, paragraph (a), is amended by removing the words "NASA's procedures for initiating changes to the NASA FAR Supplement" and adding the citation "1801.271."

c. Section 1801.302–70, paragraph (b), is amended by revising the words "Procurement Officer" to read "procurement officer."

PART 1803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTING OF INTEREST

Subpart 1803.1—[Amended]

4. Section 1803.104–2 is added to read as follows:

1803.104–2 Applicability.

Pursuant to section 507 of the Ethics Reform Act of 1989 (Pub. L. 101–194), the requirements of this section are suspended for the period of December 1, 1989, through November 30, 1990.

PART 1804—ADMINISTRATIVE MATTERS

Subpart 1804.6—[Amended]

5. Subpart 1804.6 is amended as set forth below:

1804.601 [Amended]

a. Section 1804.601 is amended by adding the word "series" after the number "507".

1804.671 [Amended]

b. The title of section 1804.671 is revised to read "Individual Procurement Act Report (NASA Form 507 series)."

c. In section 1804.671, "(NASA Forms 507 and 507A)" are revised to read "NASA Forms 507, 507A, 507B, 507G, and 507M)" and the sentence beginning with "The preparation" and ending with "(FACS) system" is revised to read "The preparation and utilization of the NASA Form 507 series (see 1853.303–507 through 1853.303–507M) are an integral part of the agencywide Financial and Contractual Status (FACS) system."

d. Section 1804.671–1 is revised to read as follows:

1804.671–1 Applicability and coverage.

The following procurement actions are individually reportable and require the completion of one or more of the forms in the 507 series.

(a) *Initial basic procurements.* (1) All contracts, regardless of dollar obligation amount.

(2) All grants, cooperative agreements, and Space Act agreements.

(3) Intragovernmental procurements and purchase orders when the initial obligation is more than $25,000.

(4) All contracts and purchase orders for consulting services.

(5) Purchase orders of $25,000 or less for services within the four designated industry groups identified at FAR 19.1005(a) under the Small Business Competitiveness Demonstration Program. (These actions are not FACS reportable, but are required for EDPS reports.)

(b) *Modifications.* Modifications that:

(1) Obligate or deobligate funds, regardless of dollar amount,

(2) Change the estimated cost and/or fee by more than $25,000,

(3) Extend the completion date, or

(4) Add or change procurement statistics previously reported are reportable.

e. Section 1804.671–4 is revised to read as follows:

1804.671–4 Preparing Individual Procurement Action Reports (NASA Forms 507, 507A, 507B, 507G, and 507M).

Individual Procurement Action Reports shall be prepared and submitted to Headquarters for each procurement action required to be reported (see 1804.671–1). Specifically, for new contract awards, NASA Forms 507, 507A, and 507B are prepared. For new grants, agreements, intragovernmental agreements, and orders against federal supply schedules, NASA Forms 507G and 507B are prepared. For modifications to any of the above procurements, NASA Forms 507M and, if necessary, 507B are prepared. Detailed item instructions for preparing the NASA Forms 507 series are set forth in paragraphs (a) through (sss) below and correspond to the item numbers shown on the forms. Position numbers after each item indicate the maximum number of characters that may be used in reporting the data element. Item numbers 2–7, 9, 15a, 50–61 and 66 are for Acquisition Management Subsystem (AMS) reporting at the installation level only. Reporting of these specific data items to the FACS system is not required.

(a) *Item 1—Contract/grant number (11 positions, including blanks).* (1) Enter the specific contract, grant, cooperative agreement, Space Act agreement, or purchase order number for which the data are reported. The first five digits represent the prefix field, while the last six digits are used to number each contractual instrument serially. If a serial number does not fill out the entire field, leave those digit positions blank instead of using zeros. For utility contract and purchase order numbers, enter an alpha letter in the last position of the serial number, indicating the fiscal year the service was provided.

(2) The method of numbering—

(i) Contracts and purchase orders are set forth in subpart 1804.71 (e.g., NAS9–14000, NAS10–9080, NASW–2080);

(ii) Space Act agreements are set forth in subpart 1804.71 (e.g., NCA1–12500);

(iii) Grants are set forth in the NASA Grant and Cooperative Agreement Handbook, NHB 5800.1, paragraph 306.1 (e.g., NAGW–1, NAG2–308);

(iv) Cooperative agreements is set forth in the NASA Grant and Cooperative Agreement Handbook, NHB 5800.1, paragraph 306.2 (e.g., NCC 2–1); and

(v) Utility contracts and purchase orders are as follows:

Last digit		Last digit	
alpha letter	Fiscal years ending in	Alpha letter	Fiscal years ending in
Q	1	V	6
R	2	W	7
S	3	X	8
T	4	Y	9
U	5	Z	0

(b) *Item 2—Document suffix (1 position).* If an alpha suffix is used in the contract or purchase order number, enter the assigned suffix (e.g., "F" for facilities contracts). Otherwise, leave this item blank.

(c) *Item 3—Modification prefix (1 position).* If an alpha prefix is used in the modification number of the reported action, enter the assigned prefix. Otherwise, leave this item blank.

(d) *Item 4—Modification number (5 positions).* Enter the serial number assigned to the modification action.

(e) *Item 5—PR number (12 positions).* Enter the number assigned to the Procurement Request document which initiated the reported action.

(f) *Item 6—Closeout PR (1 position).* Enter "Y" if the reported action closes the PR reported in item 5. Otherwise, leave this item blank.

(g) *Item 7—Contractor VID (7 positions).* Enter the contractor's unique Vendor Identification Number (VID) which indicates the contractor's name and business address.

(h) *Item 7a—Contractor name (29 positions, including spaces).* Enter the name of the contractor. (For editing purposes, the first five characters of the contractor's name must be identical to those shown in "NASA Contractor Identification Codes.") For intragovernmental actions, enter the agency name (e.g., US Army, US Navy, US Commerce) and also see the Item 8 instructions immediately below. If the activity is under a single-manager agency, enter the name of the agency.

(i) *Item 7b—Contractor division (20 positions).* Enter the name of the contractor's division if one is named in the contractual instrument. (For editing purposes, the first five characters of the division name must be identical to those shown in "NASA Contractor Identification Codes.") For intragovernmental actions, enter the

name of the cognizant procuring activity (e.g., Electronic Systems Division).

(j) *Item 7c—Contractor address—city and state.* Enter city and state of contractor's address as stated in the contractual instrument.

(k) *Item 8—Contractor identification code (CIC) number (7 positions).* This code is obtained from the publication "NASA Contractor Identification Codes," issued quarterly by the Headquarters Procurement Management Division (Code HM). It identifies the procurement in terms of the contractor's name, division (if any), address, and the place of performance. A unique code is assigned for each different combination of these items. For combinations not listed in the coding publication, NASA Form 507 preparers should call the Office of Procurement, NASA Headquarters (Code HM), where a code will immediately be assigned and the exact abbreviations, where appropriate, will be specified. The new code will be listed in the next issue of the coding publication.

(l) *Item 9—Place of performance VID (7 positions).* Enter the contractor's unique Vendor Identification Number (VID) which indicates the contractor's place of performance address.

(m) *Items 9a—Place of performance (city—24 positions; state—2 positions).* Enter the location (city and state) of the principal plant or place of business where the items will be produced or supplied from stock or where the service will be performed. (For editing purposes, the first three characters of the city name must be identical to those shown in "NASA Contractor Identification Codes.") For construction contracts, enter the site of construction. If more than one location is involved, enter the principal place of performance. For intragovernmental actions where the place of performance is unknown, enter the address of the cognizant Government agency. Enter the zip code in Item 11.

(n) *Item 10—Procuring installation number (2 positions).* Enter a numeric code identifying the installation responsible for the procurement. The following is a list of installations and their assigned codes:

Code	Installation
04	NASA headquarters.
05	Space station procurement office.
21	Ames research center.
22	Lewis research center.
23	Langley research center.
24	Dryden flight research facility.
51	Goddard space flight center.
53	Wallops flight facility.
54	NASA resident procurement office-JPL.
62	George C. Marshall space flight center.
64	John C. Stennis space center.
72	Lyndon B. Johnson space center.
76	John F. Kennedy space center.

(o) *Item 11—POP zip code (5 positions).* Enter the five digit zip code corresponding to the contractor's place of performance address.

(p) *Item 12—Contract award/modification date (6 positions).* (1) *Contract award.* Enter the year, month, and day (two numerics each) that the contract is signed by the contracting officer.

(2) *Modification date.* Enter the year, month, and day (two numerics each) that the modification is signed by the contracting officer.

(q) *Item 13—Completion date (6 positions).* Enter the year, month, and day (two numerics each), either specified or estimated, when all work on the contract and any modifications is scheduled for completion. This date may or may not change as modifications to the contract are issued.

(r) *Item 14—Procurement placement code (2 positions).* Enter the alpha procurement placement code (PPC) identifying the type of solicitation process used and the extent of competition obtained on the procurement. (See 1804.671-7 for PPC matrix.) The FACS system must be able to provide information on "noncompetitive procurements using competitive procedures," as required by Public Law 98-369; this is accomplished by selecting procurements coded 1 in Item 28 (Number of offers received) and coded 2, 3, or 4 in Item 18 (Extent of competition). These procurements must have one of the following competitive PPC's: AX, AE, AF, BX, BE, BF, FX, FE, FF, GF, KX, KE, QX, RS, RE, UX, TX, TE, XX, XE, or XD.

(s) *Item 15—Kind of action (2 positions).* Enter the numeric code from the following lists that identifies in general terms the kind of procurement and the action taken to initiate it:

Code	Kind of action
New Contracts/Grants/Orders:	
01	New letter contract.
03	New basic contract. New procurements, when the first binding document contains all the agreement's terms and conditions.
05	Intragovernmental. Orders issued to other Federal agencies.
06	Grant.
21	Cooperative agreement or Space Act agreement.
23	Order under Mandatory GSA-FSS. See FAR 8.404.
24	Order under optional (non-mandatory) GSA-FSS. See FAR 8.404-2.
25	Order under indefinite-delivery contract (IDC) (other than reporting center's).
26	Order under BOA (other than reporting center's).
Modifications To Existing Contracts:	
07	New-work modification. Modifications that add a new procurement to existing contracts. New procurement, for the purpose of this report, means a modification action that usually requires the preparation of a Justification for Other than Full and Open Competition (see FAR 6.303).
08	Supplemental agreement. Bilateral, definitized modifications except those covered by code 10 below.
09	Change order. Change orders issued pursuant to the changes clause of the contract.
10	Supplemental agreement definitizing change order.
11	Administrative/incremental funding. This code should be used for administrative changes (such as novation agreements) as well as for incremental funding modifications.
12	Termination for default.
13	Termination for convenience.
14	Definitizing letter contract.
15	Exercising priced option.
16	Order under reporting center's indefinite delivery contract (IDC).
17	Order under reporting center's BOA.

(t) *Item 15a—Center kind of action (2 positions).* Enter the numeric code, if applicable, from the following list that further identifies the kind of action reported in item 15:

Code	Center kind of action
14	Small purchase.
50	Basic ordering agreement (BOA).
52	Indefinite delivery type contract.
53	Basic ordering agreement modification.
54	Task order modification.
60	Blanket purchasing agreement (BPA).
61	Call against BPA.
99	Closing modification.

Leave this item blank if none of the above choices are descriptive of the action being reported. The information provided in this item is used in the generation of Procurement Management Data Reports (PMDR).

(u) *Item 16—Contractor type (2 positions).* Enter the appropriate code from the following:

Code	Contractor
Business:	
01	Section 8(a)—disadvantaged. Awards placed through the Small Business Administration with a minority business firm owned and controlled by socially and economically disadvantaged individuals, in accordance with Section 8(a) of the Small Business Act.

Code	Contractor
03	Disadvantaged direct. Awards placed directly with a minority business firm owned and controlled by socially and economically disadvantaged individuals.
04	Not disadvantaged. Other large or small businesses that are not considered disadvantaged.
Nonprofit organization:	
05	Educational. An educational institution that is not State, Federal, or local-government-owned.
06	Hospital. A hospital that is not State, Federal, or local-government-owned.
08	Other nonprofit. A nonprofit institution or organization that is a corporation, foundation, trust, or institution not organized for profit, and no part of its net earnings is applied to the profit of any private shareholder or individual.
State/local government:	
09	Educational. A State, Federal, or local-government-owned educational institution. (Privately owned educational institutions shall be coded 05.)
10	Hospital. A State, Federal, or local-government-owned hospital. (Privately owned hospitals shall be coded 06.)
12	Other State/local government. Includes State, Federal, or local-government-owned research organizations.

(v) *Item 17—Award Outside U.S.* Enter "L" for an award to a source outside the U.S. Enter "M" for an award to a source inside the U.S., if the principal place of performance will be outside the U.S. When this item is coded "L" or "M," the PPC code entered in item 14 of the NASA Form 507 must be from the "work outside U.S." category of the PPC matrix.

(w) *Item 18—Extent of competition (1 position).* Enter the appropriate code from the following list (except for non-new-work (within-scope) modifications):

Code	Extent of competition
2	Sealed Bid. Award results from acceptance of a bid in response to a formal invitation for bids or from sealed bidding following an evaluation of technical proposals (two-step sealed bidding). (See FAR part 14.)
3	Competed action—SEB. Competitive offers are solicited from more than one responsible offeror capable of satisfying the Government's requirements wholly or partially; award is based on price, design, or technical competition; and Source Evaluation Board (SEB) procedures are used to evaluate the proposals (see FAR 15.506-2). This code shall also be used if Architect-Engineer Selection Board procedures are used (see FAR 36.603-2).
4	Other competed action. Competitive offers are solicited from more than one responsible offeror capable of satisfying the Government's requirements wholly or partially; award is based on price, design, or technical competition; and Source Evaluation Board procedures are not used to evaluate the proposals.
5	Noncompetitive follow-on to competed action. The procurement is for the continued development or production of a major system or highly specialized equipment, including major components thereof, that is considered available only from the original source, and it is likely that award to any other source would result in (1) substantial duplication of cost to the Government that is not expected to be recovered through competition, or (2) unacceptable delays in fulfilling NASA's requirements (see FAR 6.302-1(b)(2)).
6	Other not competed. Only one offer is solicited and only one offer is received capable of satisfying the Government's requirements wholly or partially; the work involved is not a follow-on procurement reportable under code 5 above. Include awards resulting from unsolicited proposals in this category.

(x) *Item 19—Type of service or product (4 positions).* Enter the code indicating the principal type of effort or end item obtained under the contract. If more than one classification applies to the procurement, enter the one accounting for the largest dollar volume of procurement. Codes have been established to identify research and development (R&D) procurements, service contracts, and supply and equipment contracts. These codes may be found in the FPDS Product and Service Codes manual located in the procurement administrative office at each NASA installation. Information on the most frequently used R&D codes is presented below.

(1) R&D procurement—R&D codes are used for—

(i) All contracts for R&D work, and

(ii) Most, but not all, contracts with educational institutions.

(2) Space R&D (first 3 digits)—If the procurement involves space R&D, use one of the following for the first three digits of the four-position code:

R&D code [1]	Type of R&D procurement
AR1	Aeronautics & space technology.
AR2	Space science & applications.
AR3	Space flight.
AR4	Space operations.
AR6	Space station.
AR7	Commercial programs.
	AR9 Other space.

[1] See subparagraph (aa) (3) of this section.

(3) Space R&D (fourth digit)—If the procurement involves space R&D, use one of the following for the fourth digit of the four position code. The terms in this list are explained in the following subdivisions:

Code	Meaning
1	Basic research.
2	Applied research and exploratory development.
3	Advanced development.
4	Engineering development.
5	Operational systems development.
6	Management and support.

(i) Basic Research—Includes all scientific effort and experimentation directed toward increasing knowledge and understanding in those fields of the physical, engineering, environmental, social, and life sciences related to long-term national needs. It provides fundamental knowledge ultimately required for the solution of social, economic, political, physical, or military problems. It forms a part of the base for subsequent applied research and exploratory and advanced development in the various disciplines, and new or improved functional capabilities.

(ii) Applied Research and exploratory development—Includes all effort directed toward the solution of specific problems, short of major development projects. This type of effort may vary from fairly fundamental applied research to quite sophisticated breadboard hardware, study, programming, and planning efforts. It thus includes investigations and minor development effort. The dominant characteristic of this category of effort is that it be pointed toward specific problem areas with a view toward developing and evaluating the feasibility and practicability of proposed solutions and determining their parameters.

(iii) Advanced development—Includes all effort directed toward projects which have moved into the development of hardware for test. The prime result of this type of effort is proof of design concept and/or prototype.

(iv) Engineering development—Includes those projects in full-scale engineering development for Government use but which have not yet received approval for production or had production funds included in the budget submission for the current or subsequent fiscal year. This area is characterized by major line-item projects.

(v) Operational systems development—Includes those projects still in full-scale engineering development but which have received

approval for production, or production funds have been included in the budget submission for the current or subsequent fiscal year.

(vi) Management and support—Includes all effort directed toward support of installations or operations required for general research and development. Included would be construction of a general nature unrelated to specific programs, maintenance support of laboratories, operation and maintenance of test ranges, and maintenance and support of test aircraft, equipment, or ships. Costs of laboratory personnel, either in-house or contractor, would be assigned to appropriate projects or program areas above.

(y) *Item 20—Physically complete (1 position).* Enter "Y" (yes) if the contract is physically complete, i.e., after all articles and services called for under the contract, including such related items as reports, spare parts, and exhibits, have been delivered to and accepted by the Government (see FAR 4.804–4). Also enter the date that the contract is physically completed. Otherwise, this field should be left blank.

(z) *Item 21—Labor surplus area award (1 position).* "Y" or "N" to indicate whether the award is to a concern in a labor surplus area (see FAR subpart 20.1).

(aa) *Item 22—FSS/Indefinite-delivery/ BOA contract no. (15 positions).* Enter the Federal Supply Schedule (FSS), indefinite-delivery, or basic ordering agreement (BOA) contract number under which a delivery order has been placed if Item 15 (Kind of Action) is coded 23, 24, 25, or 26.

(bb) *Item 23—Description of contract/ modification (narrative).* Enter a brief description of the end item or services being procured. For modifications, enter a brief description of the purpose.

(cc) *Item 24—CICA applicability (1 position).* (1) Pre-CICA: Code 1 Enter if the contract action is a new contract resulting from a solicitation issued before April 1, 1985, irrespective of the award date. All within-scope modifications to such contracts and new-work modifications resulting from solicitations issued before April 1, 1985, are to be reported by this code.

(2) Post CICA: Code 2 Enter if the contract action is a new contract resulting from a solicitation issued on or after April 1, 1985. All modifications to such contracts are to be reported by this code.

(dd) *Item 25—Proposed procurement synopsized (1 position).* Enter "Y" if the procurement was synopsized prior to award in the Department of Commerce's Commerce Business Daily. Enter "N" if the procurement was not synopsized, except enter "U" if the procurement was not synopsized because of urgency.

(ee) *Item 26—Contract type (2 positions).* Enter the code that identifies the type of contract from the following list:

Code	Contract type
01	Fixed-Price, Firm (FAR 16.202 and 16.207). (Include Firm Fixed-Price, level-of-effort term contracts in this category.)
02	Fixed-Price, Redetermination (FAR 16.205).
03	Fixed-Price with Economic Price Adjustment (FAR 16.203).
04	Fixed-Price Incentive (FAR 16.204).
05	Cost (No Fee) (FAR 16.302).
06	Cost-Sharing (FAR 16.303). (The estimated cost reported shall include only the Government's share.)
07	Cost-Plus-Fixed-Fee (FAR 16.306).
08	Cost-Plus-Incentive-Fee (FAR 16.404–1).
09	Time-and-Materials (FAR 16.601).
10	Labor-Hour (FAR 16.602).
12	Cost-Plus-Award-Fee (FAR 16.404–2).

(2) Combination contract types shall be reported as follows:

(i) Where the contract has one type of incentive arrangement applying to cost performance and another to technical and/or schedule performance, report the contract type assigned to the cost-incentive feature; e.g., a contract providing a cost-plus-incentive-fee arrangement on cost and an award fee arrangement on technical and/or schedule performance will be reported as "Code 08—Cost-Plus-Incentive-Fee."

(ii) Where one or more items of work are priced exclusively under one of the arrangements coded above, with one or more additional items priced exclusively under another such arrangement, report the contract type in accordance with the code assigned to the arrangement under which the predominate dollar amount will be spent.

(ff) *Item 27—No. or offerors solicited (3 positions).* Enter the number of firms to which soliciations were provided.

(gg) *Item 28—Number of offers received (3 positions).* Enter the actual number of offers received in response to the solicitation.

(hh) *Item 29—Solicitation procedures (1 position).* This item pertains to the requirements of FAR subparts 6.1 (Full and Open Competition), 6.2 (Full and Open Competition After Exclusion of Sources), and 6.3 (Other Than Full and Open Competition), with the exception of the statutory authorities for other than full and open competition (subpart 6.3), which are reported in Item 30. Codes "A" through "L" designate the competition alternatives described in FAR part 6. Delivery-order contract actions under indefinite-delivery contracts shall be reported the same as the initial contract when the following criterion, in FAR 6.001(e), is met: They are orders placed under indefinite-delivery contracts that were entered into pursuant to FAR part 6, and either the contract was awarded under subpart 6.1 or 6.2 and all responsible sources were realistically permitted to compete for the requirements contained in the order, or the contract was awarded under subpart 6.3 and the required justification and approval adequately covers the requirements contained in the order.

(1) Code A—Full and open competition sealed bid is entered when the sealed bidding (see FAR 6.401(a)) method of contracting was used.

(2) Code B—Full and open competition—competitive proposal is entered when the FAR part 15, Contracting by Negotiation, procedures were used for a competitive solicitation.

(3) Code C—Full and open competition—combination is entered when any combination of competitive procedures (e.g., two-step sealed bidding) was used (see FAR 6.102(c)).

(4) Code D—Architect-engineer is entered if the action resulted from selection of sources for architect-engineer (A&E) contracts in accordance with Public Law 92–582 and procedures in FAR subpart 36.6 (see FAR 6.102(d)(1)). The selection of a potential A&E contractor is made by an A&E Evaluation Board conducted in accordance with 41 U.S.C. 541 et seq. This selection process is considered a competitive procedure and shall be reported as a competitive award. When award is an A&E contract and was a result of a small business set-aside or labor surplus area set-aside, use code K in lieu of this code.

(5) Code E—NASA Research Announcement/Announcement of Opportunity is entered if the action resulted from competitive selection of basic research proposals as a result of:

(i) A broad agency announcement (NASA Research Announcement or Announcement of Opportunity) that is general in nature identifying areas of research interest, including criteria for selecting proposals, and soliciting the participation of all offerors capable of satisfying the Government's needs and

(ii) A peer or scientific review (see FAR 6.102(d)(2)).

(6) Code F—Multiple-award schedule is entered if the action is an order issued against a multiple-award schedule using the procedures in FAR 8.405–1 (see FAR 6.102(d)(3)). This code shall be used for multiple-award schedule contracts (mandatory or optional). This code may

be used for ADP procurements, unless the solicitation utilized make-or- model specifications. Use of the multiple-award schedule program is considered to be a competitive procedure because competitive procedures were used by GSA to make the basic multiple-award schedule contract awards under 41 U.S.C. 259(b)(3)(A). For reporting purposes, an order issued against a multiple-award schedule shall be reported as a competitive award.

(7) Code G—Alternate source—reduced cost is entered if the action was taken pursuant to FAR 6.202(a)(1), which states that agencies may exclude a particular source from a contract action in order to establish or maintain an alternative source or sources for the supplies or services being acquired if the agency head determines that to do so would increase or maintain competition and likely result in reduced overall costs for the acquisition, or for any anticipated acquisition of such supplies or services.

(8) Code H—Alternate source—mobilization is entered if the action was taken pursuant to FAR 6.202(a)(2), which states that agencies may exclude a particular source from a contract action in order to establish or maintain an alternative source or sources for the supplies or services being acquired if the agency head determines that to do so would be in the interest of national defense in having a facility (or a producer, manufacturer, or other supplier) available for furnishing the supplies or services in case of a national emergency or industrial mobilization.

(9) Code J—Alternate source—engineering/R&D capability is entered if the action was taken pursuant to FAR 6.202(a)(3), which states that agencies may exclude a particular source from a contract action in order to establish or maintain an alternative source or sources for the supplies or services being acquired if the agency head determines that to do so would be in the interest of national defense in establishing or maintaining an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center.

(10) Code K—Set-asides is entered if the action resulted from use of procedures for set-asides pursuant to FAR 6.203. This includes small business set-asides, labor surplus area set-asides, or combinations thereof. This code also includes contract actions under the Small Business Innovation Research (SBIR) Program established under Public Law 97–219.

(11) Code L—Other than full and open competition is entered if the action resulted from use of other than full and open competition pursuant to 10 U.S.C. 2304(c). The conditions or exceptions permitting contracting without providing for full and open competition are prescribed in FAR 6.302. Enter this code for noncompetitive awards made under the authority of section 8(a) of the Small Business Act (see FAR subpart 19.8). This code shall also be used for all ADP procurements where the solicitation utilized make-and-model specifications.

(ii) *Item 30—Authority for other than full and open competition.* When Item 29 is coded "L," this item must be completed. Enter the applicable code from the categories listed below. This item identifies the solicitation process and not the extent of competition obtained.

(1) Code A—Unique source is entered when the contract action is under 10 U.S.C. 2304(c)(1) and the agency's minimum needs can be satisfied only by unique supplies or services available from only one source or only one supplier with unique capabilities (see FAR 6.302–1(b)(1)).

(2) Code B—Follow-on contract is entered when the contract action is under 10 U.S.C. 2304(c)(1) and it is likely that the award of follow-on contracts must be to the original source because award to any other source would result in:

(i) Substantial duplication of cost to the Government that is not expected to be recovered through competition or

(ii) Unacceptable delays in fulfilling the agency's requirements (see FAR 6.302–1(a)(2)(ii)).

(3) Code C—Unsolicited research proposal is entered when the contract action is under 10 U.S.C. 2304(c)(1) as the result of acceptance of an unsolicited research proposal that demonstrates a unique and innovative concept, the substance of which:

(i) Is not otherwise available to the Government and

(ii) Does not resemble the substance of a pending competitive acquisition (see FAR 6.302–1(a)(2)(i)).

(4) Code D—Patent/data rights is entered when the contract action is under 10 U.S.C. 2304(c)(1) because the existence of limited rights in data, patent rights, copyrights, or secret processes; the control of basic raw material; or similar circumstances make the supplies and services available from only one source (see FAR 6.302–1(b)(2)).

(5) Code E—Utilities is entered when:

(i) The contract action is under 10 U.S.C. 2304(c)(1) when acquiring electric power or energy, gas (natural or manufactured), water, or other utility services and circumstances dictate that only one supplier can furnish the service or

(ii) The contemplated contract is for construction of a part of a utility system and the utility company itself is the only source available to work on the system (see FAR 6.302–1(b)(3)).

(6) Code F—Standardization is entered when the contract action is under 10 U.S.C. 2304(c)(1) because the agency head has determined under the agency's standardization program that only specified makes and models of technical equipment and parts will satisfy the agency's needs for additional units or replacement items and only one source is available (see FAR 6.302–1(b)(4)).

(7) Code G—Only one source—other is entered when the contract action is under 10 U.S.C. 2304(c)(1) to a single source and codes "A" through "F" above do not apply (see FAR 6.302–1(b)).

(8) Code H—Urgency is entered when the contract action is under 10 U.S.C. 2304(c)(2) because:

(i) An unusual and compelling urgency precludes full and open competition and

(ii) Delay in award of a contract would result in serious injury, financial or other, to the Government (see FAR 6.302–2(b)).

(9) Code J—Mobilization is entered when the contract action is under 10 U.S.C. 2304(c)(3) to a particular source or sources in order to maintain a facility, producer, manufacturer, or other supplier available for furnishing supplies or services in case of a national emergency or to achieve industrial mobilization (see FAR 6.302–3(b)(1)).

(10) Code K—Essential R&D capabilities is entered when the contract action is under 10 U.S.C. 2304(c)(3) to a particular source or sources in order to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center (see FAR 6.302–3(b)(2)).

(11) Code L—International agreement is entered when the contract action is under 10 U.S.C. 2304(c)(4) because full and open competition is precluded by (i) the terms of an international agreement or treaty between the United States and a foreign government or international organization or (ii) the written directions of a foreign government reimbursing the agency for the cost of the acquisition of the supplies or services (see FAR 6.302–4).

(12) Code M—Authorized by statute is entered when the contract action is

under 10 U.S.C. 2304(c)(5) because a statute expressly authorizes or requires that the acquisition be made through another agency or from a specified source (see FAR 6.302–5(a)(2)(i)). This code should be used for noncompetitive 8(a) awards.

(13) Code N—Authorized resale is entered when the contract action is under 10 U.S.C. 2304(c)(5) for a brand-name commercial item for resale through commissaries or other similar facilities (see FAR 6.302–5(a)(2)(ii)).

(14) Code P—National security is entered when the contract action is under 10 U.S.C. 2304(c)(6) because disclosure of the Government's needs would compromise the national security (see FAR 6.302–6).

(15) Code Q—Public interest is entered when the contract action is under 10 U.S.C. 2304(c)(7) because the agency head has determined that full and open competition is not in the public interest in the particular acquisition concerned (see FAR 6.302–7).

(jj) *Item 31—Labor statutes* (1 position). Enter the appropriate code, in accordance with the provisions of the contract, from the following list:

Code	Statutory requirements
N	Not subject to statutory requirements listed below.
1	Subject to Walsh-Healey Act, manufacturer (FAR 22.606–1).
2	Subject to Walsh-Healey Act, regular dealer (FAR 22.606–2).
3	Subject to Service Contract Act (FAR Subpart 22.10).
4	Subject to Davis-Bacon Act (FAR 22.403–1).

(kk) *Item 32—Standard Industrial Classification (SIC) Code (4 positions).* Enter the code identifying the industry category within which the principal (determined by the predominance of dollars awarded) product produced or distributed or services rendered would best fit. Industry categories are published in the Standard Industrial Classification Manual maintained and issued by the Office of Management and Budget (OMB). A listing of the SIC codes, without the detailed lists of products and services falling within each category, can be found at FAR 19.102(g).

(ll) *Item 33) Contract administration delegated* (1 position). Enter "Y" (yes) or "N" (no) to indicate whether any contract administration functions have been delegated to another Government agency (see FAR Subpart 42.2).

(mm) *Item 34—Preference program.* Report the code that represents the preference program used in making the award. Report Code H if no preference program applies or the preference program is not otherwise listed.

(1) Code A—Directed to sheltered workshops. Report this code for an award to a workshop for the blind or a workshop for the other severely handicapped pursuant to FAR subpart 8.7.

(2) Code B—8(a) Program Report this code for actions with the Small Business Administration pursuant to FAR subpart 19.8.

(3) Code C—Combined labor surplus/small business set-aside. Report this code for a combined labor surplus area and small business set-aside award made to a small business concern pursuant to FAR subpart 19.5.

(4) Code D—Small business set-aside. Report this code for a small business set-aside (including Small Business Innovation Research (SBIR)) award made pursuant to FAR subpart 19.5.

(5) Code E—Labor surplus area set-aside. Report this code for a labor surplus area set-aside award made pursuant to FAR subpart 20.2.

(6) Code F—Tie-bid preference. Report this code for all tie-bid preference awards (see FAR 19.202–3) made pusuant to FAR subpart 19.5.

(7) Code H—No preference program. Report this code if the award is not made pursuant to a preference program, or if the preference program is not listed above.

(nn) *Item 35—Advisory/Assistance services contract* (1 position). Enter "Y" (yes) or "N" (no) to indicate whether the contract is for advisory and assistance services (formerly known as consulting services).

(oo) *Item 36—Support services type contract (1 position).* Enter "Y" (yes) or "N" (no) to indicate whether the contract is for support services. Compare the following explanations with the procurement in question in determining how to code this item:

(1) In-house contract support—(i) Provides a service to the installation; (ii) Is performed on or near the installation; (iii) Is continuous in nature; (iv) Is not provided by the prime product development contractor when the work is for the purpose of fulfilling the prime contract;

(v) Is characterized as that support necessary because of the on- or near-site population and activated facilities (housekeeping maintenance and operation function) and the effort necessary to support the research, development, or test efforts the installation performs in-house; and (vi) Excludes—(A) Construction, alteration, and repair; (B) Purchase and incidental services; (C) Prime product development contracts; (D) Operations support contracts; and (E) Tenants.

(2) Operations support contracts. This is work performed on- or near-site because of the location of major operations facilities. (This is the effort associated with carrying out mission operations; it is done on-site because that is where the supported facility is—a launch pad, mission control center, or tracking station.) Tracking operations support contractors are subdivided as on-site (at or near GSFC or JPL) or off-site.

(i) Operations support contractors are restricted to major national operations facilities and the following foreign and domestic tracking network stations: (A) JPL-Mission Control Center (DSN); (B) Goldstone; (C) Mesa Antenna Range; (D) JSC-Mission Control Center (MSF); (E) GSFC-Mission Control Center (STDN); (F) World-Wide Network Tracking Stations; (G) OTDA-Operations Funded Support; (H) KSC-Launch Complex 39 and related support facilities.

(ii) Operations support includes support funded by STS operations at MSFC, KSC, and JSC.

(3) Purchased and/or incidental services.

(i) Purchased services are those obtained by—(A) Delivery orders against Federal Supply Schedules; (B) Purchase orders; (C) Blanket purchase agreements; or (D) Basic ordering agreements not exceeding $25,000 per order.

(ii) Incidental services are—(A) Described in terms of the labor required to perform the services; (B) Procured from vendors that provide similar services to the local community; (C) Those for which the vendor provides all or a substantial amount of the capital investment required to perform the work under the contract; and (D) Rendered under small contracts generally not exceeding four-to-five staff-years per year.

(pp) *Item 37—Cost Accounting Standards clause (1 position).* Enter "Y" (yes) or "N" (no) to indicate whether the contract contains the Cost Accounting Standards clause (see FAR 30.201–4).

(qq) *Item 38—New technology or patent rights clause (1 position).* Enter "Y" (yes) or "N" (no) to indicate whether a new technology or patent rights clause is included in the contract. (See 1827.373.) A "Y" entry for contracts with small businesses, non-profit organizations, and educational institutions will indicate a patent rights clause. A "Y" entry for contracts with large businesses will indicate a new technology clause.

(rr) *Item 39—Subcontracting program plan (1 position).* Enter "Y" (yes) or "N" (no) to indicate whether the contract contains a subcontract plan requiring the contractor to furnish the information prescribed on Standard Forms 294 and 295 (see 1804.674 and FAR 19.702). Enter "W" (waiver) when there are no subcontracting opportunities, for contracts performed entirely outside the United States, and for GSA Federal Supply Schedule contracts containing plans. Use Code "Y" for corporate plans with individual contract goals.

(ss) *Item 40—SBIR award (1 position).* Enter Code "N" (no) if the contract action is not in support of the Small Business Innovation Research (SBIR) Program (Pub. L. 97–219). Enter Code "1" if the contract action is related to a Phase I contract in support of the program. Enter Code "2" if the contract action is related to a Phase II contract in support of the program.

(tt) *Item 41—Woman-owned small business (1 position).* Enter "Y" (yes) or "N" (no) to indicate whether the business concern is a woman-owned small business (see FAR subpart 19.9).

(uu) *Item 42—Contract for foreign government or international organization.* Enter "Y" (yes) if a foreign government or international organization is bearing any part of the cost of the action. Otherwise, enter "N" (no).

(vv) *Item 43—Management reporting requirements (MRR): correlated cost and performance data reporting (1 position).* Enter one of the following codes (see NHB 9501.2):

Code	Reporting required
N	None required.
2	NASA Form 533M only.
3	NASA Forms 533M and 533Q.
4	NASA Forms 533M and 533P.
5	NASA Forms 533P and 533Q.
6	NASA Forms 533M, 533P, and 533Q.

(ww) *Item 44—Management reporting requirements (MRR): property and space hardware reporting (1 position).* Enter one of the following codes (see FAR 45.505–11):

Code	Reporting required
N	None required.
2	NASA Form 1018, without space hardware.
3	NASA Form 1018, with space hardware.

(xx) *Item 45—Trade data (3 blocks).* (1) First block—number of bidders offering foreign item (1 position). Enter one numeric code (0–9) to indicate the number of firms that offered foreign end products. An entry is required regardless of whether the Buy American Act is invoked or not. If none, enter "0". If 9 or more, enter "9".

(2) Second block—Percent difference (2 positions). If the evaluation factor under the Buy American Act is used and results in an award to a firm offering a domestic product, enter the percentage difference between the award price and that of the low firm offering a foreign end product, computed before application of the Buy American Act differential, i.e., the difference divided by the price of the low firm offering a foreign end product. Enter the percentage as a whole number. If the evaluation factor under the Buy American Act is not used, enter "00".

(3) Third block—Country of manufacturer (2 positions). If the product is manufactured, mined, or grown in the United States (the 50 states and the District of Columbia) or the service is performed by a U.S. contractor, enter "US". If the product is manufactured, mined, or grown in a foreign country, enter the code from FIPS PUB 10–3 of that country/area. In the case of a service, if the service is performed by a foreign contractor, enter the code from FIPS PUB 10–3 of that country/area. This publication may be obtained from the Headquarters Office of Procurement, Procurement Management Division (Code HM).

(yy) *Item 46—Demonstration test program (1 position).* Enter "Y" or "N" to indicate whether the award is a new contract awarded to a U.S. business concern as a result of a solicitation issued on or after January 1, 1989, under the Small Business Competitiveness Demonstration Program (see FAR subpart 19.10 and NFS 18–19.10). This item must be completed for awards to large businesses as well as for awards to small businesses.

(zz) *Item 47—Emerging small business (1 position).* Complete this item only if Item 46 is coded "Y." Enter "Y" or "N" to indicate whether the contractor represents that it is an emerging small business concern (see FAR 19.1002 for definition of emerging small business).

(aaa) *Item 48—Emerging small business reserve award (1 position).* Complete this item only if Item 47 is coded "Y." Enter "Y" or "N" to indicate whether the contract award was reserved for emerging small business concerns.

(bbb) *Item 49—Size of small business (1 position).* Complete this item only if Item 46 is coded "Y" and the award is to a small business. Enter the code that corresponds to the range of the number of employees or the range of the average annual gross revenue for the small business contractor receiving the award as represented by the contractor in response to the solicitation.

(ccc) *Item 50—Effective date.* Enter the year, month, and day (two numerics each) of the contract's effective date.

(ddd) *Item 51—Security code (1 position).* Enter "Y" or "N" to indicate whether Defense Industrial Security clearances are required during contract performance.

(eee) *Item 52—Equipment code (1 position).* Enter "Y" or "N" to indicate whether the contract will involve government furnished or contractor acquired property.

(fff) *Item 53—Administrator code (3 positions).* Enter the code which identifies the individual at the contracting installation responsible for administration of the contract.

(ggg) *Item 54—Contracting officer code (3 positions).* Enter the code which identifies the contracting officer assigned to the contract.

(hhh) *Item 55—Negotiator code (3 positions).* Enter the code which identifies the individual responsible for negotiating the contract.

(iii) *Item 56—COTR name (15 positions).* Enter the name of the Contracting Officer's Technical Representative (COTR) for the contract.

(jjj) *Item 57—Organization code (5 positions).* Enter the organization code for the responsible technical organization for which the contract has been awarded.

(kkk) *Item 58—Contract fund code (1 position).* Enter the appropriate code to indicate whether the contract is fully funded, incrementally funded, or unfunded.

(lll) *Item 59—Reason not small business (2 positions).* Enter the appropriate two digit code to identify the reason the contract was not awarded to a small business concern.

(mmm) *Item 60—Center unique.* This field may be used at the discretion of individual centers to collect data not elsewhere reported on the form (e.g., taxpayer identification numbers). Otherwise leave this item blank.

(nnn) *Item 61—Cancellation date (6 positions).* If it is necessary to cancel a previously executed modification, enter the year, month, and day (two numerics each) of such cancellation.

(ooo) *Item 62—Total contract value including options.* Enter the definitized contract value (including maximum potential fee or profit) plus the value of any options (including maximum potential fee or profit) available in the contract. Round entries to the nearest whole dollar.

(ppp) *Item 63—Estimated cost or fixed price (11 positions).* Enter the estimated cost or fixed price for all new awards. For modifications, enter only the increase or decrease effected by the respective modification. For cost-reimbursement contracts, enter the estimated cost, exclusive of fee. For fixed-price contracts, enter the total fixed price, including the negotiated profit. For time-and-materials and labor-hour contracts, enter the total estimated contract price, including profit. Round all entries to the nearest whole dollar. Do not report amounts for priced options that have not been exercised in this field.

(qqq) *Item 64—Fee (11 positions).* This item pertains to cost-reimbursement contracts only. For new awards, enter the definitized negotiated fee, broken down into the types of fee indicatd on the form. For modifications, enter only the increase or decrease effected by the respective modification. For incentive contracts, enter the target fee. For award-fee contracts, enter the base fee, the maximum available award fee. Also enter the total of the different types of fees reported. Round entries to the nearest whole dollar.

(rrr) *Item 65—Action obligation.* Enter the dollar amount obligated (increase or decrease) of the reported action. Report obligations for cost and fee separately and enter the total obligations reported. Round entries to the nearest whole dollar.

(sss) *Item 66—Funded through date (6 positions).* For incrementally funded contracts, enter the date through which the contract is funded.

1804.671–5 [Removed]

g. Section 1804.671–5 is removed.

PART 1808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 1808.3—[Amended]

6. Section 1808.304–573 is added to read as follows:

1808.304–573 Authorization for procurement of wellhead natural gas.

Acquisition of wellhead natural gas and interstate transportation of the natural gas to locally franchised distribution utility companies' receipt points (city gate) is considered the procurement of supplies rather than the procurement of public utility services described in FAR subpart 8.3. Therefore, wellhead natural gas and interstate transportation of such gas should be obtained directly by NASA under applicable authorities and FAR procedures governing the acquisition of supplies. Redelivery of the gas from the city gate to the NASA facility is considered a utility service since it is provided only by the locally franchised utility. GSA is responsible for obtaining an appropriate contract for the redelivery service in accordance with FAR 8.304.

PART 1813—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

7. Subpart 1813.71 is added to read as follows:

Subpart 1813.71—Credit Cards

1813.7101 Scope of subpart.
1813.7102 Applicability.
1813.7103 Limitations.
1813.7104 Cardholders.
1813.7105 Approving officials.
1813.7106 COTR.
1813.7107 Administrative office contact.

Subpart 1813.71—Credit Cards

1813.7101 Scope of subpart.

This subpart authorizes the use of the U.S. Government Credit Card. (See 1870.4 for NASA procedures under the NASA Credit Card System.)

1813.7102 Applicability.

This subpart applies to installations that have elected to participate in the credit card program by issuing a delivery order under the contract for Governmentwide Commercial Credit Card Service awarded by the General Services Administration, Federal Supply Service.

1813.7103 Limitations.

To use the GSA schedule contract, an installation must take the following actions before issuing a delivery order:

(a) Designate cardholders, approving officials, a Contracting Officer's Technical Representative (COTR), an Administrative Office Contact, and a Financial Management Office Contact.

(b) Establish procedures for covering the contractor's administrative fee.

1813.7104 Cardholders.

(a) *Designation.* The Procurement Officer shall determine the number of cardholders to be authorized at the installation and shall designate individual cardholders based on installation nomination procedures. The Procurement Officer shall issue a delegation of authority to each cardholder specifying the authority being delegated and any limitation on the authority.

(b) *Single purchase limits.* The authority delegated to a cardholder shall not exceed the small purchase limit in FAR 13.000. This authority is the limit for a single purchase, which may include multiple items as part of the same transaction.

(c) *Limitation on designations.* Cardholders with authority for purchases above the imprest fund limit in 1813.404(a) shall be warranted contracting officers appointed under subpart 1801.6.

(d) *Training.* Cardholders with purchase authority above the imprest fund limit shall have completed formal training required by 1801.603–2(e)(1)(iii)(A). The Procurement Officer shall assign a contracting officer or other procurement person to provide eight hours of on-the-job orientation and training for other cardholders.

(e) *Review.* The Procurement Officer shall establish a system for periodic review of the credit card transaction process, including a review of a sample of purchases, to ensure that proper purchasing procedures are being followed and that internal controls to avoid fraud, waste, and abuse are effective.

1813.7105 Approving officials.

Unless installation procedures otherwise provide for their designation, the Procurement Officer shall designate approving officials. The approving official should be the cardholder's supervisor or a higher level individual. A cardholder may not be an approving official for purchases made by the cardholder or the cardholder's supervisor.

1813.7106 COTR.

The Procurement Officer shall appoint a COTR and notify GSA of the appointment.

1813.7107 Administrative office contact.

The Procurement Officer shall appoint an installation Administrative Office Contact (who may be the COTR).

PART 1814—SEALED BIDDING

Subpart 1814.2—[Amended]

9. Sections 1814.202 and 1814.202–7 are added to read as follows:

1814.202 General rules for solicitation of bids.

1814.202–7 Facsimile bids.

Before issuance of the solicitation, NASA procurement officers may, by written determination and without power of redelegation, authorize the use of facsimile bids for individual procurements.

PART 1815—CONTRACTING BY NEGOTIATION

10. Section 1815.402 is added to read:

1815.402 General.

Before issuance of the solicitation, NASA procurement officers may, by written determination and without power of redelegation, authorize the use of facsimile proposals for individual procurements.

1815.805–5 [Amended]

11. In section 1815.805–5, paragraph (e), the citation "1815.805–5(a)(1)" is revised to read "1815.805–5(a)."

1815.904 [Removed]

12. Section 1815.904 is removed.

PART 1817—SPECIAL CONTRACTING METHOD

SUBPART 1817.2—[Amended]

13. Section 1817.200 is revised to read as follows:

1817.200 Scope of subpart.

As authorized at FAR 17.200, FAR subpart 17.2 shall apply to all NASA contracts, unless otherwise stated at 1817.204(a).

14. Section 1817.204(a) is revised to read as follows:

1817.204 Contracts.

(a) The 5-year limitation (basic plus option periods) set forth in FAR 17.204(e) shall apply to all NASA contracts regardless of type, except contracts for automatic data processing (ADP) equipment systems and related software development, maintenance, and services; and contracts for telecommunications equipment and services. In addition to these exclusions, the 5-year limitation is not applicable to contracts for which the time needed to design, manufacture, and deliver the end item of hardware is greater than five years. Deviations from the 5-year limitation policy require that:

(1) The extended years can be reasonably priced, and

(2) A persuasive case (other than resources problems) can be made for exceeding five years.

(Example: Some specific program event will occur at or near the end of the total contract period and a competition and potential change of contractor would be unacceptably disruptive or inefficient, or some other programmatic considerations dictate a longer period.)

* * * * *

PART 1819—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 1819.5—[Amended]

15. Section 1819.501 is revised to read as follows:

1819.501 General.

The Small Business Specialist: (a) May make certain set-aside recommendations; (b) Is responsible for reviewing those procurements not set aside; and (c) Is responsible for taking action in accordance with FAR 19.506(b).

1819.505 [Amended]

16. Section 1819.505, paragraph (a), is amended by removing the citation "(see 1819.501(b))".

PART 1832—CONTRACT FINANCING

Subpart 1832.7—[Amended]

17. In section 1832.702–70, a new paragraph (d) is added to read as follows:

1832.702–70 NASA policy

* * * * *

(d) Waiver of any of the conditions set forth in paragraphs (a), (b), and (c) of this section shall be submitted for approval to the installation procurement officer. Concurrence of the installation Comptroller must be obtained on all requests prior to approval by the procurement officer. The procurement officer shall maintain a record of all such approvals during the fiscal year and submit a summary report to the Headquarters Financial Management Division (Code BFC) by October 31. The report will include: contract number, description and type; dollar value; amount of funds initially available; and the reason(s) for the waiver.

18. Subpart 1832.9 is revised to read as follows:

Subpart 1832.9—Prompt Payment

1832.903 Policy.
1832.908 Contract clauses.
1832.970 Payments to Canadian Commercial Corporation.

Subpart 1832.9—Prompt Payment

1832.903 Policy.

As authorized at FAR 32.903, payments for contracts (other than Fixed-Price Architect-Engineer Contracts, Construction Contracts, and contracts for meats, perishables and dairy products) with the Canadian Commercial Corporation (CCC) shall be made earlier than the standard contract payment due dates.

1832.908 Contract clauses.

(a) When a clause at FAR 52.232–25, 52.232–26 or 52.232–27 is used, the clause at FAR 52.232–28 shall be used as authorized by FAR 32.908(d), modified by deleting the words "and contract number" from paragraph (d). The following paragraph shall be inserted in the clause as (b)(4) in lieu of the FAR paragraph at that location:

(4) The Contractor shall submit a Standard Form 3881 to the installation awarding this contract. If a Standard Form 3881 previously submitted to the installation awarding this contract is still valid, resubmittal is not necessary, unless requested by NASA.

(b) When the clause at FAR 52.232–25, Prompt Payment, is used in contracting with the CCC subject to the conditions at 1832.970—

(1) The number "17" shall be used in lieu of "30" in paragraphs (a)(2)(i) and (a)(2)(ii) of the clause; and

(2) The number "17th" shall be inserted in paragraph (b)(2) of the clause.

1832.970 Payments to Canadian Commercial Corporation.

For contracts with the Canadian Commercial Corporation subject to the policy at 1832.903, as authorized by FAR 32.903, the phrase "the 17th day" shall be used in lieu of "the 30th day" only in FAR Subpart 32.9 at FAR 32.905(a)(1), FAR 32.905(a)(2) and FAR 32.906(a).

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

19. Part 1852 is amended as set forth below:

1852.227–70 [Amended]

a. In the clause of section 1852.227–70, paragraph (b)(1)(i), the citation "(43 U.S.C. 2457(a))" is revised to read "(42 U.S.C. 2457(a))".

b. Section 1852.227–84 is revised to read as follows:

1852.227–84 Patent Rights Clauses.

The contracting officer shall insert the following provision as prescribed in 1827.373(f):

Patent Rights Clauses (December 1989)

This solicitation contains the patent rights clauses of FAR 52.227–11 (as modified by the NFS) and NFS 1852.227–70. If the contract resulting from this solicitation is awarded to a small business or nonprofit organization, the clause at NFS 1852.227–70 shall not apply. If the award is to other than a small business or nonprofit organization, the clause at FAR 52.227–11 shall not apply.

(End of Provision)

1852.250–72 [Amended]

c. In section 1852.250–72 introductory text, the citation "1852.403–3(b)" is revised to read "1852.403–370(b)."

PART 1853—FORMS

Subpart 1853.2—[Amended]

20. Section 1853.204–70 is revised to read as follows:

1853.204–70 General (NASA Forms 507, 507A, 507B, 507G, 507M, 533M, 533P, 533Q, 667, 1098, 1356, 1611, and 1612 and DD Form 1593).

(a) *NASA Form 507, Individual Procurement Action Report (New Awards).* NASA Form 507, prescribed at 1804.671–4, shall be used to provide acquisition records and statistics for new awards.

(b) *NASA Form 507A, Individual Procurement Action Report (New Awards) Supplement A.* NASA Form 507A, prescribed at 1804.671–4, shall be used to provide additional data to that provided on the NASA Form 507 for new awards.

(c) *NASA Form 507B, Individual Procurement Action Report Supplement B.* NASA Form 507B, prescribed at 1804.674, shall be used to provide contract cost, fee, and obligation data for new awards and modifications.

(d) *NASA Form 507G, Individual Procurement Action Report (Grants/Orders).* NASA Form 507G, prescribed at 1804.671–4, shall be used to provide acquisition records and statistics for grants, agreements, intragovernmental awards, and orders against Federal Supply Schedule contracts.

(e) *NASA Form 507M, Individual Procurement Action Report (Modifications).* NASA Form 507M, prescribed at 1804.671–4, shall be used to provide acquisition records and statistics for modifications to contracts, grants, agreements, intragovernmental awards, and orders against Federal Supply Schedule contracts.

(f) *NASA Form 533M, Monthly Contractor Financial Management Report.* NASA Form prescribed at 1804.675, shall be used when financial management reporting is required.

(g) *NASA Form 533P, Monthly Contractor Financial Management Performance Analysis Report.* NASA Form 533P, prescribed at 1804.675, shall be used when monthly performance analysis reports are required.

(h) *NASA Form 533Q, Quarterly Contractor Financial Management Report.* NASA Form 533Q, prescribed at 1804.675, shall be used when quarterly cost projection reports are required.

(i) *NASA Form 667, Report on NASA Subcontracts.* NASA Form 667, prescribed at 1804.672, shall be used by contractors to submit information to NASA on each subcontract or subcontract modification over $10,000.

(j) *NASA Form 1098, Checklist for Contract Award File Content.* NASA Form 1098, prescribed at 1804.803–71, shall be used as a guide in compiling contract files and shall accompany contracts and supplemental agreements submitted to Headquarters for approval.

(k) *NASA Form 1356, C.A.S.E. Report on College and University Projects.* NASA Form 1356, prescribed at 1804.7202, shall be used to report information applicable to colleges and universities.

(l) *NASA Form 1611, Contract Completion Statement.* NASA Form 1611, prescribed at 1804.804–2, shall be used for closeout of contract files by an office other than the one administering the contract.

(m) *NASA Form 1612, Contract Closeout Checklist.* NASA Form 1612, prescribed at 1804.804–5, shall be used for contract closeout when the NASA contracting office retains contract administration.

(n) *DOD Form 1593, Contract Administration Completion Record.* DD Form 1593, prescribed at 1804.804–5, shall be used for closeout when the NASA contracting office retains contract administration.

PART 1870—NASA SUPPLEMENTARY REGULATIONS

21. Subpart 1870.4 is added to read as follows:

Subpart 1870.4—NASA Credit Card System

1870.401 Purpose.
1870.402 System content.
1870.403 NASA procedures for the credit card system.
Appendix I to 1870.403 NASA Procedures for using the Governmentwide Commerical Credit Card Service.

Subpart 1870.4 NASA Credit Card System

1870.401 Purpose.

The NASA credit card system provides a means for using credit cards for small purchases.

1870.402 System content.

(a) The regulations governing the use of credit cards are set forth at 1813.7104.

(b) The system contains specific procedures for use by procurement personnel and by the wide range of individuals who participate in the credit card program. These procedures integrate diverse regulatory and operational information from numerous sources in a user-oriented document.

1870.403 NASA procedures for the credit card system.

(a) Credit card procedures are prescribed by Appendix I to this section 1870.403.

(b) NASA may reprint Appendix I as a separate document, provided the following conditions are met:

(1) The issuance date ("cover date") of the procedures shall be the date of the NASA FAR Supplement version from which the text is extracted.

(2) With the exception of availability, distribution and other special prefatory notices, any subsequent modification in the text shall be preceded by a change to the NASA FAR Supplement 1870.403, Appendix I.

(3) The following notice shall be included in the prefatory material of the Handbook:

Important Notice

These procedures are a separately bound, verbatim version of NASA FAR Supplement (NFS) (48 CFR 1870.403) Section 1870.403, Appendix I. Reference to other parts of the Federal Acquisition Regulation (FAR) and the NFS will be required for complete coverage of all procurement aspects. NASA reserves the right to make changes to NFS 1870.403, Appendix I, without issuing a new edition of these procedures. In the event of apparent conflict between these procedures and the NFS, the NFS shall govern.

Appendix I to 1870.403

NASA Procedures for Using the Governmentwide Commercial Credit Card Service

1. Introduction

(a) At the request of the Office of Management and Budget (OMB), the General Services Administration (GSA), Federal Supply Service (FSS) awarded a single schedule contract (Federal Supply Schedule No. OOCC 6150, Industrial Group 615, IG Class 6153) for Governmentwide commercial credit card service to Rocky Mountain BankCard System, Inc. (contractor). The contract is intended to provide, at the request of federal ordering agencies, Governmentwide commercial credit cards and associated services to civilian and military Government employees for the purpose of paying for purchases made for official Government purposes.

(b) These procedures are designed as the NASA supplement to the "Instructions for the Use of the U.S. Government Credit Card" distributed to the cardholder and "Approving Official Instructions for the Use of the U.S. Government Credit Card" distributed to the approving official at the time the card is issued. In the event these procedures conflict with the instructions provided by the contractor, these procedures take precedent. All purchases that will be paid for using the card shall comply with the Federal

Acquisition Regulation (FAR), the NASA FAR Supplement (NFS) and these procedures.

2. Definitions

(a) *Administrative Office Contact.* The Administrative Office Contact is the focal point appointed by the Procurement Officer for coordination of the applications, issuance and destruction of cards, establishment of reports, and administrative training.

(b) *Approving Official.* The approving official is the person who reviews and approves the cardholder's monthly statement of purchases.

(c) *Cardholder.* The cardholder is the individual to whom a card is issued. The card bears this cardholder's name and may only be used by this individual to pay for authorized U.S. Government purchases.

(d) *Contractor.* The contractor is the organization that will maintain all accounts as required by the General Services Administration contract.

(e) *I.M.P.A.C.* I.M.P.A.C., which is printed on all cards furnished by the contractor, stands for "International Merchant Purchase Authorization Card." These initials will also appear on most forms provided by the contractor.

(f) *Oral Procedure.* Oral procedure means a procedure where an order is placed or a purchase is made through an oral agreement which is made in person or by telephone by providing the card for imprint by the vendor or the card number to the vendor. No written purchase order or contract is issued by the Government. The supplies or services are provided by the vendor and payment is made using the I.M.P.A.C.

(g) *Statement of Account.* The Statement of Account is a monthly listing of all payments authorized for purchase and credits made by the cardholder and billed by the merchant.

3. Responsibilities

(a) *Contractor.* The contractor will issue cards to cardholders and send out monthly statements to cardholders, approving officials, and financial management offices. The contractor will pay merchants in a timely manner and will receive reimbursement from the financial management office of each NASA installation.

(b) *Contracting Officer's Technical Representative (COTR).* The COTR appointed by the Procurement Officer will serve as the liaison between the installation and the contractor. The COTR shall oversee the I.M.P.A.C. program and establish installation guidelines. The COTR shall establish authorization codes for controlling purchases. Changes to dollar limitations or authorized merchant codes must be approved by the COTR.

(c) *Cardholder.* Each cardholder is to reconcile his/her monthly statement and forward the reconciled statement to his/her approving official. Detailed instructions are included in paragraph 12 and in the cardholder instructional pamphlet, "Instructions for the Use of the U.S. Government Credit Card," issued by the contractor.

(d) *Approving Official.* The approving official will review the cardholder's monthly statement and serve as liaison with the Administrative Office Contact, the Financial Management Office, and the COTR. Each approving official shall establish, after coordination with the Administrative Office Contact, a budgetary limit for each cardholder's monthly purchases. The approving official will certify the cardholder's monthly statements and ensure that payments are for purchases which are authorized and made in accordance with FAR and NFS. Detailed instructions are included in paragraph 12 and in the approving official's instructional pamphlet, "Approving Official Instructions for Use of the U.S. Government credit card," issued by the contractor. The approving official will also assist the cardholder in resolving disputed payments. The approving official has authority to direct the COTR to instruct the contractor to cancel a card at any time.

(e) *Administrative Office Contact.* The Administrative Office Contact shall establish a budgetary limit for each office that does not exceed the sum of the approving official's cardholders' monthly purchase limits. The Administrative Office Contact, in conjunction with the COTR, shall coordinate, process and monitor resolution of all disputed purchases, credits or billing errors, unless the Procurement Officer designates another individual or office to perform this function.

(f) *Financial Management Office Contact.* The Financial Management Office Contact shall answer the contractor's questions about payment of monthly statements.

4. Use of the I.M.P.A.C.

(a) The I.M.P.A.C. may be used to pay for small purchases made in accordance with part 13 of the FAR and the NFS. It may also be used to pay for orders placed against established requirements contracts or with established sources of supply (see FAR part 8), when authorized by the contract or regulation requiring use of the source. However, installation stocks/inventories must be checked for availability prior to credit card purchase.

(b) The I.M.P.A.C. can be used to pay for supplies or services acquired using oral solicitation procedures. It may also be used to pay for supplies or services that are acquired through a purchase order or an individual order under a requirements contract where the contract specifically allows such payment method. Without exception, the I.M.P.A.C. may only be used to pay for authorized U.S. Government purchases.

(c) Under no circumstances will the I.M.P.A.C. be used for cash advances.

5. Setting Up the I.M.P.A.C. Account

The contractor will provide the Administrative Office Contact with all the necessary application forms (cardholder, approving official, disputes, destruction notice etc.). The Administrative Office Contact will distribute the forms to the selected cardholders and approving officials for completion. Upon completion, the Administrative Office Contact shall process and forward the forms to the contractor. The card will be mailed to the cardholder within ten working days after the application is received by the contractor. When the cardholder receives the card, he/she must immediately return the enclosed notice to the contractor in order to notify the contractor that the card has been received. The contractor is capable of providing various reports to meet management and administrative needs. During the account setup process, the Administrative Office Contact will discuss the various reports available with management personnel and submit requirements to the COTR.

6. Signature Cards

When the account information is submitted to the Administrative Office Contact, a signature card must be completed by each approving official that states the approving official may approve the accuracy of the Statement of Account for payment. The signature card will be forwarded to the appropriate financial management office after completion. An alternate approving official must be designated to avoid statement processing delays and late payment penalties.

7. Dollar Limits Associated With the Card

Use of the credit card by a cardholder is subject to a single purchase limit, a monthly cardholder limit and a monthly office limit. The purpose of these dollar limits is as follows:

(a) *Single Purchase Limit.* The single purchase limit is a limitation on the procurement authority delegated to the cardholder. This limit cannot be exceeded unless a revised delegation of authority is issued by the Procurement Officer raising the limit. A "single purchase" using the card may include multiple items. However, no single purchases may exceed the authorized single purchase limit established for each cardholder. The application for the cardholder will be completed in accordance with the Purchase Limit Matrix in the Federal Supply Schedule contract.

(b) *Monthly Cardholder Limit.* The monthly cardholder limit is a budgetary limit assigned by the approving official. The approving official shall coordinate with the Administrative Office Contact when determining a monthly limit. The total dollar value of purchases when using the card for any single month may not exceed the monthly purchase limit set by the approving official.

(c) *Monthly Office Limit.* The monthly office limit is a budgetary limit established by the Administrative Office Contact and shall not exceed the sum of the approving official's cardholders' monthly purchase limit and should reflect spending history as well as budgetary trends. The total dollar value of purchases using the card shall not exceed the monthly office limit.

8. Administrative Fee

The monthly statement to each cardholder by the contractor will include an administrative fee which is calculated as a fixed percentage of the total dollar value of purchases. Each installation financial management office shall implement procedures to ensure funds to cover the monthly administrative fee are available.

9. Authorized Use of the Card

(a) The unique I.M.P.A.C. VISA card that the cardholder receives has his/her name

embossed upon it and may be used only by that cardholder. No other person is authorized to use the card. The card was specially designed showing the great seal of the U.S. and "United States of America" imprinted upon it to avoid being mistaken for a personal credit card.

(b) When issuing this card to an employee, authorization codes will be established by the COTR and the Administrative Office Contact and will be incorporated in the card. Under normal circumstances, merchants are required to obtain authorization from the contractor for purchases over $50.00. However, many merchants now use electronic authorization methods allowing them to obtain authorization for all purchases regardless of amount. When authorization is sought for a purchase by the merchant, the the contractor authorization system will electronically check each individual cardholder's single purchase and monthly limits, the monthly office limit, and the type of merchant where the cardholder is making the purchase before authorization for the transaction will be granted.

(c) Use of the card must meet the following conditions:

(1) The total of a single purchase to be paid for using the card may be comprised of multiple items and cannot exceed the authorized single purchase limit. Purchases will be denied if the authorized single purchase limit is exceeded. Payment for purchases may not be split in order to stay within the single purchase limit.

(2) All items purchased over the counter to be paid for using the card must be immediately available. No back-ordering is allowed.

(3) All items purchased by a telephone order that will not be confirmed with a written order and be paid for using the card should generally be delivered by the merchant within the 30-day billing cycle. However, a longer period (up to 120 days for delivery) may be utilized by the installations. If the longer period is elected, installation procedures need to be established for proper reconciliation of the monthly bills, allowing for the carrying forward of items ordered but not received.

(4) All items purchased during one telephone transaction that will not be confirmed by a written order should generally be delivered in a single delivery. If an installation elects to allow partial deliveries, installation procedures must be implemented to ensure proper reconciliation of all such orders.

(5) All accountable personal property items pruchased and paid for using the car must have the input and concurrence of the Supply and Equipment Management Officer; the NASA Equipment Management System (NEMS) must be screened prior to purchase; and, the items purchased must be processed through the installation receiving function so the proper tagging can be done and the required accountability established. (See NHB 4200.1.)

(6) When purchasing items by phone or over the counter, the cardholder should inform the merchant that the purchase is for official U.S. Government purposes and therefore is not subject to state or local tax. The card will be imprinted with "US Govt Tax Exempt" for additional clarification.

(7) Prior to use of the card for an individual purchase, funds must be certified as available by an authorized individual within the installation Financial Management Office.

10. Unauthorized Use of the Card

(a) The card must not be used for the following: (1) Cash advances; (2) Rental or lease of motor vehicles; (3) Rental or lease of land or buildings; (4) Purchase of airline, bus, train, or other travel related tickets; (5) Purchase of meals, drinks, lodging, or other travel or subsistence costs; (6) Purchase of gasoline or oil for Interagency Fleet Management automotive vehicles; (7) Repair of Interagency Fleet Management automotive vehicles; and (8) Purchases of telecommunications and telephone equipment.

(b) Purchases of the following items are specifically governed by the FAR and NFS. Compliance with the applicable regulations is required when purchasing these items. (1) Non-expendable property; (2) Janitorial, yard and maintenance services, other than repair services; (3) Personal clothing or footwear, except emergency situations when required for safety; (4) Printing or copying services; (5) Telephone calls.

11. Acquisition Procedures for Use When Paying With the I.M.P.A.C.

(a) *General.* When making purchases that will be paid for using the I.M.P.A.C., all the applicable acquisition regulations apply. Regardless of whether the open market purchase is made using oral procedures or using a written purchase order or contract, the cardholder must:

(1) Ensure that funds are available and certified to pay for the items being purchased. A funded Purchase Request (PR) shall support each credit card purchase. The PR may be bulk funded.

(2) Reserve small purchases for small business in accordance with Public Law 95-507 (FAR 13.105).

(A) The Law provides that each acquisition of supplies or services which has an anticipated value of $25,000 or less and which is subject to small purchase procedures shall be reserved exclusively for small business concerns. Therefore, when offers are solicited, they should be from small business concerns only, unless the contracting officer (cardholder) makes a written determination that there is no reasonable expectation of obtaining quotations from two or more responsible small business concerns (one, if the purchase does not exceed $1,000) that will be competitive in terms of market price, quality, and delivery. If the purchase is not made from small business, the contracting officer must document the reason for not purchasing from a small business concern.

(B) The requirement for purchasing from small business does not waive the requirement to make purchases from required sources of supply or mandatory Federal Supply Schedules (FAR part 8).

(3) Solicit competition for purchases in accordance with FAR 13.106.

(A) Oral solicitations should be used whenever possible. Written solicitations are mandatory under the FAR when purchasing construction work over $2,000. In addition, written solicitations should be used when purchasing services which are subject to Service Contract Act wage determinations.

(B) The FAR recommends that written solicitations be used when (i) a large number of line items are included in a single proposed acquisition, (ii) obtaining oral quotations is not considered economical or practical, (iii) special specifications are required because items or services cannot be easily explained or (iv) suppliers are located outside the local trade area (there may be instances, however, where it is appropriate to use the cards for purchases outside the local trade area).

(C) Purchases not in excess of $1,000 may be accomplished without securing competition if the contracting officer considers the prices to be reasonable. These purchases are to be distributed equitably among qualified suppliers. If practical, other than the previous supplier should be solicited when placing repeat orders.

(D) A reasonable number of sources must be solicited (at least three) for purchases over $1,000. If practical, two of these sources shall not have been previously solicited. If suppliers furnish standing price quotations or catalog prices on a recurring basis, verifying the quotations or prices for individual purchases is not necessary, but the prices should be periodically confirmed as current. When determining the number of sources to solicit, consider (i) the nature of the item or service to be purchased and whether it is highly competitive, (ii) information from recent purchases of the same or similar item or service, (iii) the urgency of the purchase, (iv) the dollar value of the purchase, and (v) past experience concerning dealers' prices.

(4) Document the record regarding competition and reasonableness of price as required by FAR 13.106(c). FAR 13.106(a)(4) cites two instances when action must be taken to verify price reasonableness of purchases not exceeding $1,000: (1) The contracting officer suspects or has information to indicate the price may not be reasonable or (2) when purchasing an item for which no comparable pricing information is available. The file must contain an explanation of how price reasonableness was determined in those instances.

(5) Purchase only domestic end products, except as provided in FAR subpart 25.1. The Buy American Act requires that only domestic end products be procured unless (A) the products or materials are for use outside the United States; (B) the cost is unreasonable as determined in accordance with FAR 25.105; (C) the agency head determines that domestic preferences would be inconsistent with the public's interest; or (D) the products or materials are not mined, produced, or manufactured in the United States in sufficient commercial quantities or of a satisfactory quality.

(b) *Oral purchase procedures.* (1) Oral procedures may be used to acquire supplies or services that can be described in sufficient detail so that the parties to the agreement have a clear understanding of what is being acquired; and a purchase order or contract is

not required by either the supplier or the Government.

(2) When placing a telephone order to be paid using the I.M.P.A.C., the cardholder will:

(A) Notify the vendor that the purchase is tax exempt.

(B) Confirm that the vendor is aware of all required Government terms and conditions.

(C) Confirm that the vendor agrees to charge the credit card when shipment is made so that receipt of the supplies may be certified on the monthly Statement of Account.

(D) Instruct the vendor to include the following information with the shipping documents or packing slip: (i) Cardholder name and mail code; (ii) Building number, room number, street address, city and state; (iii) Cardholder telephone number; (iv) The term: Credit Card; (v) Purchase Request or Purchase Order Number.

(3) This information will alert the receiving offices and the requisitioner that the supplies have been purchased with the credit card.

(4) A log should be used to document or record telephone credit card orders under $1,000 when competitive quotes are not solicited. If competitive quotes are solicited for purchases under $1,000, or if the purchase exceeds $1,000 and therefore requires competition, the record shall be documented. The documentation should be held until the monthly billing statement is received and then attached to the statement when it is submitted to the approving official.

(c) *Purchases requiring the issuance of a written order or contract.* If the I.M.P.A.C. is used to pay for a purchase made by using one of the purchase order or contract forms, the vendor should be provided the necessary information from the card orally, either in person or by telephone, and the statement "Payment to be made by credit card" should be inserted on the form. Do not include specific information from the card on the purchase order. If the vendor requires an order, an authorized installation form may be used. The vendor is given its copy of the purchase order and the contracting officer (cardholder) maintains a copy.

12. Documentation, Reconciliation and Payment Procedures

(a) Any time a purchase is made that will be paid using the card, whether it is done over the counter or by telephone, a document must be retained as proof of purchase. These documents will later be used to verify the purchases shown on the cardholder monthly statement.

(1) When a purchase is made over the counter, the cardholder is to obtain a customer copy of the charge slip, which will become the accountable document (make sure all carbons are destroyed).

(2) When making purchases by phone, the cardholder is to document the transaction on a log, annotate the PR, and attach any shipping documents associated with the order.

(b) The contractor will provide and distribute three monthly statements within five working days after the end of the 30-day billing cycle.

(1) Cardholder—will receive a statement showing all purchases, credits and other data on transactions the cardholder has made in the 30-day billing cycle.

(2) Approving official—will receive a copy of all cardholder statements for which he/she has approving authority and a summary sheet for these statements.

(3) Financial Management Office—will receive a statement providing summary data by cardholder and approving official.

(c) At the end of each monthly billing cycle, the cardholder must reconcile the information on his/her statement. The cardholder must fill in the appropriate accounting classification in the accounting code block, if not the same as the Master Accounting Code, the organization or individual for whom the purchase was made, and a description, if not provided, for each purchase. The cardholder must then sign the statement, attach all supporting documentation and forward it to the approving official or designated alternate. It is important that the cardholder check each purchase on the statement to verify the accuracy. If an item has been returned and a credit voucher received, the cardholder will verify that the credit is reflected on the statement. If purchased items and credits are not on the next monthly statement, the transaction documentation will be retained by the cardholder until the purchase or credit appears on the statement. If the purchase or credit does not appear on the next monthly statement, the cardholder or approving official must notify the Administrative Office Contact to resolve and reconcile the statement.

(d) If for some reason the cardholder does not have documentation of the transaction to send with the statement, he/she must attach an explanation that includes a description of the item, date of purchase, merchant's name and why there is not supporting documentation.

(e) The cardholder must sign the monthly statement and forward it to the approving official within five working days of receipt. If the cardholder cannot review the statement at the time that it is received, the approving official is responsible for reviewing and certifying the cardholder's statement. The approving official will go over the cardholder's statement with the cardholder upon his/her return.

(f) The approving official is responsible for the following: (1) Supplying the appropriate financial management office with the date services provided by the contractor were received and the date services were accepted. The date services were received will be the last day of the monthly billing cycle for the contractor. The date services were accepted will be the date the approving official signs the reverse side of the statement of account. If the approving official takes more than seven calendar days to accept the services, acceptance (for determining payment due date for compliance with prompt payment regulations only) will be deemed to occur seven calendar days after receipt of the services. If any purchased items have not been received or accepted by the time the statement is received, the items should be disputed using the procedures in paragraph 13, in order to prevent payment delays. It is critical that this information be supplied in order to avoid late payment penalties; (2) Certifying and signing monthly cardholder-signed statements and summary statements; (3) Forwarding signed cardholder statements and finance copies of receiving reports and supporting documents to the financial management office for payment; (4) Forwarding monthly summary statements, and the cardholder statements to the appropriate financial management office in time to be received within 15 working days of receipt by the approving official to avoid late payment penalties; (5) Retaining copies of summary statements and fund certification, solicitation and award documentation as supporting documentation on purchases. Records retention and disposition procedures in FAR 4.805 should be followed for documentation of purchases paid for using the credit card.

13. Billing Errors and Disputes

(a) If a cardholder receives a statement that lists a transaction for merchandise that has not been received, or a transaction which includes a sales tax, the cardholder (or the approving official) must notify the Administrative Office Contact and complete the Cardholder Questioned item form. The contractor will credit the transaction until the dispute is resolved. In addition, a copy of the form must be attached to the cardholder's monthly statement and sent to the appropriate financial management office.

(b) If items purchased with the card are found to be defective, the cardholder has the responsibility to obtain replacement or correction of the item as soon as possible. If the merchant refuses to replace or correct the faulty item, then the purchase of the item will be considered in dispute. Items in dispute are handled in the same manner as billing errors.

14. Contact With the Contractor

The contractor should be contacted only to report a LOST OR STOLEN card. All other questions should be directed to the installation points of contact referenced in these procedures. Telephone numbers are listed in paragraph 15.

15. Lost or Stolen Cards

(a) If the card is lost or stolen, it is important that the cardholder immediately notify Rocky Mountain BankCard System, Inc., at the following numbers:

(1) During business hours, Monday–Friday (8:00 AM–4:30 PM (MST))

(A) Outside Colorado—1–800–525–3717 x3900

(B) In Colorado—1–303–629–5678

(C) Outside Continental U.S.—303–629–5678

(2) After business hours and weekends (MST)

(A) Outside Colorado—1–800–525–5093

(B) In Colorado—1–800–332–9840

(b) The cardholder must also notify the approving official of the lost or stolen card within one workday after discovering the card missing.

(c) The approving official will subit a written report through the Administrative Office Contact to the Contracting Officer's Technical Representative within five workdays.

(d) The report will include: (1) The card number; (2) The cardholder's complete name; (3) The date and location of the loss; (4) If

stolen, date reported to police; (5) Date and time the contractor was notified; (6) Any purchase(s) made on the day the card was lost/stolen; (7) Any other pertinent information.

(e) A new card will be mailed within two business days of the reported loss or theft. A card that is subsequently found by the cardholder after being reported lost or stolen will be cut in half and given to his/her approving official. The approving official will complete the destruction notice and forward the notice to the Administrative Office Contact.

16. Card Security

It is the cardholder's responsibility to safeguard the credit card and account number at all times. The cardholder must not allow anyone to use his/her card or account number. A violation of this trust will require that the card be withdrawn from the cardholder with the possibility of subsequent disciplinary action.

17. Separation of Cardholder

Upon separation of a cardholder, the cardholder must surrender the card to his/her approving official who will complete the destruction notice and forward the notice to the Administrative Office Contact.

18. Transfer of Cardholder to Another Approving Official

If a cardholder is transferred to another office with a different approving official, the new approving official must determine if the employee will be a cardholder within his/her office. If it is determined that the card should be kept by the cardholder, the master file can be changed by requesting, in writing, that the Administrative Office Contact have the contractor add the cardholder to the new approving official's responsibility and delete him/her from the old file without issuing a new card.

19. Unauthorized Purchases or Careless Use of the I.M.P.A.C.

(a) A cardholder who makes unauthorized purchases or carelessly uses the card may be liable to NASA for the total dollar amount of unauthorized purchases made in connection with the misuse or negligence. Also, the cardholder may be subjected to disciplinary action for unauthorized or careless use.

(b) NASA will be liable for the use of I.M.P.A.C.s by authorized users (cardholders).

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INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1003, 1160, 1162 and 1168

[Ex Parte No. 55 (Sub-No. 69)]

RIN 3120-AB57

Applications for Operating Authority; Revision of Form OP-1

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission has revised significantly the general licensing application form (Form OP-1) and has adopted corresponding revisions in its regulations governing licensing procedures at 49 CFR parts 1160, 1162, and 1168 and the list of forms at 49 CFR part 1003. The revised OP-1 form integrates the information previously required in and supersedes:

(1) Form OP-1 (Revised 12/83) used by applicants for motor and water carrier, property broker, and household goods freight forwarder authority; and

(2) Form OCCA-95 used by applicants for emergency temporary and temporary operating authority.

The form and corresponding licensing regulations also gather necessary information concerning such matters as an applicant's domicile, safety fitness profile, and ownership or control relationships at an initial phase of the licensing process. This will permit a more consistent and unified evaluation of the applicant's fitness to hold operating authority.

Cumulatively, the form and rule revisions adopted here will simplify and unify the temporary and permanent authority licensing processes, minimize the application filing burdens on applicants, and, in turn, create a more efficient application process for the public, as well as the Commission. The notice of proposed rulemaking was published in the Federal Register on May 15, 1989 at 54 FR 20879.

EFFECTIVE DATE: The rules and revised application form will become effective April 28, 1990.

FOR FURTHER INFORMATION CONTACT: Suzanne H. O'Malley (202) 275-7292, or Richard B. Felder (202) 275-7691. [TDD for hearing impaired: (202) 275-1721.]

SUPPLEMENTARY INFORMATION: The revised regulations governing the licensing application process are set forth below. Instructions for completing the revised Form OP-1 are set forth at Appendix A. The new form appears at Appendix B.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 275-1721.]

Environmental and Energy Considerations

Adoption of the amended rules and the revised application form will not affect significantly either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

The Commission certifies that the adopted rules will have a significant positive economic impact on a substantial number of small entities. The public comments ratify our preliminary conclusion that the unified and simplified application procedures, as well as the comprehensive accompanying Instructions, will reduce significantly the time required to prepare and process licensing requests. Small entities involved in the licensing process—particularly new entrants and individual owner-operators—will benefit directly from the reduced completion and processing time, the elimination of redundant evidentiary requirements, and the overall simplification of pre-licensing procedures. Such entities also will benefit indirectly, but very measurably, from the administrative streamlining of the application process that will permit the Commission to expedite licensing requests.

We, therefore, conclude that the revised application form and corresponding rules will have a significant positive impact on a substantial number of small carrier applicants, as well as upon applicants generally, and will ensure that the Commission's licensing process can be more readily responsive to the service needs of small shipping concerns and consumers. This action will not impose additional reporting, recordkeeping, or compliance requirements upon small entities. Nor will the rules adopted here duplicate, overlap, or conflict with any existing Federal rule.

Paperwork Reduction Analysis

In the notice of proposed rulemaking, 54 FR 20879, 20880 (May 15, 1989), we estimated that an average of 4 burden hours would be required to complete the revised licensing application. This estimate takes into account the time required for reviewing the regulations and accompanying instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collected. None of the comments addresses the accuracy of this burden hour estimate or provides recommendations for reducing the burden hours. Although some of the revisions to the proposed form and accompanying instructions that have been integrated into the final document may incrementally alter the response

times for particular portions of the licensing application, the composite effect of these adjustments to the licensing package does not warrant a revision of our prior burden hours estimate for preparing an application.

List of Subjects

49 CFR Part 1003

Brokers, Freight forwarders, Insurance, Maritime carriers, Motor carriers, Securities, Surety bonds.

49 CFR Part 1160

Administrative practice and procedure, Buses, Freight forwarders, Maritime carriers, Motor carriers.

49 CFR Part 1162

Administrative practice and procedure, Maritime carriers, Motor carriers.

49 CFR Part 1168

Administrative practice and procedure, Buses.

Decided: November 29, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Lamboley, Phillips, and Emmett.

Kathleen M. King,

Acting Secretary.

For the reasons set forth in the preamble Title 49, Chapter X, parts 1003, 1160, 1162 and 1168 of the Code of Federal Regulations are amended as follows:

PART 1003—LIST OF FORMS

1. The authority citation for part 1003 continues to read as follows:

Authority: 5 U.S.C. 551(a), 5 U.S.C. 553(1)(c), and 49 U.S.C. 10321.

2. The entry for "OP-1 (Rev. 12/83)" in § 1003.2 is revised to read as follows:

§ 1003.2 Motor and water carrier, broker and household goods freight forwarder forms.

* * * * *

OP-1 (Rev. 12/89).

Interstate Commerce Commission Authority Application.

Cross Reference: 49 CFR parts 1160 and 1162.

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3. The entry for "OCCA-95 (Rev. 8/84)" in § 1003.2 is removed.

4. Part 1160 is revised to read as follows:

PART 1160—RULES GOVERNING APPLICATIONS FOR OPERATING AUTHORITY

Subpart A—How to Apply for Operating Authority

Sec.

1160.1 Applications governed by these rules.
1160.2 Procedures used generally.
1160.3 Starting the application process: Form OP-1.
1160.4 Types of applications.
1160.5 Commission review of the application.
1160.6 Appeals to rejections of the application.
1160.7 Changing the request for authority or filing supplementary evidence after the application is filed.
1160.8 After publication in the ICC Register.
1160.9 Obtaining a copy of the application package.
1160.10 Opposed applications.
1160.11 Filing a reply statement.
1160.12 After all statements are submitted.
1160.13 Applicant withdrawal.
1160.14 Household goods freight forwarder applicants only.
1160.15 Water carrier applicants only.
1160.16 Passenger carrier applicants only.
1160.17 Motor property "fitness" applicants only.
1160.18 Applicability of oath.

Subpart B—How to Oppose Requests for Authority

1160.40 Definitions.
1160.41 Time for filing.
1160.42 Contents of the protest.
1160.43 Protestant qualifications information—all protestants.
1160.44 Factual evidence format for protests in property and passenger fitness applications.
1160.45 Factual evidence format for passenger public interest applications.
1160.46 Protestant's rebuttal—passenger public interest applications only.
1160.47 Factual evidence format for protests in intrastate passenger applications under 49 U.S.C. 10922(c)(2)(A).
1160.48 Protestant's rebuttal—intrastate passenger applications under 49 U.S.C. 10922(c)(2)(A) only.
1160.49 Factual evidence format (except fitness only, passenger public interest, and passenger intrastate applications).

Subpart C—General Rules Governing the Application Process

1160.60 Applicable rules.
1160.61 Contacting another party.
1160.62 Serving copies of pleadings.
1160.63 Replies to motions.
1160.64 Requesting oral hearing.
1160.65 Consolidation of applications.
1160.66 Petition to clarify or interpret formally an operating authority.
1160.67 Withdrawal.

Authority: 49 U.S.C. 10101, 10305, 10321, 10921, 10922, 10923, 10924, 10928, and 11102; 5 U.S.C. 553 and 559; 16 U.S.C. 1456.

Subpart A—How to Apply for Operating Authority

§ 1160.1 Applications governed by these rules.

These rules govern the handling of applications for operating authority of the following type:

(a) Applications for certificates and permits to operate as a motor common or contract carrier of property or passengers.

(b) Applications for permits to operate as a household goods freight forwarder.

(c) Applications for certificates, permits, and exemptions for water carrier transportation of property and passengers.

(d) Applications for licenses to operate as a broker of motor vehicle transportation.

(e) Applications to remove operating restrictions from motor property and passenger carrier authorities.

(f) Applications for certificates under 49 U.S.C. 10922(c)(2)(A) to operate as a motor common carrier of passengers in intrastate commerce on a route over which applicant holds interstate authority as of November 19, 1982.

(g) Applications for certificates under 49 U.S.C. 10922(c)(2)(B) to operate as a motor common carrier of passengers in intrastate commerce on a route over which applicant has been granted or will be granted interstate authority after November 19, 1982.

Note: Applications for emergency temporary and temporary motor and water carrier authority are filed on Form OP-1. Rules governing these applications are set forth at parts 1162 and 1163.

§ 1160.2 Procedures used generally.

(a) *Modified procedure.* The Commission will handle licensing application proceedings using the modified procedure, if possible. The applicant and protestants send statements made under oath (verified statements) to each other and to the ICC. There are no personal appearances or formal hearings.

(b) *Oral hearings.* Oral hearings are used infrequently. Either an applicant or a protestant may request oral hearing at any time during the proceeding, using the procedures set forth at § 1160.64.

Note: Intrastate passenger applications under 49 U.S.C. 10922(c)(2)(A) will be decided on the basis of the written record. There will not be an opportunity for oral hearing.

§ 1160.3 Starting the application process: Form OP-1.

(a) All applicants shall use Form OP-1 (revised 12/89).

(b) Obtain the form at Commission regional and field offices, or call the

Office of the Secretary at (202) 275–7428. Additional information concerning the application process and required submissions is available from the Office of Public Assistance at (202) 275–7597.

§ 1160.4 Types of applications.

(a) "Fitness only" applications. Certain types of motor property and passenger applications require only the finding that the applicant is fit, willing and able to perform the involved operations and to comply with all applicable statutory and regulatory provisions. These applications can be opposed only on the grounds that applicant is not fit or does not fall into a fitness-only category of service under the Interstate Commerce Act. These applications are:

(1) Motor common carrier of property transportation to serve any community not regularly served by a certificated motor common carrier.

(2) Motor common carrier of property transportation to provide service as a direct substitute for complete abandonment of all rail service in a community.

(3) Motor common carrier transportation for the United States Government of property (except used household goods, hazardous or secret materials, and sensitive weapons and munitions).

(4) Motor common carrier property transportation of shipments weighing 100 pounds or less if transported in a motor vehicle in which no one package exceeds 100 pounds.

(5) Motor common or contract carrier of property transportation of food and other edible products (including edible byproducts but excluding alcoholic beverages and drugs) intended for human consumption, agriculture limestone and other soil conditioners, and agricultural fertilizers, when the transportation is provided with the owner of the motor vehicle in the vehicle (except in emergency situations). After issuance of the authority, such transportation (measured by tonnage) shall not exceed, on an annual basis, the transportation provided by the motor vehicle (measured by tonnage) which is exempt from the Commission's jurisdiction under 49 U.S.C. 10526(a)(6).

(6) Transportation for the United States Government of used household goods that is incidental to a pack-and-crate service on behalf of the Department of Defense.

(7) Motor carrier brokerage of general commodities (except household goods).

(8) Privately-funded motor common carrier of passengers charter transportation.

(9) Privately-funded motor common carrier of passengers special transportation.

(10) Motor common carrier of passengers authority to serve any community not regularly served by a certificated motor common carrier of passengers.

(11) Motor common carrier of passengers authority to provide service as a direct substitute for abandonment or discontinuance of all rail and commercial-air passenger service in a community.

(12) Motor common carrier of passengers transportation to any community where the only interstate motor common carrier of passengers has applied to discontinue the interstate service under 49 U.S.C. 10925(b) or to reduce intrastate service under 49 U.S.C. 10935 to less than one trip per day (excluding Saturdays and Sundays).

(13) Motor contract carrier of passengers transportation.

(b) Motor passenger "public interest" applications. Certain types of applications require the finding that applicant is fit, willing, and able, and, when protested, whether the transportation to be authorized is not consistent with the public interest. In addition to the grounds listed in § 1160.4(a), a protestant may oppose the application on the grounds that a grant of the application will not be consistent with the public interest. These applications are:

(1) Motor common carrier of passengers transportation provided by an applicant receiving governmental financial assistance for the purchase or operation of buses, or by an applicant that is an operator for such a recipient, except to perform a service described in § 1160.4(a) (10), (11) or (12).

(2) Motor common carrier transportation of passengers over regular routes in interstate or foreign commerce, except to perform a service described in § 1160.4(a) (10), (11) or (12).

(3) Motor common carrier transportation of passengers in intrastate commerce under 49 U.S.C. 10922(c)(2)(B) on regular routes over which applicant has been or will be granted authority in interstate commerce after November 19, 1982.

(c) Intrastate motor passenger applications under 49 U.S.C. 10922(c)(2)(A). Applications filed by motor common carriers of passengers that held authority on November 19, 1982, to provide interstate transportation of passengers on a route over which the carrier now proposes to provide regular-route transportation entirely in one State will be granted a certificate to provide the intrastate transportation if the Commission finds that the carrier is fit, willing, and able to provide the intrastate transportation and to comply with Commission rules and regulations, unless the Commission finds, on the basis of evidence presented by a person objecting to the issuance of the certificate, that the transportation to be authorized would directly compete with a commuter bus operation and would have a significant adverse effect on commuter bus service in the area in which the competing service will be performed. The Commission will take final action upon these applications not later than 90 days after the application is filed with the Commission.

Note: Commuter bus service or operation means short-haul, regularly scheduled passenger service provided by motor vehicle in metropolitan and suburban areas, whether within or across the geographical boundaries of a State, and used primarily by passengers using reduced fare, multiple-ride, or commutation tickets during morning and evening peak periods of operations.

(d) Motor property common carrier applications. These applications require a finding that:

(1) The applicant is fit, willing, and able to provide the involved transportation and to comply with all applicable statutory and regulatory provisions; and

(2) The service proposed will serve a useful public purpose, responsive to a public demand or need.

(e) Water common carrier applications. These applications require a finding that:

(1) The applicant is fit, willing, and able to provide the involved transportation and to comply with all applicable statutory and regulatory provisions; and

(2) The transportation to be provided is or will be required by present or future public convenience and necessity.

(f) Motor and water contract carrier, household goods property broker, and household goods freight forwarder applications. These applications require a finding that:

(1) The applicant is fit, willing, and able to provide the involved transportation and to comply with all applicable statutory and regulatory provisions; and

(2) The transportation to be provided will be consistent with the public interest and the national transportation policy of 49 U.S.C. 10101.

§ 1160.5 Commission review of the application.

(a) ICC staff will review the application for correctness,

completeness, and for adequacy of the evidence (the *prima facie* case).

(1) Minor errors will be corrected without notification to the applicant.

(2) Materially incomplete applications will be rejected. Applications that are in substantial compliance with these rules may be accepted.

(3) All motor carrier applications will be reviewed for consistency with the Commission's operational safety fitness policy as set forth in Ex Parte No. 55 (Sub-No. 71), "Notice of Policy and Final Rule Governing Submission and Evaluation of Safety Fitness Evidence in Motor Carrier Licensing Proceedings," 5 I.C.C.2d 94 (1988), as modified in Ex Parte No. 55 (Sub-No. 69), "Rules Governing Applications for Operating Authority—Revision of Form OP-1," 6 I.C.C.2d 266 (1989). Applicants with deficient safety ratings from DOT will have their applications rejected in a letter notice and their filing fees returned.

(4) An employee board of the Commission appointed under § 1011.6(k) will review completed applications that are in conformance with the Commission's safety fitness policy. The entire Commission will review motor property applications filed by applicants that hold a "conditional" safety fitness rating from DOT, that do not seek to transport hazardous commodities, and that present evidence responsive to the Commission's safety fitness policy. The employee board, or in the case of conditionally-rated, non-hazardous motor property applicants, the Commission, determines whether there is adequate evidence to warrant publication of the authority applicant seeks in the *ICC Register* as a preliminary grant. If there is not, the application will be rejected in a letter notice to applicant, without prejudice to refiling once deficiencies have been corrected. Applicants that refile their applications may refer to the docket number and fee stamp number assigned to the prior filing and no additional filing fee will be required. An applicant may appeal rejections as provided under § 1160.6.

(b) A summary of the application will be published as a preliminary grant of authority in the *ICC Register* to give notice to the public in case anyone wishes to oppose the application.

(c) If the *ICC Register* publication does not properly describe the authority being sought because of ministerial error, applicant shall inform the Office of Proceedings, Motor Section, as soon as possible. Where notification is received within 10 days of the publication, ministerial errors will be corrected and the notice will be republished. Notifications after 10 days will result in republication only at the Commission's discretion and may result in an application being rejected without prejudice to refiling.

§ 1160.6 Appeals to rejections of the application.

(a) An applicant has the right to appeal rejection of the application. The appeal must be filed at the Commission within 10 days of the date of the letter of rejection.

(b) If the appeal is successful and the filing is found to be proper, the application shall be deemed to have been properly filed as of the decision date of the appeal.

§ 1160.7 Changing the request for authority or filing supplementary evidence after the application is filed.

(a) Once the application is filed, the applicant may supplement evidence only with approval of the Commission.

(b) Amendments to the authority proposed in the application generally are not permitted, but in appropriate instances may be entertained at the discretion of the Commission.

§ 1160.8 After publication in the ICC Register.

(a) Interested persons have 45 days to file protests. *See* subpart B of this part.

(b) If no one opposes the application, the grant published in the *ICC Register* will become effective.

(c) If no one opposes the application for an extension of authority, the grant published in the *ICC Register* will be made effective by issuance of a certificate, permit, or license. If no one opposes an application for initial authority, the grant published in the *ICC Register* will be made effective by a Commission notice outlining compliance requirements that must be met before applicant commences the proposed service.

§ 1160.9 Obtaining a copy of the application package.

After publication, interested persons may request a copy of the application by writing to the Commission-designated contract agent (as identified in the *ICC Register*), Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. The request must be accompanied by a check or money order for $10 made payable to such contract agent or by contacting the contract agent at (202) 289-4357 [TDD for hearing impaired: (202) 275-1721] and arranging billing as acceptable to the agent.

§ 1160.10 Opposed applications.

If the application is opposed, opposing parties are required to send a copy of their protest to the applicant.

§ 1160.11 Filing a reply statement.

(a) If the application is opposed, applicant may file a reply statement. This statement is due at the Commission within 60 days of the *ICC Register* publication (30 days for intrastate passenger applicants under 49 U.S.C. 10922(c)(2)(A)).

(b) The reply statement may not contain new evidence. It shall only rebut or further explain matters previously raised.

Note: In passenger carrier "public interest" applications, if a protestant has raised the "public interest" issue under § 1160.4(b), an applicant may submit any reply evidence to the "public interest" issue. In intrastate passenger applications under 49 U.S.C. 10922(c)(2)(A), if a protestant has raised the issue of the application's effect on commuter bus service operations under § 1160.4(c), an applicant may submit any reply evidence in response to the commuter service issue.

(c) The reply statement need not be notarized or verified. Applicant understands that the oath in the application form applies to all evidence submitted in the application. Separate legal arguments by counsel need not be notarized or verified.

§ 1160.12 After all statements are submitted.

(a) When the proceeding is to be handled under the modified procedure, the next notification to the parties will be the service of the initial decision.

(b) If the proceeding is to be handled by oral hearing, parties will receive a notice to this effect.

§ 1160.13 Applicant withdrawal.

If the applicant wishes to withdraw an application, it shall request dismissal in writing.

§ 1160.14 Household goods freight forwarder applicants only.

An applicant for household goods freight forwarder authority shall submit the following additional information with the application: Applicant shall state whether it is a person engaged principally in the business of manufacturing, buying, or selling articles and commodities, and whether it controls, is controlled by, or is under common control with any such person. If yes, applicant shall describe such persons and advise to what extent such persons use the services of household goods freight forwarders; or if applicant is such a person, whether it performs its own similar operations of assembling,

consolidating, and shipping in connection with the transportation of such articles or commodities.

§ 1160.15 Water carrier applicants only.

(a) If an applicant seeks approval of dual operations under 49 U.S.C. 10930, it must specify those that would result from a grant of the application and must present evidence to establish that such operations are consistent with the public interest and the national transportation policy as set forth at 49 U.S.C. 10101.

(b) If applicant is a water common carrier seeking a revised certificate covering extension of service over newly opened waterways pursuant to 49 U.S.C. 10922(g)(3)(B), it must furnish the following with its application:

(1) A description of the portion of the waterway project newly opened for navigation, including the U.S. Engineer District, project number, description of project, and date opened for navigation;

(2) A description of the operation performed thus far on the uncompleted portion of the waterway newly opened for navigation, including the date service was extended and points served (*see* § 1166.3); and

(3) A description of operations performed under the present certificate authorizing service on the previously completed portion of the waterway, naming points served, indicating when service was commenced, and if the operation has been continuous.

§ 1160.16 Passenger carrier applicants only.

Applicants for various passenger carrier service categories must submit the following additional information with their applications:

(a) If the application is to serve a "community not regularly served" under § 1160.4(a)(10), describe the location of the community and the interstate or other major highways which serve the community. If known, state the last date of service from other carriers and their identity, and the subsequent dates when service was requested from these carriers.

(b) If the application is for transportation services as a substitute for discontinued rail or commercial air passenger service under § 1160.4(a)(11), give the location of the points sought to be served by cross-referencing each specific community to the particular abandonment proceeding relied upon; certify that rail or commercial air passenger service, or both, was offered at the points for which authority is sought; and certify that all rail and commercial air passenger service has been discontinued and give the effective date of the latest discontinuance. The application must be filed within 180 days after the latest discontinuance becomes effective. The 180-day period begins to run either on the effective date of the certificate of abandonment issued by the appropriate government agency or, in a noncertificate case, on the date of a pronouncement by that agency regarding the abandonment. In situations where applications are filed before the actual abandonment takes place, the applicant must certify that after rail or commercial air passenger services cease on the line to be abandoned, no rail and commercial air passenger service by any carrier will remain. In such situations, the Commission will issue the certificate, but operations may begin only after the applicant files an affidavit certifying that all rail and commercial air passenger service has actually terminated at the granted points.

(c) If the application is for intrastate passenger authority over routes for which interstate operating authority already has been issued, under either 49 U.S.C. 10922(c)(2)(A) (§ 1160.4(c)), or 49 U.S.C. 10922(c)(2)(B) (§ 1160.4(b)(3)), submit a proposed draft of a certificate for issuance upon grant of the authority sought. The draft shall include:

(1) The complete service description contained in each interstate authority for the routes over which applicant seeks to provide intrastate transportation, numbered separately by subnumber; and

(2) The necessary modifications of the interstate authority authorizing the proposed intrastate operations.

The draft certificate shall contain the service descriptions in the interstate authorities in the same format as in each of the authorities which will be superseded upon issuance of the draft certificate. Applicant should submit sufficient information under this paragraph for the Commission to determine readily the precise portions of the existing authorities upon which applicant's proposal is based.

Note: *Combination of authorities.* An intrastate passenger applicant may request intrastate authority in a single application on the basis of more than one underlying interstate authority if the underlying authorities are reasonably related. In applications based on more than one authority, the requests shall be clearly segregated according to each authority. Failure to comply may result in a rejection of the application.

Repeat applications. An interstate authority may be the basis for more than one intrastate application. However, a repeat application should not be filed before the first application has been finally processed by the Commission.

§ 1160.17 Motor property "fitness" applicants only.

Applicants for various categories of motor property "fitness only" authority under 49 U.S.C. 10922(b)(4) must submit the following additional information with their applications:

(a) If the application is to serve a "community not regularly served" under § 1160.4(a)(1), describe the location of the community and the highways which serve the community. If known, state the last known date of service from other carriers and their identity, and the date when service was requested from these carriers.

(b) If the application is for transportation service as a direct substitute for complete abandonment of all rail service to a community under § 1160.4(a)(2), submit:

(1) Docket number, approval date and effective date of the Commission's decision approving the abandonment, or, date of the Commission's recommendation or pronouncement in a noncertificate abandonment.

(2) Description of the location of the points sought to be served, indicating to what portion of the rail line they are adjacent (submit maps where obscure rural points are involved), and cross-referencing each specific community to the pertinent abandonment proceeding relied on.

(3) Certification that rail service was offered at the points for which authority is sought.

(4) Certification that all rail service has been terminated (give date if known), or

(5) If rail service has not yet been terminated, state that fact and submit certification that, after rail service does cease on the line to be abandoned, no rail service by any carrier will remain to the involved community.

(6) When the certification in paragraph (b)(5) of this section is made, and applicant has otherwise established its right to a certificate, the Commission will issue a certificate subject to the filing, when rail service is terminated, of another certification that all service has ceased at the granted points.

(7) *Filing period.* Applications under this subsection must be filed no later than 120 days (plus extensions) after the effective date of the Certificate of Abandonment issued by the Commission, or, in a noncertificate abandonment, 120 days after the issuance of a recommendation or other pronouncement by the Commission regarding the abandonment.

§ 1160.18 Applicability of oath.

Separate verification of statements made under §§ 1160.14–1160.17 is not necessary. The oath in the application form applies to all factual statements.

Subpart B—How To Oppose Requests For Authority

§ 1160.40 Definitions.

A person wishing to oppose a request for permanent authority files a protest. A person filing a valid protest becomes a protestant.

§ 1160.41 Time for filing.

A protest shall be filed (received at the Commission) within 45 days after notice of the application appears in the *ICC Register* (25 days for protests in intrastate passenger applications under 49 U.S.C. 10922(c)(2)(A)). A copy of the protest shall be sent to applicant's representative at the same time. Failure timely to file a protest waives further participation in the proceeding.

§ 1160.42 Contents of the protest.

(a) All information upon which the protestant plans to rely is put into the protest.

(b) A protest must be verified, as follows:

I, _____, verify under penalty of perjury under laws of the United States of America, that the information above is true and correct. Further, I certify that I am qualified and authorized to file this protest. (*See* 18 U.S.C. 1001 and 18 U.S.C. 1621 for penalties.)

(Signature and Date)

(c) A protest not in substantial compliance with these rules may be rejected.

(d) A protestant must file two separate types of evidence: qualifications evidence under the format in § 1160.43 and factual evidence according to the applicable guidelines in § 1160.44, 1160.45, 1160.47, or 1160.49.

§ 1160.43 Protestant qualifications information—all protestants.

Protestant must submit this information in separately numbered paragraphs:

(a) Docket number of application being opposed.

(b) Name and domicile of protestant. Include lead docket number of ICC authority, if any.

(c) Name and address of protestant's representative, if any.

(d) Name and address of witness presenting the evidence, and why qualified to speak for protesting party.

(e) Description of the extent to which the person seeking to protest possesses authority to handle the traffic for which authority is applied, is willing and able to provide service that meets the reasonable needs of the shippers or public involved, and has either performed service within the scope of the application during the 12-month period before the application was filed or has actively in good faith solicited business within the scope of the application during that period; or

(f) Description of any application which the prospective protestant has pending before the Commission which was filed before the applicant's and which covers substantially the same traffic; or

(g) Description of any other legitimate interest not contrary to the transportation policy set forth in 49 U.S.C. 10101(a), or of any right to intervene under a statute. Intervention on this basis is discretionary. A person seeking to qualify under this paragraph must submit a petition requesting leave to intervene which describes in detail the circumstances warranting its participation and how they are consistent with 49 U.S.C. 10101(a). The Commission normally shall permit intervention when the person seeking to intervene shows that a proceeding is novel or of first impression, is of industrywide importance, or has significant economic impact. Anyone may protest an application on the grounds of safety fitness. Notwithstanding other provisions of this paragraph, any petition requesting leave to intervene based on safety fitness will be permitted, and the Commission will consider the protest contained therein.

Note: A motor contract carrier may not protest an application to provide transportation as a motor common carrier.

§ 1160.44 Factual evidence format for protests in property and passenger fitness applications.

Protestant must submit this information in separately numbered paragraphs:

(a) A description of the specific grounds upon which it is alleged that applicant cannot meet the statutory fitness criteria.

(b) Alternatively, evidence that the application does not properly fall within the scope of one of the statutorily described categories.

Note: If the Commission finds that the application does not properly fall within the scope of one of the categories, the application shall be dismissed without prejudice to the filing of an application for authority under other criteria.

(c) Legal argument (optional).

(d) Verification.

(e) Certificate of service.

(f) Request for oral hearing (optional).

§ 1160.45 Factual evidence format for passenger public interest applications.

Protestant must submit this information in separately numbered paragraphs:

(a) Evidence that a grant of the application would not be consistent with the public interest. Four factors are to be considered, to the extent applicable, and given equal weight in determining whether authorization would be consistent with the public interest:

(1) The transportation policy of section 10101(a) of this title.

(2) The value of competition to the traveling and shipping public.

(3) The effect of issuance of the certificate on motor carriers of passenger service to small communities; and

(4) Whether issuance of the certificate would impair the ability of any other motor common carrier of passengers to provide a substantial portion of the regular-route passenger service which such carrier provides over its entire regular-route system. Diversion of revenue or traffic shall not itself be sufficient to support such a finding. The routes and services of affiliates and subsidiaries of protestant shall be considered part of protestant's system for this purpose.

(b) Evidence that applicant cannot meet the statutory fitness criteria.

(c) Legal argument (optional).

(d) Verification.

(e) Certificate of service.

(f) Request for oral hearing (optional).

§ 1160.46 Protestant's rebuttal—passenger public interest applications only.

(a) When a protestant has protested an application on public interest grounds as provided under § 1160.4(b), and an applicant has replied to the public interest arguments under § 1160.11(b), the protestant may file a rebuttal statement within 70 days of the *ICC Register* publication.

(b) The rebuttal statement may not contain new evidence. It shall only rebut or further explain matters previously raised.

(c) The rebuttal statement and separate legal argument by counsel need not be notarized or verified. Protestant understands that the oath in the protest applies to all evidence submitted in the application.

§ 1160.47 Factual evidence format for protests in intrastate passenger applications under 49 U.S.C. 10922(c)(2)(A).

Protestant must submit this information in separately numbered paragraphs:

(a) Evidence to establish that the intrastate service would directly compete with a commuter bus operation, and that the competition would have a significant adverse effect on commuter bus service in the area in which the competing service will be performed.

(b) A summary, description, or copy of the specific commuter authorities in conflict with that sought in the application, if pertinent.

(c) Information to demonstrate: that the proposed service is directly competitive with a commuter bus service, that the proposed service will adversely affect commuter bus service in a significant manner, and the degree to which all commuter bus services in the area where the competing service would be performed would be adversely affected.

(d) Evidence that applicant is not fit, willing, or able under the statutory fitness criteria.

(e) Legal argument (optional).

§ 1160.48 Protestant's rebuttal—intrastate passenger applications under 49 U.S.C. 10922(c)(2)(A) only.

If the protestant has filed a protest under § 1160.4(c), and applicant has replied to the commuter operations arguments under § 1160.11(b), protestant may file a rebuttal statement at the Commission within 35 days after publication in the *ICC Register*. The rebuttal statement shall contain no new evidence, but shall only rebut or further explain matters previously raised concerning commuter operations. The rebuttal need not be verified.

§ 1160.49 Factual evidence format (except fitness only, passenger public interest, and passenger intrastate applications).

Protestant must submit this information in separately numbered paragraphs:

(a) A summary, description or copy of the specific authorities in conflict with that sought in the application. Protests containing copies of authority or authority abstracts which are more than 5 pages in length may be rejected.

(b) A description of the type and amount of equipment and facilities available to meet the avowed purpose of the application.

(c) A description of present operations that pertain to the application, including a description of the specific services provided to those supporting the application or within the same territory.

(d) Adverse impacts on its business generally and on the public, such as:

(1) Need to close terminals or other facilities;

(2) Number of employees that would be furloughed or dismissed;

(3) Resulting imbalance or inefficiencies caused to its operations;

(4) Effects on fuel efficiency; or

(5) Inability to continue its existing service to the public due to a reduction in total business, or loss of essential services that would not be replaced, or other factors.

(e) Evidence that applicant is not fit, willing, or able to comply with the appropriate statutes or regulations governing its activities.

(f) Legal or other argument (optional).

(g) Verification.

(h) Certificate of service.

(i) Any request for oral hearing.

Subpart C—General Rules Governing the Application Process

§ 1160.60 Applicable rules.

Generally, all application proceedings are governed by the Commission's Rules of Practice at 49 CFR part 1100 *et seq.*, except as designated below.

§ 1160.61 Contacting another party.

When a person wishes to contact a party or serve a pleading or letter on that party, it shall do so through its representative. The phone number and address of applicant's representative shall be listed in the *ICC Register*.

§ 1160.62 Serving copies of pleadings.

(a) An applicant must serve all pleadings and letters on the Commission and all known participants in the proceeding, except that a reply to a motion need only be served on the moving party.

(b) A protestant need serve only the Commission and applicant with pleadings or letters.

§ 1160.63 Replies to motions.

Replies to motions filed under these rules are due within 10 days of the date the motion is filed at the Commission.

§ 1160.64 Requesting oral hearing.

(a) If an applicant or protestant believes that a proceeding should be orally heard, the person may request an oral hearing.

(b) The request shall specifically state the evidence that would be presented, the reason why the evidence is material to determine the merits of the proceeding, why an oral hearing with cross-examination is necessary to bring it out, and what evidence already in the record would be contravened (with specific page reference).

(c) The Commission intends to assign matters for oral hearing only where use of modified procedures would prejudice a party, material issues of decisional fact cannot adequately be resolved without an oral hearing, or assignment of an application for oral hearing is otherwise required by the public interest.

(d) Denial of an oral hearing request will not be made in writing where the denial is made prior to issuance of the initial decision. The request will be deemed denied when the proceeding is handled under the modified procedure.

§ 1160.65 Consolidation of applications.

(a) Applicants may request consolidation of applications. The request shall be made when the applications to be consolidated are filed. Requests for consolidation shall be made in writing to the Office of Proceedings, Motor Section.

(b) Requests to consolidate applications not currently filed shall only be considered to the extent that the applications are filed within 5 days of each other.

(c) Representatives of the consolidating applicants shall indicate their agreement with the consolidating either in the initial request or in their individual submissions. If mutual agreement has been reached in advance, one representative may indicate representatives' assent to the consolidation.

(d) The applications will be published in the *ICC Register* and their consolidation will be indicated. Protestants may file a single protest which will apply to all the proceedings.

§ 1160.66 Petition to clarify or interpret formally an operating authority.

(a) A person seeking to clarify or interpret its operating authority shall file a petition under these rules.

(b) No application form need be used. Petitioner shall file its entire argument with the petition.

(c) Notice of the petition will be published in the *ICC Register*. Petitioner may file a rebuttal to any opposing argument.

§ 1160.67 Withdrawal.

A protestant wishing to withdraw from a proceeding shall inform the Commission and applicant in writing.

PART 1162—TEMPORARY AUTHORITY (TA) AND EMERGENCY TEMPORARY AUTHORITY (ETA) PROCEDURES UNDER 49 U.S.C. 10928

5. The authority citation for part 1162 continues to read as follows:

Authority: 49 U.S.C. 10321; 10928; 5 U.S.C. 559.

6. Section 1162.2, paragraphs (b), (c), (d), and (e)(3) are revised to read as follows:

§ 1162.2 Filing of applications.

* * * * *

(b) *How and where filed.* (1) Applicants for TA or ETA shall file Form OP–1 in accordance with the instructions accompanying that form. The envelope containing the form shall be clearly marked "ETA Application" and/or "TA Application."

(2) The signed original and one copy of each application and all supporting documents shall be filed with the Regional Office which has jurisdiction over applicant's point of domicile, or at such other location as the Commission may designate in special circumstances.

Note: Applicants for TA and/or ETA who have simultaneously filed for corresponding permanent authority on the same Form OP–1 must submit the original and one copy of the form to Commission Headquarters for processing the permanent licensing request and must submit 1 copy of the form to the appropriate Regional Office for processing the temporary authority request.

(3) Where an applicant for TA also has applied or will apply for corresponding ETA, the application shall include the statement: "An underlying ETA seeks ——— days authority" in its application. Applicant should also include the "R" docket number of the ETA, if known.

(c) *Filing fees.* A filing fee as designated at 49 CFR 1002.2 shall accompany each TA and ETA application. Method of payment options are set forth on the fees schedule that accompanies Form OP–1.

Note: TA and ETA applicants who have concurrently filed for corresponding permanent operating authority on the same Form OP–1 must submit the TA and/or ETA filing fee(s) to the Regional Office processing such applications.

(d) *Supporting statements.* Each application shall be accompanied by "Certificate(s) of Support" designed to establish an immediate need for service which cannot be met by existing carriers. Such supporting evidence should follow the format and contain all the information prescribed on the "Certificate of Support" portion of Form OP–1.

(e) * * *

(3) The filing of ETA applications by telegram, telephone, or facsimile (FAX) document shall be acceptable in exigent circumstances. Confirmation shall be made by filing Form OP–1 (with the "Certificate(s) of Support") within 10 working days of the telegram, telephone, or FAX filing.

* * * * *

PART 1168—[REMOVED]

7. Part 1168 is removed.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendix A—Instructions for Completing Application Form OP–1

Please read the instructions before completing the application form. Before mailing the completed application form, see the check list in the instructions. Retain the instructions and a copy of the completed application for future reference.

How the ICC Processes Applications

Permanent and Temporary Authority

• When sufficient evidence is included in a permanent (PA) or temporary authority (TA) application this Commission assigns it a docket number and publishes a summary of the request in the *ICC Register.* [Other sections of these Instructions describe the types of evidence that must be submitted.]

• If no protest (due in 45 days for PA and in 15 days for TA) is filed following *ICC Register* notice, the application is approved. An applicant receiving authority for the first time in a particular service category (*i.e.,* motor property common or contract, motor passenger common or contract, property broker, or household goods freight forwarder) will receive a letter-notice (not the actual authority document) informing it to comply with applicable pre-licensing requirements. A carrier already possessing authority in the same service category as is involved in this application will be forwarded its new authority automatically.

• Most applications are unopposed. However, if there is opposition, you must be served with a copy of the protest(s), and you have the right to reply. If you receive a protest, contact the ICC immediately if you are unsure of the procedures and rules governing opposed applications.

Emergency Temporary Authority

• The ICC does not publish summaries of emergency temporary authority (ETA) filings. Instead, the ICC's regional decisional body reviews the request and notifies you of its decision by telephone, usually within 1 week. No written ICC decision is issued.

General Instructions

• Definitions of important terms used in this application are listed under "Transportation Terms" below.

• You can use this form to apply for motor or water carrier, property broker, and household goods freight forwarder authority. [Check the appropriate box(es) in Part I of the application.]

• You can use this form to request emergency temporary authority (motor carrier applicants only), temporary authority (motor and water carrier applicants), permanent authority (all applicants), or any combination. [Check the appropriate box(es) in Part I.]

• You can file a single application to request more than one type of operating authority.

• This form consists of Parts I through VI. You must complete Parts I and VI of the form. If you seek permanent motor property, water carrier, household goods freight forwarder, or property broker authority, you also must complete Part II; if you seek permanent motor passenger carrier authority, you also must complete Part III; and if you seek temporary or emergency temporary operating authority, you also must complete Parts IV and V. For information about the Part V "Certificate of Support" portion of this application, see the "Supporting Evidence" section of the Instructions.

• Your application must be typed or printed in ink.

• You may continue responses on a separate sheet of paper if needed. Identify each answer by the application form page and item number.

• Certifications—at several points on the application form, you must verify certain information (for example, matters relating to compliance with DOT safety regulations, the absence of Mexican domicile or control, or CZMA compliance for water carrier applicants). You should check the "YES" response only if you can attest to the truth of the preceding statement. As with all portions of the application, these statements are embraced by the "APPLICANT'S OATH" in the form. False certifications are subject to the penalties described in that oath.

Filing Fees

• Filing fees are adjusted annually. Refer to the enclosed schedule for a list of current fees.

• Note to TA and ETA applicants who are simultaneously filing a permanent licensing application: You must submit your applications and payment for the temporary portion(s) of your service requests to the Regional Office processing your TA or ETA application. Commission Headquarters will accept only permanent authority applications and the fees for the permanent portion(s) of the authority requests.

How to Describe Service

• The Commission favors broad service descriptions such as those listed

in Parts II and III of the application form. You may complete this form by checking the box in Part II or III describing the service you seek to provide and by completing Parts I and VI of the form.

• If you want authority not defined by one of the service descriptions provided in the application form, you also must complete Part II, Item 1(N) [property carriers] or Part III, Item 9 [passenger carriers]. In describing the alternative service, you must explain briefly why the proposed service description either promotes or at least does not defeat the purposes of the Interstate Commerce Act (*e.g.*, why the service is reasonable and not unduly restrictive). Further information concerning acceptable commodity descriptions is available by contacting the ICC Office of Public Assistance—(202) 275–7597.

• Territorial service descriptions may not be defined in terms smaller than a county.

• If you develop your own service description, you must use the following format to define the proposed operations:

Sample Service Descriptions

"To operate as a common carrier by motor vehicle, in interstate or foreign commerce transporting commodities in bulk, between points in KY, NC, TN, VA, and WV."

"To operate as a contract carrier, by motor vehicle, in interstate or foreign commerce, transporting food and related products, between points in the United States, under continuing contracts with shippers or receivers of food and related products."

Supporting Evidence

• Applicants for emergency temporary authority or temporary authority must submit supporting evidence on the Part V "Certificate of Support" portion of the form to establish that there is or soon will be an immediate transportation need that reasonably cannot be met by existing carrier service. The "Certificate of Support" need not be completed by supporting shippers; others (including applicants themselves) may do so. However, shipper testimony is one of the most direct and cogent means of fulfulling this requirement.

• All other applicants—complete Part II, Item 3 (specified motor property carriers, water carriers, household goods freight forwarders, and household goods property brokers) or Part III, Item 10 (specified motor passenger carriers). The information provided in response to these questions should describe how the proposed service will be consistent with statutory public interest-type criteria for the various service types involved. Additionally, you may submit the Part V "Certificate(s) of Support" if you wish to enhance and expand upon your service request. A particularly direct and cogent means of demonstrating a public interest in the proposed operations is through supporting shipper testimony.

Note: Certain motor property and passenger authorities and non-household goods property broker authority are authorized on the basis of "fitness-only" determinations. Applicants in these categories expressly are excluded from responding to Part II, Item 3, or Part III, Item 10.

• If you want any authority to transport classes A and B explosives, bulk commodities, or household goods, or to provide service in Alaska and/or Hawaii, you must include additional evidence that specifically addresses your fitness, willingness, and ability to provide the service and discusses how the proposed operations will be responsive to a public (common carrier) or shipper (contract carrier) need for service. These issues may be addressed on a separate sheet of paper appended to your application, or in your response to Part II, Item 3. Also, you are strongly encouraged to submit evidence from supporting witnesses on the Part V "Certificate(s) of Support" portion of the form. Supporting evidence from prospective shippers is particularly valuable in establishing the manner in which you will meet the public or shipper needs for these specialized service categories.

• All evidence offered in support of the application should relate specifically to the authority requested (for example, make reference to a need for service involving classes A and B explosives, bulk commodities, household goods, and/or Alaska and/or Hawaii, as relevant).

• You may submit more than one "Certificate of Support."

Safety Fitness Evidence (Motor Carrier Applicants, Including ETA and TA Applicants)

• You must provide evidence of your most current DOT safety rating, or, if unrated, certify your willingness to comply with all applicable DOT safety rules. Complete "Safety Evidence," Part I.

• If you have been assigned an "unsatisfactory" safety fitness rating by DOT, or if you have been assigned a "conditional" safety fitness rating and intend to transport passengers or hazardous materials, do not file for new authority. Your application will not be accepted until you submit evidence of an improved safety fitness rating.

• If you are an applicant for motor property authority, do not seek to transport hazardous commodities, and have been assigned a "conditional" safety fitness rating by DOT, you must provide specific evidence concerning the measures you have taken to bring your operations into full compliance with DOT safety requirements and to correct each deficiency cited in the safety audit upon which your conditional rating was based. You also must submit a copy of your request to DOT seeking a re-audit of your operations. These issues must be addressed on a separate sheet of paper attached to your application. Upon review of this evidence, the Commission may elect to issue the sought authority subject to a typically nonrenewable 1-year term limitation. You will not be permitted to transport "hazardous materials" under your limited term authority.

• If you have not yet received a DOT safety rating, any authority you receive will be subject to a 1-year term limitation. If you are unable to obtain a safety rating within the 1-year term, you may petition to have the authority extended for a second year until the safety rating has been assigned.

• Applicants who have not filed form MCS–150 with the Federal Highway Administration of DOT must do so within 90 days of initiating operations.

Prelicensing Requirements

Insurance

• If you are seeking authority as a motor carrier, broker, or a household goods freight forwarder that provides a pickup or delivery service directly or by using a local delivery service under your control, before your newly approved operations may begin you must have on file with the ICC proof of adequate insurance, as follows:

• Liability insurance for motor carriers and household goods freight forwarders described above—your insurance company must file evidence with the Commission that you maintain appropriate levels of bodily injury and property damage (BI & PD) insurance—filed on ICC Form BMC–91 or BMC–91X. (Refer to "Insurance Information" in Part I.

• Cargo insurance for motor common carriers and household goods freight forwarders described above—your insurance company also must file evidence with the Commission that you maintain minimum levels of cargo insurance—filed on ICC Form BMC–34:

(1) $5,000—for loss or damage to property carried on any one motor vehicle; and

(2) $10,000—for loss of or damage to or aggregate of losses of or damages to property occurring at any one time and place.

• Property brokers—before beginning operations, you must file evidence with the Commission of a broker surety bond (filed on ICC Form BMC–84) or trust fund agreement (filed on ICC Form BMC–85) in the amount of $10,000.

Note: No authority document will be issued until all required insurance forms are on file with the ICC. It is your responsibility to contact your insurance company(ies) and to follow through to guarantee all required filings are received by this Commission. The ICC does not furnish insurance forms to applicants. Insurance companies print the forms and are familiar with the ICC's insurance filing requirements.

For ETA applicants—you must include with your application evidence of insurance (name of insurance company, policy number, and effective date). *See* Part IV (B) of Form OP–1.

Legal Process Agents

• All motor carriers and property brokers—you must designate an agent in each State where you conduct operations (for property brokers, each State where your offices will be located or in which you will write contracts) who will accept legal filings on your behalf (known as process agents)—filed on ICC Form BOC–3.

Tariffs

• Motor common carriers—you must file tariffs with the Commission listing prices for and specifying terms of the services you offer.

Note: Contract carriers must have written contracts with the shippers they serve, but the contracts need not be filed with the Commission.

• ETA applicants—your applications must include tariffs and be filed with the appropriate Commission Regional Office.

• All other motor common carrier applicants—your tariffs are to be filed with the ICC Headquarters office in Washington, DC.

State Notification

• All applicants—before beginning new or expanded interstate operations, you must contact the appropriate regulatory agencies in every State in and through which you will conduct operations to obtain information regarding various State rules applicable to interstate authorities. It is your responsibility to comply with registration, fuel tax, and all other State regulations and procedures.

Passenger Carrier Funding Recipients

• Applicants for passenger carrier authority must specify the nature of governmental financial assistance you receive, if any, by designating in Part III your status, defined as only one of the following:

Public recipient—Any State; any municipality or other political subdivision of a State; any public agency or instrumentality of such entities of one or more States; an Indian tribe; and any corporation, board or other person owned or controlled by such entities or owned by, controlled by, or under common control with such a corporation, board, or person which is receiving or has ever received governmental financial assistance for the purchase or operation of any bus currently in its fleet;

or *Private recipient*—Any applicant, other than a public recipient, that is receiving or has ever received governmental financial assistance in the form of a subsidy for the purchase, lease, or operation of any bus currently in its fleet;

or *Nonrecipient*—Any applicant that is not receiving, nor using equipment acquired with, governmental financial assistance.

Filing the Application and Related Materials

• TA and/or ETA applicants not filing for corresponding permanent authority—you must send the original and one copy of your applications to the ICC Regional Office serving the State in which your business is headquartered.

• TA and/or ETA applicants who simultaneously file for permanent authority—you must send the original and one copy of your application to ICC Headquarters and two copies to the appropriate Regional Office.

• All other applicants—you must send an original and one copy to ICC Headquarters and one copy to the appropriate ICC Regional Office.

Mailing Addresses for Applications

• Headquarters

Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423

• Eastern Region [includes AL, CT, DE, DC, FL, GA, KY, ME, MD, MA, MS, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA, WV, and Canadian Provinces of NB, NF, NS, PE, and PQ]

Interstate Commerce Commission, 3535 Market Street, Room 16400, Philadelphia, PA 19104

• Central Region [includes AR, IL, IN, IA, KS, LA, MI, MN, MO, NE, ND, OK, SD, TX, WI, and Canadian Provinces of MB and ON]

Interstate Commerce Commission, 219 South Dearborn Street, Room 1304, Chicago, IL 60604

• Western Region [includes AK, AZ, CA, CO, HI, ID, MT, NV, NM, OR, UT, WA, WY, and Canadian Provinces of AB, BC, and SK]

Interstate Commerce Commission, 211 Main Street, Suite 500, San Francisco, CA 94105

• All insurance and process agent filings (except for motor carrier ETA filings) should be addressed to the ICC, Office of the Secretary, Insurance Unit, Washington, DC 20423.

Note: ETA applicants—you must include evidence of insurance and process agent information with your application. *See* Part IV of the application form.

• Tariffs covering operations under temporary and permanent common carrier authority, and any future supplements, should be mailed to the ICC, Bureau of Traffic, Tariff Examining Branch, Washington, DC 20423.

Note: Applicants for ETA motor and water carrier authority—tariffs must accompany the application. Also, include a statement concerning the status of any interstate rate filings or suspensions involving the applicant.

• Intrastate motor passenger applicants—you also must send a description of the proposed service to the State transportation regulatory body of the State(s) in which the operations described in the application will be performed.

Transportation Terms

Applicant—the person or company applying for authority to provide transportation in interstate or foreign commerce or to provide property brokerage service.

Applicant's Representative—the person filing the application. The representative may be the applicant, any officer or authorized employee of the company, or a person licensed to practice before the ICC.

Common Carriage—transportation offered to the general public using prices and services named in tariffs on file at the ICC.

Contract Carriage—transportation performed under written contracts with particular shippers.

Contracts—written agreements between a contract carrier and each shipper with whom the carrier does business, covering a specific time period or series of movements and all

negotiated terms and charges for services rendered. Unlike tariffs, contracts are not subject to public review and do not have to be filed with the ICC.

Emergency Temporary Authority (ETA)—motor carrier authority lasting a maximum of 120 days to meet an immediate need that cannot be met by existing carriers.

Household Goods Freight Forwarding—the arrangement, assembly, and/or consolidation for transportation of household goods where the actual movement is performed by ICC licensed carriers. Forwarders arrange with the carriers for the actual transportation; they do not do it themselves. Freight forwarders issue bills of lading to shippers and, as common carriers, are responsible for loss of or damage to the goods.

Irregular Route Authority—authority that is not restricted to particular roads or routes.

Permanent Authority—authority with no time limit.

Property Brokerage—the arrangement for transportation of goods where the actual movement is performed by ICC licensed motor carriers. As contrasted with forwarders, brokers assume no responsibility for loss of or damage to the property being transported.

Regular Route Authority—authority to perform service only over named roads.

Restriction Removal—broadening the existing authority of a motor property or passenger carrier, upon request, to eliminate certain or all operating restrictions in its current service description.

Tariffs—public documents filed by common carriers that set out the terms of and prices for service.

Temporary Authority—authority, lasting a maximum of 270 days for motor and 180 days for water operations, to provide service that cannot be performed by existing carriers. If a permanent authority application also is filed, the temporary authority does not expire until the permanent authority is acted on.

Water Carrier Exemption—an action by the Commission exempting from its regulation the transportation of certain commodities by water contract carrier upon a finding that their transportation by water is not actually and substantially competitive with rail or motor transportation, either because of the inherent nature of the involved commodities, their special equipment requirements, or their shipment in bulk.

Additional Assistance

For additional information about obtaining authority, you may seek assistance in each of the following areas from:

Completing the Application

Permanent authority applications: Office of Public Assistance, Interstate Commerce Commission, Washington, DC 20423, (202) 275–7597, [TDD for hearing impaired: (202) 275–1721.]

TA and ETA applications: ICC regional offices processing the request for authority (addresses listed above):

Eastern Region: (215) 596–4040
Central Region: (312) 353–6204
Western Region: (415) 744–6520

Status of Filed Applications

Permanent authority applications—ICC, Office of proceedings, Case Tracking Unit, (202) 275–7022 or 275–7023.

Temporary or *emergency temporary* authority applications— ICC regional office processing application(s). Addresses and telephone numbers listed above.

Levels of Insurance

ICC, Office of Compliance and Consumer Assistance, Insurance Branch, (202) 275–0854.

Status of Insurance Filings

ICC, Office of the Secretary, Insurance Unit, (202) 275–0783.

Tariff Filings

ICC, Public Assistance Unit, Bureau of Traffic, (202) 275–7462.

DOT Safety Rating

Write to Director, Motor Carrier Safety Field Operations, Federal Highway Administration, United States Department of Transportation, Washington, DC 20590, for information concerning a carrier's safety fitness rating or to obtain a safety audit.

Check List

Before mailing your application, check to be sure that you have:

[ ] Completed all necessary sections, including the oath and certificate of service in Part I.
[ ] Enclosed the correct number of copies of the application form and addressed them to the proper places.
[ ] Enclosed the correct fee(s).
[ ] Attached supplemental documents to the form, where applicable.
[ ] Marked the word(s) "APPLICATION," "TA APPLICATION," "ETA APPLICATION," "90 DAY INTRASTATE PASSENGER APPLICATION," and/or "RESTRICTION REMOVAL APPLICATION," as appropriate, on the envelope.
[ ] Placed sufficient postage on the envelope(s).

Appendix B

Approved by OMB
3120–0047
Expires _____

Form OP–1 (Revised 12/89)
Supercedes Form OP–1 (12/83) and Form OCCA–95 (8/84)

INTERSTATE COMMERCE COMMISSION

Authority Application

Mail this form only after you have compared the application with the check list in the instructions.

For Commission Use Only

Docket No. _____
Filed _____
Fee No. _____

Paperwork Burden

It is estimated that an average of 4 burden hours per response are required to complete this collection of information. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments concerning the accuracy of this burden estimate or suggestions for reducing this burden should be directed to the Section of Administrative Services, Interstate Commerce Commission, and to the Office of Management and Budget, Paperwork Reduction Project, (OMB No. 3120–0079), Washington, DC 20503.

Part I—General Information To Be Completed by all Applicants

Applicant _____
(Legal Name)
Doing Business As _____
(Trade Name)
Business Address _____
(Street, Highway, or Rural Route and Box Number)
_____
(City)
_____
(State)
_____
(Zip Code)
_____
(Phone Number)
Mailing Address if Different from Above _____
(Street or P.O. Box)
_____
(City)
_____
(State)
_____
(Zip Code)
_____
(Phone Number)

Form of Business (Check only one):

[ ] Corporation. State of incorporation———
[ ] Partnership. Identify partners ———

[ ] Sole Proprietorship. Name of individual ———

If you have been issued a U.S. D.O.T. number, provide it here: ———

Do you now hold, or have an application pending for, authority from this Commission? [ ] Yes [ ] No.

If yes, identify the lead docket number or numbers: ———

In this application, do you seek to haul hazardous materials? [ ] Yes [ ] No.

Do you currently transport hazardous materials? [ ] Yes [ ] No.

Applicant seeks to operate as (Check one or more):

[ ] Motor property common carrier
[ ] Motor passenger common carrier
[ ] Motor property contract carrier
[ ] Motor passenger contract carrier
[ ] Property broker
[ ] Water common carrier
[ ] Water contract carrier
[ ] Household goods freight forwarder

Type of Application (Check one or more):

[ ] Permanent authority
[ ] Emergency temporary authority (ETA)
[ ] Temporary authority (TA)
[ ] Restriction removal
[ ] Water carrier exemption

Representative: Person to whom inquiries may be made (applicant or legal representative)

(Name)
(Title, position, or relationship to applicant)
(Street/P.O. Box)
(City)
(State)
(Zip Code)
(Phone Number)

Safety Evidence (Motor carrier applicants, including ETA and TA applicants)

(a) Applicants with DOT safety ratings:

Current DOT safety fitness rating: ———

Note: If your currently have a DOT safety rating other than "satisfactory," consult the "Safety Fitness Evidence" information in the Instructions.

(b) Applicants without DOT safety ratings:

I certify that I have access to and am familiar with all applicable regulations of the U.S. Department of Transportation (DOT) relating to the safe operation of commercial vehicles and the safe transportation of hazardous materials, and I will comply with these regulations.

[ ] Yes. All applicants without DOT safety ratings must so certify by checking "Yes." Unrated carriers may only receive 1-year authority from the Commission. Upon receipt of a "Satisfactory" safety rating during the 1-year term, carriers may petition to have the term limitation removed from their authority.

Insurance Information

Note: This section must be completed by all motor carrier and (where applicable) household goods freight forwarder applicants. The amounts in parentheses represent the minimum amount of bodily injury and property damage insurance you must maintain. *See* the Instructions for further information about other insurance requirements.

Property motor applicants (check one or more):

(1) Will use only vehicles having Gross Vehicle Weight Ratings (GVWR) under 10,000 pounds; and
(a) ——— Will transport commodities other than those listed in (b) below ($300,000), or
(b) ——— Will transport any Class A or B explosives or poison gas or highway quantity controlled radioactive materials ($5,000,000).

(2) Will use vehicles with GVWR of 10,000 pounds or more to transport
(a) ——— Non-hazardous commodities ($750,000).
(b) ——— Hazardous materials other than those described in (c) below ($1,000,000).
(c) ——— Hazardous materials as defined in 49 CFR 1043.2(b)(2) ($5,000,000).

Passenger motor applicants (check one).—Will use vehicles with seating capacities of:

(1) 16 or more ——— ($5,000,000)———
(2) Less than 16 only ——— ($1,500,000). ——

Note: If any vehicle accommodates 16 or more passengers, the larger insurance amount applies.

Control Relationships

(1) Relationship between applicant, any person having an interest in applicant, and/or any other ICC regulated transportation company (for example, percentage stock ownership, loans, voting, or management arrangements). Provide license numbers and, if applicable, U.S. D.O.T. numbers, or involved ICC regulated transportation interests and indicate DOT safety fitness ratings of all commonly controlled motor carriers.

(2) If no common control relationship, check here [ ]. Otherwise, check the appropriate box below.
(a) [ ] The Commission approved the common control relationship in Docket No. MC–F– ———.
(b) [ ] The aggregate gross (interstate) operating revenues of the carriers were not more than $2 million during a period of 12 consecutive months ending not more than 6 months before the date of the agreement of the parties in the transaction creating the control relationship.
(c) [ ] Applicant has filed or is filing concurrently an application for approval of common control or a petition seeking exemption from the requirements of 49 U.S.C. 11343. Provide docket number (if known): ———.

(3) Property broker applicants only—Has applicant or any of its principals been involved previously in the brokerage industry?
[ ] Yes [ ] No
If yes, please describe this experience, and, if licensed by the Commission, indicate docket number(s).

Miscellaneous

(a) I certify that the applicant in this proceeding is not domiciled in Mexico. Moreover, the applicant is not owned by or controlled by persons of that country. [ ] Yes. Applicants must so certify by checking "Yes."
(b) Does the applicant hold a certificate of registration from this Commission as a single-State operator?

Note: This refers to authority issued by the ICC; not intrastate authority issued by a State regulatory body.

[ ] Yes [ ] No
If Yes, identify authority number and State: ———.

Applicant's Oath

Must be completed by all applicants.

I, ———, (name and title of witness) verify under penalty of perjury, under the laws of the United States of America, that all information supplied on this form or relating to this application is true and correct. Further, I certify that I am qualified and authorized to file this application. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to 5 years and fines up to $10,000 for each offense. Additionally, these

misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to $2,000 or imprisonment up to 5 years for each offense.

I further certify under penalty of perjury under the laws of the United States, that I have not been convicted, after September 1, 1989, of any Federal or State offense involving the distribution or possession of a controlled substance, or that if I have been so convicted, I am not ineligible to receive Federal Benefits, either by court order or operation of law, pursuant to 21 U.S.C. 853a.

(Signature and Date)

Certificate of Service

Must be completed by all applicants.

I certify that I have delivered a copy of this application, in person or by mail, to the Regional Director of the Commission's Office of Compliance and Consumer Assistance for the Region in which the applicant has its headquarters.

(Signature and Date)

After completing Part I

Applicants for	*Turn to and complete*
Motor property carrier, water carrier, property broker, and household goods freight forwarder authority.	Parts II and VI
Motor passenger carrier authority.	Parts III and VI
Temporary and emergency temporary authority.	Parts IV, V, and VI

Note: The Part V "Certificate of Support" is optional for motor and water carrier permanent authority, broker, and household goods freight forwarder applicants. The "Certificate" must be submitted by applicants for emergency temporary and temporary authority. The certificate in support of these applications need not be completed by a shipper witness. However, a supporting shipper certificate is one of the most direct and cogent means of fulfilling statutory requirements with regard to the public interest. Certain other applicants are strongly encouraged to submit supporting evidence as explained in the "Supporting Evidence" portion of the Instructions.

Part II—Motor Property Carrier, Water Carrier, Property Broker, and Household Goods Freight Forwarder Applications

(1) Check appropriate box(es) for type(s) of authority you seek and provide required information; then turn to part VI.

(A) [ ] Motor common carrier of general commodities (except classes A and B explosives, household goods, and commodities in bulk), between points in the United States (except Alaska and Hawaii).

(B) [ ] Motor contract carrier of general commodities (except classes A and B explosives, household goods, and commodities in bulk), between points in the United States (except Alaska and Hawaii), under continuing contract(s) with commercial shippers or receivers of such commodities.
Note: If you have checked Item B, you also must complete Item 2, below, "Contract Carrier Service."

(C) [ ] Motor contract carrier of household goods, between points in the United States (except Alaska and Hawaii), under continuing contract(s) with commercial shippers of household goods.

If you have checked Item C, complete one or both box(es) below, as applicable:

[ ] Contracting shippers have one or more of the distinct needs delineated in No. MC–1745 (Sub-No. 17), "Interstate Van Lines, Inc., Extension—Household Goods," 5 I.C.C. 2d 168 (1988).

Describe briefly the distinct need(s):

[ ] Contracts provide for assignment of one or more vehicles for the exclusive use of each such shipper in the manner specified in No. MC–1745 (Sub-No. 17), "Interstate Van Lines, Inc., Extension—Household Goods," 5 I.C.C.2d 168 (1988).

(D) [ ] Motor carrier broker of general commodities (except household goods), between points in the United States.

(E) [ ] Motor carrier broker of household goods between points in the United States.

(F) [ ] Freight forwarder of household goods, unaccompanied baggage, or used automobiles, between points in the United States.

(G) [ ] Motor common carrier of property authority to serve any community not regularly served by a certificated motor common carrier of property, transporting general commodities between the specified community(ies), on the one hand, and, on the other, points in the United States.

(H) [ ] Motor common carrier of property authority to provide service as a direct substitute for abandonment of all rail service in a community, transporting general commodities, between the abandoned community(ies), on the one hand, and, on the other, points in the United States.

Note: If you have checked Item (G) or (H) above:

Identify community(ies)

Describe service

(I) [ ] Motor common carrier of property transportation for the U.S. Government of general commodities (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the United States.

(J) [ ] Motor common carrier of property transportation of shipments weighing 100 pounds or less if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the United States.

(K) [ ] Motor common or [ ] motor contract carrier of property transportation of food and other edible products (including edible byproducts but excluding alcoholic beverages and drugs) intended for human consumption, agricultural limestone and other soil conditioners, and agricultural fertilizers, between points in the United States, where the owner is in the vehicle when the transportation is provided (except in emergency situations) and the tonnage transported annually under this authority does not exceed the motor vehicle's tonnage of exempt commodities transported annually.

(L) [ ] Transportation for the U.S. Government of used household goods incidental to a pack-and-crate service on behalf of the Department of Defense, between points in the United States.

(M) [ ] Water common or [ ] water contract carrier authority or [ ] Water carrier exemption.

Describe service: [If application is for water contract authority, indicate how you will meet the statutory requirements for contract carriage. 49 U.S.C. 10102(31).]

Note: If you have checked Item M, you must make the following CZMA Certification:

I certify that I have filed a notice of this application with the appropriate Coastal Zone Management Program agency of each State in which I propose to operate.

[ ] Yes. Applicants must so certify by checking "Yes."

(N) [ ] Other. [If you seek authority that differs from the above options, please describe it in the space below—for example, applications for restriction removal, specified

commodities in lieu of general commodities, bulk commodities, household goods common carrier authority, service to limited geographic areas (less than 48-State authority), or service to Alaska or Hawaii.]

(a) If you checked Item N, you must complete this service description.

To operate as a

_____

(type of transportation)

in interstate or foreign commerce, transporting

_____

(commodity or commodities)

between

_____.

(territory)

If applicable: Under continuing contract(s) with

_____

(contracting shipper or class of shippers)

Note: You must furnish a map that clearly identifies and depicts any regular route involved in the above service description.

(b) Explain briefly why this proposed service description either promotes or at least does not defeat the purposes of the Interstate Commerce Act (*e.g.*, why the service is reasonable and not unduly restrictive).

Note: This information may be embraced in your response to Item 3, below. If so, you need not provide a separate explanation here.)

_____

_____

_____

_____

(2) Contract carrier service—If you have checked Item B in Part II and seek industrywide general commodities contract carrier authority, or Item N in Part II and seek contract carrier authority to transport specified commodities in lieu of general commodities, you must complete Item 2(a) and/or 2(b).

As a contract carrier, I will: [Complete the box(es) indicating how you will meet the statutory requirement for contract carriage.]

(a) [ ] Furnish the transportation service through the assignment of motor vehicles for a continuing period of time for the exclusive use of each person served; and/or

(b) [ ] Furnish the transportation service designed to meet the distinct need(s) of each contracting shipper or each member of a class of shippers.

Note: To meet distinct needs of contracting shippers you must develop a service designed to meet some distinct need of each shipper or specified class and must define such need with precision.

Describe briefly the distinct need(s):

_____

_____

_____

_____

(3) All applicants for property authority, except those whose service proposals are limited to Items 1 (G) through (L)—describe briefly how the proposed service: (1) Will serve a useful public purpose, responsive to a public demand or need (motor common carrier applicants); (2) will be required by the present or future public convenience and necessity (water common carrier applicants); or (3) is or will be consistent with the public interest and the transportation policy of 49 U.S.C. 10101 (motor and water contract carrier, household goods freight forwarder, and household goods property broker applicants).

_____

_____

_____

_____

_____

_____

_____

_____

Part III—Motor Passenger Applications

Applicant is a: [Check the appropriate box. Refer to the "Passenger Carrier Funding Recipients" section of the Instructions.]

[ ] Public Recipient

[ ] Nonrecipient

[ ] Private Recipient

Type Service Applicant Wishes to Provide

Check appropriate box(es) for type(s) of authority you seek and provide required information; then turn to Part VI.

Note: You must furnish a map clearly identifying each *regular route* involved in your passenger carrier service description(s). Also, you must attach on a separate sheet a narrative description of each regular route. If you seek authority as a passenger contract carrier, proceed to Item 5.

(1) [ ] Charter and special transportation.

Describe territory.

_____

_____

_____

_____

(2) [ ] Service over regular routes in interstate or foreign commerce.

(3) [ ] Service over regular routes in intrastate commerce under 49 U.S.C. 10922(c)(2)(A) on a route over which applicant had authority as of November 19, 1982.

Note: You must attach to your application a copy of the interstate authority or authorities issued on or before November 19, 1982, authorizing the transportation of passengers on the routes over which you seek to obtain intrastate authority. To enable expedited action, you must mark the envelope and the application in the upper right corner of the front page "90-Day Intrastate Passenger Application."

(4) [ ] Service over regular routes in intrastate commerce under 49 U.S.C. 10922(c)(2)(B) on a route over which applicant has been or will be granted authority in interstate commerce after November 19, 1982.

Note: You must attach to your application a copy of the interstate authority or authorities granted after November 19, 1982, authorizing the transportation of passengers on the routes over which you seek to obtain intrastate authority.

If you have not been granted or do not have pending an application for the underlying interstate, regular-route authority over which the intrastate operations are to be performed, you may file a request for such intrastate authority only if you request the underlying interstate, regular-route transportation in the same application. A denial or rejection of the underlying interstate application will require rejection of the request to provide intrastate transportation.

(5) [ ] Service as a contract carrier between points in the United States (except Alaska and Hawaii), under continuing contract(s) with

_____

(Name contracting persons)

_____

_____

As a contract carrier, I will: [Complete the box(es) indicating how you will meet the statutory requirement for contract carriage.]

(a) [ ] Furnish the transportation service through the assignment of motor vehicles for a continuing period of time for the exclusive use of each person served; and/or

(b) [ ] Furnish the transportation service designed to meet the distinct needs of each contracting shipper or each member of a class of shippers. Describe briefly the distinct need(s):

_____

_____

_____

_____

(6) [ ] Service to any community not regularly served by a certificated motor common carrier of passengers.

(7) [ ] Service as a direct substitute for the abandonment or discontinuance of all rail and commercial air passenger service in a community.

If you have checked Item (6) or (7) above:

Identify community(ies).

_____

Describe service.

_____

_____

_____

(8) [ ] Service to any community where the only interstate motor common carrier of passengers has applied under 49 U.S.C. 10925(c) to discontinue such interstate service or has applied under 49 U.S.C. 10935 to reduce intrastate service to less than one trip per day (excluding Saturdays and Sundays).

Note: If you have checked Item (8), you must complete A and B below:

A. Provide a copy of, or appropriate reference to, the existing carrier's application to the ICC for discontinuance or reduction of service.

B. Service to be provided.

(9) [ ] Other. [If you seek authority that is not covered by Items (1)—(8), please describe in the space below (for example, restriction removal).]

Explain briefly why this proposed service description either promotes or at least does not defeat the purposes of the Interstate Commerce Act (*e.g.*, why the service is reasonable and not unduly restrictive).

(**Note:** This information may be embraced in your response to Item 10, below. If so, you need not provide a separate explanation here.)

(10) [ ] All passenger carrier applicants except those whose service proposals are limited to Item 1 (if privately funded) and Items 5 through 8—describe briefly how the proposed service will be consistent with the public interest.

Part IV—Emergency Temporary Authority and Temporary Authority Applications

Complete this information concerning your proposed temporary operations; ensure that Part V "Certificate of Support" has been completed; then turn to Part VI.

A. To be completed by applicants for emergency temporary and/or temporary authority:

(1) Description of authority requested.

(Note: To the extent feasible, if you also are seeking permanent authority, you should conform the proposed temporary service to that sought in your permanent licensing application.)

To operate as a

(type of transportation)

in interstate or foreign commerce, transporting

(commodity or commodities)

between

(territory)

If applicable: Under continuing contract(s) with

(contracting shipper of class of shippers)

(2) I understand that the filing of this application does not, in itself, constitute authority to operate and that a grant of this authority as requested does not mean that corresponding permanent authority will be granted.

[ ] Yes. Applicants must so certify by checking "Yes."

B. To be completed by applicants for emergency temporary authority:

(1) Enter date the emergency temporary authority is requested to become effective:

(2) Is an automatic extension beyond 30 days requested?

[ ] Yes [ ] No.

Note: ETA applications will not be processed unless they include evidence of insurance (name of insurance company, policy number, and effective date); a list of process agents; and, for common carrier authorities, tariff information as described in the Instructions under "Filing the Application and Related Materials."

Part V—Certificate of Support

(1) Name, title, and address of supporting witness.

Supporting Shipper Witnesses (Complete Items 2, 3, 4, and 5).

(2) Describe the geographic movement (actual or future) of the involved traffic in terms of origin(s) and destination(s); also provide representative traffic volumes and frequency of movements. Is service sought in [ ] Alaska [ ] Hawaii? If so, you must describe service needs involving such State(s).

(3) List actual commodities that may be transported. If the movement of classes A and B explosives, household goods, or commodities in bulk is sought, you must describe service needs involving such commodities (for example, specialized equipment).

(4) Describe any distinct service needs. If supporting an application for contract carriage, you may, alternatively or additionally, describe any equipment dedication requirements.

(5) If supporting an application for emergency temporary authority or temporary authority, please answer the following:

(a) Volume of traffic that will be tendered, frequency of movement, and how transported in the past:

(b) How soon must service be provided and reasons for such a time requirement:

(c) How long will need for service likely continue:

(d) The circumstances that create an immediate need for service:

(e) Consequences if service is not made available:

Supporting Witnesses Other than Shippers (Provide information concerning a need for the proposed service in the space below.)

Supporting Witness' Oath

I, _____, (name and title of witness), verify under penalty of perjury, under the laws of the United States of America, that all information supplied is true and correct. Further, I certify that I am qualified and authorized to file this certificate of support. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to 5 years and fines up to $10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to $2,000 or imprisonment up to 5 years for each offense.

(Signature and Date)

Part VI—Filing Fee Information

[Please refer to enclosed Fee Schedule.]

Permanent Authority Applicants

Indicate amount $_____ and method of payment:

[ ] Check [ ] Money Order [Payable to the "Secretary, Interstate Commerce Commission"]

[ ] VISA [ ] Master Card

Credit Card No.:

Expiration Date:

Signature:

Date:

ETA and/or TA Applicants

Indicate amount $_____ and method of payment:

[ ] Check [ ] Money Order [Payable to the "Secretary, Interstate Commerce Commission"]

[ ] VISA [ ] Master Card

Credit Card No.:

Expiration Date:

Signature:

Date:

Insert to Appendix B

Fee Schedule

• An application for motor carrier common or contract carrier; passenger or property authority; property broker authority, motor carrier certificate of registration including a certificate of registration; water carrier operating authority or exemption; or household goods freight forwarder authority	$200
• A fitness only application for motor common or contract owner operator authority to transport food and related products	100
• An application to remove restrictions or broaden unduly narrow authority	250
• An application for motor carrier emergency temporary authority	70
• An application for motor carrier or water carrier temporary authority	100

Note: Separate filing fees must accompany requests for permanent and temporary operating authority, even if embraced in the same application. Filing fees for ETA and TA authority embraced in the same application may be consolidated. (See "Fee Policy" statement on reverse side.)

Fee Policy

• Fees must be payable to the Interstate Commerce Commission by check drawn upon funds deposited in a bank in the United States or money order payable in U.S. currency or by approved credit card.

• Separate fees are required for permanent authority requests, emergency temporary authority requests, or temporary authority requests. If an applicant requests multiple types of permanent authority in one application (for example common, contract, and broker authority), only one fee is required.

• The filing fee for a permanent authority application must be sent with the application to Washington, DC.

• The filing fees for an emergency temporary application and/or temporary application must be sent with the application to the appropriate regional office.

• After an application is accepted the filing fee is not refundable.

• The Commission reserves the right to discontinue processing any application for which a check is returned because of insufficient funds. Such an application will be stayed until the fee is paid in full, in good funds.

[FR Doc. 89-30044 Filed 12-28-89; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 54, No. 249
Friday, December 29, 1989

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1032

[DA-90-004]

Milk in the Southern Illinois-Eastern Missouri Marketing Area; Notice of Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This action invites written comments on a proposal to suspend certain provisions of the Southern Illinois-Eastern Missouri Federal milk marketing order for the month of January 1990. The proposed suspension would reduce the shipping standard for pool supply plants. The action was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that operates supply plants and represents producers who supply the market. Mid-Am contends that the action is necessary to reflect a reduced need for shipments of milk from supply plants to distributing plants. Mid-Am indicates that less of its supply plant milk will be needed because of the sale of a distributing plant whose fluid milk accounts have been shifted to distributing plants that are regulated under other Federal orders. In response to this situation, a previous suspension order was issued for the months of November 1989 through January 1990 that reduced the shipping standard for supply plants operated by cooperative associations to 25 percent of milk receipts. Mid-Am contends that, under current marketing conditions, it will not be able to perform at the 25 percent shipping level to pool its supply plant at Cabool, Missouri, without engaging in inefficient and uneconomic movements of milk. Thus, Mid-Am contends that a further suspension is necessary to eliminate unnecessary shipments of milk to pool the milk of dairy farmers who have historically supplied the fluid milk needs of the market.

DATES: Comments are due on or before January 5, 1990.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-2089.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

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 the criteria contained therein.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), the suspension of the following provisions of the order regulating the handling of milk in the Southern Illinois-Eastern Missouri marketing area is being considered for January 1990:

In § 1032.7(b), the words "during December at least 40 percent, and at least 50 percent in all other months, of the total", the words "(including producer milk diverted from such plant pursuant to § 1032.13 but excluding milk diverted to such plant) and handlers described in § 1032.9(c)", the words ", except that the minimum qualifying percentage shall be 25 percent for a plant(s) operated by a cooperative association that delivered producer milk", the words "each of", the words "months of", the words "through August", the word "to", and the words "plants described in paragraph (a) of this section".

For the benefit of the reader, the above suspension in conjunction with a previous suspension that was issued on November 15, 1989 (54 FR 48078) would result in a provision that reads as follows:

Section 1032.7 Pool plant.

* * * * *

(b) A supply plant from which receipts of milk from dairy farmers is transferred to and physically received at plants described in paragraph (a) of this section during the immediately preceding September.

* * * * *

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, by the 7th day after publication of this notice in the Federal Register. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures to make the action effective for January 1990.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed action would suspend certain provisions of the order for the month of January 1990. The action would reduce the shipping standard for pool supply plants that transferred milk to distributing plants during September 1989.

The order provides that a supply plant must ship at least 40 percent of its receipts of milk to distributing plants during December, and 50 percent in other months, to be a pool plant under the order. A supply plant that meets the pooling standard during each of the months of September through January is a pool plant during each of the months of February through August. Also, the order provides an alternative shipping standard of 25 percent for a supply plant operated by a cooperative association if at least 75 percent of the cooperative's total milk supply during the preceding months of September through August is received at distributing plants. A previous suspension action for the

months of November 1989–January 1990 reduced the shipping standard to 25 percent of receipts for any cooperative association supply plant that delivered producer milk during each of the immediately preceding months of September through August. The proposed action would further reduce the amount of milk that must be shipped from any supply plant to a distributing plant during January 1990 if the supply plant shipped milk during September 1989.

Both the current and previous actions were requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that operates supply plants under the order and represents producers who supply the market. Mid-Am contends the action is necessary because of a reduced need for shipments of milk from supply plants to furnish the fluid milk requirements of distributing plants.

Mid-Am indicates that the reduction of the fluid milk requirements for the market is a result of the recent sale of a distributing plant to another handler that is regulated under the order. Mid-Am has maintained pool plant status under the order for its Cabool, Missouri, supply plant by making shipments to the distributing plant that was sold. The fluid milk accounts of the plant that was sold were shifted to distributing plants that are regulated under other Federal orders and the plant ceased receiving milk on October 19, 1989. As a result, there was a reduction in the amount of supplemental supply plant milk required of Mid-Am to meet the fluid milk needs of the market.

In response to this situation, a suspension order was issued for the months of November 1989–January 1990 that reduced the shipping standard for supply plants operated by cooperative associations to 25 percent of milk receipts. Mid-Am now contends that, under current marketing conditions, it will not be able to perform at the 25 percent shipping level to pool its supply plant at Cabool, Missour, without engaging in inefficient and uneconomic movements of milk. Thus, Mid-Am contends that a further suspension for January 1990 is necessary to eliminate unnecessary shipments of milk to pool the milk of diary farmers who have historically supplied the fluid milk needs of the market.

List of Subjects in 7 CFR Part 1032

Dairy products, Milk, Milk marketing orders.

PART 1032—[AMENDED]

The authority citation for 7 CFR part 1032 continues to read as follows:

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

Signed at Washington, DC, on: December 26, 1989.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 89–30244 Filed 12–28–89; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 694]

RIN 1512–AA07

Realignment of the Eastern Boundary of the Alexander Valley Viticultural Area and the Northeastern Boundary of the Northern Sonoma Viticultural Area (88F–120P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF), has received a petition for the revision of the eastern boundary of the Alexander Valley Viticultural area to encompass the planted areas of Gauer Ranch and Chestnut Springs Vineyards. The proposed revised boundary conforms, in part, to the boundary proposed by Group B of the original Alexander Valley petitioners.

ATF is also proposing the revision of the northeastern boundary of the Northern Sonoma viticultural area to coincide with the proposed revision of the northeastern boundary for the Alexander Valley viticultural area.

DATE: Written comments must be received by February 12, 1990.

ADDRESSES: Send written comments to: Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044–0385 (Notice No. 694). Copies of the petition, the proposed regulations, the appropriate maps, and written comments will be available for public inspection during normal business hours at: ATF Reading Room, Disclosure Branch Room 4412, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: David W. Brokaw, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226, (202) 566–7626.

SUPPLEMENTARY INFORMATION:

Background

On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added a new part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), title 27, CFR defines an American viticultural area as a delimited grape-growing region distinguishable by geographic features, the boundaries of which have been delineated in subpart C of part 9.

Section 4.25a(e)(2), Title 27, CFR, outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include;

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy (or copies) of the appropriate U.S.G.S. map(s) with the proposed boundaries prominently marked.

T.D. ATF–187

T.D. ATF–187, which was published in the **Federal Register** on October 24, 1984, established the Alexander Valley viticultural area effective November 23, 1984. Two groups had presented petitions for the establishment of an Alexander Valley viticultural area, and a hearing was held on January 24, 1983, concerning establishment of the viticultural area. In the final rule, ATF found that the general area encompassed within the boundaries proposed by the second group, ("Group B"), merited establishment as the Alexander Valley viticultural area. Therefore, the viticultural area

established by the final rule generally corresponded to the area proposed by Group B. However, their proposed boundaries were modified to exclude several mountainous areas encompassed by the eastern and northwestern boundaries, which ATF found possessed viticultural features which were distinguished by geographical features from the rest of the proposed viticultural area. Specifically, ATF found that the mountainous areas to the east were characterized by soils primarily of the Goulding-Toomes-Guenoc association, while the valley floor was characterized by soils of the Yolo-Cortina-Pleasanton association. ATF noted that virtually all grapes in the Alexander Valley area were grown on the valley floor, adjacent river terraces, and the lower slopes rising out of the valley. The U.S.G.S. 7.5 minute topographic maps consulted by ATF did not depict any vineyards in the mountainous areas. Finally, ATF found no evidence that the name Alexander Valley was locally and/or nationally known as referring to those mountainous areas, or that the historical or current boundaries of Alexander Valley had ever included those areas. Therefore, ATF concluded that the eastern boundaries proposed by Group B encompassed mountain areas which lay outside the actual geographic and viticultural limits of Alexander Valley, and those boundaries were modified accordingly.

Petition

ATF has received a petition for revision of the eastern boundary of Alexander Valley viticultural area to encompass the planted and soon-to-be-planted areas of Gauer Ranch and Chestnut Springs Vineyards. The petition was submitted by Edward H. Gauer of Gauer Ranch and Ellis J. Alden of Chestnut Springs Vineyards.

Mr. Gauer stated that his 6,000-acre ranch includes property on the valley floor and land rising to the northeast into the hills. Mr. Gauer began planting vineyards in Alexander Valley in 1972. Over the next five years he established 251 acres of vineyards on the valley floor and at low elevations in the foothills. Since 1977 an additional 142 acres have been planted on the hillsides, and another 392 acres of potential new vineyard sites have been chosen.

Mr. Alden stated that he purchased his 1,400 acre ranch in the hills east of Geyserville in 1986 and planted his first vineyards in 1988. Thirteen acres of Cabernet grapes are in the ground; a total of 100 acres are planted for the ranch and nearly level expanses of the upland valley on his ranch. Mr. Gauer recently learned that a large part of his property was excluded from the official Alexander Valley viticultural area boundaries which were established in 1984. Both of the petitions originally submitted at the time included all of Mr. Gauer's hillside vineyards, as well as the site which has now been planted to Mr. Alden's vineyards. Evidence at the hearing did not focus on the exclusion of vineyards of higher elevation. Both petitioners were under the erroneous impression that their properties were included in the Alexander Valley viticultural area boundaries. However, the boundaries described in the final petition excluded a portion of Mr. Gauer's vineyards, and totally excluded the property currently owned by Mr. Alden. When T.D. ATF–187 was issued, ATF was unaware that the boundaries would exclude portions of Mr. Gauer's vineyards from the Alexander Valley viticultural area. ATF mistakenly believed that there were no vineyards planted in the mountainous areas to the east of the eastern boundary line. The petition thus requests a revision of the northeastern boundary of the Alexander Valley viticultural area to include the vineyards owned by the petitioners. The proposed boundary revision would add approximately 19,085 acres of territory to Alexander Valley. Of these, 165 acres are currently planted to grapes, and another 460 acres will be planted within the next three to five years.

Northern Sonoma

ATF's proposal to revise the boundary of the Alexander Valley viticultural area affects the boundary of the Northern Sonoma viticultural area.

In the preamble to Notice No. 472 proposing the Northern Sonoma viticultural area, ATF stated its intention to have the proposed boundary coincide generally with the "outer" portions of the boundaries of the proposed Alexander Valley, Dry Creek Valley, Russian River Valley, and Knights Valley viticultural areas. In the preamble to T.D. ATF–204, ATF stated that these four areas all fit perfectly together dividing northern Sonoma County into four large areas with the Northern Sonoma area using all of the outer boundaries of these four areas with the exception of a small area having nearly 300 acres of grapevines and possessing the same geographical features as the rest of the Northern Sonoma area.

Therefore, ATF is proposing to revise the northeastern boundary of the Northern Sonoma viticultural area to coincide with the proposed revised northeastern boundary for the Alexander Valley viticultural area.

Evidence of Name

The petitioners contend that the area within the proposed extension has always been known as being part of Alexander Valley. They submitted evidence that the area was known as Alexander Valley at the time the final boundaries were established in 1984, and has been known as part of Alexander Valley since then.

The petitioners submitted several letters from owners of neighboring vineyards, including one from a member of the Alexander Valley Appellation Committee, which stated that the area in question is locally known as part of Alexander Valley. The letters supported the petitioners' contention that their vineyards had been left out of the Alexander Valley boundaries by mistake.

The petitioners also submitted letters from several wineries stating that they had used grapes from the area in question in wines which were labeled as coming from the Alexander Valley. For example, a letter from Landmark Vineyards stated that they had purchased grapes from the Gauer Ranch, from both the valley floor and hillside locations, over several vintages, and had consistently designated wines made from those grapes as "Alexander Valley," including a vineyard designated "Gauer Ranch" Chardonnay which was produced in 1982, which came entirely from one of the hillside vineyards. A letter from Chateau St. Jean Vineyards and Winery stated that they had purchased several tons of Chardonnay grapes from the Gauer estate during the late 1970s and early 1980s, and had labeled these wines to reflect their Alexander Valley heritage

The petitioners also submitted several newspaper and magazine articles which referred to the Gauer ranch as being located in the Alexander Valley area. The following list contains examples of the articles submitted:

(1) An article entitled "Gauer Ranch Vineyard Designation" (Sonoma County California Visitors Review, 5/8/87), which refers to the "high-elevation vineyards of the Circle G (Gauer Ranch) in Alexander Valley."

(2) An article entitled "Gauer Grapes Say Sayonara California; Hello Japan" (California Visitors Review, 10/23/87), which refers to "the premium, hillside, Alexander Valley vineyards of Gauer Estate Winery."

(3) An article entitled "A winery 'Department Store' for Alexander Valley" (San Francisco Chronicle, 7/20/87), which refers to Mr. Gauer as an "Alexander Valley grape grower."

(4) An article entitled "Ex-Clothes Magnate Buys Wine Complex," (The Press Democrat, 7/11/87), which refers to Mr. Gauer's purchase of "a large wine warehouse and crushing facility near his 6,000-acre ranch in the Alexander Valley."

(5) An article entitled "Valley Grapes Head for Tokyo" (The Healdsburg Tribune, 10/23/87), stating that sixty tons of "grapes from the hillside Alexander Valley Vineyards of Gauer Estate Winery" had been sent to Tokyo.

Finally, the petitioners submitted a map distributed by the Sonoma County Wineries Association, of which over 8,000 copies have been distributed over the past 5 years, which shows the boundaries of the Alexander Valley viticultural area as encompassing the vineyards owned by the petitioners.

Apparently the map was created in early 1984, before the final rule on Alexander Valley was published, and the boundaries on the map are the boundaries proposed by Group B, not the boundaries that were adopted in the final rule. The petitioners contend that the map has been distributed on a nationwide basis, and that it has contributed to a belief on the part of wine consumers that the petitioners' vineyards were within the official boundaries of the Alexander Valley viticultural area.

Thus, the petitioners contend that the evidence establishes that the area under consideration is locally and nationally known as part of Alexander Valley.

Topography

The elevations found within the petitioned area are consistent with elevations inside the currently defined boundaries of Alexander Valley. Elevations in the northeastern corner of the appellation, which are the highest in the Alexander Valley viticultural area, range from 1,600 to 2,400 feet. Within the petitioned area elevations range from 600 to 2,000 feet.

The proposed amended boundary approximates a minor watershed boundary within the larger Russian River watershed. To the southwest of the proposed boundary line (i.e., the foothills currently in Alexander Valley viticultural area and the area proposed to be added to the appellation) surface water drains directly into the Russian River. To the northeast of the line, surface water drains first into Sulphur Creek and its tributaries and from there into the Russian River. This natural boundary proceeds from the top of Black Mountain along a ridge line that bisects Mr. Alden's Ranch.

Climate

The climate of the petitioned area falls within the range of climate found inside the currently approved Alexander Valley appellation. The climate of Alexander Valley contains a certain amount of variation. For example, temperatures increase as one travels from north to south; fog affects only the southern portion of the valley. In general, the climate of Alexander Valley is characterized as a Region III climate according to the system developed by Amerine and Winkler.

No long range temperature studies for either the Gauer Ranch or Chestnut Springs Ranch have been made. However, the petitioners state that years of viticultural experience on the Gauer Ranch indicate that the area has a Region III climate, suitable for the production and consistent ripening of late varieties such as Cabernet Sauvignon, yet not too warm to produce excellent quality Chardonnay, a relatively early variety.

Soils

The petitioners explain that a very general soil survey map of Sonoma County put out by the U.S. Department of Agriculture Forest Service and Soil Conservation Service (May 1972), which categorizes soil groupings into ten types, characterizes the primarily alluvial soils of the valley floor as the Yolo-Cortina-Pleasanton Association. Proceeding northeast into the foothills, the map identifies the next soil grouping as the Goulding-Toomes-Guenoc Association. Farther east and running parallel to this association lies another grouping classified as the Yorkville-Suther Association. The rugged mountainous area beyond is mapped as the Los Gatos-Hennecke-Maymen Association. The current eastern boundary of the appellation runs within the area marked Goulding-Toomes-Guenoc, except for the expanded area in the northeast corner, which is mapped as Yorkville-Suther.

However, the petitioners state that a closer examination of U.S. Department of Agriculture Forest Service and Soil Conservation (May 1972) large scale soil maps of the eastern half of Alexander Valley suggests that the distinctions between the general soil associations of the foothills are not so clear-cut. The close-in foothills, inside the current Alexander Valley viticultural area boundaries, contain significant quantities of many of the same soils as the foothills in the petitioned area.

The eastern foothills officially accepted as part of Alexander Valley show substantial areas of Suther loam, Laughlin loam, Suther-Laughlin loams, Spreckels loam soils, and smaller areas of Sobrante loam, Yorkville clay loam, Pleasantown gravelly loam, Josephine loam, Hennecke gravelly loam, and others including Montara cobbly clay loam, Guenoc gravelly silt loam, Supan silt loam, and Toomes rocky loam. The principal soils in this list are classified as uplands range soils.

The petitioned area shows predominantly Suther loam, Laughlin loam, Suther-Laughlin loams, Yorkville clay loam, and Sobrante loam soils, with smaller areas of Josephine loam, Hennecke gravelly loam, and others. The principal soils, here again, are classified as uplands range soils.

The area outside the proposed amended boundary has large areas of Hennecke gravelly loam, Los Gatos gravelly loam, Stonyford gravelly loam, Josephine loam, Suther-Laughlin loams, Hugo very gravelly loam, and Laughlin loam soils, and smaller areas of Maymen gravelly sandy loam, Hugo-Atwell complex, rock land, and others. The principal soils in this group are mountainous/wilderness type soils.

Thus, the petitioners state that in the eastern foothills of Alexander Valley, like in most parts of Sonoma County, there is a great diversity of soil types. There are, however, unifying themes as well. As described above, the same soils reappear throughout the foothills. East of the proposed amended boundary, where the terrain becomes appreciably more rugged, different soil types appear and become predominant.

Public Participation-Written Comments

ATF requests comments from all interested persons. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except to comments received on or before the closing date.

ATF will not recognize any submitted material as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of the person submitting a comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing on the proposed regulations should submit his or her request, in writing, to the Director within the 45-day comment period. The Director, however, reserves the right to

determine, in light of all circumstances, whether a public hearing will be held.

Regulatory Flexibility Act

It is hereby certified that this proposed regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required because the proposal, if promulgated as a final rule, is not expected (1) to have secondary, or incidental effects on a substantial number of small entities; or (2) to impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Executive Order 12291

It has been determined that this proposed regulation is not a major regulation as defined in E.0. 12291 and a regulatory impact analysis is not required because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reducton Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96–511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice because no requirement to collect information is proposed.

Drafting Information

The principal author of this document is David W. Brokaw, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, Wine.

Authority And Issuance

27 CFR Part 9, American Viticultural Areas, is amended as follows:

PART 9—[AMENDED]

Paragraph 1. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Section 9.53 is amended by revising paragraphs (c) (37) through (42), removing paragraphs (c) (43) and (44), and redesignating paragraphs (c) (45) and (46) as (c) (43) and (44) to read as follows:

§ 9.53 Alexander Valley

* * * * *

(c) Boundary * * *

(37) Then northerly along the western lines of Section 4, of T. 9 N, R. 8 W., and Sections 33, 28, 21, 16, and 9 of T. 10 N., R. 8 W.;

(38) Then westerly along the northern lines of Sections 8 and 7, T. 10 N., R. 8 W. and Section 12, T. 10 N., R. 9 W. to the southeastern corner of Section 2, T. 10 N., R. 9 W.;

(39) Then northwesterly in a straight line to the eastern line of Section 3 at 38 degrees 45 minutes latitude, T. 10 N., R. 9 W.;

(40) Then westerly along latitude line 38 degrees 45 minutes to the point lying at 122 degrees 52 minutes 30 seconds longitude;

(41) Then northwesterly in a straight line to the southeast corner of Section 4, T. 11 N., R. 10 W., on the Asti, Quadrangle map;

(42) Then northeasterly in a straight line to the southeast corner of Section 34, T. 12 N., R. 10 W.;

Par. 3. Section 9.70(b) is revised to read as follows:

§ 9.70 Northern Sonoma

* * * * *

(b) *Approved maps.* The approved maps for determining the boundary of the Northern Sonoma viticultural area are the U.S.G.S. Topographical Map of Sonoma County, California, scale 1:100,000, dated 1970, the Asti Quadrangle, California, 7.5 minute series (Topographic) Map, dated 1959, photorevised 1978, and the Jimtown Quadrangle, California-Sonoma County, 7.5 Minute series (Topographic) Map, dated 1955, photorevised 1975.

Par. 4. Section 9.70 is amended by revising paragraphs (c) (10) through (26) and by removing paragraphs (c) (27) and (28) to read as follows:

(c) Boundary * * *

(10) The boundary proceeds northerly along the western lines of Sections 4, of Township 9 North, Range 8 West, and Sections 33, 28, 21, 16, and 9 of Township 10 North, Range 8 West on the Jimtown Quadrangle map.

(11) The boundary proceeds westerly along the northern lines of Sections 8 and 7, Township 10 North, Range 8 West and Section 12, Township 10 North, Range 9 West to the southeastern corner of Section 2, Township 10 North, Range 9 West.

(12) The boundary proceeds northwesterly in a straight line to the eastern line of Section 3 at 38 degrees 45 minutes latitude, Township 10 North, Range 9 West.

(13) The boundary proceeds westerly along latitude line 38 degrees 45 minutes to the point lying at 122 degrees 52 minutes 30 seconds longitude.

(14) The boundary proceeds northwesterly in a straight line to the southeast corner of Section 4, Township 11 North, Range 10 West, on the Asti, Quadrangle map.

(15) The boundary proceeds northeasterly in a straight line to the southeast corner of Section 34, Township 12 North, Range 10 West.

(16) The boundary proceeds north along the east boundary of Section 34, Township 12 North, Range 10 West on the U.S.G.S. Topographical Map of Sonoma County, California, to the Sonoma County-Mendocino County line.

(17) The boundary proceeds along the Sonoma County-Mendocino County line west then south to the southwest corner of Section 34, Township 12 North, Range 11 West.

(18) The boundary proceeds in a straight line east southeasterly to the southeast corner of Section 2, Township 11 North, Range 11 West.

(19) The boundary proceeds in a straight line south southeasterly to the southeast corner of Section 24, Township 11 North, Range 11 West.

(20) The boundary proceeds in a straight line southeasterly across Sections 30, 31, and 32 in Township 11 North, Range 10 West, to the point at 38 degrees 45 minutes North latitude parallel and 123 degrees 00 minutes East longitude in Section 5, Township 10 North, Range 10 West.

(21) The boundary proceeds along this latitude parallel west to the west line of Section 5, Township 10 North, Range 11 West.

(22) The boundary proceeds along the section line south to the southeast corner of Section 18, Township 9 North, Range 11 West.

(23) The boundary proceeds in a straight line southwesterly approximately 5 miles to the peak of Big Oat Mountain, elevation 1404 feet.

(24) The boundary proceeds in a straight line southerly approximately 2 ¾ miles to the peak of Pole Mountain, elevation 2,204 feet.

(25) The boundary proceeds in a straight line southeasterly approximately 4 ¾ miles to the confluence of Austin Creek and the Russian River.

(26) The boundary proceeds along the Russian River northeasterly, then southeasterly to the beginning point.

Signed: December 18, 1989.

Stephen E. Higgins,

Director.

[FR Doc. 89-30240 Filed 12-28-89; 8:45 am]

BILLING CODE 4810-31-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-583, RM-7052]

Radio Broadcasting Services; Van Wert, Ohio, and Monroeville, IN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Atlantic Resources Corporation seeking the reallotment of Channel 255B from Van Wert, Ohio, to Monroeville, Indiana, and the modification of its license for Station WBYR(FM) accordingly. Channel 255B can be allotted to Monroeville in compliance with the Commission's minimum distance separation requirements and can be used at Station WBYR(FM)'s present transmitter site. The coordinates for this allotment are North Latitude 40-57-14 and West Longitude 84-53-07. In accordance with § 1.420 of the Commission's Rules, we will not accept competing expressions of interest in use of the channel at Monroeville or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before February 12, 1990, and reply comments on or before February 27, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Peter A. Rohrbach, Esq., Marissa G. Repp, Esq., Christy J. Dittrick, Esq., Hogan & Hartson, Columbia Square, 555 Thirteenth Street, NW, Washington, DC 20004-1109 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-583, adopted December 5, 1989, and released December 20, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

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

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

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

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

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

[FR Doc. 89-30209 Filed 12-28-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-579; RM-7065]

Radio Broadcasting Services; Big Rapids and Whitehall, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by West Michigan Radio, Inc., proposing the substitution of FM Channel 272C3 for Channel 272A at Big Rapids, Michigan, and modification of the license for Station WAAQ(FM) to specify the higher class channel. To accommodate the Class C3 channel at Big Rapids, it is necessary to substitute Channel 248A for vacant Channel 272A at Whitehall, Michigan. The coordinates for Channel 272C3, Big Rapids, are 43-43-20 and 85-36-30. The coordinates for Channel 248A, Whitehall, are 43-24-24 and 86-20-42. Canadian concurrence will be requested for both allotments.

DATES: Comments must be filed on or before February 12, 1990, and reply comments on or before February 27, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John F. Garziglia, Pepper & Corazzini, 1776 K Street, NW., Suite 200, Washington, DC 20006 (counsel for petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-579, adopted December 5, 1989, and released December 20, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

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

[FR Doc. 89-30208 Filed 12-28-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-581, RM-7067]

Radio Broadcasting Services; Zanesville and South Zanesville, OH

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Christian Voice of Central Ohio seeking the substitution of Channel 224B1 for Channel 224A, the reallotment of Channel 224B1 from Zanesville to South Zanesville, Ohio, as the community's first local FM service, and the modification of its license for Station WCVZ(FM) to specify the higher class channel and new community of license. Channel 224B1 can be allotted to South Zanesville in compliance with the Commission's minimum distance separation requirements with a site restriction of 21.1 kilometers (13.1 miles) south to avoid a short-spacing to Station WDJQ, Channel 223B, Alliance, Ohio, and Station WQEL, Channel 224A, Bucyrus, Ohio. The coordinates for the allotment are North Latitude 39–42–53 and West Longitude 82–04–02. Canadian concurrence is required since South Zanesville is located within 320 kilometers of the U.S.-Canadian border. In accordance with Section 1.420 of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 224B1 at South Zanesville or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before February 12, 1990, and reply comments on or before February 27, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Eric S. Kravetz, Esq., Ward & Mendelsohn, P.C., 1100–17th Street, NW., Suite 900, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–581, adopted December 5, 1989, and released December 20, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

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

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission

Karl A. Kensinger,

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

[FR Doc. 89–30210 Filed 12–28–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–580; RM–6977, RM–7177]

Radio Broadcasting Services; Elkins, WV; Mountain Lake Park, and Westernport, MD

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on mutually exclusive petitions. Marja Broadcasting Corporation, licensee of Station WVHT(FM), Channel 257A, Elkins, West Virginia, proposes the substitution of Channel 255B1 for Channel 257A at Elkins, and the modification of its station's license to specify operation on the higher powered frequency (RM–6977). In order to accomplish the upgrade at Elkins, the proposal requires the substitution of Channel 283A for Channel 255A at Mountain Lake Park, Maryland, and the modification of the construction permit of Station WKHJ(FM) at Mountain Lake Park to specify operation on the new frequency. Ernest F. Santmyire, permittee of Station WWPN(FM), Channel 224A, Westernport, Maryland, proposes the substitution of Channel 283A for Channel 224A at Westernport, and the modification of his construction permit accordingly (RM–7177). The proposed coordinates for Channel 255B1 at Elkins are 38–55–25 and 79–51–33. The coordinates for Channel 283A at Mountain Lake Park are 39–24–37 and 79–17–15. The proposed coordinates for Channel 283A at Westernport are 39–31–22 and 78–58–26.

DATES: Comments must be filed on or before February 12, 1990, and reply comments on or before February 27, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: J. Dominic Monahan, Esq., Dow, Lohnes, & Albertson, 1255 Twenty-Third Street, NW., Suite 500, Washington, DC 20037 (Counsel for Marja Broadcasting Corporation); and Howard M. Liberman, Esq., Jonathan V. Cohen, Esq., Arter & Hadden, 1919 Pennsylvania Avenue, NW., Suite 400, Washington, DC 20006 (Counsel for Ernest F. Santmyire).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–58, adopted December 5, 1989, and released December 20, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

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

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

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

[FR Doc. 89–30207 Filed 12–28–89; 8:45 am]

BILLING CODE 6712–01–M

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1516 and 1552

[FRL-3700-6]

Acquisition Regulation Concerning Payment of Fee on Cost-Reimbursement Term Form Contracts

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This document proposes a rule on the payment of fee on cost-reimbursement term form contracts. The intended effect of this action is to change the current procedure of making provisional payments of fee as a percentage of cost incurred, to a method of payment based on the number of direct hours performed in relation to the total level of effort in the contract. This action is necessary to provide for a more equitable procedure for the provisional payment of fee.

DATE: Written comments should be submitted not later than January 29, 1990.

ADDRESS: Comments should be addressed to: Environmental Protection Agency, Procurement and Contracts Management Division (PM-214F), 401 M Street SW., Washington, DC 20460, ATTN: Joe Nemargut.

FOR FURTHER INFORMATION CONTACT: Joe Nemargut at (202) 382-5019 or FTS 382-5019.

SUPPLEMENTARY INFORMATION:

A. Background

Under current Environmental Protection Agency (EPA) procedures, provisional payment of fee (i.e., the fixed fee in a cost-plus-fixed-fee type contract or the base fee in a cost-plus-award-fee contract) is made on the basis of costs incurred. This procedure may result in provisional payments of fee earlier in contract performance than anticipated.

This proposed rule would change provisional payment of fee to a percentage of completion basis on cost-reimbursable term form contracts. Percentage of completion is the ratio of the direct labor hours performed in relation to the direct labor hours set forth in the clause at 48 CFR 1552.212-70, "Level of Effort—Cost-Reimbursement Term Contract."

This clause provides for a possible equitable downward adjustment to the fee, if a contractor provides less than 90 percent of the level of effort specified for any contract period. Provisional payment of fee on the basis of percentage of completion should reduce the need for recovering any payment of fee to a contractor, should a downward equitable adjustment be necessary.

B. Executive Order 12291

OMB Bulletin No. 85-7, dated December 14, 1984, establishes the requirements for Office of Management and Budget (OMB) review of agency procurement regulations. This regulation does not fall within any of the categories cited in the Bulletin requiring OMB review.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this proposed rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501, et seq.

D. Regulatory Flexibility Act

The EPA certifies that this rule will not have a significant economic impact on a substantial number of small entities. The rule merely initiates a more equitable policy for provisional payment of fee more directly to the percentage of work completed.

List of Subjects in 48 CFR 1516 and 1552

Government procurement, Types of contracts, Solicitation provisions, and Contract clauses.

For the reasons set out in the preamble, parts 1516 and 1552 of Title 48, Code of Federal Regulations, are proposed to be amended as follows:

PART 1516—[AMENDED]

1. The authority citation for part 1516 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

2. Subpart 1516.3 is amended to add section 1516.301-70 to read as follows:

1516.301-70 Payment of fee.

(a) The policy of EPA for cost-reimbursement term form contracts is to make provisional payment of fee (i.e., the fixed fee on cost-plus-fixed-fee type contracts or the base fee on cost-plus-award-fee type contracts) on a percentage of work completed basis. Percentage of work completed is the ratio of the direct labor hours performed in relation to the direct labor hours set forth in the contract in clause 1552.212-70, "Level of Effort—Cost Reimbursement Term Contract." Payment of fee will remain subject to withholding provisions, such as 48 CFR 52.216-8, Fixed Fee.

(b) The Contracting Officer shall not make provisional Payment of fee in cost-reimbursement term form contracts on the basis of a percentage of costs incurred.

3. Section 1526.307 is amended to designate the existing paragraph as (a) and to add a paragraph (b) to read as follows:

1516.307 Contract clauses.

* * * * *

(b) The Contracting Officer shall insert the clause at 1552.216-74, Payment of Fee, in solicitations and contracts where a cost-reimbursement term form contract is contemplated.

PART 1552—[AMENDED]

4. The authority citation for part 2552 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

5. Part 1552 is amended to add section 1552.216-74 to read as follows:

1552.216-74 Payment of fee.

(a) The term "fee" in this clause refers to either fixed fee under a cost-plus-fixed-fee type contract, or the base fee under a cost-plus-award-fee type contract.

(b) The Government will make provisional fee payments on the basis of percentage of work completed. Percentage of work completed is the ratio of direct labor hours performed to the direct labor hours set forth in clause 1552.222-70 "Level of Effort—Cost-Reimbursement Term Contract."

Dated: November 28,1989.

John C. Chamberlin,

Director, Office of Administration.

[FR Doc.89-30130 Filed 12-28-89; 8:45 am]

BILLING CODE 6560-50-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1003, 1043 and 1084

[Ex Parte No. MC-5 (Sub-No. 10)]

Removal of Regulations Governing Cargo Liability Insurance, Surety Bonds or Other Security Required by Motor Common Carriers of Property and Freight Forwarders

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time to file comments.

SUMMARY: By petition filed December 11, 1989, the Shippers National Freight Claim Council, Inc., (hereafter "petitioner"), requests a 60-day extension of time from December 27,

1989, for filing comments. (See 54 FR 48779; November 27, 1989.) Petitioner states that extension is necessary to permit its members to carefully consider the proposal and forward recommendations to the Council on the position to be taken by the Council. Petitioner has not shown good cause for a 60-day extension. However, preparation of a reasoned response should be possible with a twenty day extension. Accordingly, a 20-day extension will be granted.

DATES: Comments are due on January 16, 1990.

ADDRESS: Send comments (an original and 10 copies) referring to Ex Parte No. MC-5 (Sub-No. 10) to: Interstate Commerce Commission, Office of the Secretary, Case Control Branch, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Alice K. Ramsay (202) 275-0854

Heber P. Hardy (202) 275-7148, [TDD for hearing impaired (202) 275-1721].

Decided: December 21, 1989.

By the Commission, Chairman Gradison.

Kathleen M. King,

Acting Secretary.

[FR Doc. 89-30249 Filed 12-28-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 264

[Docket No. 90604-9204]

RIN 0648-AA46

United States Standards for Grades of Frozen Fish Blocks

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

ACTION: Notice of extension of comment period.

SUMMARY: NOAA issues this notice to extend for 30 days the period during which the public may comment on the proposed rule to revise the U.S. Standards for Grades of Frozen Fish Blocks. Copies of the proposed amendment may be obtained from the addresses below.

DATES: Comments on the amendment should be submitted in writing on or before January 29, 1990.

ADDRESSES: All comments on the proposed amendment should be submitted to Thomas J. Moreau, Deputy Director, Technical Services Unit, Inspection Services Division, F/TS45, NMFS, NOAA, U.S. Department of Commerce, One Blackburn Drive, Gloucester, MA 01930.

Copies of the U.S. Standards for Grades, the proposed amendment, and supporting documentation are available from the Standards & Specifications Branch, Technical Services Unit, NMFS, NOAA, U.S Department of Commerce, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Earl C. Johnston, Chief, Standards & Specifications Branch (508-281-9219).

SUPPLEMENTARY INFORMATION: The proposed rule to revise the U.S. Standards for Grades of Frozen Fish Blocks (50 CFR part 264, subpart A) was published in the Federal Register on September 21, 1989 (54 FR 38881). The proposed rule was developed with the cooperation of industry and user groups and was examined and evaluated utilizing over 660 sample units. The proposed rule specified a comment period extending through November 6, 1989.

Several interested parties have requested an extension to the comment period so that they may evaluate the proposal more closely and provide comments based on their evaluations. Because NOAA believes additional comments from the affected industry are in the best interest of the public, an additional 30 days for comment are established by this notice. The Secretary of Commerce will consider the public comments in determining whether to modify or approve the proposed rule.

Authority: 7 U.S.C. 1621-1630; Reorganization Plan No. 4 of 1970 (84 Stat. 2090).

Dated: December 22, 1989.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 89-30165 Filed 12-28-89; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 265

[Docket No. 90805-9205]

RIN 0648-AA47

United States Standards for Grades of Fresh and Frozen Shrimp; Extension of Comment Period

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

ACTION: Notice of extension of comment period.

SUMMARY: NOAA issues this notice to extend for 30 days the period during which the public may comment on the proposed rule to revise the U.S. General Standards for Grades of Shrimp (50 CFR, part 265, subpart A). Copies of the proposed rule may be obtained from the addresses below.

DATES: Comments on the amendment should be submitted in writing on or before January 29, 1990.

ADDRESSES: All comments on the proposed amendment should be submitted to Thomas J. Moreau, Deputy Director, Technical Services Unit, Inspection Services Division, F/TS45, NMFS, NOAA, U.S. Department of Commerce, One Blackburn Drive, Gloucester, MA 01930.

Copies of the U.S. Standards for Grades, the proposed amendment, and supporting documentation are available from the Standards & Specifications Branch, Technical Services Unit, NMFS, NOAA, U.S Department of Commerce, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Earl C. Johnston, Chief, Standards & Specifications Branch (508-281-9219).

SUPPLEMENTARY INFORMATION: The proposed rule to revise the U.S. Standards for Grades of Shrimp (50 CFR part 265, subpart A) was published in the Federal Register on September 21, 1989 (54 FR 38885). The proposed rule was developed with the cooperation of industry and user groups. The proposed rule was examined and evaluated utilizing over 660 sample units. The proposed rule published on September 21, 1989 specified a comment period extending through November 6, 1989. Several interested parties have requested an extension to the comment period so that they may evaluate the proposal more closely and provide comments based on their evaluations. Because NOAA believes additional comments from the affected industry are in the best interest of the public, an additional 30 days for comment are established by this notice. The Secretary of Commerce will consider the public comments in determining whether to modify or approve the proposed rule.

Authority: 7 U.S.C. 1621-1630; Reorganization Plan No. 4 of 1970 (84 Stat. 2090).

Dated: December 11, 1989.

James E. Douglas, Jr.,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 89-30186 Filed 12-28-89; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 630

[Docket No. 90918-9218]

RIN 0648-AC41

Atlantic Swordfish Fishery

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

ACTION: Proposed rule; regulatory amendment.

SUMMARY: NOAA proposes to amend the regulations implementing the Fishery Management Plan for Atlantic Swordfish (FMP) to require mandatory reporting by all U.S. dealers handling swordfish. Dealers would be required to provide NMFS with weight and price information for U.S.-harvested swordfish and related bycatch species received, and pertinent information on landings. Such information is or can be included on weighout sheets and sales receipts that are used routinely by the industry. Other changes are proposed to (1) clarify the scope of the regulations, (2) modify the requirements and procedures for obtaining a vessel permit, and (3) modify the procedures for submitting the daily fishing records. The intent of the proposed rule is to obtain more timely and accurate data regarding landings, value, and size composition of the catch of swordfish and related bycatch species, thus improving stock assessment and fishery monitoring capabilities; to ensure accountability for information submitted on swordfish fishery permit applications; to ensure timeliness of information submitted on fishing records; and to clarify the regulations.

DATE: Written comments on this proposed rule must be received on or before January 29, 1990.

ADDRESSES: Comments on this proposed rule should be sent to Rodney C. Dalton, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

Comments on the information collection requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Washington, DC 20503, Attention: Desk Officer for NOAA.

FOR FURTHER INFORMATION CONTACT: Rodney C. Dalton, 813-893-3722.

SUPPLEMENTARY INFORMATION: The Atlantic swordfish fishery is managed under the FMP and its implementing regulations at 50 CFR Part 630. The FMP contains a procedure for modifying statistical reporting requirements by regulatory amendment. That procedure, including the holding of public hearings, has been followed.

When the FMP was prepared, voluntary reporting was at a level sufficient to provide reliable size-frequency data. In recent years, voluntary cooperation from fishermen and some dealers has declined, and the geographical range of the pelagic longline fishery has expanded significantly. As a result, there is concern that the size-frequency data received via the voluntary reporting program are not statistically representative of all swordfish landed by the fishery. Mandatory dealer reporting, as proposed by this rule, will result in more accurate data on the size composition, total volume, and value of the catch. These are critical information components for improving stock assessments, monitoring the fishery, and evaluating management strategies.

This proposed rule would require each dealer in the Atlantic swordfish fishery to provide information on swordfish received and on other fish caught incidentally in the swordfish fishery and landed in conjunction with swordfish trips (bycatch). The required information to be reported would include: dates of receipt of swordfish; names and official numbers of the vessels from which swordfish were received; dates and ports of landing of the vessels; total carcass weights, by market category for swordfish and by species for related bycatch species received; prices paid for each market category and species; and individual carcass weights for swordfish. The required data on related bycatch species are necessary to calculate effort directed at swordfish, economic values related to the swordfish fishery, and other parameters necessary to monitor the FMP. Although not required, individual carcass weights of the related bycatch species would also be desired. A report form would be available to report this information, or a dealer could provide copies of appropriate weigh-out sheets and sales receipts to the NMFS Science and Research Director or to a designated fishery port agent.

Information from dealers would supplement, but not duplicate, information provided via fishing vessel logbooks. Dealers' reports would provide individual carcass weights needed to determine size composition and total weights and value of the catch, whereas logbooks provide effort data and numbers of fish caught per set (i.e., catch per unit of effort) and catch locations. Both information components are necessary for stock assessment and monitoring.

The reporting burden associated with the proposed dealer reports should be minimal. NMFS estimates that approximately 60 dealers are involved in the Atlantic swordfish fishery. The required weigh-out sheets and sales receipts are currently produced in the course of routine business practice throughout the industry. Data elements required are restricted to those that are or can be routinely recorded. It is anticipated that most dealers will simply photocopy their existing forms and submit them on a monthly basis to NMFS; however, a NOAA form may also be used. The estimated total annual reporting burden for all dealers combined is 320 hours, and the associated total annual costs are estimated to be $3,104. Federal costs are estimated to be $36,492 annually.

Current regulations require fishermen landing swordfish in Puerto Rico or the Virgin Islands to submit weigh-out sheets to NMFS. Because the proposed dealer reports will provide the same information in a more efficient manner, this rule removes the requirement for weigh-out sheets from fishermen operating in the Caribbean.

Two additional reductions in the present reporting requirements would be made by this rule. The existing requirement that selected owners and operators of permitted vessels advise the Science and Research Director of departure and landing information would be deleted. The on-board observer program for which this information would have been necessary was not implemented. The existing requirement that a permit application include projected information regarding target species, average trip length, and monthly distribution of fishing would be deleted. Empirical data are now available from fishermen's logbooks to replace the projected information from the applications.

The definition of *Center Director* would be replaced by *Science and Research Director* and expanded to include the Science and Research Director, Northeast Fisheries Center (NMFS) for those reports submitted by dealers whose principal place of business is in the Northeast Region of NMFS.

The purpose and scope section of the regulations (§ 630.1(b)) would be modified to express the scope of the regulations in the broadest terms consistent with the FMP. NOAA has determined that the public is better served by a general expression of scope in this section, with the specific scope of each management provision or measure specified for that provision or measure. This approach avoids the possibility of misleading fishermen, dealers, and

processors as to the scope of the regulations in this part.

Revisions to the vessel permit requirements (§ 630.4(a)) would clarify that the criteria for determining the need for a permit by a vessel with longline gear aboard applies only to pelagic longline gear. Non-pelagic longline gear does not normally have a significant bycatch of swordfish. The need for a permit for a vessel with non-pelagic longline gear aboard would be determined under the less stringent citeria applicable to other vessels. A definition of *pelagic longline* would also be added.

In addition, the current language of § 630.4(a) leaves room for argument that "operating in the * * * EEZ" is a primary controlling factor in determining whether or not a swordfish or longline fishing vessel must have a permit. Such is not the intention of the FMP. The FMP provides that the Science and Research Director may obtain data necessary for effective management of the fishery. These data are necessary from vessels fishing for or possessing swordfish shoreward of the outer boundary of the EEZ or fishing with pelagic longline gear shoreward of the outer boundary of the EEZ. Therefore, such activities control the need for a permit (with exceptions for rod and reel gear and handline gear around Puerto Rico and the Virgin Islands). No permit is required for a commercial swordfish fishing vessel or a commercial pelagic longline fishing vessel with a bycatch of swordfish that neither fishes in the area shoreward of the outer boundary of the EEZ nor transits such area with swordfish aboard. If issued a permit, an owner or operator of a permitted vessel that has been selected by the Science and Research Director must maintain and submit a daily fishing record to the Science and Research Director regardless of where the vessel fishes for or possesses swordfish.

The present exemptions from the permit requirement for vessels fishing with handline gear around Puerto Rico and the Virgin Islands and for vessels fishing with rod and reel gear in the EEZ would be modified, consistent with the intent of the FMP, to apply to the area shoreward of the outer boundary of the EEZ rather than only to the EEZ. In addition, the exemptions would be clarified so that they apply to vessels with only the specified gear aboard. This clarification is necessary for effective enforcement of the permit requirement. Otherwise, a vessel might claim exemption from the permit requirement merely by carrying hand line or rod and reel gear aboard even though it harvested swordfish by other gear.

Revisions to § 630.4 would also require that an application be submitted only by a vessel's owner, and that a copy of the vessel's U.S. Coast Guard Certificate of Documentation or the State boat registration or license accompany the permit application. This would obviate the possibility of a vessel operator submitting erroneous information for which the vessel owner might be held responsible. Most applications are submitted by owners and all permits are issued to owners. Thus, this would not be a significant departure from current practice. Other changes in the permitting requirements are proposed to remove redundancies, to clarify that a newly permitted vessel may not fish for swordfish until the permit is onboard, and to require that a corporate owner provide the names and addresses of its officer and directors. The catch-all phrase permitting collection of any other information necessary for the issuance or administration of the permit is added to cover the situations where additional information is required in order to identify fully the owner of the vessel.

Changes to the requirements for fishing vessel reports are proposed which would specify the time frame for submission of those reports and clarify that a monthly report is required even if no fishing occurred during the month.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this regulatory amendment is necessary for the conservation and management of the swordfish fishery and that it is consistent with the Magnuson Fishery Conservation and Management Act and other applicable law.

This proposed rule does not change any of the factors considered in the environmental impact statement for the FMP; accordingly this action is categorically excluded from the requirement to prepare an environmental assessment by NOAA Directive 02-10.

The Administrator has initially determined that this proposed rule is not a major rule requiring a regulatory impact analysis under E.O. 12291. As discussed above, compliance costs are minimal, this rule is not expected to increase costs or prices, and there should be no significant adverse effect on employment, investment, productivity, innovation, or foreign or domestic competition. Long-term beneficial effects are expected through improved data for effective management of the fishery.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The proposed rule would impose a minimal reporting requirement on approximately 60 swordfish dealers; total annual costs to all dealers combined is estimated to be $3,104. The reporting burden has been reduced to the maximum extent possible by allowing dealers to use their normal business forms (i.e., weigh-out sheets and sales receipts), photocopy them, and submit them on a monthly basis to NMFS. Some dealers have been providing this information on a voluntary basis, thus, no additional burden or costs would be imposed on them. Federal costs associated with collecting and analyzing the additional information are estimated to be $36,492.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act. A request to collect this information has been submitted to the Office of Management and Budget for approval. The final rule implementing the FMP (50 CFR 630) contains two OMB-approved collection-of-information requirements subject to the Paperwork Reduction Act. Permitted vessels must maintain and submit to the Center Director a daily fishing record on special forms requiring, on average, 2.5 minutes per record entry (OMB Control No. 0648–0016). Applicants for a fishing vessel permit issued under 50 CFR 630 must submit a written application to the Regional Director containing specified information and requiring, on average, 0.5 hour for completion (OMB Control No. 0648–0149). Under the new proposed collection-of-information requirement, any seafood dealer receiving U.S. harvested swordfish would be required to report information concerning the weight, value, and vessel of origin of swordfish received and other species received with the swordfish. Such data are routinely recorded by seafood dealers as the fish are off-loaded and weighed. Reporting will be once a month by all dealers purchasing swordfish from U.S. vessels. The public reporting for this collection-of-information is estimated to average 2 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these reporting burden

estimates or any other aspect of this collection of information, including suggestions for reducing this burden, to the NMFS at the address above, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: Desk Officer for NOAA).

In the final rule that implemented the FMP (51 FR 20297; June 4, 1986) NOAA concluded that, to the maximum extent practicable, the FMP is consistent with the approved coastal zone management programs of all the affected States. Since this rule, if adopted, does not directly affect the coastal zone in a manner not already fully evaluated in the FMP and the initial consistency determination, a new consistency determination is not required.

This rule does not contain regulatory provisions with federalism implications sufficient to warrant preparation of a federalism assessment under E.O 12612.

List of Subjects in 50 CFR Part 630

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 22, 1989.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 630 is proposed to be amended as follows:

PART 630—ATLANTIC SWORDFISH FISHERY

1. The authority citation for part 630 continues to read as follows:

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

2. In § 630.1, paragraph (b) is revised to read as follows:

§ 630.1 Purpose and scope.

* * * * *

(b) This part governs conservation and management of swordfish shoreward of the outer boundary of the EEZ in the Atlantic Ocean (including the Gulf of Mexico and the Caribbean Sea).

* * * * *

3. In § 630.2, the definition for *Center Director* is removed and new definitions for *Pelagic longline* and *Science and Research Director* are added in alphabetical order to read as follows:

§ 630.2 Definitions.

* * * * *

Pelagic longline means a type of fishing gear consisting of a length of line suspended horizontally in the water above the bottom from lines attached to surface floats and to which gangions and hooks are attached.

* * * * *

Science and Research Director means the Science and Research Director, Southeast Fisheries Center, NMFS, 75 Virginia Beach Drive, Miami, FL 33149, telephone 305–361–5761, or a designee; except that for a dealer whose principal place of business is in an Atlantic coastal state from Maine through Virginia, *Science and Research Director* means the Science and Research Director, Northeast Fisheries Center, NMFS, Woods Hole, MA 02543, telephone 617–548–5123, or a designee.

* * * * *

4. In § 630.4, paragraphs (a) through (d) are revised; paragraph (e) is removed; paragraphs (f) through (l) are redesignated as paragraphs (e) through (k), respectively; in newly redesignated paragraph (i), the second sentence is removed; and newly redesignated paragraph (k) is revised to read as follows:

§ 630.4 Vessel permits.

(a) *Applicability.*

(1) The owner of a vessel of the United States with pelagic longline gear aboard—

(i) That fishes for or possesses swordfish shoreward of the outer boundary of the EEZ, or

(ii) That takes swordfish as bycatch shoreward of the outer boundary of the EEZ, whether or not retained—must obtain an annual vessel permit.

(2) The owner of any other vessel of the United States that fishes for swordfish or possesses swordfish for sale, trade, or barter shoreward of the outer boundary of the EEZ must obtain an annual vessel permit.

(3) The owner of a vessel fishing shoreward of the outer boundary of the EEZ—

(i) With only rod and reel gear aboard, or

(ii) Around Puerto Rico and the Virgin Islands with only handline gear aboard—is exempt from the requirement to obtain a permit.

(b) *Application.* An application for a fishing vessel permit under this section must be signed by the owner and submitted to the Regional Director. An application form is available from the Regional Director and must contain the following information:

(1) Vessel owner's name, mailing address, and telephone number;

(2) If the vessel owner is a corporation, the officers' and directors' names and mailing addresses;

(3) Vessel's name, official number, home port, net tonnage, length, and type and amount of gear used; and

(4) Any other information which may be necessary for the issuance or administration of the permit.

The application must also include a copy of the vessel's U.S. Coast Guard Certificate of Documentation of the State boat registration or license.

(c) *Issuance.* The Regional Director will issue a permit within 30 days of receipt of the information required in paragraph (b) of this section. An applicant will be promptly notified of any deficiency in the required information. If an applicant fails to correct a deficiency within 30 days of notification, the application will be considered abandoned.

(d) *Duration.* A permit is valid for the fishing year (calendar year) for which it is issued or that portion of the fishing year remaining after it is issued, unless revoked, suspended, or modified under subpart D of 15 CFR part 904.

* * * * *

(k) *Change in application information.* Any change in the application information specified in paragraph (b) of this section must be reported to the Regional Director within 15 days of the change. If the vessel changes ownership, the new owner must apply for a permit. The vessel may not fish for swordfish until the new permit is on board the vessel.

5. In § 630.5, paragraphs (a) and (b) are removed; paragraph (c) is redesignated as paragraph (a); in newly redesignated paragraph (a), the introductory text is revised; and a new paragraph (b) is added to read as follows:

§ 630.5 Recordkeeping and reporting.

(a) *Fishing vessel reports.* An owner or operator of a vessel for which a permit has been issued under § 630.4 and that is selected by the Science and Research Director must ensure that a daily fishing record is maintained on forms available from the Science and Research Director. The forms for each month must be submitted to the Science and Research Director so as to be received not later than the twenty-fifth day of the following month. If no fishing occurred during a month, a report so stating must be submitted in accordance with instructions provided with the forms. If fishing occurred, the following information must be included on the forms:

* * * * *

(b) *Dealer reports.* (1) A dealer who receives U.S.-harvested fish must report to the Science and Research Director each receipt of swordfish. The report for each month must be submitted to the Science and Research Director so as to be received not later than the fourteenth day of the following month. A report

form is available from the Science and Research Director.

(i) The following information must be included in each report:

(A) Name and address of the dealer;

(B) Date of receipt of swordfish;

(C) Name and official number of the vessel from which the swordfish was received;

(D) Date, port, and State of landing of the vessel;

(E) Total carcass weight (pounds) by market category for swordfish, and by species for yellowfin tuna, bigeye tuna, albacore, and other species received with the swordfish;

(F) Price per pound (or total value) paid by market category for swordfish, and by species for yellowfin tuna, bigeye tuna, albacore, and other species; and

(G) Individual carcass weight (pounds) of each swordfish received.

(ii) In addition to the information required to be reported by paragraph (b)(1)(i) of this section, individual carcass weight (pounds) of each yellowfin tuna, bigeye tuna, albacore, and other species received with the swordfish is requested but is not mandatory.

(2) The reporting requirement of paragraph (b)(1)(i) of this section may be satisfied by providing a copy of each appropriate weigh-out sheet and/or sales record, provided such weigh-out sheet and/or sales record, by itself or combined with the form available from the Science and Research Director, includes all of the required information.

(3) In lieu of providing a required report to the Science and Research Director by mail, as specified in paragraph (b)(1) of this section, a dealer may provide a report to a State or Federal fishery port agent designated by the Science and Research Director. Reports so provided must be delivered to such port agent not later than the tenth day of the month following the dealer's receipt of the swordfish.

[FR Doc. 89-30187 Filed 12-28-89; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 54, No. 249
Friday, December 29, 1989

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

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

December 22, 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.

Extension

- Animal and Plant Health Inspection Service
  Volunteer Program
  APHIS 360, APHIS 361
  On occasion
  Individuals or households; Non-profit institutions; Small businesses or organizations; 110 responses; 20 hours; not applicable under 3504(h)
  Sophia Y. Lawrence (301) 436–6466
- National Agricultural Statistics Service
  Mink Survey
  None
  Annually
  Farms; 1,027 responses; 171 hours; not applicable under 3504(h)
  Larry Gambrell (202) 447–7737
- Foreign Agricultural Service
  Emergency Relief from Duty Free Imports of Perishable Products
  None
  On occasion
  Farms; Businesses or other for-profit; 7 responses; 126 hours; not applicable under 3504(h)
  Richard K. Petges (202) 382–1336
- Forest Service
  Collection and Analysis of Timber Purchaser's Cost and Sales Data
  None
  Recordkeeping; Annually
  Businesses or other for-profit; Small businesses or organizations; 80 responses; 320 hours; not applicable under 3504(h)
  Jim Pharo (202) 475–3756

New Collection

- Cooperative State Research Service
  Grant Application Kit—Facilities Projects
  CSRS–850, CSRS–851, CSRS–852, CSRS–853, and CSRS–854
  Annually
  Non-profit institutions; 43 responses; 238 hours; not applicable under 3504(h)
  Evelyn J. O'Connor-Miller, (202) 475–5050.

Larry K. Roberson,

Acting Departmental Clearance Officer.

[FR Doc. 89–30241 Filed 12–28–89; 8:45 am]

BILLING CODE 3410–01–M

Federal Grain Inspection Service

Advisory Committee Meeting

Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given of the following committee meeting:

Name: Federal Grain Inspection Service Advisory Committee.

Date: January 18, 1990.

Place: Clarion Hotel, 1500 Canal Street, New Orleans, LA 70112.

Time: 8:30 a.m.

Purpose: To provide advice to the Administrator of the Federal Grain Inspection Service with respect to the implementation of the U.S. Grain Standards Act.

The agenda includes (1) role of the Advisory Committee, (2) pending grain quality legislation, (3) how to improve grain standards, (4) aflatoxin testing, (5) financial matters, (6) sunflower seed oil calibration, and (7) other matters.

The meeting will be open to the public. Public participation will be limited to written statements unless otherwise requested by the Committee Chairman. Persons, other than members, who wish to address the Committee or submit written statements before or after the meeting should contact Les Malone, Assistant to the Administrator, FGIS, U.S. Department of Agriculture, P.O. Box 96454, Washington, DC 20090–6454, telephone (202) 382–0216.

Dated: December 22, 1989.

D.R. Galliart,

Acting Administrator.

[FR Doc. 89–30245 Filed 12–28–89; 8:45 am]

BILLING CODE 3410–EN–M

Forest Service

Heavenly Valley Ski Area, Lake Tahoe Basin Management Unit, El Dorado, CA, and Douglas County, NV; Intent To Prepare an Environmental Impact Statement

SUMMARY: The Department of Agriculture, Forest Service, will prepare an environmental Impact Statement for a proposal to revise the Master Development Plan for Heavenly Valley Ski Area. The proposal will be developed in cooperation with the Tahoe Regional Planning Agency, with the counties of El Dorado, California, and Douglas, Nevada, and with the City of South Lake Tahoe. Improvement and expansion of the ski area, over at least the next ten to fifteen years, will be guided by this Master Development Plan.

Written comments and suggestions regarding the scope of the analysis are invited by the agency. Two public meetings are planned for January 18, 1990, at 3 p.m. and at 7 p.m. to receive initial comment. The meetings will be held in the Board Meeting Room of the Tahoe Regional Planning Agency, located at 195 U.S. Highway 50, Round Hill-Zephyr Cove, Nevada. Written

comment is requested by February 5, 1990. Further public participation is planned, but not currently scheduled.

ADDRESS: Send written comments to Jon Hoefer, Planning Staff Officer, Lake Tahoe Basin Management Unit, P.O. Box 731002, South Lake Tahoe, California 95731–7302.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and environmental impact statement should be directed to Jon Hoefer at the address above or at telephone (916) 573–2600.

SUPPLEMENTARY INFORMATION: Development occuring as a result of the revised ski area master plan will extend beyond national forest boundaries. Components of the plan may include, but may not be limited to: modernization, relocation, and addition of ski lifts; modernization and addition of base facilities; expansion of the ski school; expansion of ski trails; expansion of transit systems; expansion of summer use facilities; and expansion of support facilities.

A range of alternatives will be considered, one of which will be no expansion, or the continuation of the existing situation.

The analysis is expected to take at least six months. A draft environmental impact statement should be available for public review by October 1990. The responsible official is the Forest Supervisor of the Lake Tahoe Basin Management Unit.

Dated: December 20, 1989.

Robert E. Harris,

Forest Supervisor.

[FR Doc. 89–30255 Filed 12–28–89; 8:45 am]

BILLING CODE 3410–11–M

Exemption of Lowman—South Fire Recovery Project to Rehabilitate National Forest System Lands and Recover Timber Damaged by the Lowman Complex Fire of 1989, Boise National Forest, ID

AGENCY: Forest Service, USDA.

ACTION: Notification that certain fire recovery projects are exempted from appeals under provisions of 36 CFR part 217.

SUMMARY: This is a notification that decisions to implement certain projects pertaining to recovery from the Lowman Complex fire on the Boise National Forest are exempted from appeal per provisions of 36 CFR part 217.4(a)(11) as published January 23, 1989, at Vol. 54, No. 13, page 3342.

EFFECTIVE DATE: Effective on December 29, 1989.

FOR FURTHER INFORMATION CONTACT: Dan Deiss, Director—Project Lightning, Boise National Forest, 1750 Front St., Boise, ID 83702.

SUPPLEMENTARY INFORMATION: The catastrophic fires of 1989 burned an estimated 87,380 acres of National Forest System Lands on the Boise National Forest. The Lowman Fire Complex burned 47,610 acres in the South Fork Payette and North Fork Boise River drainages. The Lowman-South analysis area includes 11,341 acres of the Lowman Complex fire area in the South Fork Payette River drainage. In July 1989, an interdisciplinary team surveyed much of the burned area, in part to identify emergency and long-term rehabilitation needs. From this survey it was found that in many places, this fire burned hot enough to cause severe damage to vegetation and watershed resources. Other resources damaged include: habitat essential to elk and other major wildlife species; streams providing water for domestic, agricultural and other uses; and recreation structures. Damage to soils is of greatest concern because this damage will affect the length of time necessary to achieve natural revegetation, as well as quantity and quality of water runoff from the area.

The emergency rehabilitation interdisciplinary team concluded that there was risk of flooding and reduced water quality caused by this fire. Natural revegetation will not provide the diversity necessary for habitat of most wildlife species. If left "untreated" these problems will persist for several years. The risk of insect and disease infestations in both the short- and long-term was also noted by the team.

Field surveys of the burned area indicate that many of the predicted consequences of the fire are starting to occur. In many areas, stream courses and riparian vegetation were severely damaged and natural processes may take up to 10 years to stabilize these areas. Damage to vegetation is great enough that a natural return to the prefire conditions of species diversity may take as long as 350 years.

Because of the drought conditions existing during the 1989 fires, trees suffered greater damage and are losing their sawlog value more quickly than anticipated. Inserts that attack both dead and live trees have moved into the project vicinity and treaten both burned and unburned areas. If left untreated, this insect damage will cause loss of much unburned vegetation, further degrading wildlife habitat, recreation opportunities, visual quality and soil and water resources. Further loss of vegetation could increase the possibility for landslides in response to summer storms for the next five to ten years.

In response to this information, an accelerated schedule of planned fire-recovery efforts including salvage of burned timber is necessary to mitigate as much of the fire-caused damage as possible.

Planned Actions

Emergency rehabilitation efforts undertaken in late 1989 were limited to treating only the most severely burned areas to reduce sediment movement and water quality degradation. The emergency rehabilitation team recommended that additional actions for restoration of the entire burned area be analyzed.

The interdisciplinary team conducting the environmental analysis for the planned recovery project has concluded that actions are needed to assist mitigation of fire effects and speed recovery. The Lowman-South Environmental Assessment documents analysis of fire recovery on 11,431 acres of the Lowman Complex. The major recovery projects proposed for this analysis area include salvage of approximately 40 million board feet (MMBF) of fire-killed timber, reforestation of 8900 acres of suitable timberland, vegetation enhancement in visually-sensitive areas, habitat improvement on big-game winter range, and lopping and scattering of timber slash to reduce soil erosion and sedimentation.

The analysis of wildfire recovery needs for the remaining 33,169 acres of the Lowman Fire Complex in the South Fork Payette River will be documented in an Environmental Impact Statement (EIS) due for release in May, 1990.

Due to the length of time it has taken to develop an acceptable restoration and rehabilitation program and to properly evaluate its effects, recovery projects should be implemented as soon as possible. Delay in implementing the activities necessary to restore these damaged lands or remove the salvageable timber will result in unacceptable degradation of the physical and biological condition of National Forest System Lands and a substantial deterioration of the fire-killed timber. To accomplish recovery work so that part of the cost is recovered, fire-killed trees should have commercial sawlog value. Removing these trees will accomplish many of the actions recommended, and a significant portion of the receipts from these sales will provide funding for the other work

planned through collection of Knutsen-Vandenburg (KV) funds. It is anticipated that much of the commercial value of the remaining trees will be lost in the next six to twelve months. Delays will also significantly increase the risk of severe forest insect and disease infestation of the already-damaged trees.

To expedite the timber salvage and other recovery projects documented in the Lowman—South Environmental Assessment, I am exempting the projects from review (appeal) under 36 CFR part 217.

The project will be approved for implementation December 29, 1989

Dated: December 22, 1989.

Clair C. Beasley,

Deputy Regional Forester, Administration.

[FR Doc. 89-30256 Filed 12-28-89; 8:45 am]

BILLING CODE 3410-11-M

CIVIL RIGHTS COMMISSION

North Carolina Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the North Carolina Advisory Committee to the Commission will convene at 10:30 a.m. and adjourn at 4:00 p.m. on Friday, January 26, 1990, at the North Raleigh Hilton Hotel, 3415 Old Wake Forest Road, Raleigh, NC 27609. The Committee will conduct a planning session in connection with a project on student tracking and equal education opportunity in public schools. Invited speakers include representatives of the North Carolina Department of Education.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee chairperson Dr. David Broyles or John T. Binkley, Director, Eastern Regional Division at (202) 523-5264, TDD (202) 376-8117. Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Eastern Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 21, 1989.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 89-30257 Filed 12-28-89; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 456]

Resolution and Order Approving the Application of the Greater Detroit Foreign Trade Zone, Inc., for Special-Purpose Subzone Status at Chrysler Auto Components Plants in the Detroit, MI, Area

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Greater Detroit Foreign-Trade Zone, Inc., grantee of FTZ 70, filed with the Foreign-Trade Zones Board (the Board) on August 25, 1987, requesting special-purpose subzone status at five auto components plants of Chrysler Corporation located in Detroit and Trenton, Michigan, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority

Whereas, by an act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Greater Detroit Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 70, has made application (filed August 25, 1987, FTZ Docket 13-87, 52 FR 33459), in due and proper form to the Board for authority to establish special-purpose subzones at five motor vehicle components manufacturing plants of Chrysler Corporation (Detroit Trim Plant, Trenton Chemical Division Plant, McGraw Glass Plant, Mound Road Engine Plant and Detroit Axle Plant) located in the Detroit, Michigan, area, adjacent to the Detroit Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, therefore, in accordance with the application filed August 25, 1987, the Board hereby authorizes the establishment of subzones at the five Chrysler plants listed above, designated on the records of the Board as Foreign-Trade Subzone Nos. 70N, 70O, 70P, 70Q, and 70R at the locations mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and regulations issued thereunder, and also to the following express conditions and limitations;

Activation of the subzones shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from federal, state, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzones in the performance of their official duties.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzones, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 22nd day of December, 1989, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Eric I. Garfinkel,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates.

Attest: **John J. Da Ponte, Jr.**

Executive Secretary.

[FR Doc. 89-30193 Filed 12-28-89; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 458]

Resolution and Order Approving the Application of the Toledo-Lucas County Port Authority for Special-Purpose Subzone Status at Chrysler Auto Components Plants in the Toledo, OH, Area

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Toledo-Lucas County Port Authority, grantee of FTZ 8, filed with the Foreign-Trade Zones Board (the Board) on September 8, 1987, requesting special-purpose subzone status at the Toledo area auto components plants of Chrysler Corporation located in Perrysburg, Sandusky, and Van Wert, Ohio, the Board, finding that the requirements on the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish Foreign-Trade Subzones at Chrysler Auto Components Plants in the Toledo, OH, Area

Whereas, by an act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorizes and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Toledo-Lucas County Port Authority, grantee of Foreign-Trade Zone 8, has made application (filed September 8, 1987, FTZ Docket 19–87, 52 FR 37995), in due and proper form to the Board for authority to establish special-purpose subzones at three motor vehicle components manufacturing plants of Chrysler Corporation (Toledo Machining Plant, Sandusky Plastics Plant, and Van Wert-Amplex Plant) located in the Toledo, Ohio, area, adjacent to the Toledo Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, The Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, Therefore, in accordance with the application filed September 8, 1987, the Board hereby authorizes the establishment of subzones at the three Chrysler plants listed above, designated on the records of the Board as Foreign-Trade Subzone Nos. 8B, 8C, and 8D at the locations mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and regulations issued thereunder, and also to the following express conditions and limitations:

Activation of the subzones shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from federal, state, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzones in the performance of their official duties.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzones, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 22nd day of December, 1989, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Eric I. Garfinkel,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates.

Attest:

John J. Da Ponte, Jr., *Executive Secretary.*

[FR Doc. 89-30195 Filed 12-28-89; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 457]

Resolution and Order Approving the Application of the Greater Dayton Foreign Trade Zone, Inc., for Special-Purpose Subzone Status at a Chrysler Auto Components Plant in Dayton, OH

Proceedings of the Foreign-Trade Zones Board, Washington, DC

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Greater Dayton Foreign-Trade Zone, Inc., grantee of FTZ 100, filed with the Foreign-Trade Zones Board (the Board) on September 28, 1987, requesting special-purpose subzone status for the auto components plant of Chrysler Corporation located in Dayton, Ohio, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority

Whereas, by an act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities

cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Greater Dayton Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 100, has made application (filed September 28, 1987, FTZ Docket 18–87, 52 FR 37809), in due and proper form to the Board for authority to establish a special-purpose subzone at the motor vehicle components manufacturing plant of Chrysler Corporation in Dayton, Ohio, within the Dayton Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, Therefore, in accordance with the application filed September 28, 1987, the Board hereby authorizes the establishment of a subzone at the Chrysler plant in Dayton, designated on the records of the Board as Foreign-Trade Subzone No. 100C at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and regulations issued thereunder, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from federal, state, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In Witness whereof, the Foreign-Trade Zones has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 22nd day of December, 1989, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Eric I. Garfinkel,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates.

Attest: **John J. Da Ponte, Jr.,**

Executive Secretary.

[FR Doc. 89–30194 Filed 12–28–89; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: December 29, 1989.

FOR FURTHER INFORMATION CONTACT: Richard W. Moreland or Holly A. Kuga, Office of Antidumping Compliance or Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–2104/2786.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce ("the Department") has received timely requests, in accordance with §§ 353.22(a)(1), (a)(2), (a)(3), and 355.22(a)(1) of the Department's regulations, for administrative reviews of various antidumping and countervailing duty orders and findings.

Initiation of Reviews

In accordance with §§ 353.22(c) and 355.22(c) of the Department's regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews no later than November 30, 1990.

Antidumping duty proceedings and firms	Periods to be reviewed
Japan:	
Titanium Sponge	11/1/88–10/31/89
A–588–020	
Showa Denko K.K.	
Osaka Titanium Co., Ltd.	
Toho Titanium Co., Ltd.	
Nippon Soda Co., Ltd.	
Argentina:	
Carbon Steel Wire Rod	11/1/88–10/31/89
A–357–007	
Acindar Industria Argentina de Aceros	
Oil Country Tubular Goods	01/1/88–12/31/88
C–357–403	

Interested parties must submit applications for administrative protective orders in accordance with §§ 353.34(b) or 355.34(b) of the Department's regulations.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and §§ 353.22(c) and 355.22(c) of the Commerce Department's antidumping and countervailing duty regulations published in the **Federal Register** on March 28, 1989 (54 FR 12742) and December 27, 1988 (53 FR 52306).

Dated: December 21, 1989.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 89–30197 Filed 12–29–89; 8:45 am]

BILLING CODE 3510-DS-M

[C–201–005]

Litharge, Red Lead and Lead Stabilizers From Mexico—Initiation and Preliminary Results of Changed Circumstances Countervailing Duty Administrative Review and Intent To Revoke Countervailing Duty Order (in Part)

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of initiation and preliminary results of changed circumstances countervailing duty administrative review and intent to revoke countervailing duty order (in part).

SUMMARY: The Department of Commerce has information sufficient to warrant initiation of a changed circumstances administrative review of the countervailing duty order on litharge, red lead and lead stabilizers from Mexico. Because the U.S. industry is not interested in having the United States Trade Representative refer this case to the International Trade

Commission to conduct a section 332 investigation and, consequently, is not interested in maintaining the countervailing duty order on duty-free imports of lead stabilizers, we intend to revoke the order with respect to lead stabilizers from Mexico. We invite interested parties to comment on these preliminary results and intent to revoke (in part).

EFFECTIVE DATE: August 24, 1986.

FOR FURTHER INFORMATION CONTACT: Philip Pia or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION: On December 6, 1982, the Department of Commerce ("the Department") published in the **Federal Register** (47 FR 54847) a notice of final affirmative countervailing duty determination and countervailing duty order on litharge, red lead and lead stabilizers from Mexico. At this time the countervailing duty order was issued, Mexico was not entitled to an injury test under U.S. and international law. Countervailing duties were imposed upon this merchandise without a determination that these entries were injuring the relevant domestic industry. Lead stabilizers are the only products covered by that order that have been, and remain, duty free.

On August 24, 1986, Mexico acceded to the General Agreement on Tariffs and Trade ("GATT"). Consistent with our earlier positions in *Certain Fasteners from India; Final Results of Administrative Review and Partial Revocation of Countervailing Duty Order* (47 FR 44129; October 6, 1982) and *Carbon Steel Wire Rod from Trinidad and Tobago; Preliminary Results of Administrative Review and Tentative Determination to Revoke Countervailing Duty Order* (50 FR 19561; May 9, 1985), the Department has concluded that it lacks the authority under Article VI of the GATT and section 303(a)(2) of the Tariff Act of 1930, as amended ("the Tariff Act"), to levy countervailing duties on duty-free imports from Mexico entered on or after August 24, 1986 absent a determination regarding injury to the domestic industry.

In order to fulfill our international obligations, we have developed procedures whereby the U.S. International Trade Commission ("ITC") will, at the request of the United States Trade Representative ("USTR"), conduct an investigation pursuant to section 332 of the Tariff Act to assess whether (1) an industry in the United States would be materially injured, or would be threatened with material injury, or (2) the establishment of an industry in the United States would be materially retarded, if the Department were to revoke the outstanding countervailing duty order with respect to lead stabilizers from Mexico.

On November 3, 1989, we sent letters to all domestic interested parties on the Department's service list informing them of these procedures. In order to determine whether there was any interest in USTR requesting an investigation pursuant to section 332 on lead stabilizers from Mexico, we requested that interested parties submit a statement of interest within 30 days of the date of receipt of our letter. We stated that if we received a statement of interest, we would urge USTR to request that the ITC conduct an investigation pursuant to section 332. We further stated that, in the absence of a statement of interest, we would initiate procedures to revoke the countervailing duty order with respect to lead stabilizers from Mexico. We received no response.

Scope of Review

The United States, under the auspices of the Customs Cooperation Council, has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS) as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after this date is now classified solely according to the appropriate HTS item number(s).

Imports covered by this review are lead stabilizers from Mexico. Through 1988, such merchandise was classifiable under item numbers 419.0400 and 473.9000 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under the following HTS item numbers: 2824.90.50, 2825.90.50, 2826.19.00, 2826.90.00, 2827.39.50, 2827.49.50, 2827.59.50, 2827.60.50, 2829.90.50, 2830.90.00, 2832.30.50, 2833.29.50, 2834.10.50, 2835.10.00, 2835.29.50, 2836.70.00, 2837.19.00, 2839.90.00, 2840.20.00, 2841.10.00, 2841.20.00, 2841.50.00, 2841.70.50, 2841.90.10, 2841.90.50, 2842.90.00, 2850.00.50, 3206.49.50, 3206.20.00, 3206.30.00, 3207.10.00, 3207.30.00, and 3212.90.00. The HTS item numbers are provide for convenience and Customs purposes. The written description remains dispositive.

Initiation, Preliminary Results of Review and Intent to Revoke (in Part)

We have determined that changed circumstances exist sufficient to warrant initiation of a changed circumstances review. These changed circumstances include: (1) The Government of Mexico's accession to the GATT; (2) our international obligations requiring us not to levy countervailing duties on duty-free imports from GATT-member countries in the absence of an affirmative injury determination; and (3) the domestic industry's lack of interest in having USTR refer this case to the ITC to conduct a section 332 investigation and, consequently, its lack of interest in maintaining the countervailing duty order with respect to lead stabilizers from Mexico. Under these circumstances, we conclude that expedited action is warranted and are combining the notices of initiation and preliminary results of our changed circumstances administrative review.

Thus, we preliminarily determine that there is a reasonable basis to believe that the requirements for revocation based on changed circumstances are met. Accordingly, we intend to revoke the countervailing duty order with respect to lead stabilizers from Mexico effective August 24, 1986. The current requirements for the cash deposit of estimated countervailing duties will remain in effect until publication of the final results of this review.

Interested parties may submit written comments on these preliminary results and intent to revoke within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within five days of the date of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday following. Rebuttal briefs and rebuttals to written coments, limited to issues in those comments, must be filed not later than 37 days after the date of publication. The Department will publish the final results of review and its decision on revocation, including its analysis of issues raised in any such written comments or at a hearing.

This initiation of review, adminstrative review, intent to revoke and notice are in accordance with sections 751(b) and (c) of the Tariff Act (19 U.S.C. 1675(b) and (c)) and 19 CFR 355.22(h)(1) and (h)(4) and 355.25(d)(1), (d)(2) and (d)(3).

Dated: December 21, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-30199 Filed 12-28-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-811]

Antidumping Duty Order: Drafting Machines and Parts Thereof From Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: In its investigation, the U.S. Department of Commerce determined that drafting machines and parts thereof from Japan are being sold at less than fair value. In a separate investigation, the U.S. International Trade Commission (ITC) determined that a U.S. industry is materially injured by reason of imports of drafting machines and parts thereof from Japan.

Therefore, based on these findings, all unliquidated entries, or warehouse withdrawals of drafting machines and parts thereof from Japan, made on or after August 25, 1989, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register**, will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the **Federal Register**.

EFFECTIVE DATE: December 29, 1989.

FOR FURTHER INFORMATION CONTACT: Mark Wells or Bradford Ward, Office of Antidumping Investigations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-3798, or 377-5288.

SUPPLEMENTARY INFORMATION: The products covered by this investigation include drafting machines and parts thereof from Japan, currently classifiable under the *Harmonized Tariff Schedule* sub-headings 9017.10.00, and 9017.90.00. Prior to January 1, 1989, such merchandise was classified under item 710.8025 of the *Tariff Schedules of the United States Annotated* (TSUSA).

The scope of this investigation includes drafting machines that are finished, unfinished, assembled, or unassembled, and drafting machine kits. For purposes of this investigation, "drafting machine" refers to "track" or "elbow-type" drafting machines used by designers, engineers, architects, layout artists, and others. Drafting machines are devices for aligning scales (or rulers) at a variety of angles anywhere on a drawing surface, generally a drafting board. A protractor head allows angles to be read and set and lines to be drawn. The machine is generally clamped to the board. Both "track" and "elbow-type" drafting machines are classified under HTS 9017.10.00.

Also included within the scope of this investigation are parts of drafting machines classified under HTS 9017.90.00. Parts include, but are not limited to, horizontal and vertical tracks, parts of horizontal and vertical tracks, band and pulley mechanisms, parts of band and pulley mechanisms, protractor heads, and parts of protractor heads, destined for use in drafting machines. Accessories, such as parallel rulers, lamps and scales are not subject to this investigation.

In accordance with section 735(a) of the Act (19 U.S.C. 1673d(a)), on November 1, 1989, the Department made its final determination that drafting machines and parts thereof from Japan are being sold at less than fair value (54 FR 46961, November 8, 1989). On December 22, 1989, in accordance with section 735(d) of the Act, the ITC notified the Department that such imports are materially injuring a U.S. industry.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department will direct U.S. Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of drafting machines and parts thereof from Japan. These antidumping duties will be assessed on all unliquidated entries of drafting machines and parts thereof from Japan entered, or withdrawn from warehouse, for consumption on or after August 25, 1989, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register** (54 FR 35363).

On or after the date of publication in the **Federal Register** of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below:

Manufacturers/producers/exporters	Margin percentage
Mutoh Industries, Ltd. (Mutoh)	90.87%
All Others	90.87%

This determination constitutes an antidumping duty order with respect to drafting machines and parts thereof from Japan, pursuant to section 736(a) of the Act (19 U.S.C. 1673e(a)). Interested parties may contact the Central Records Unit, Room B-099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This notice is published in accordance with section 736(a) of the Act (19 U.S.C. 1673e(a)) and § 353.21 of the Department's regulations.

Dated: December 26, 1989.

Gary Taverman,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-30380 Filed 12-28-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-475-084]

Preliminary Results of Antidumping Duty Administrative Review: Spun Acrylic Yarn From Italy

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: In response to requests by the petitioner, the Department of Commerce is conducting an 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 periods April 1, 1987 through March 31, 1988, and April 1, 1988 through March 31, 1989. The preliminary results of this review indicates the existence of dumping margins during these periods.

We used best information available for two firms which failed to respond or provide an adequate response to our requests for information for the two annual review periods. In addition, we used best information available for one respondent whose response to our request for information was determined to be untimely.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: December 29, 1989.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Bradford Ward, Office of Antidumping

Investigations, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–4136 or 377–5288, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 8, 1980, the Department of Commerce ("the Department") published in the **Federal Register** (45 FR 23684) an antidumping duty order on spun acrylic yarn from Italy. The petitioner requested in accordance with the regulation then in effect, 19 CFR 353.53a(a) (1988), that we conduct administrative reviews for the 1987–88 and 1988–89 periods. We published notices of initiation of antidumping duty administrative review on May 23, 1988 (53 FR 18325) and on May 24, 1989 (54 FR 22465). The Department is conducting these administrative reviews in accordance with section 751 of the Tariff Act of 1930 ("the Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule ("HTS"), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number.

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. This merchandise is currently classifiable under HTS item 5509.3200. Prior to 1989, such merchandise was classifiable under items 310.5015 and 310.5049 of the Tariff Schedules of the United States Annotated ("TSUSA"). The HTS and TSUSA item numbers are provided for convenience and Customs purposes. The written description of the products subject to this review remains dispositive.

The review covers five manufacturers/exporters of spun acrylic yarn from Italy and the periods April 1, 1987 through March 31, 1988, and April 1, 1988 through March 31, 1989. Only one manufacturer/exporter with shipments during both periods responded adequately and in a timely fashion to our requests for information. Turriddo Torracchi did not respond to our questionnaires and the Department has learned that the company no longer exists. Mister Joe's responses to the Department's questionnaires were inadequate, lacking any information for making sales comparisons. Therefore, the Department used the best information available for these two firms. As best information available for these firms, we used the rate published in the antidumping duty order (45 FR 23684, April 8, 1980). Manifattura Emmepi's response for the period April 1, 1987 through March 31, 1988 was submitted seven months late and determined to be untimely. Consequently, we have also used the rate published in the antidumping duty order as best information available for Manifattura Emmepi for that period. Gruppo Bertrand (a.k.a. Fantasia, Cofisa and Saberfil) reported no shipments during either of the review periods, as did Manfattura Emmepi for the April 1, 1988 through March 31, 1989 period. We are using the rates from the last review in which there were shipments for those companies during these periods.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Act. Purchase price was based on the packed, CIF or delivered price to unrelated purchasers in the United States. Where applicable, we made adjustments for foreign inland freight, ocean freight, marine insurance, brokerage and handling charges, and U.S. inland freight.

Foreign Market Value

International Fibre Industries, Ltd. (IFI), the only respondent whose response we were able to use, did not make any sales to Italian customers during the review periods. Consequently, in calculating foreign market value, the Department used either sales to third countries or constructed value, as defined in section 773 of the Act. Third-country sales price was based on the packed FOB or CIF price to unrelated purchasers in third countries. We made adjustments, where appropriate, for foreign inland freight and for differences in credit and physical characteristics of the merchandise. No adjustment was made for packing as IFI reported no differences in packing between markets.

We calculated constructed value as the sum of the cost of materials, fabrication, general expenses and packing, plus profit. The amount added for general expenses was 10 percent of the sum of the materials and fabrication costs because the actual amount of general expenses was less than the statutory minimum of 10 percent. The amount added for profit was 8 percent of the sum of the cost of materials, fabrication and general expenses as actual profit was less than the statutory minimum of 8 percent.

IFI purchases the raw material for spun acrylic yarn and contracts with an unrelated party, Lanificio di Nervesa della Battaglia S.p.A., to process this material into the finished subject merchandise, which IFI itself later imports into the United States and exports to third countries. For purposes of this review, we are treating IFI as a respondent and are using its prices and costs as the basis for establishing foreign market value, in keeping with our practice in past administrative reviews of this antidumping duty order.

Currency Conversion

We used the official exchange rates in effect on the dates of U.S. sales, in accordance with section 773(a)(1) of the Act, as amended by section 615 of the Trade and Tariff Act of 1984. All currency conversions were made at the rates certified by the Federal reserve Bank.

Preliminary Results of the Review

As a result of our review, we preliminarily determine the dumping margins to be:

Manufacturer / exporter	Period	Margin (percent)
Maniffattura Emmepi S.p.A.	04/01/87–03/31/88	48.05
	04/01/88	[1] 48.05
Gruppo Bertrand (a.k.a. Fantasia, Cofisa, and Saberfil)	04/01/87–03/31/88	[1] 14.06
	04/01/88–03/31/89	[1] 14.06

Manufacturer / exporter	Period	Margin (percent)
Lanificio di Nervesa della Battaglia S.p.A/Inter-national Fibre Industries, Ltd.	04/01/87-03/31/88	0.01
	04/01/88-03/31/89	0.69
Turriddo Torracchi	04/01/87-03/31/88	48.05
	04/01/88-03/31/89	48.05
Mister Joe, S.p.A.	04/01/87-03/31/88	48.05
	04/01/88-03/31/89	48.05

[1] No shipments reported during the period; margin is from the last review in which there were shipments.

The Department will issue appraisement instructions concerning each manufacturer/exporter directly to the Customs Service upon completion of this administrative review.

Furthermore, the following deposit requirements will be effective upon publication of our final results of this administrative review for all shipments of spun acrylic yarn from Italy entered, or withdrawn from warehouse, for consumption on or after that publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for any shipments of this merchandise manufactured or exported by the remaining known manufacturers/exporters not covered in this review 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; 50 FR 35839, September 4, 1985; and 54 FR 42005, October 13, 1989); (2) the cash deposit rate for the companies included in this notice will be that established in the final results of this administrative review; and (3) the cash deposit rate for any future entries of this merchandise from a new producer and/or exporter, not covered in this or prior administrative reviews, whose first shipments occurred after March 31, 1989 and who is unrelated to any reviewed firm, will be 0.69 percent.

Public Comment

In accordance with § 353.38 of the Department's regulations, case briefs or any other written comments in at least seven copies must be submitted to the Assistant Secretary for Import Administration no later than 30 days after the date of publication of this notice in the **Federal Register**, and rebuttal briefs no later than 37 days after the date of publication. In accordance with § 353.38(b) of the Department's regulations, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case of rebuttal briefs. Such a hearing will be held 44 days after the date of publication, or the first business day thereafter. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In accordance with § 353.38(b) of the Department's regulations, an interested party may make an oral presentation only on arguments included in its briefs.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(c)(5) (1989).

Dated: December 20, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-30196 Filed 12-28-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-001]

Leather Wearing Apparel From Mexico—Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on leather wearing apparel from Mexico. We preliminarily determine the total bounty or grant to be zero or *de minimis* during the period January 1, 1986, through December 31, 1987. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: December 29, 1989.

FOR FURTHER INFORMATION CONTACT: Britt Doughtie or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On October 20, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 38954) the final results of its last administrative review of the countervailing duty order on leather wearing apparel from Mexico (46 FR 21357; April 10, 1981). On April 29, 1987, the Government of Mexico requested that we conduct an administrative review of the order for the period January 1, 1986, through December 31, 1986. On April 8, 1988, two domestic interested parties, Valley Imports & Exports and J. & A. Leathers Inc., requested that we conduct an administrative review of the order for the period January 1, 1987, through December 31, 1987. We initiated the reviews on May 20, 1987 (52 FR 18938), and on April 7, 1988 (53 FR 11540), respectively. The Department has now conducted these administrative reviews in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

The United States, under the auspices of the Customs Cooperation Council, has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

The imports covered in these reviews are shipments of Mexican leather wearing apparel. These products include leather coats and jackets for men, boys, women, girls and infants, and other leather apparel products including leather vests, pants and shorts. Also included are outer leather shells and parts and pieces of leather wearing apparel. During the review periods, such

merchandise was classifiable under item numbers 791.7620, 791.7640, and 791.7660 of the Tariff Schedules of the United States Annotated ("TSUSA"). This merchandise is currently classifiable under HTS item numbers 4203.10.4030, 4203.10.4060, and 4203.10.4090. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The reviews cover the period January 1, 1986, through December 31, 1987, and eight programs.

Analysis of Programs

(1) FOMEX

The Fund for the Promotion of Exports of Mexican Manufactured Products ("FOMEX") is a trust of the Mexican Treasury Department, with the National Bank of Foreign Trade acting as trustee for the program. The National Bank of Foreign Trade, through financial institutions, makes FOMEX loans available at preferential rates to Mexican manufacturers and exporters for two purposes: pre-export financing and export financing. We consider both pre-export and export FOMEX loans to confer export bounties or grants since these loans are given only on merchandise destined for export.

We found that the annual interest rate financial institutions charged borrowers for peso-denominated FOMEX pre-export loans outstanding during the 1987 period of review ranged from 70.0 to 96.0 percent. The annual interest rate for the one dollar-denominated FOMEX export loan was 7.5 percent. We consider the benefit from loans to occur when the interest is paid. Interest on FOMEX pre-export loans is paid at maturity, and those that matured during the periods of review were obtained between December 1986 and October 1987. Since interest on FOMEX export loans is pre-paid, we calculated benefits from all FOMEX export loans received during the period of review.

The Banco de Mexico stopped publishing data on nominal and effective commercial lending rates in Mexico after 1984. Therefore, as the basis for our benchmark, we have relied in part on the rates for the years 1981 through 1984, as published in the Banco de Mexico's *Indicatores Economicos y Moneda* (I.E.). We calculated the average difference between the I.E. effective rates and the Costo Porcentural Promedio (CPP) rates, the average cost of short term funds to banks, for the years 1981 through 1984. We added this average difference to the 1987 CPP rates. In this way, we calculated an annual benchmark of 167.05 percent for pre-export peso loans obtained in 1987.

Only one leather wearing apparel manufacturer used FOMEX pre-export and export financing during the periods of review. Since these FOMEX loans were not tied to any one product or to specific shipments, we allocated this firm's FOMEX benefit over the value of its total exports of all merchandise. We then weight-averaged the resulting benefit by this firm's proportion of Mexican exports of the subject merchandise to the United States during 1987. On this basis, we preliminarily determine the benefit from this program to be zero for 1986 and 0.06 percent for 1987.

(2) FOGAIN

The Guarantee and Development Fund for Medium and Small Industries (FOGAIN) is a program that provides long-term loans to all small and medium-size firms in Mexico. The interest rates available under the program vary depending on whether a small- or medium-size business has been granted priority status, and whether a business is located in a zone targeted for industrial growth. Although FOGAIN loans are available to all small- and medium-size firms in Mexico, regardless of the type of industry or location, some firms receive more beneficial rates than others. Therefore, to the extent that this program provides financing at rates below the least beneficial rate available under FOGAIN, we consider it to confer a countervailable domestic bounty or grant.

Six firms had long-term variable-rate FOGAIN loans on which interest payments were due during the periods of review. Because the interest rates are variable, we treated each loan as a series of short-term loans and used as our benchmarks the least beneficial FOGAIN interest rate in effect for each loan payment. To calculate the benefit, we compared the benchmark rate to the interest rate for each FOGAIN loan payment made during the periods of review. We allocated the benefit from each loan over the firm's total sales to all markets. We then weight-averaged the resulting benefits by each firm's proportion of exports of the subject merchandise to the United States during each review period. On this basis, we preliminarily determine the benefit from FOGAIN loans to be 0.31 percent for 1986 and 0.0009 percent for 1987.

(3) Other Programs

We also examined the following programs and preliminarily determine that exporters of leather wearing apparel from Mexico did not use them during the review periods:

(A) CEPROFI (Certificates of Fiscal Promotion);

(B) FONEI (Fund for Industrial Development);

(C) Import duty reductions and exemptions;

(D) NDP preferential discounts;

(E) Article 15 Loans; and

(F) State tax incentives.

Preliminary Results of Review

As a result of our review, we preliminarily determine the total bounty or grant to be 0.31 percent *ad valorem* during the period January 1, 1986 through December 31, 1986, and 0.06 percent *ad valorem* during the period January 1, 1987 through December 31, 1987. The Department considers any rate less than 0.50 percent *ad valorem* to be *de minimis*.

Therefore, the Department intends to instruct the Customs Service to liquidate, without regard to countervailing duties, all shipments of this merchandise exported on or after January 1, 1986 and on or before December 31, 1987. The Department also intends to instruct the Customs Service to waive cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Parties to the proceeding may request disclosure of the calculation methodolgy and interested parties may request a hearing not later than 10 days after date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e).

Any request for disclosure under an administrative protective order must be made no later than five days after the date of publication.

The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

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 19 CFR 355.22.

Dated: December 21, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-30198 Filed 12-28-89; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Business Development Center Applications; El Paso, TX

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for approximately a three-year period, subject to the availability of funds. The cost of performance for the first 12 months is estimated at $184,260 in Federal funds and a minimum of $32,516 in non-Federal contributions for the budget period May 1, 1990 to April 30, 1991. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the El Paso, Texas Standard Metropolitan Statistical Area (SMSA).

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian tribes, and educational institutions.

The MBDC is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms, offer a full range of management and technical assistance, and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDC's shall be required to contribute at least 15% of the total project cost through non-Federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales over $500,000.

The MBDC may continue to operate after the initial competitive year for up to two additional budget periods. Periodic reviews culminating in year-to-year quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as a MBDC's satisfactory performance, the availability of funds and Agency priorities.

CLOSING DATE: The closing date for applications in January 31, 1990. Applicants should mail the completed applications to the office specified in the project announcement. MBDA will accept only those applications (1) which are received by the closing date or (2) which show acceptable evidence of mailing on or before the closing date. Acceptable evidence consists of (1) a legible U.S. Postal Service postmark or (2) a legible mail or courier service receipt dated on or before the closing date. Applications must be post marked on or before January 31, 1990.

ADDRESS: Dallas Regional Office, 1100 Commerce Street, Suite 7B23, Dallas, Texas 75242-0790, (214) 767-8801.

FOR FURTHER INFORMATION CONTACT: Darnecia Tyler, Dallas Regional Office.

SUPPLEMENTARY INFORMATION: Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address. A pre-bid conference will be held in El Paso, Texas, on January 12, 1990, in the Small Business Administration's office located at 10737 Gateway West, Suite 320 at 1:00 p.m.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: December 21, 1989.

Melda Cabrera,

Regional Director, Dallas Regional Office.

BILLING CODE 3510-21-M

Section B - Project Specifications
(To be completed by the Regional Offices)

PROJECT IDENTIFICATION	
1. Program Number and Title:	11.800 Minority Business Development
2. Project Name:	El Paso MBDC (Geographic Area or SMSA)
3. Project Identification Number:	06-10-90002-01

BUDGET PERIOD DURATION	
1. Budget Period (Check One):	First X Second ____ Third ____
2. Start Date:	May 1, 1990
3. End Date:	April 30, 1991
4. Budget Period Duration (Months):	Twelve

PROJECT COST	
1. Required Federal Funding Level:	$ 184,260
2. Minimum Non-Federal Contribution:	$ 32,516
3. Total Project Cost:	$ 216,776

PROJECT MINIMUM PERFORMANCE GOAL LEVELS	
1. Combined Financial Package and Procurement Minimum Goal Level:	$ 12,454,000
2. Billable $M&TA Minimum Goal Level:	$ 125,000
3. Number of Clients Minimum Goal Level:	125

OTHER PROJECT SPECIFICATIONS

1. Closing Date for Submission of this Application: January 31, 1990

2. Geographic Specification: The Minority Business Development Center shall offer assistance in the geographic area of:
El Paso, Texas (SMSA)

3. Eligibility Criteria: There are no eligibility restrictions for this project. Eligible applicants may include individuals, non-profit organizations, for-profit firms, local and state governments, American Indian tribes and educational institutions.

4. Budget Period: The competitive award period will be for approximately three (3) years consisting of three (3) separate budget periods. Performance evaluations will be conducted, and funding levels will be established for each of three (3) budget periods. The MBDC will receive continued funding, after the initial competitive year, at the discretion of MBDA based upon the availability of funds, the MBDC's performance and Agency priorities.

[FR Doc. 89-30177 Filed 12-28-89; 8:45 am]
BILLING CODE 3510-21-C

Business Development Center Applications: Cincinnati/Dayton, OH

AGENCY: Minority Business Development Agency, Commerce.

ACTION: NOTICE.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for approximately a 3-year period, subject to availability of funds. The cost of performance for the first 12 months is estimated at $184,260 in Federal funds and a minimum of $32,516 in non-federal contributions for the budget period May 1, 1990 to April 30, 1991. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Cincinnati/Dayton, Ohio geographic service area. The award number of this MBDC will be 05–10–90002–01.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, State and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specificially, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDCs shall be required to contribute at least 15% of the total project cost through non-federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

CLOSING DATE: The closing date for applications is February 2, 1990. Applications must be postmarked on or before February 2, 1990.

ADDRESS: Chicago Regional Office, Minority Business Development Agency, 55 East Monroe Street, Suite 1440, Chicago, Illinois 60603, 312/353–0182.

FOR FURTHER INFORMATION CONTACT: *David Vega,* Regional Director, *Chicago* Regional Office.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs"is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(11.800 Minority Business Development Catalog of Federal Domestic Assistance)

Dated: December 21, 1989.

David Vega,

Regional Director, Chicago Regional Office.

[FR Doc. 30237 Filed 12–28–89; 8:45 am]

BILLING CODE 3510–21–M

National Institute of Standards and Technology

[Docket No. 91180–9280]

National Voluntary Laboratory Accreditation Program

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Publication of NVLAP directory supplement.

SUMMARY: The National Institute of Standards and Technology (NIST) announces the status of laboratory accreditations as of December 31, 1989. A listing of laboratories accredited and de-accredited in the last six months is available upon request. To obtain a copy, please write to the National Voluntary Accreditation Program (NVLAP), National Institute of Standards and Technology, Building 411, Room A124, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Nancy M. Trahey, Acting Chief, Laboratory Accreditation Program, National Institute of Standards and Technology, Gaithersburg, MD 20899, (301) 975–4016.

SUPPLEMENTARY INFORMATION: This listing is an addendum to the 1989 NVLAP Directory of Accredited Laboratories (NISTIR 89–4056) published annually pursuant to section 7.6(b) of the National Voluntary Laboratory Accreditation Program (NVLAP) Procedures (Title 15, part 7, of the Code of Federal Regulations).

Directory addenda published in the Federal Register on April 26, 1989, June 20, 1989, and July 27, 1989 are superseded with this notice.

Dated: December 21, 1989.

Raymond G. Kammer,

Acting Director.

[FR Doc. 89–30236 Filed 12–28–89; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

Extension of Public Comment on Swim-With-the-Dolphin Draft Environmental Impact Statement

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

ACTION: Notice of an extension of the public comment period on swim-with-the-dolphin draft environmental impact statement.

SUMMARY: NOAA Fisheries has prepared a programmatic environmental impact statement (EIS) in accordance with the National Environmental Policy Act, and has conducted hearings on the use of marine mammals in swim-with-the-dolphin programs (54 FR 46755). These programs allow a member of the public, including any general visitor or customer, to enter the water with a captive marine mammal for recreational swimming, snorkeling or scuba diving activities. NOAA Fisheries is considering the consequences of swim-with-the-dolphin programs and has requested comments on the draft EIS. Provisional authority to conduct these programs on an experimental basis expires on December 31, 1989. NOAA Fisheries has received several requests

for an extension of the public comment period. Therefore, NOAA Fisheries is extending the public comment period to January 8, 1990. In order to allow time for full consideration of public comment on the final EIS and decision, NOAA Fisheries intends to extend the provisional authority for the four existing programs until April 30, 1990, as stated in the draft EIS.

ADDRESSES: Written comments on the draft EIS may be mailed to Dr. Nancy Foster, Director, Office of Protected Resources and Habitat Programs (F/PR), NOAA Fisheries, 1335 East-West Highway, Silver Spring, Maryland 20910. A copy of the draft EIS may be obtained by writing to this address or from the information contact listed below.

FOR FURTHER INFORMATION CONTACT: Georgia Cranmore in Washington, DC at 301/427–2289.

Dated: December 22, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89–30184 Filed 12–28–89; 8:45 am]

BILLING CODE 3510–22–M

Billing Code 3510-22

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Permits; Foreign Fishing

This document publishes for public review and comment a summary of applications received by the Secretary of State. The applications request permits for foreign vessels to fish in the Exclusive Economic Zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 et seq.). Send comments on applications to:

NOAA - National Marine Fisheries Service
Office of Fisheries Conservation and Management
1335 East West Highway
Silver Spring, Maryland 20910

or, to the appropriate Regional Fishery Management Council reviewing applications, as listed below:

Douglas G. Marshall, Executive Director
New England Fishery Management Council
5 Broadway (Route 1)
Saugus, MA 01906
617/231-0422

John C. Bryson, Executive Director
Mid-Atlantic Fishery Management Council
Federal Building, Room 2115
320 South New Street
Dover, DE 19901
302/674-2331

Robert K. Mahood, Executive Director
South Atlantic Fishery Management Council
Southpark Building, Suite 306
1 Southpark Circle
Charleston, SC 29407
803/571-4366

Miguel A. Rolon, Executive Director
Caribbean Fishery Management Council
Banco De Ponce Building, Suite 1108
Hato Rey, PR 00918
809/753-6910

Wayne E. Swingle, Executive Director
Gulf of Mexico Fishery Management Council
Lincoln Center, Suite 881
5401 West Kennedy Blvd.
Tampa, FL 33609
813/228-2815

Lawrence D. Six, Executive Director
Pacific Fishery Management Council
Metro Building, Suite 420
2000 S.W. First Avenue
Portland, OR 97201
503/326-6352

Clarence Pautzke, Executive Director
North Pacific Fishery Management Council
P.O. Box 103136
Anchorage, AK 99510
907/271-2809

Kitty M. Simonds, Executive Director
Western Pacific Fishery Management Council
1164 Bishop Street, Room 1405
Honolulu, HI 96813
808/523-1368

For further information contact John D. Kelly or Robert A. Dickinson (Office of Fisheries Conservation and Management, 301-427-2339).

The Magnuson Act requires the Secretary of State to publish a notice of receipt of applications for foreign fishing permits, summarizing the contents of the applications in the FEDERAL REGISTER. The National Marine Fisheries Service, under the authority granted in a memorandum of understanding with the Department of State, effective November 29, 1983, issues this notice on behalf of the Secretary of State.

Dated: 12/22/89

Richard H. Schaefer

Richard H. Schaefer
Director of Office of Fisheries
Conservation and Management
National Marine Fisheries Service

Fishery codes and designations of Regional Fishery Management Councils which review applications for individual fisheries are as follows:

Code	Fishery	Regional Fishery Management Council
ABS	Atlantic Billfish and Sharks	New England, Mid-Atlantic, South Atlantic, Gulf of Mexico, Caribbean
BSA	Bering Sea and Aleutian Island Groundfish	North Pacific
GOA	Gulf of Alaska Groundfish	North Pacific
NWA	Northwest Atlantic Ocean	New England, Mid-Atlantic
SNA	Snail (Bering Sea)	North Pacific
WOC	Pacific Coast Groundfish (Washington, Oregon and California)	Pacific
PBS	Pacific Billfishes, Oceanic Sharks, Wahoo, and Mahi-mahi	Western Pacific

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Activity codes which specify categories of fishing operations applied for are as follows:

Activity Code

1 . . . . . Catching, processing and other support.

2 . . . . . Processing and other support only.

3 . . . . . Other support only.

4 . . . . . Vessel supporting U.S. vessels [Joint Venture (JV)].

* . . . . . Denotes JV requested in addition to directed fishing.

Joint venture (JV) and directed fishing requests are summerized below, followed by a vessel list indicating requested fisheries and activities.

China (CH)

The Government of the People's Republic of China proposed a JV in the BSA to purchase 25,000 metric tons (mt) of yellowfin sole; 5,000 mt of rock sole; 5,000 mt of Pacific cod, and 10,000 mt of other flatfish. A GOA JV was proposed to purchase 5,000 mt of yellowfin sole. There were nine requests to conduct support and supply activities in the EEZ between foreign vessels involving fish taken seaward of the EEZ or processed in the internal waters of a state, and nine requests to conduct support and supply activities in the EEZ with U.S. vessels.

German Democratic Republic (GC)

The Government of the German Democratic Republic applied to fish in the NWA for 22,000 mt of Atlantic mackerel and proposed to purchase 8,250 mt of JV mackerel.

Iceland (IC)

The Government of Iceland proposed JV's in the BSA to purchase 49,000 mt of Pacific cod; 3,800 mt of yellowfin sole; 3,200 mt of Atka mackerel, and 1,000 mt of pollock. A GOA JV was proposed to purchase 6,000 mt of Pacific cod and 1,000 mt of flatfish.

Japan (JA)

The Government of Japan proposed JV's in the BSA to purchase 114,000 mt of pollock and/or yellowfin sole; 132,000 metric tons

of other flatfish, and 37,000 mt of Pacific cod. Joint ventures were also proposed for unspecified species and quantities in the GOA, and for unspecified quantities of Loligo and Illex squid in the NWA. A WOC JV was proposed to purchase 160,000 mt of Pacific whiting. There were 19 requests to process fish in the EEZ received in the internal waters of a state, 37 requests to conduct support and supply activities in the EEZ between foreign vessels involving fish processed in the internal waters of a state, and 57 requests to conduct support and supply activities in the EEZ with U.S. vessels.

Korea (KS)

The Government of the Republic of Korea proposed JV's in the BSA to purchase 313,400 mt of pollock; 108,000 mt of yellowfin sole; 23,200 mt of other flatfish; 38,700 mt of Pacific cod; 20,700 mt of Atka mackerel, and 7,180 mt of unspecified species. Joint ventures in the GOA were proposed to purchase 11,500 mt of pollock; 1,400 mt of Pacific cod; 500 mt of flatfish; 800 mt of other mackerel and 800 mt of unspecified species. Joint ventures in the WOC were proposed to purchase 13,000 mt of Pacific whiting. There were six requests to process fish in the EEZ taken in the economic zone of another country, 16 requests to process fish in the EEZ taken in waters seaward of the EEZ, 50 requests to conduct support and supply activities in the EEZ between foreign vessels involving fish taken seaward of the EEZ.

and 33 requests to conduct support and supply activities in the EEZ with U.S. vessels.

The Netherlands (NL)

The Government of the Kingdom of the Netherlands applied to fish in the NWA for 21,000 mt of Atlantic mackerel and proposed to purchase 7,000 mt of JV mackerel.

Poland (PL)

The Government of the Polish People's Republic applied to fish in the NWA for 10,500 mt of Atlantic mackerel and proposed to purchase 3,000 mt of JV mackerel and 500 metric tons of U.S. processed mackerel. Joint ventures in the BSA and GOA were proposed to purchase 40,000 mt of pollock and 5,000 mt of yellowfin sole, or, in the event pollock is not available, 45,000 mt of yellowfin sole and/or Pacific cod. A WOC JV was proposed to purchase 50,000 mt of Pacific whiting.

USSR (UR)

The Union of Soviet Socialist Republics proposed a JV in the NWA to purchase 30,000 mt of Atlantic mackerel, a JV in the BSA to purchase 60,000 mt of yellowfin sole and 30,000 mt of Pacific cod, and a JV in the WOC for an unspecified quantity of Pacific whiting.

VESSEL (VESSEL TYPE)	APPLICATION /PERMIT #	FISHERY-ACTIVITY
GENG HAI (LARGE STERN TRAWLER)	CH-90-0001	GOA-4 BSA-4
HAI FA (CARGO/TRANSPORT VESSEL)	CH-90-0009	GOA-3 BSA-3
HAI FENG 301 (CARGO/TRANSPORT VESSEL)	CH-90-0008	GOA-3 BSA-3
KAI CHUANG (LARGE STERN TRAWLER)	CH-90-0003	GOA-4 BSA-4
KAI TUO (LARGE STERN TRAWLER)	CH-90-0010	GOA-4 BSA-4
YAN YUAN 1 (LARGE STERN TRAWLER)	CH-90-0002	GOA-4 BSA-4
YAN YUAN NO. 2 (FACTORY SHIP)	CH-90-0006	GOA-4 BSA-4
YAN YUAN NO. 3 (LARGE STERN TRAWLER)	CH-90-0011	GOA-4 BSA-4
YUN HAI (FACTORY SHIP)	CH-90-0007	GOA-4 BSA-4
HALGAFELLI (CARGO/TRANSPORT VESSEL)	DA-90-0010	NWA-3
ICE FLOWER (CARGO/TRANSPORT VESSEL)	DA-90-0003	NWA-3
ICE PEARL (CARGO/TRANSPORT VESSEL)	DA-90-0009	NWA-3
ICEPORT (CARGO/TRANSPORT VESSEL)	DA-90-0004	NWA-3
NORDLANDIA (CARGO/TRANSPORT VESSEL)	DA-90-0006	NWA-3
VESTLANDIA (CARGO/TRANSPORT VESSEL)	DA-90-0008	NWA-3
EDUARD CLAUDIUS (LARGE STERN TRAWLER)	GC-90-0059	NWA-1*
EHM WELK (LARGE STERN TRAWLER)	GC-90-0041	NWA-1*
EVERSHAGEN (CARGO/TRANSPORT VESSEL)	GC-90-0027	NWA-3

LUDWIG RENN.....GC-90-0054...NWA-1*
(LARGE STERN TRAWLER)

REUTERSHAGEN.....GC-90-0056...NWA-3
(CARGO/TRANSPORT VESSEL)

RUDOLF LEONHARD.....GC-90-0048...NWA-1*
(LARGE STERN TRAWLER)

WILLI BREDEL.....GC-90-0024...NWA-1*
(LARGE STERN TRAWLER)

ANDRI I.....IC-90-0006...BSA-4
(FACTORY SHIP)

BJOERNOEY.....IC-90-0007...GOA-4 BSA-4
(FACTORY SHIP)

AKASHIA MARU.....JA-90-1156...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

AKEBONO MARU NO. 3.....JA-90-0105...GOA-4 BSA-4
(MEDIUM STERN TRAWLER)

AKEBONO MARU NO. 31.....JA-90-0306...WOC-4 GOA-4 BSA-4
(MEDIUM STERN TRAWLER)

AKEBONO MARU NO. 77.....JA-90-0157...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

AKISHIO MARU.....JA-90-0096...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

ANYO MARU NO. 1.....JA-90-1552...GOA-4 BSA-4
(MEDIUM STERN TRAWLER)

ANYO MARU NO. 15.....JA-90-0104...GOA-4 BSA-4
(SMALL STERN TRAWLER)

ANYO MARU NO. 18.....JA-90-1175...GOA-4 BSA-4
(MEDIUM STERN TRAWLER)

ANYO MARU NO. 22.....JA-90-0622...GOA-4 BSA-4
(LONGLINE FISHING VESSEL)

ARIZONA MARU.....JA-90-0233...SNA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

ATAGO MARU.....JA-90-0195...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

BANYO MARU.....JA-90-0099...WOC-2 GOA-2 BSA-2
(CARGO/TRANSPORT VESSEL)

BIYO MARU.....JA-90-0598...WOC-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

CHIKUBU MARU.....JA-90-0336...GOA-4 BSA-4
(LARGE STERN TRAWLER)

CHIKUZEN MARU.....JA-90-0199...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

CHITOSE MARU.....JA-90-0180...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

CHIYO MARU.....JA-90-0197...GOA-4 BSA-4
(LARGE STERN TRAWLER)

CHOYOH MARU.....JA-90-0574...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

DAIAN MARU NO. 158.....JA-90-0228...GOA-4 BSA-4
(MEDIUM STERN TRAWLER)

DAIAN MARU NO. 188.....JA-90-0553...GOA-4 BSA-4
(MEDIUM STERN TRAWLER)

DAIKAN MARU.....JA-90-0033...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

DAIKICHI MARU NO.1.....JA-90-1198...GOA-4 BSA-4
(SMALL STERN TRAWLER)

DAIKICHI MARU NO.5.....JA-90-0187...GOA-4 BSA-4
(SMALL STERN TRAWLER)

DAIKICHI MARU NO.51.....JA-90-0484...GOA-4 BSA-4
(MEDIUM STERN TRAWLER)

DAIKOH MARU.....JA-90-0021...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

DAISHIN MARU NO. 22.....JA-90-0286...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

DAISHIN MARU NO. 28.....JA-90-0569...BSA-4
(LARGE STERN TRAWLER)

DAISHO MARU.....JA-90-0035...SNA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

DOUGLAS.....JA-90-2028...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

EBISU FONTAINE.....JA-90-0589...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

EIYO MARU (B).....JA-90-0109...WOC-2 GOA-2 BSA-2
(CARGO/TRANSPORT VESSEL)

ENYOH MARU.....JA-90-0086...WOC-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

ETSUYOH MARU.....JA-90-0089...WOC-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

FALCON.....JA-90-0918...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

FUJISHIO MARU.....JA-90-0594...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

FUKUCHO MARU NO. 11.....JA-90-1537...GOA-4 BSA-4
(SMALL STERN TRAWLER)

FUKUHO MARU NO. 78.....JA-90-1548...BSA-4
(SMALL STERN TRAWLER)

FUKUSHIO MARU.....JA-90-1539...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

FUKUYOSHI MARU NO. 38.....JA-90-0304...GOA-4 BSA-4
(MEDIUM STERN TRAWLER)

FUKUYOSHI MARU NO. 58.....JA-90-1536...GOA-4 BSA-4
(SMALL STERN TRAWLER)

HAKKO BOOMERANG.....JA-90-0881...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

HAKKO FONTAINE.....JA-90-0587...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

HAKUYO MARU.....JA-90-0570...WOC-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

HAMANASU MARU.....JA-90-0883...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

HANAZONO MARU.....JA-90-0147...WOC-3 SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

HEKIFU.....JA-90-0196...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

HIKARI MARU NO. 8.....JA-90-0142...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

HIYO MARU.....JA-90-2025...WOC-2 GOA-2 BSA-2
(CARGO/TRANSPORT VESSEL)

HIYOSHI MARU.....JA-90-0075...WOC-3 SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

HOKKAI MARU (B).....JA-90-0922...WOC-3 SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

HOKUSHIN MARU.....JA-90-0138...SNA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

HONAI MARU.....JA-90-0648...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

HOZAN MARU.....JA-90-0194...WOC-2 NWA-2 GOA-2 BSA-2
(CARGO/TRANSPORT VESSEL)

ISHIKARI MARU.....JA-90-0595...WOC-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

IZUMO REEFER.....JA-90-0053...WOC-3 SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

KAIHO MARU.....JA-90-0236...WOC-2 NWA-2 GOA-2 BSA-2
(CARGO/TRANSPORT VESSEL)

KAIUN MARU NO. 65.....JA-90-2010...GOA-4 BSA-4
(MEDIUM STERN TRAWLER)

KAIYO MARU.....JA-90-0088...WOC-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

KAIYO MARU NO. 115.....JA-90-1153...GOA-4 BSA-4
(MEDIUM STERN TRAWLER)

KAIYO MARU NO. 28.....JA-90-1544...GOA-4 BSA-4
(MEDIUM STERN TRAWLER)

KAMUI MARU.....JA-90-0223...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

KASHIMA REEFER.....JA-90-0054...WOC-3 SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

KASHIWAGI MARU.....JA-90-0019...WOC-3 SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

KASUGA REEFER.....JA-90-0055...WOC-3 SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

KATAH.....JA-90-0148...SNA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

KAZU MARU NO. 8.....JA-90-0143...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

KEIFU MARU.....JA-90-0572...WOC-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

KEIYO MARU.....JA-90-0102...WOC-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

KINYO MARU.....JA-90-0103...WOC-2 GOA-2 BSA-2
(CARGO/TRANSPORT VESSEL)

KISARAGI MARU.....JA-90-0929...WOC-3 SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

KOEI MARU NO. 51.....JA-90-1173...BSA-4
(MEDIUM STERN TRAWLER)

KOEI MARU NO.15.....JA-90-1396...BSA-4
(MEDIUM STERN TRAWLER)

KOHFU MARU.....JA-90-0641...WOC-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

KOMEI MARU.....JA-90-0139...SNA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

KOSHIN MARU NO. 1.....JA-90-0225...GOA-4 BSA-4
(MEDIUM STERN TRAWLER)

KOSHIN MARU NO. 21.....JA-90-0525...GOA-4 BSA-4
(MEDIUM STERN TRAWLER)

KOSHIN MARU NO. 3.....JA-90-0192...GOA-4 BSA-4
(MEDIUM STERN TRAWLER)

KOTOKU MARU.....JA-90-1035...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

KOYO MARU.....JA-90-0383...WOC-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

KOYO MARU NO. 3.....JA-90-0343...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

KOYO MARU NO. 8.....JA-90-0224...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

KUROSHIMA MARU.....JA-90-1582...WOC-3 SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

KYOKUSHIN MARU.....JA-90-1161...WOC-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

MABAH.....JA-90-0108...SNA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

MATENA LUMO.....JA-90-0232...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

MIYABI MARU.....JA-90-0237...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

MIYAJIMA MARU.....JA-90-1540...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

MIYOSHIMA MARU.....JA-90-0025...WOC-3 SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

NICHIYO MARU.....JA-90-1167...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

NOJIMA MARU.....JA-90-1096...WOC-2 SNA-2 NWA-2 GOA-2 BSA-2
(CARGO/TRANSPORT VESSEL)

OHTORI MARU.....JA-90-0342...BSA-4
(LARGE STERN TRAWLER)

OHYO MARU.....JA-90-0158...WOC-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

OREGON MARU.....JA-90-0234...SNA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

ORIENTAL CRANE.....JA-90-0184...WOC-3 SNA-3 GOA-3 BSA-3
(TANKER FUEL/WATER)

ORIENTAL EAGLE.....JA-90-0239...WOC-3 SNA-3 GOA-3 BSA-3
(TANKER FUEL/WATER)

ORION.....JA-90-0591...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

ORION.....JA-90-0642...WOC-2 NWA-2 GOA-2 BSA-2
(CARGO/TRANSPORT VESSEL)

OTOWA MARU.....JA-90-1538...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

PALOMA.....JA-90-0098...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

PHOENIX.....JA-90-0917...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

POHAH.....JA-90-0206...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

REEFER BEAVER.....JA-90-1145...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

REEFER FRESH.....JA-90-2029...WOC-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

RIKUZEN MARU.....JA-90-0340...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

RISHIRI.....JA-90-0027...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

ROKKO.....JA-90-0181...WOC-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

RYUHO MARU NO. 51.....JA-90-1572...BSA-4
(SMALL STERN TRAWLER)

SAGAMI MARU.....JA-90-0146...WOC-2 SNA-2 NWA-2 GOA-2 BSA-2
(CARGO/TRANSPORT VESSEL)

SAKAE MARU.....JA-90-0647...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SANUKI MARU.....JA-90-0915...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SANWA FONTAINE.....JA-90-0590...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SEAGULL.....JA-90-0034...SNA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SEISHIN MARU.....JA-90-0645...SNA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SEIYOH MARU.....JA-90-0583...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SEKI REX.....JA-90-1148...WOC-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SHIDAKA MARU.....JA-90-0179...WOC-3 SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SHIN SAKURA.....JA-90-0153...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SHINASAHI MARU.....JA-90-0578...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SHINBUNGO MARU.....JA-90-0047...WOC-2 NWA-2 GOA-2 BSA-2
(CARGO/TRANSPORT VESSEL)

SHINEI MARU NO. 63.....JA-90-1196...BSA-4
(SMALL STERN TRAWLER)

SHINKO MARU NO. 11.....JA-90-0119...GOA-4 BSA-4
(LONGLINE FISHING VESSEL)

SHINMEI MARU.....JA-90-0207...SNA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SHINNICHI MARU NO. 38.....JA-90-0563...GOA-4 BSA-4
(MEDIUM STERN TRAWLER)

SHINSHO MARU.....JA-90-0640...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SHINTAKARA MARU.....JA-90-0046...WOC-2 NWA-2 GOA-2 BSA-2
(CARGO/TRANSPORT VESSEL)

SHINWA MARU.....JA-90-0137...SNA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SHINYO MARU.....JA-90-0074...WOC-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SHOJU MARU.....JA-90-0134...SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SHOKEN MARU.....JA-90-0930...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SHOUTOKU MARU.....JA-90-0028...WOC-3 SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SHOYO MARU (B).....JA-90-1563...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SHUNYO MARU.....JA-90-0136...WOC-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SHUNYOO MARU NO. 118.....JA-90-0564...GOA-4 BSA-4
(MEDIUM STERN TRAWLER)

SINGAPORE FONTAINE.....JA-90-0586...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SKYLARK.....JA-90-0023...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SOUTHERN CROSS.....JA-90-0156...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

STARLING.....JA-90-0024...SNA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SUIYO MARU.....JA-90-0575...WOC-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SUNBIRD.....JA-90-0576...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SUOH.....JA-90-0893...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SURUGA MARU.....JA-90-2014...WOC-3 SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

TAISEI MARU NO. 101.....JA-90-1144...WOC-2 SNA-2 NWA-2 GOA-2 BSA-2
(CARGO/TRANSPORT VESSEL)

TAISEI MARU NO. 15.....JA-90-0205...WOC-2 SNA-2 NWA-2 GOA-2 BSA-2
(CARGO/TRANSPORT VESSEL)

TAISEI MARU NO. 3.....JA-90-0085...WOC-2 SNA-2 NWA-2 GOA-2 BSA-2
(CARGO/TRANSPORT VESSEL)

TAISEI MARU NO. 52.....JA-90-1055...WOC-2 SNA-2 NWA-2 GOA-2 BSA-2
(CARGO/TRANSPORT VESSEL)

TAISEI MARU NO. 87.....JA-90-1053...WOC-2 SNA-2 NWA-2 GOA-2 BSA-2
(CARGO/TRANSPORT VESSEL)

TAISEI MARU NO. 98.....JA-90-1054...WOC-2 SNA-2 NWA-2 GOA-2 BSA-2
(CARGO/TRANSPORT VESSEL)

TAISETSU MARU.....JA-90-0193...WOC-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

TAKACHIHO MARU.....JA-90-0291...NWA-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

TAKUYO MARU.....JA-90-0029...WOC-3 SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

TEISHO MARU NO. 68.....JA-90-1547...BSA-4
(SMALL STERN TRAWLER)

TENYO MARU.....JA-90-0352...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

TENYO MARU NO. 2.....JA-90-0332...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

TENYO MARU NO. 3.....JA-90-0333...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

TENYO MARU NO. 5.....JA-90-0334...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

TOKACHI MARU (B).....JA-90-0359...WOC-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

TOKIWA MARU.....JA-90-0631...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

TOKUKO MARU.....JA-90-0593...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

TOKURYU MARU.....JA-90-0592...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

TOKYO REEFER.....JA-90-1135...WOC-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

TOMI MARU NO. 51.....JA-90-1197...GOA-4 BSA-4
(SMALL STERN TRAWLER)

TOMI MARU NO. 55.....JA-90-1171...GOA-4 BSA-4
(MEDIUM STERN TRAWLER)

TOMI MARU NO. 58.....JA-90-0643...GOA-4 BSA-4
(MEDIUM STERN TRAWLER)

TOMI MARU NO. 81.....JA-90-1192...GOA-4 BSA-4
(SMALL STERN TRAWLER)

TOMI MARU NO. 82.....JA-90-1193...GOA-4 BSA-4
(SMALL STERN TRAWLER)

TOMI MARU NO. 83.....JA-90-1170...GOA-4 BSA-4
(MEDIUM STERN TRAWLER)

TOMI MARU NO. 86.....JA-90-0222...GOA-4 BSA-4
(MEDIUM STERN TRAWLER)

TOMI MARU NO. 87.....JA-90-0198...GOA-4 BSA-4
(MEDIUM STERN TRAWLER)

TOMI MARU NO. 88.....JA-90-0612...GOA-4 BSA-4
(LONGLINE FISHING VESSEL)

TOMOE MARU.....JA-90-0238...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

TOSHIN MARU.....JA-90-0056...SNA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

TSUDA MARU.....JA-90-0337...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

WASHINGTON MARU.....JA-90-0227...SNA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

WORLD FONTAINE.....JA-90-0588...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

YAGISHIRI.....JA-90-0581...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

YAMASAN MARU NO. 102.....JA-90-1185...GOA-4 BSA-4
(SMALL STERN TRAWLER)

YAMATO MARU.....JA-90-0339...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

YASAKA REEFER.....JA-90-0052...WOC-3 SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

YAYOI MARU.....JA-90-0018...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

YOHTEI MARU.....JA-90-0076...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

YOKO MARU.....JA-90-0087...WOC-3 SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

YOSHI MARU NO. 38.....JA-90-0229...BSA-4
(SMALL STERN TRAWLER)

YURISHIMA MARU.....JA-90-0235...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

ZUIFU.....JA-90-0646...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

ZUIHOO MARU NO. 28.....JA-90-0565...GOA-4 BSA-4
(MEDIUM STERN TRAWLER)

ZUIHOO MARU NO. 88.....JA-90-0231...GOA-4 BSA-4
(MEDIUM STERN TRAWLER)

ZUIYO MARU NO. 3.....JA-90-0331...GOA-4 BSA-4
(LARGE STERN TRAWLER)

CHEOG YANG HO.....KS-90-0003...GOA-4 BSA-4
(LARGE STERN TRAWLER)

CORAL STAR.....KS-90-0135...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

CRYSTAL DAHLIA.....KS-90-0034...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

DAE JIN NO. 21.....KS-90-0136...GOA-4 BSA-4
(LARGE STERN TRAWLER)

DAE SUNG HO.....KS-90-0051...GOA-4 BSA-4
(LARGE STERN TRAWLER)

DAEJIN NO. 52.....KS-90-0037...GOA-4 BSA-4
(LARGE STERN TRAWLER)

DONG BANG HO.....KS-90-0152...GOA-4 BSA-4
(LARGE STERN TRAWLER)

DONGSAN-HO.....KS-90-0039...GOA-4 BSA-4
(LARGE STERN TRAWLER)

GAE CHEOG HO.....KS-90-0112...GOA-4 BSA-4
(FACTORY SHIP)

GAE CHEOG HO NO. 2.....KS-90-0090...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

GAE YANG HO.....KS-90-0001...GOA-4 BSA-4
(LARGE STERN TRAWLER)

HAN JIN HO.....KS-90-0045...GOA-4 BSA-4
(MEDIUM STERN TRAWLER)

HAN KIL HO.....KS-90-0044...GOA-4 BSA-4
(MEDIUM STERN TRAWLER)

HANIL HO.....KS-90-0107...GOA-4 BSA-4
(MEDIUM STERN TRAWLER)

JOON SUNG HO.....KS-90-0137...GOA-4 BSA-4
(LARGE STERN TRAWLER)

KYUNG YANG HO.....KS-90-0085...GOA-4 BSA-4
(LARGE STERN TRAWLER)

NAM BUG HO.....KS-90-0033...GOA-4 BSA-4
(LARGE STERN TRAWLER)

NO. 1 HAN SUNG.....KS-90-0106...GOA-4 BSA-4
(LARGE STERN TRAWLER)

NO. 101 HYUN IL.....KS-90-0151...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

NO. 103 NAM CHANG.....KS-90-0141...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

NO. 29 TAE BAEK.....KS-90-0091...WOC-4 GOA-4 BSA-4
(FACTORY SHIP)

NO. 3 CHIL BO SAN HO.....KS-90-0074...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

NO. 5 CHIL BO SAN HO.....KS-90-0075...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

NO. 501 DONG SOO.....KS-90-0119...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

NO. 602 TAE WOONG.....KS-90-0105...GOA-4 BSA-4
(MEDIUM STERN TRAWLER)

NO. 7 SANG WON.....KS-90-0041...GOA-4 BSA-4
(MEDIUM STERN TRAWLER)

NO. 70 OYANG HO.....KS-90-0048...GOA-4 BSA-4
(LARGE STERN TRAWLER)

NO. 71 DONG BANG.....KS-90-0121...GOA-4 BSA-4
(LARGE STERN TRAWLER)

NO. 77 DONG BANG.....KS-90-0118...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

NO. 9 JEONG WOO.....KS-90-0139...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

NO. 99 TAE BAEK.....KS-90-0079...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

OCEAN EXPRESS.....KS-90-0142...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

ODAEYANG NO. 106.....KS-90-0099...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

ORYONG NO. 501.....KS-90-0123...GOA-4 BSA-4
(LARGE STERN TRAWLER)

ORYONG NO. 503.....KS-90-0095...GOA-4 BSA-4
(LARGE STERN TRAWLER)

OYANG HO.....KS-90-0006...GOA-4 BSA-4
(LARGE STERN TRAWLER)

PUNG YANG HO.....KS-90-0004...GOA-4 BSA-4
(LARGE STERN TRAWLER)

REEFER NO. 1.....KS-90-0147...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

REEFER NO. 2.....KS-90-0148...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

REEFER NO. 3.....KS-90-0149...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

REEFER NO. 5.....KS-90-0098...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

REEFER NO. 6.....KS-90-0150...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SALVIA.....KS-90-0103...GOA-4 BSA-4
(LARGE STERN TRAWLER)

SHIN AN HO.....KS-90-0047...GOA-4 BSA-4
(LARGE STERN TRAWLER)

SHIN YANG HO.....KS-90-0122...GOA-4 BSA-4
(LARGE STERN TRAWLER)

SUNFLOWER NO. 7.....KS-90-0002...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

TAE BAEK HO.....KS-90-0042...GOA-4 BSA-4
(LARGE S"ERN TRAWLER)

TAE WOONG HO.....KS-90-0143...GOA-4 BSA-4
(LARGE STERN TRAWLER)

TAE YANG NO. 12.....KS-90-0081...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

YUYANG HO.....KS-90-0104...GOA-4 BSA-4
(LARGE STERN TRAWLER)

ALIDA.....NL-90-0006...NWA-1*
(LARGE STERN TRAWLER)

ASTRID.....NL-90-0028...NWA-1*
(LARGE STERN TRAWLER)

CORNELIS VROLIJK FZD SCH 171....NL-90-0041...NWA-1*
(LARGE STERN TRAWLER)

DIRK DIRK.....NL-90-0026...NWA-1*
(LARGE STERN TRAWLER)

FRANZISKA.....NL-90-0043...NWA-1*
(LARGE STERN TRAWLER)

FRIESLAND.....NL-90-0031...NWA-1*
(MEDIUM STERN TRAWLER)

GEERTRUID MARGRETA.....NL-90-0032...NWA-1*
(LARGE STERN TRAWLER)

PRINS BERNHARD.....NL-90-0007...NWA-1*
(LARGE STERN TRAWLER)

TETMAN HETTE.....NL-90-0042...NWA-1*
(LARGE STERN TRAWLER)

ADMIRAL ARCISZEWSKI.....PL-90-0081...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

AKRUX.....PL-90-0121...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

ALTAIR.....PL-90-0115...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

AMAREL.....PL-90-0046...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

ANTARES.....PL-90-0037...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

AQUARIUS.....PL-90-0103...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

AQUILA.....PL-90-0097...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

ARCTURUS.....PL-90-0038...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

ATRIA.....PL-90-0123...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

AWIOR.....PL-90-0060...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

BOGAR.....PL-90-0085...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

BURAN.....PL-90-0033...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

CASSIOPEIA.....PL-90-0099...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

DALMOR 2.....PL-90-0114...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

DELFIN.....PL-90-0065...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

DENEBOLA.....PL-90-0075...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

GEMINI.....PL-90-0048...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

GRINWAL.....PL-90-0007...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

HAJDUK.....PL-90-0066...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

HALNIAK.....PL-90-0029...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

HOMAR.....PL-90-0124...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

INDUS.....PL-90-0094...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

KALMAR.....PL-90-0039...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

KANTAR.....PL-90-0118...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

KASZUBY 2.....PL-90-0027...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

KOCIEWIE.....PL-90-0116...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

KOLIAS.....PL-90-0050...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

KORWIN.....PL-90-0026...NWA-1*
(LARGE STERN TRAWLER)

KULBIN.....PL-90-0117...NWA-1*
(LARGE STERN TRAWLER)

KUNATKA.....PL-90-0021...NWA-1*
(LARGE STERN TRAWLER)

LANGUSTA.....PL-90-0015...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

LASKARA.....PL-90-0024...NWA-1*
(LARGE STERN TRAWLER)

LEWANTER.....PL-90-0030...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

M/V KURPIE.....PL-90-0120...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

MARLIN.....PL-90-0034...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

MAZURY.....PL-90-0098...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

MORS.....PL-90-0063...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

MUSTEL.....PL-90-0012...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

ORCYN.....PL-90-0077...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

ORLEN.....PL-90-0078...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

OTOL.....PL-90-0011...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

PARMA.....PL-90-0084...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

PERSEUS.....PL-90-0004...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

PODLASIE.....PL-90-0122...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

POLLUX.....PL-90-0006...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

POWISLE.....PL-90-0119...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

PROF. BOGUCKI.....PL-90-0107...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

REGULUS.....PL-90-0095...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

REKIN.....PL-90-0080...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

SAGITTA.....PL-90-0040...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

SIRIUS.....PL-90-0062...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

SOLANO.....PL-90-0112...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

TAZAR.....PL-90-0054...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

TERRAL.....PL-90-0086...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

TORNADO.....PL-90-0113...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

TUNEK.....PL-90-0045...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

VEGA.....PL-90-0055...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

WALEN.....PL-90-0009...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

WINETA.....PL-90-0061...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

WLOCZNIK.....PL-90-0020...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

ZONDA.....PL-90-0102...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

ZULAWY.....PL-90-0041...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

15 SYEZD PROFSOYUZOV.....UR-90-0087...WOC-4 BSA-4
(LARGE STERN TRAWLER)

ALEKSANDR KSENOFONTOV.....UR-90-0862...NWA-4
(LARGE STERN TRAWLER)

ALEXANDR MAKSUTOV.....UR-90-0553...WOC-4 BSA-4
(LARGE STERN TRAWLER)

ALTAYSKIE GORY.....UR-90-0259...WOC-3 BSA-3
(CARGO/TRANSPORT VESSEL)

BAGANOVO.....UR-90-0758...WOC-4 BSA-4
(LARGE STERN TRAWLER)

BEREG MECHTY.....UR-90-0753...WOC-3 BSA-3
(CARGO/TRANSPORT VESSEL)

BEREG NADEZDY.....UR-90-0754...WOC-3 BSA-3
(CARGO/TRANSPORT VESSEL)

DANKO.....UR-90-0001...WOC-4 BSA-4
(LARGE STERN TRAWLER)

DELEGAT.....UR-90-0762...WOC-3 BSA-3
(TANKER FUEL/WATER)

DUBRAVA.....UR-90-0832...WOC-3 BSA-3
(CARGO/TRANSPORT VESSEL)

GERMAN MATERN.....UR-90-0805...WOC-3 BSA-3
(CARGO/TRANSPORT VESSEL)

GNEVNYY.....UR-90-0861...WOC-4 BSA-4
(LARGE STERN TRAWLER)

KAMCHATSKY BEREG.....UR-90-0755...WOC-3 BSA-3
(CARGO/TRANSPORT VESSEL)

KAZALINSK.....UR-90-0171...WOC-4 BSA-4
(LARGE STERN TRAWLER)

KAZATIN.....UR-90-0830...WOC-4 BSA-4
(LARGE STERN TRAWLER)

KHRUSTALNYI BEREG.....UR-90-0732...WOC-3 BSA-3
(CARGO/TRANSPORT VESSEL)

KLYUCHEVSKOY.....UR-90-0082...WOC-4 BSA-4
(LARGE STERN TRAWLER)

KOMMUNARY NIKOLAEVA.....UR-90-0860...WOC-3 BSA-3
(CARGO/TRANSPORT VESSEL)

KONTAIKA.....UR-90-0076...WOC-4 BSA-4
(LARGE STERN TRAWLER)

KORENGA.....UR-90-0215...WOC-4 BSA-4
(LARGE STERN TRAWLER)

KULUNDA.....UR-90-0093...WOC-4 BSA-4
(LARGE STERN TRAWLER)

KUSHKA.....UR-90-0217...WOC-4 BSA-4
(LARGE STERN TRAWLER)

MESKUPAS ADOMAS.....UR-90-0588...NWA-4
(LARGE STERN TRAWLER)

MYS CHASOVOY.....UR-90-0176...BSA-4
(LARGE STERN TRAWLER)

MYS EGOROVA.....UR-90-0097...WOC-4 BSA-4
(LARGE STERN TRAWLER)

MYS GROZNYY.....UR-90-0185...WOC-4 BSA-4
(LARGE STERN TRAWLER)

MYS LAZAREVA.....UR-90-0013...WOC-4 BSA-4
(LARGE STERN TRAWLER)

NIDA.....UR-90-0865...NWA-4
(LARGE STERN TRAWLER)

OSTROV KARAGINSKIY.....UR-90-0255...WOC-3 BSA-3
(CARGO/TRANSPORT VESSEL)

OSTROV LISYANSKOGO.....UR-90-0254...WOC-3 BSA-3
(CARGO/TRANSPORT VESSEL)

OSTROV SHMIDTA.....UR-90-0256...WOC-3 BSA-3
(CARGO/TRANSPORT VESSEL)

OSTROV SHOKALSKOGO.....UR-90-0257...WOC-3 BSA-3
(CARGO/TRANSPORT VESSEL)

OZYORNYE KLYUCHI.....UR-90-0223...WOC-4 BSA-4
(LARGE STERN TRAWLER)

PENJINSKIY ZALIV.....UR-90-0831...WOC-3 BSA-3
(CARGO/TRANSPORT VESSEL)

PIONER NIKOLAEVA.....UR-90-0854...WOC-4 BSA-4
(LARGE STERN TRAWLER)

POYMA.....UR-90-0201...WOC-4 BSA-4
(LARGE STERN TRAWLER)

PRIOZERSK.....UR-90-0038...WOC-4 BSA-4
(LARGE STERN TRAWLER)

PELIGER.....UR-90-0866...NWA-4
(LARGE STERN TRAWLER)

SHAPOSHNIKOVO.....UR-90-0863...NWA-4
(LARGE STERN TRAWLER)

SOVETSKIYE PROFSOYUZY.....UR-90-0705...WOC-4 BSA-4
(LARGE STERN TRAWLER)

SULAK.....UR-90-0238...WOC-4 BSA-4
(FACTORY SHIP)

SUVALKIYA.....UR-90-0864...NWA-4
(LARGE STERN TRAWLER)

SVETLAJA.....UR-90-0080...WOC-4 BSA-4
(LARGE STERN TRAWLER)

TAEJNYI BEREG.....UR-90-0770...WOC-3 BSA-3
(CARGO/TRANSPORT VESSEL)

TERNEI.....UR-90-0202...WOC-4 BSA-4
(LARGE STERN TRAWLER)

TIGIL.....UR-90-0162...WOC-4 BSA-4
(LARGE STERN TRAWLER)

TRUSKAVETS.....UR-90-0559...WOC-4 BSA-4
(LARGE STERN TRAWLER)

TURKUL.....UR-90-0172...WOC-4 BSA-4
(LARGE STERN TRAWLER)

USSURIISKAIA TAIGA.....UR-90-0782...WOC-3 BSA-3
(CARGO/TRANSPORT VESSEL)

UST-KARSK.....UR-90-0728...WOC-3 BSA-3
(TANKER FUEL/WATER)

VASILII POLECHUK.....UR-90-0804...WOC-3 BSA-3
(CARGO/TRANSPORT VESSEL)

VOSTOCHNYI BEREG.....UR-90-0761...WOC-3 BSA-3
(CARGO/TRANSPORT VESSEL)

YUBILEY OKTIABRIA.....UR-90-0064...WOC-4 BSA-4
(LARGE STERN TRAWLER)

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[FR Doc. 89-30229 Filed 12-28-89; 8:45 am]
BILLING CODE 3510-22-C

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts' next scheduled meeting is Thursday, 18 January 1990 at 10:00 a.m. at the Commission's offices at 708 Jackson Place, NW., Washington, DC 20006 to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government. Handicapped persons should call the offices (566–1066) for details concerning access to meetings.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC, 21 December 1989.

Charles H. Atherton,

Secretary.

[FR Doc. 89–30258 Filed 12–28–89; 8:45 am]

BILLING CODE 6330–01–M

DEPARTMENT OF ENERGY

Secretarial Panel for the Evaluation of Epidemiologic Research Activities; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Secretarial Panel for the Evaluation of Epidomiologic Research Activities, DOE.

Date and Time: Wednesday, January 17, 1990, 8:30 a.m.–5:30 p.m., Thursday, January 18, 1990, 8:00 a.m.–4:30 p.m.

Place: The Clarion Hotel, 131 West 6th Street, Cincinnati, Ohio 45202, (513) 352–2110.

Contact: Steven F. Boedigheimer, Executive Director, S.P.E.E.R.A., 1000 Independence Ave., SW., Washington, DC 20585, Telephone: (202) 586–7304.

Purpose: The Panel was established to provide the Secretary with an independent evaluation of the Department of Energy's epidemiology program and the appropriateness, effectiveness, and overall quality of the Department's epidemiologic research activities.

Tentative Agenda:

Wednesday, January 17, 8:30 a.m.–5:30 p.m.

8:30–10:00 a.m. National Center for Health Statistics—Robert Bilgrad, M.P.H.; Association for Vital Records and Health Statistics—George Van Amberg

10:00–10:45 a.m. Invited Testimony and/or Work Session

10:45–11:45 a.m. Occupational Safety and Health Administration; Officials of the Occupational Safety and Health Administration

11:45–1:15 p.m. Lunch

1:15–2:30 p.m. National Institute for Occupational Safety and Health—Dr. Larry Fine, Dr. David Brown, Richard Lemen

2:30–3:45 p.m. National Cancer Institute—Dr. Seymour Jablon

3:45–4:30 p.m. Department of Energy, Richland Operations Office—Michael Lawrence

4:30–5:30 p.m. Invited testimony and/or work session.

Thursday, January 18, 8:00 a.m.–4:30 p.m.

8:00–8:45 a.m. Department of Energy, Management and Administration; Officials of the Office of Budget

8:45–10:00 a.m. District 34, International Association of Machinists—Al O'Connor; International Chemical Workers Union—David Ortlieb, John Webster; Fernald Atomic Trades and Labor Council—David Day

10:00–10:30 a.m. Fernald Residents for Environmental Safety and Health—Lisa Crawford

10:30–11:45 a.m. Public Comment

11:45–1:15 p.m. Lunch

1:15–4:30 p.m. Invited Testimony and Work Session

Public Participation: The meeting is open to the public. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will, in the Chairperson's judgment, facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact the Executive Director at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. It is requested that oral presenters provide 15 copies of their statements at the time of their presentations.

Minutes: Available for public review and copying approximately 30 days following the meeting at the Public Reading Room 1E–190, Forrestal Building, 1000 Independence Ave, SW., Washington, DC. between 9 a.m. and 4 p.m., Monday through Friday except Federal holidays.

Issued: Washington, DC, on: December 26, 1989.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 89–30272 Filed 12–28–89; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER90–62–000, et al.]

Utah Power & Light Company, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

December 19, 1989.

Take notice that the following filings have been made with the Commission:

1. Utah Power & Light Company

[Docket No. ES90–62–000]

Take notice that on November 15, 1989, Utah Power & Light Company (Utah) tendered for filing revised Exhibit A of its November 8, 1989, filing in this docket.

Comment date: January 3, 1990, in accordance with Standard Paragraph E at the end of this notice.

2. Wisconsin Power & Light Company

[Docket No. ER90–101–000]

Take notice that on December 11, 1989, Wisconsin Power & Light Company (WPL) tendered for filing an amendment to the wholesale power agreement dated November 29, 1989, between the Village of Wonewoc and WPL. WPL states that this amendment revises the previous agreement between the two parties which was dated November 25, 1989, and is designated Rate Schedule No. 107 by the Commission.

The purpose of this amendment is to lengthen the notice period required for termination.

WPL requests that an effective date concurrent with the contract effective date be assigned. WPL states that copies of the agreement and the filing have been provided to the Village of Wonewoc and the Wisconsin Public Service Commission.

Comment date: January 3, 1990, in accordance with Standard Paragraph E at the end of this notice.

3. Vermont Electric Power Company, Inc.

[Docket No. ER88–447–000]

Take notice that on December 7, 1989, Vermont Electric Power Company, Inc. (VELCO) tendered for filing an Amendment to Supplement No. 1 to FERC Rate Schedule No. 235 and an

Amendment to Supplement No. 3 to FERC Rate Schedule No. 240, Rate Schedules that provide for the allocation of transmission capacity on the VELCO system among Vermont distribution utilities. At the same time, VELCO also filed an Exhibit A to FERC Rate Schedule No. 235 and an Exhibit A to FERC Rate Schedule No. 240. The new Exhibits set forth allocations of transmission capacity as of December 31, 1987.

VELCO proposes that the Amendments become effective on July 1, 1989. VELCO requests a waiver of the Commission's Regulations to allow the filings to become effective as of that date. If the waiver is granted, VELCO states that there will be no adverse effect upon any of VELCO's customers. If the waiver is not granted, VELCO requests that the filings become effective on February 7, 1990, or on such other date as the Commission deems appropriate.

VELCO states that it has served the filing upon the Vermont Public Service Board and upon VELCO's transmission customers: Allied Power and Light Company, Barton Village, Inc., The City of Burlington Electric Department, Central Vermont Public Service Corporation, Citizens Utilities Company, Village of Enosburg Falls Water and Light Department, Franklin Electric Light Company, Green Mountain Power Corporation, Village of Hardwick Electric Department Village of Hyde Park, Inc., Village of Jacksonville, Village of Johnson Electric Light Department, Village of Ludlow Electric Light Department, Village of Lyndonville Electric Department, Village of Northfield Electric Department, Village of Orleans Electric Department, Village of Readsboro Electric Light Department, Rochester Light and Power Company, Village of Stowe Water and Light Department, Village of Swanton, Vermont Department of Public Service, Vermont Electric Cooperative, Vermont Electric Generation and Transmission Cooperative, Inc., Vermont Marble Company, Vermont Public Power Supply Authority, and Washington Electric Cooperative, Inc.

Comment date: January 3, 1990, in accordance with Standard Paragraph E at the end of this notice.

4. Indianapolis Power & Light Company

[Docket No. ER90-71-000]

Take notice that Indianapolis Power & Light Company on December 12, 1989, tendered an amendment to the filing made November 16, 1989 of Modification No. 3 to the Interconnection Agreement dated December 1, 1981, (the 1981 Agreement) between Indianapolis Power & Light Company (IPL) and Hoosier Energy Rural Electric Cooperative, (Hoosier). The 1981 Agreement is designated as Rate Schedule FPC No. 18.

The amended filing corrects an inadvertent error in Section 2.12 of Service Schedule B to Modification No. 3 which covers energy transfer. A waiver of the 60-day notice requirements is requested to make Modification No. 3 effective December 31, 1989.

Copies of the amended filing were mailed to Hoosier Energy Rural Electric Cooperative, Inc. and to the Indiana Utility Regulatory Commission.

Comment date: January 3, 1990, in accordance with Standard Paragraph E at the end of this notice.

5. Public Service Company of Colorado

[Docket No. ER87-577-000]

Take notice that Public Service Company of Colorado,on December 11, 1989, tendered for filing proposed changes in its FERC Electric Service Tariff No. 43. The proposed changes update the term and change the contract price for non-firm power from the "based on a share the savings basis or 115 percent of the supplying party's cost to supply such energy or mutually agreed upon rates" to a negotiated price deemed to "be of mutual benefit to both parties."

The proposed tariff change is the result of a revised Letter Agreement between Public Service Company of Colorado and the City of Colorado Springs. The above mentioned change in tariff coincides with the change made to the letter Agreement.

Copies of the filing were served upon the Public utility's jurisdictional customers, the Public Utilities Commission of the State of Colorado and the State of Colorado's Office of Consumer Counsel.

Comment date: January 3, 1990, in accordance with Standard Paragraph E at the end of this notice.

6. Southern California Edison Company

[Docket No. ER90-105-000]

Take notice that on December 13, 1989, Southern California Edison Company (Edison) tendered for filing, the following Letter Agreement No. 4:

Letter Agreement No. 4 to the Edison-SMUD Power Sale Agreement Between Southern California Edison company (Edison) and Sacramento Municipal Utility District (SmUD).

The Letter Agreement amends the Power Sale Agreement to allow SMUD to terminate the Power Sale Agreement or reduce the purchase amount (by 100 MW no earlier than January 1, 1995) because of the potential impact the recently filed PG&E Interconnection Rate Schedule (FERC Docket No. ER89-475) may have on SMUD utilizing the PG&E transmission service to import power from Edison.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: January 3, 1990, in accordance with Standard Paragraph E at the end of this notice.

7. LUZ Solar Partners VIII, Ltd.

[Docket No. QF88-470-001]

On December 13, 1989, LUZ Solar Partners VIII, Ltd. (Applicant), a California Limited Partnership, c/o LUZ Engineering Corporation, 924 Westwod Boulevard, Suite 1000, Los Angeles, California 90024 submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located approximately 12 miles due east of Kramer Junction, California, 25 miles west-northwest of Barstow, California, and six miles north of California Highway 58, on Harper Lake Road. The facility will consist of a solar collector field, a solar-fired preheater/steam generator, a solar-fired superheater, a solar-fired reheat unit, a natural gas-fired heat transfer fluid heater and a single inlet steam turbine generator. The primary energy source will be solar energy. The net electric power production capacity of the facility will be 80 MW.

The certification for the original application was issued on December 27, 1988 (45 CFR ¶ 62,261). The current recertification is requested due to change in the ownership structure and a change in configuration of the facility. The auxiliary gas-fired boiler, as proposed in the original application, is replaced with a larger heat transfer fluid (HTF) heater. The facility will also include Applicant's undivided one-sixth co-tenancy interest in a 220 KV transmission line connecting the facility to the Southern California Edison Company's transmission system, the purchasing utility. Subsidiaries of Iowa-Illinois Gas and Electric Company, an electric utility and FPL Group, Inc., also an electric utility holding company will have equity interests in the facility.

Comment date: Thirty days from publication in the **Federal Register**, in

accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-30213 Filed 12-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 9401]

Halecrest Co.; Granting Extension of Time To Comment on DEIS and Denying Motion To Delay Public Hearing

December 22, 1989.

On November 24, 1989, notice of availability of the draft environmental impact statement (DEIS) for the proposed Mount Hope Pumped Storage Project No. 9401 was published in the **Federal Register**, with comments on the document due forty-five days later, or January 8, 1990. On December 4, 1989, the Corps of Engineers issued notice of a Joint Public Hearing on the DEIS to be conducted by the Corps and the Commission on January 4, 1990. On December 12, 1989, the Township of Rockaway, an intervenor, filed a request for a forty-five day extension of time to file comments on the DEIS and for a delay of the proposed public hearing.[1]

Upon consideration, notice is hereby given that a thirty day extension of time for all interested persons to file comments on the DEIS is granted. Interested persons may file comments up to and including February 7, 1990.

The request to delay the public hearing is denied. The written comments which may be filed in the extended period for comment on the DEIS are accorded the same treatment as oral comments which may be presented at the public hearing. Accordingly, those persons who are not prepared to present oral comments at the public hearing may still submit comments in writing until the close of the extended period for comment on the DEIS.

Lois D. Cashell,

Secretary.

[FR Doc. 89-30214 Filed 12-28-89; 8:45 am]

BILLING CODE 6717-01-M

[1] Thus far, requests for extensions of time have also been received from Constance Pojanowski, Nancy and Michael Vogelstein, Anthony Staninas, David Mortensen and Friends of Ford-Faesch House, Historical Society of Rockaway.

[Docket No. RP89-223-002]

Black Marlin Pipeline Co.; Proposed Changes in FERC Gas Tariff

December 21, 1989.

Take notice that on December 15, 1989 Black Marlin Pipeline Company (Black Marlin), tendered for filing the following Primary and Alternative Tariff Sheets to its FERC Gas Tariffs to be effective March 1, 1990:

Primary Tariff Sheet

Original Volume No. 1

Substitute 2nd Revised Sheet No. 4

Alternate Tariff Sheet

First Revised Volume No. 1

Substitute 1st Revised Sheet No. 4

Black Marlin states that these tariff sheets are being filed in compliance with the Federal Energy Regulatory Commission's (Commission) orders issued September 29, 1989, October 13, 1989 and November 16, 1989 in the above referenced docket to reflect the effect on rates of a revised amortization period for determining the appropriate annual amortization amount of Black Marlin's excess tax reserve. The Primary Tariff Sheet was submitted as part of Black Marlin's FERC Gas Tariff Original Volume No. 1 to become effective March 1, 1990. In addition, the above-listed Alternative Tariff Sheet to Black Marlin's FERC Gas Tariff First Revised Volume No. 1 were submitted to become effective on March 1, 1990, if Black Marlin accepts an Order No. 500 blanket certificate and its FERC Gas Tariff First Revised Volume No. 1 becomes effective prior to March 1, 1990.

These tariff sheets are being filed to reflect a proposed amortization period for determining the appropriate annual amortization amount of Black Marlin's excess tax reserve of approximately six (6) years.

Black Marlin states that copies of the filing were served upon all of its customers and interested State Commission. Any person desiring to protest said filing should file a protest with the Commission, 825 North Capitol Street, NE., Washington, DC 20426 by December 29, 1989, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. 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. 89-30215 Filed 12-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-60-000]

Colorado Interstate Gas Co.; Petition for Waiver

December 21, 1989.

Take notice that on December 15, 1989, Colorado Interstate Gas Company (CIG) petitioned for an extension of time to file the materials required by 18 CFR 154.310(d)(2)(ii)(1989).

CIG states that it will file a new general notice of rate change pursuant to section 4(e) of the Natural Gas Act on or about December 29, 1989, and that, consequently, it will be subject to the requirements of the Order No. 483 regulations. CIG requests that it be permitted to delay the submission of the specified materials until May 31, 1990 to be effective July 1, 1990 (the date that CIG's new rates will become effective assuming a normal five-month suspension period). CIG states that continuation of its unit of sales methodology for determining its commodity cost of gas will have no immediate rate consequences, and no party will be prejudiced if CIG receives a waiver until May 31 to comply with the filing requests of Order No. 483.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure [18 CFR 385.214, 385.211 (1989)]. All such motions or protests should be filed on or before December 29, 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. 89-30216 Filed 12-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-434-003, RP88-185-002]

El Paso Natural Gas Co.; Compliance Tariff Filing

December 21, 1989.

Take notice that on December 14, 1989, El Paso Natural Gas Company ("El Paso") tendered for filing pursuant to Part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act and in compliance with Opinion No. 336 and Order Issuing Certificate of Public Convenience and Necessity (hereinafter referred to as "Opinion No. 336") issued November 29, 1989 at Docket Nos. CP88-434-001 and RP88-185-001, certain tariff sheets for inclusion in El Paso's FERC Gas Tariff, First Revised Volume No. 1, Original Volume No. 1-A, Third Revised Volume No. 2 and Original Volume No. 2A.

El Paso states that in compliance with Opinion No. 336, El Paso is submitting the tariff sheets to provide for the implementation of El Paso's Gas Inventory Charge ("GIC") mechanism reflecting El Paso's proposed procedures specifically including deadlines for initial nominations to reflect levels of service, and the procedures for allocation of capacity at constraint points on its mainline system or any portion thereof including the points at which gas is tendered or delivered. Also contained in the filing is an explanation of El Paso's offer to release gas to its customers.

El Paso further states that prior to implementation of the GIC mechanism, El Paso will file additional tariff sheets necessary to make various conforming changes in other portions of its Tariff, inncluding changes to the applicability provisions of the Annual Charge Adjustment Provision, the Gas Research Institute General Research, Development and Demonstation Funding Unit Adjustment Provision and the Throughput Surcharge under the Take-or-Pay Buyout and Buydown Cost Recovery provision, and other conforming changes to existing rate schedules and general terms and conditions, including the termination of Section 19, Purchased Gas Cost Adjustment Provision.

El Paso respectfully requested that the Commission grant such waivers of its applicable rules and regulations as may be necessary to permit the tendered tariff sheets to become effective prior to or coincident with El Paso's implementation of its GIC mechanism.

Copies of the filing were served upon all interstate pipeline system sales customers and shippers of El Paso, all parties of record at Docket Nos. CP88-434-000 and RP88-185-000, and interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before December 29, 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. 89-30217 Filed 12-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-50-002]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

December 21, 1989.

Take notice that on December 15, 1989, Florida Gas Transmission Company (FGT) tendered for filing tariff sheets to its FERC Gas Tariff, to be effective January 1, 1990.

FGT states that the tariff sheets are being filed in compliance with the Commission's order dated November 30, 1989 in Docket No. RP89-50-000, *et al.* to reflect new base tariff rates to be effective January 1, 1990.

For purposes of restating the base tariff rates applicable for service under Rate Schedules G, I and T-3, FGT has reflected the weighted average cost of gas included in its most recently approved Quarterly PGA filing effective November 1, 1989 in Docket No. TQ90-1-34-000.

FGT states that copies of the filing have been mailed to each of its customers purchasing gas and receiving transportation services under its F.E.R.C. Gas Tariff, to its affected direct sales customers and to interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such protests should be filed on or before December 29, 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. 89-30218 Filed 12-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-20-000]

Great Lakes Gas Transmission Co.; Granting Late Interventions

December 21, 1989.

Motions to intervene in the above-captioned docket were due no later than November 8, 1989. Motions to intervene out of time were filed on November 22, 1989, by Peoples Gas Light and Coke Company and North Shore Gas Company, and on November 30, 1989, by Southeastern Michigan Gas Company. No answers in opposition to the motions were filed.

Movants appear to have legitimate interests in this proceeding that are not adequately represented by other parties. Granting the interventions will not cause delay or prejudice other parties. Accordingly, the interventions will be granted.

Pursuant to § 375.302 of the Commission's regulations [18 CFR 375.302 (1989)], the movants are permitted to intervene in this proceeding subject to the Commission's rules and regulations under the Natural Gas Act, 15 U.S.C. 717-717 (W) (1982). Participation of the intervenors shall be limited to matters set forth in their motions to intervene. The admission of the intervenors shall not be construed as recognition by the Commission that the intervenors might be aggrieved by any order entered in this proceeding.

Lois D. Cashell,

Secretary.

[FR Doc. 89-30219 Filed 12-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP90-406-000, RP89-37-000, RP89-82-000]

High Island Offshore System, Application and Offer of Settlement

December 21, 1989.

Take notice that on December 15, 1989, High Island Offshore System (HIOS), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP90-406-000 an application pursuant to section 7(c) of the National Gas Act for a certificate of public convenience and necessity authorizing HIOS to provide an experimental capacity brokering program, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The application was filed as part of an offer of settlement in Docket Nos. RP89-37-000 and RP89-82-000.[1]

HIOS' stipulation and agreement which constitutes an offer of settlement provides, in part, that:

> All firm shippers on the HIOS system, including HIOS, will be authorized to broker their firm capacity rights on HIOS on an experimental basis.

In accordance with this provision, HIOS requests that the Commission, in conjunction with its approval of HIOS' offer, issue such certificate authority as may be necessary to enable the firm shippers on HIOS to participate in the experimental capacity brokering program on the terms and conditions set forth in Article IV of the stipulation and agreement (See Appendix hereto). HIOS states that it will not accept the certificate requested herein prior to the Commission's approval of the offer of settlement.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 4, 1990, file 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) 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 the 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 application 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 HIOS to appear or be represented at the hearing.

The initial comment period on the offer of settlement will be set to coincide with the notice period for the certificate application provided for above. Initial comments will be due no later than January 4, 1990. Reply comments will be due no later than January 14, 1990.

This notice supercedes the Presiding Judge's notice of December 13, 1989.

Lois D. Cashell,

Secretary.

Appendix

[Docket No. CP90-406-000]

Article IV

Capacity Brokering

HIOS will include a capacity brokering provision in its FERC Gas Tariff, on an experimental basis and for a limited term, upon the terms and conditions set forth below. HIOS has made it clear that a waiver of the biennial rate filing requirement, as set forth on Original Sheet No. 9 of HIOS' FERC Gas Tariff, First Revised Volume No. 1, for a period of one year (i.e., rates to be effective January 1, 1992), is an important consideration in reaching an agreement to include a brokering provision in its Tariff.

Terms and Conditions

1. All firm shippers on the HIOS system, including HIOS, will be authorized to broker their firm capacity rights on HIOS, on an experimental basis.

2. Firm capacity may be resold to anyone, including HIOS.

3. No permanent reassignment of capacity rights on HIOS will be permitted under the brokering provisions. Permanent reassignments of firm capacity prior to expiration of contracts will continue to be handled pursuant to the terms of HIOS' Rate Schedules T and FT and the regulations under Order Nos. 509 and 509-A.

4. To be brokered, a right to transportation must be identified as to the parties to the immediate transaction, receipt and delivery points, the quantity of gas to be transported, and the time period over which the right is to be exercised.

5. Available firm capacity may be brokered or rebrokered for any geographical route and any time period within the contractual rights of the original firm shipper, but in no event beyond the term of the experimental program. (*See* 17 below). The capacity may be sold at a negotiated price at or below the maximum allowed price. (*See* 8 below).

6. Multiple rebrokering will be permitted. Repackaging of brokered capacity will be permitted. Available capacity may be sold as firm or with a recall right, such that, under specified circumstances, the capacity will revert to the seller.

7. Sales of brokered capacity shall be made on a nondiscriminatory basis.

8. The maximum price for brokered capacity shall be the per-unit demand rate charged by HIOS for firm service under HIOS' Rate Schedules T and FT, plus the maximum commodity charge for throughput for such service, or, alternatively, the 100% load factor rate for such service. The minimum price for brokered capacity shall be 0.5 cents per Mcf.

9. HIOS will continue to make available all capacity that is not used by the firm shippers or their assignees, or that has not reverted to HIOS' control as firm capacity, on an interruptible basis, at a rate no greater that the maximum rate for interruptible service under HIOS' Rate Schedule IT.

10. All demand and commodity billings will be made to HIOS' firm contracting party, not ultimate shippers. In addition, all contractual, payment, scheduling and imbalance obligations will remain the direct responsibility of HIOS' firm contracting party.

11. All billings by HIOS' firm contracting party for brokered capacity will be directed, in turn, to the first party to whom capacity is brokered. Said first party will be responsible to HIOS' firm contracting party to satisfy any contractual, payment, scheduling, and imbalance obligations associated with the brokered capacity, irrespective of any rebrokering of the capacity.

12. All brokering transactions will be reported to the Commission by the responsible brokering parties, and not by HIOS in its role as the pipeline whose capacity is being brokered.

13. Apart from periodic reporting of brokering activity, HIOS' pipeline shippers will not be required to make any certificate, tariff, rate, or related filings as a condition of participation in HIOS brokering. The brokering of firm capacity, as authorized under any order approving this Agreement, will not be required, but rather, will be optional to HIOS' firm shippers.

14. Neither HIOS, the Commission Staff nor any party will seek a change in HIOS' current

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[1] On December 15, 1989, HIOS filed in Docket Nos. RP89-37 and RP89-82 an offer of settlement pursuant to Section 385.602 of the Commission's Regulations within which is contained HIOS' request for authorization to provide the experimental brokering program. The offer of settlement was tendered for filing on December 11, 1989. However, the certificate application fee required by § 381.207 of the regulations was not paid until December 15, 1989. Section 381.103 of the Commission's regulations provides that the filing date is the date on which the appropriate fee is paid.

rate design during the term of the experimental program.

15. The brokering authorized under the experimental brokering program shall not include brokering of any capacity on pipeline facilities other than the HIOS system.

16. The experimental brokering program shall be recognized as part of a settlement of the instant dockets and, as such, shall not be deemed precedential for any other interstate pipeline.

17. The term of the experimental program and related tariff provisions will expire at such time as this Agreement terminates pursuant to Article VII, *infra*. In HIOS' next rate filing under section 4(e) of the Natural Gas Act, HIOS may, at its option, submit tariff sheets that provide for continuation of the brokering program.

In connection with the above terms and conditions, HIOS has filed a Petition in Docket No. CP75-104-055 seeking a waiver of the effective rate changes required by the biennial filing condition until January 1, 1992.

[FR Doc. 89-30220 Filed 12-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-29-001]

Inland Gas Co., Inc.; Proposed Changes in FERC Gas Tariff

December 21, 1989.

Take notice that the Inland Gas Company, Inc., (Inland) on December 18, 1989, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1 to be effective December 1, 1989:

Primary Tariff Sheet

Substitute Alternate Fifth Revised Sheet No. 10

Inland states that on October 31, 1989, it filed revised tariff sheets to recover additional take-or-pay charges billed to Inland by Tennessee Gas Pipeline Company (Tennessee) amounting to $3,098,241 via an increase in the volumetric surcharge approved by the Federal Energy Regulatory Commission's (Commission) March 31, 1989 Order in Docket No. RP89-65-000. The Fifth Revised Sheet No. 10 reflected a 72 month amortization period and employed the base rates pending before the Commission in the Stipulation and Agreement submitted in Docket No. RP89-65-000. Inland also submitted an Alternate Fifth Revised Sheet No. 10 which reflected the 72 month amortization period noted above but employed the base rates accepted subject to refund pursuant to the February 7, 1989 filing in Docket No. RP89-65-000.

By letter order dated November 30, 1989 in Docket No. RP90-29-000, the Commission denied Inland's request to extend the amortization period from 48 months to 72 months for recovery of the $3,098,241 in take-or-pay costs billed to Inland by Tennessee. The Commission noted that since the base rates contained in Inland's Stipulation and Agreement in Docket No. RP89-65-000 were pending at the time, the Commission would accept and suspend the alternate tariff sheet which reflected Inland's current base rates. Further, the Commission directed Inland to refile Alternate Fifth Revised Sheet No. 10 to reflect a volumetric surcharge based on a 48 month amortization period.

In compliance with the November 30, 1989 letter order, Inland tenders the Substitute Alternate Fifth Revised Sheet No. 10 which reflects both the 48 month amortization period and Inland's current base rates. Pursuant to the November 30, 1989 letter order, this filing is made without prejudice to Inland refiling tariff sheets to reflect its settlement base rates at such time as the Commission approves the pending settlement at Docket Nos. RP89-65-000 and RP90-29-000.

Copies of the filing were served upon Inland's customers and interested state commissions and to each person designated on the official service list compiled by the Commission's Secretary in Docket Nos. RP89-65-000 and RP90-29-000.

Any person desiring to protest said filing, should file a protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20246, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before December 29, 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. 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. 89-30221 Filed 12-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-1-45-002]

Inter-City Minnesota Pipelines Ltd., Inc.; Tariff Filing

December 21, 1989.

Take notice that on December 19, 1989, Inter-City Minnesota Pipelines, Ltd., Inc. ("Inter-City"), 245 Yorkland Boulevard, North York, Ontario, Canada M2J 1R1, tendered for filing a revised tariff sheet to Original Volume 1 of its FERC Gas Tariff to be effective December 1, 1989.

Original Volume No. 1

Substitute Thirty-Sixth Revised Sheet No. 4

This substitute sheet is filed to correct Thirty-Sixth Revised Sheet No. 4 filed in this proceeding on November 21, 1989. Inter-City states that this revised tariff sheet is filed as an out-of-cycle PGA.

Inter-City states that copies of the filing have been mailed to all of its customers and the affected state regulatory commission.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, DC 20426, in accordance Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 29, 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. 89-30222 Filed 12-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-62-000]

Northwest Pipeline Corp.; Proposed Change in FERC Gas Tariff

December 21, 1989.

Take notice that on December 18, 1989, Northwest Pipeline Corporation ("Northwest") tendered for filing and acceptance the following tariff sheets to be a part of its FERC Gas Tariff.

First Revised Volume No. 1

Fifth Revised Sheet No. 101
First Revised Sheet No. 109
Third Revised Sheet No. 112

Original Volume No. 1-A

First Revised Sheet No. 318-A
Third Revised Sheet No. 401

The purposes of this filing are (1) to revise Northwest's tariff provisions to provide additional receipt point flexibility for Rate Schedule TF-1 customers, (2) to change Northwest's gas day for delivery points located on

Pacific Gas Transmission Company's pipeline, and (3) to make minor changes regarding odorization and title of gas on Northwest's system.

A copy of this filing is being mailed to all jurisdictional sales customers and affected state regulatory commissions.

Any person desiring to be heard or 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 of Practice and Procedure. All such motions or protests should be filed on or before December 29, 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. 89-30223 Filed 12-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-1-40-000]

Raton Gas Transmission Co.; Filing of Quarterly Purchased Gas Adjustment

December 21, 1989.

Raton Gas Transmission Company (Raton) on December 15, 1989, tendered for filing proposed changes to its FERC GAS TARIFF, Original Volume No. 1, to implement its quarterly purchased gas adjustment under the provisions of Order Nos. 483 and 483A. The proposed tariff sheets are to be effective January 1, 1990.

Raton states that the revised tariff sheet reflects a Demand Rate decrease of 41¢ to track rate changes filed by Colorado Interstate Gas Company (CIG) to be effective on Janary 1, 1990. The revised tariff sheet also reflects a decrease of 81.65¢ in commodity rate due to separate spot gas purchase contract effective December 1, 1989.

Copies of this filing have been served on Raton's two customers and the New Mexico Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211 (1988). All such motions or protests should be filed on or before December 29, 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. 89-30224 Filed 12-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-119-006 and RP89-208-002]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 21, 1989

Take notice that on December 14, 1989, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Docket No. RP89-119; Effective May 1, 1989

Substitute Tenth Revised Sheet No. 12
Substitute Seventh Revised Sheet No. 12A
Substitute First Revised Sheet No. 12B
Substitute First Revised Sheet No. 12C

Docket No. RP89-208; Effective August 1, 1989

Substitute Eleventh Revised Sheet No. 12
Substitute Eighth Revised Sheet No. 12A
Substitute Second Revised Sheet No. 12B
Substitute Second Revised Sheet No. 12C

Texas Gas states that this filing complies with a Commission Order issued December 7, 1989, in Docket No. RP89-119-001 requiring changes in the base and deficiency periods used by Texas Gas in recovering TOP Settlement Costs in Docket No. RP89-119. Texas Gas, by separate filing, is requesting rehearing or clarification of the December 7, 1989, Order to also make it applicable to those TOP Settlement Costs included in Docket No. RP89-208. The tariff sheets filed herein reflect the changed base and deficiency periods as required by the December 7, 1989, Order for costs incurred in Docket No. RP89-119, as well as for costs included in Docket No. RP89-208. Texas Gas requests any necessary waiver of the Commission's regulations as necessary to permit such tariff sheets to become effective as proposed.

Copies of the revised tariff sheets are being mailed to Texas Gas's jurisdictional sales customers and intervenors of the respective dockets, as well as interested state commissions.

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 §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before December 29, 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. 89-30225 Filed 12-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-58-000]

Texas Gas Transmission Corp; Proposed Changes in FERC Gas Tariff

December 21, 1989.

Take notice that on December 14, 1989, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following revised tariff sheets to its FERC Gas Tariff:

Original Volume No. 1

First Revised Substitute Twenty-second Revised Sheet No. 10
First Revised Substitute Twenty-second Revised Sheet No. 10A
Twelfth Revised Sheet No. 12
Ninth Revised Sheet No. 12A
Third Revised Sheet No. 12B
Third Revised Sheet No. 12C

Original Volume No. 2-A

Third Revised Sheet No. 14

Original Volume No. 3

Fourth Revised Sheet No. 23

Texas Gas states that the proposed tariff sheets are filed in order to implement recovery of a portion of $31.9 million in Take-or-Pay Settlement Payments incurred by Texas Gas pursuant to the procedures established in the Commission's Order No. 500. Specifically under those procedures, Texas Gas is proposing to absorb 25% (approximately $7.9 million) of the Take-or-Pay Settlement Payments, recover 25% (approximately $7.9 million) through a monthly fixed charge applicable to each of its current firm sales customers, and recover the remaining 50%

(approximately $15.9 million) of such payments through a volumetric or commodity surcharge to be applicable to all of Texas Gas's throughput, including both sales and transportation volumes.

Texas Gas states that this filing is without prejudice to a similar filing or filings which Texas Gas may make at a later date for the purpose of recovering additional Take-or-Pay Settlement Payments under the Commission's equitable sharing mechanism. Texas Gas also reserves the right to revise the filing as necessary to reflect any modifications made by the Commission or as required by any appellate court.

Texas Gas requests an effective date of January 1, 1990, for the proposed tariff sheets. Texas Gas further states that it has served copies of this filing upon the company's sales and transportation customers and interested state commissions.

Finally, Texas Gas has filed detailed support for the costs included in the filing in a Confidential Binder, for which it has requested privileged treatment, pursuant to the provisions of § 388.112 of the Commission's Regulations. In order to expedite this proceeding and to permit interested parties access to such confidential information, Texas Gas has submitted with the public filing a proposed protective order. Due to the highly confidential and proprietary nature of the information contained in "Confidential Binder B," Texas Gas requests that access to the contents thereof be limited pursuant to the terms of the protective order.

Texas Gas will maintain copies of Confidential Binder B at its Owensboro, Kentucky, offices and in the offices of Andrews & Kurth, in Washington, DC, for review by the appropriate parties, subject to the terms of the protective order.

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 December 29, 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 exclusive of Confidential Binder B, are on file with the Commission and are available for public inspection in the Public Reference Room. A copy of this filing, including Confidential Binder B, is in the non-public file with the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 89-30226 Filed 12-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-61-000]

Transcontinental Gas Pipe Line Corp.; Tariff Filing

December 21, 1989.

Take notice that on December 19, 1989, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Second Revised Sheet No. 259
First Revised Sheet No. 260
Second Revised Sheet No. 261
First Revised Sheet No. 262
Third Revised Sheet No. 373

The proposed effective date of the revised tariff sheets is January 14, 1990.

Transco states that the purpose of this filing is to revise Transco's FERC Gas Tariff to require under the tariff that shippers notify Transco within six business days for receipts and five business days for deliveries prior to the beginning of each month of its gas requirements for that month. Transco states that the purpose of the proposed change is to modify the procedures in Transco's tariff so that nominations are due at the conclusion of monthly supply negotiations between customers, shippers and suppliers, thereby easing the burden on customers and shippers caused by the current procedure required by the tariff and providing Transco with nominations more accurately reflecting the actual transactions negotiated by customers and shippers.

Transco states that it also proposes a revision of its Form of Service Agreement for use under Transco's Rate Schedule FT, such that the term for notice of termination is left blank. Transco states that thus revision will allow more flexibility for mutual agreement of the length of notice required for termination, in particular with regard to certain agreements resulting from Transco's Settlement, which was approved by the Commission on September 28, 1989.

Transco states that copies of the filing have been served upon its customers, state commissions, and other interested parties.

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, 823 North Capitol Street, NE., Washington, DC 20428, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before December 29, 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. 89-30227 Filed 12-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-2-11-000]

United Gas Pipe Line Co.; Filing of Revised Tariff Sheets

December 21, 1989.

Take notice that on December 15, 1989, United Gas Pipe Line Company (United), tendered for filing the following tariff sheets:

Second revised Sheet No. 1

Second Revised Sheet No. 4
Second Revised Sheet No. 4A
Second Revised Sheet No. 4B
First Revised Sheet No. 4C
First Revised Sheet No. 4E
First Revised Sheet No. 4F
First Revised Sheet No. 4G
First Revised Sheet No. 4H
Second Revised Sheet No. 4I

United states that the purpose of this filing is to reflect a decrease in the Gas Research Institute (GRI) Adjustment Charge applicable to sales and transportation deliveries to distributors for resale, to pipelines which are not members of GRI and to ultimate customers.

United states that on October 10, 1989, the Commission issued Opinion No. 334 in Docket No. RP89-187-000. The Opinion provides that, as a member of GRI, United may file under its Gas Research Institute Charge Adjustment Provision to collect, in advance of payment to GRI, 1.30 cents per Mcf (1.26 cents per Dth) on sales and transportation deliveries. This charge will replace the currently effective charge of 1.51 cents per Mcf. All amounts collected under this provision will be remitted to GRI, less any applicable taxes.

United states that the revised tariff sheets are being mailed to its

jurisdictional customers and to 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 such accordance with §§ 385.214 and 385.211 of the Commission's regulations. All such petitions or protests should be filed on or before December 29, 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 this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-30228 Filed 12-28-89; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Proposed Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the proposed procedures for disbursement of $200,000 (plus accrued interest) which was remitted by Petraco-Valley Oil & Refining Company. The DOE has tentatively determined that funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges.

DATE AND ADDRESS: Comments must be filed in duplicate within 30 days from date of publication of this notice in the **Federal Register** and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to the Case Number LEF-0002.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures which will be used to distribute funds remitted by Petraco-Valley Oil & Petroleum Company (Petraco) to the DOE. The monies remitted by Petraco were in settlement of possible violations of the DOE regulations pertaining to the Crude Oil Entitlements Program, 10 CFR 211.67, and the resale of crude oil, 10 CFR part 212, subpart L.

The DOE has tentatively decided that the distribution of the monies received from Petraco will be governed by the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986). That policy states that all crude oil overcharge funds shall be divided among the states, the Federal government, and injured purchasers of refined products. Under the plan we are proposing, refunds to the states would be distributed in proportion to each state's consumption of petroleum products during the period of price controls. Refunds to eligible purchasers would be based on the number of gallons of petroleum products which they purchased and the extent to which they can demonstrate injury.

Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register** and should be sent to the address set forth at the beginning of this notice. All comments received will be available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: December 15, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

December 15, 1989.

Implementation of Special Refund Procedures

Name of Firm: Petraco-Valley Oil & Refining Company.

Date of Filing: October 27, 1989.

Case Number: LEF-0002.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) of the DOE may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to make refunds in order to remedy the effects of alleged violations of the DOE regulations. 10 CFR 205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

The ERA has filed a Petition for the Implementation of Special Refund Procedures for funds which the DOE has obtained from Petraco-Valley Oil & Refining Company (Petraco). Petraco has remitted to the DOE a total of $200,000, which was deposited in an interest-bearing escrow account maintained at the Department of the Treasury. The funds paid by Petraco were in settlement of enforcement proceedings regarding Petraco's compliance with the Federal petroleum price and allocation regulations applicable to crude oil during the period from July 1, 1979 through January 27, 1981.[1] An additional $100,771 in interest has accrued on these funds as of October 31, 1989. This Proposed Decision and Order sets forth the OHA's plan to distribute these funds.

The procedural regulations of the DOE establish general guidelines by which the Office of Hearings and Appeals may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR part 205, subpart V. The subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. After reviewing the record in the present case, we have concluded that a subpart V proceeding is an appropriate mechanism for distributing the Petraco remittance. Therefore, we propose to grant the ERA's petition and assume jurisdiction over distribution of the funds.

[1] A Consent Order entered into between Petraco and the DOE required Petraco to refund $700,000 plus interest to the DOE in resolution of disputes concerning Petraco's compliance with the regulations pertaining to the Crude Oil Entitlements Program, 10 CFR 211.67, and the resale of crude oil, 10 CFR part 212, Subpart L. In 1985, however, Petraco filed for bankruptcy. At that time, Petraco had remitted only $200,000 to the DOE. The Proof of Claim filed by the DOE for the balance of the $700,000 plus interest was dismissed by the bankruptcy court on April 8, 1988.

I. Background

On July 28, 1986, the DOE issued a Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986) ("the MSRP"). The MSRP, issued as a result of a court approved Settlement Agreement in *In re:* The Department of Energy Stripper Well Exemption Litigation, M.D.L. No. 378 (D. Kan.), provides that crude oil overcharge funds will be divided among the states, the federal government, and injured purchasers of refined petroleum products. Under the MSRP, up to 20 percent of these crude oil overcharge funds will be reserved initially to satisfy valid claims by injured purchasers of petroleum products. Eighty percent of these funds, and any monies remaining after all valid claims are paid, are to be disbursed equally to the states and federal government for indirect restitution.

The OHA has been applying the MSRP to all subpart V proceedings involving alleged crude oil violations. *See* Order Implementing the MSRP, 51 FR 29689 (August 20, 1986). That Order provided a period of 30 days for the filing of any objections to the application of the MSRP. It also solicited comments concerning the appropriate procedures to follow in processing refund applications in crude oil refund proceedings.

On April 6, 1987, the OHA issued a Notice analyzing the numerous comments which it received in response to the August 1986 Order. 52 FR 11737 (April 10, 1987). The Notice set forth generalized procedures and provided guidance to assist applicants who wish to file refund applications for crude oil monies under the subpart V regulations. All applicants for refunds would be required to document their purchase volumes of petroleum products during the period of crude oil price controls and to prove that they were injured by the alleged overcharges. The Notice indicated that end-users of petroleum products whose businesses are unrelated to the petroleum industry will be presumed to have absorbed the crude oil overcharges and need not submit any further proof of injury to receive a refund. Finally, we stated that refunds would be calculated on the basis of a per gallon refund amount derived by dividing crude oil violation amounts by the total consumption of petroleum products in the United States during the period of price controls. The numerator would include the crude oil overcharge monies that were in the DOE's escrow account at the time of the settlement and a portion of the escrow funds in the M.D.L. 378 escrow at the time of the settlement.

These procedures have been applied by the DOE in numerous cases since the April 1987 Notice. *See, e.g.,* Shell Oil Co., 17 DOE 85,204 (1988) (Shall Oil); Ernest A. Allerkamp, 17 DOE 85,079 (1988) (Allerkamp). They have also been approved by the United States District Court for the District of Kansas. *In Re:* The Department of Energy Stripper Well Exemption Litigation, 671 F. Supp. 1318 (D. Kan. 1987), *aff'd,* 857 F.2d 1481 (Temp. Emer. Ct. App. 1988). Various States had filed a Motion with that court claiming that the OHA violated the Settlement Agreement by employing presumptions of injury for end-users and by improperly calculating the refund amount to be used in those proceedings. In denying the Motion, the court concluded that the Settlement Agreement "does not bar [the] OHA from permitting claimants to employ reasonable presumptions in affirmatively demonstrating injury entitling them to a refund." *Id.,* 671 F. Supp. at 1323. The court also held that the OHA would calculate refunds based on a portion of the M.D.L 378 overcharges. *Id.* at 1323–24.

II. The Proposed Refund Procedures

A. Refund Claims

We now propose to apply the procedures discussed in the April 1987 Notice to the crude oil Subpart V proceeding that is the subject of the present determination. As noted above, $200.00 plus interest is covered by this Proposed Decision. We have decided to reserve initially the full 20 percent of these funds, or $40,000 (plus interest), for direct refunds to applicants in order to ensure that sufficient funds will be available for refunds to injured parties. The amount of the reserve may later be adjusted downward if circumstances warrant.

The process which the OHA will use to evaluate claims for crude oil refund monies will be modeled after the process the OHA has used in subpart V proceedings to evaluate claims based upon alleged overcharges involving refined products. *See* Mountain Fuel Supply Co., 14 DOE 85,475 (1986) (*Mountain Fuel*). Applicants will be required to document their purchase volumes and to prove that they were injured as a result of the alleged violations. Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry and who were not subject to the DOE price regulations, are presumed to have absorbed rather than passed on alleged crude oil overcharges. In order to receive a refund, end-users need not submit any further evidence of injury beyond volumes of product purchased in the distribution scheme in which the overcharges occurred. A. Tarricone Inc., 15 DOE 85,495 at 88,893–96 (1987). Reseller and retailer applicants must submit detailed evidence of injury, and may not rely on the presumptions of injury utilized in refund cases involving refined petroleum products. *Id.* They may, however, use econometric evidence of the type employed in the OHA Report to the District Court in the Stripper Well Litigation, 6 Fed. Energy Guidelines ¶ 90,507 (June 19, 1985). *See* Petroleum Overcharge Distribution and Restitution Act section 3003(b)(2), 15 U.S.C. section 4502(b)(2). Applicants who executed and submitted a valid waiver pursuant to one of the escrows established by the Settlement Agreement have waived their rights to apply for crude oil refunds under subpart V. *See Mid-America Dairymen Inc.* v. *Herrington,* 878 F. 2d 1448 (Temp. Emer. Ct. App. 1989); accord, Boise Cascade Corp., 18 DOE 85,970 (1989).

Refunds to eligible applicants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the crude oil refund amounts involved in this determination ($200,000) by the total consumption of petroleum products in the United States during the period of price controls (2,020,997,335,000 gallons). Mountain Fuel, 14 DOE at 88,868. This approach reflects the fact that crude oil overcharges were spread equally throughout the country by the Entitlements Program, 10 CFR 211.67.[2] This yields a volumetric refund amount of $0.00000009896 per gallon.

As we have stated in previous Decisions, a crude oil refund applicant will be required to submit only one application for crude oil overcharge funds. *See, e.g.,* Allerkamp, 17 DOE at 88,176. Any party that has previously submitted a refund application in the crude oil refund proceedings need not file another application. That application will be deemed to be filed in all crude oil proceedings finalized to date. A deadline of June 30, 1988 was

[2] The DOE established the Entitlements Program to equalize access to the benefits of crude oil price controls among all domestic refiners and their downstream customers. To accomplish this goal, refiners were required to make transfer payments among themselves through the purchase and sale of "entitlements." This balancing mechanism had the effect of evenly disbursing overcharges resulting from crude oil miscertifications throughout the domestic refining industry. *See* Amber Refining Inc., 13 DOE 85,217 at 88,564 (1985).

established for all refund applications for the first pool of crude oil funds. The first pool was funded by the crude oil refund proceedings, implemented pursuant to the MSRP, up to and including Shell Oil Co., 17 DOE 85,204 (1988). A deadline of October 31, 1989 was established for applications for refunds from the second pool of crude oil funds. The second pool was funded by those crude oil refund proceedings beginning with World Oil Co., 17 DOE ¶ 85,568, *corrected,* 17 DOE 85,669 (1988), and ending with Texaco Inc., 19 DOE 85,200, corrected 19 DOE ¶ 85,236 (1989). The deadline for filing an application for a refund from the third pool of funds, pursuant to this proceeding, is October 31, 1990. The volumetric refund amount from the third pool of crude oil funds will be increased as additional crude oil violation amounts are received in the future. Applicants may be required to submit additional information to document their refund claims for these future amounts. Notice of any additional amounts available in the future will be published in the **Federal Register.**

B. Payments to the States and Federal Government

Under the terms of the MSRP, we propose that the remaining 80 percent of the alleged crude oil violation amounts subject to this Proposed Decision, or $160,000 (plus interest), be disbursed in equal shares to the states and federal government for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Settlement Agreement. These funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Settlement Agreement.

Before taking the actions we have proposed in this Decision, we intend to publicize our proposal and solicit comments on it. Comments regarding the tentative distribution process set forth in this Proposed Decision and Order should be filed with the OHA within 30 days of its publication in the **Federal Register.**

It is therefore ordered that: The refund amounts remitted to the Department of Energy by Petraco-Valley Oil & Refining Company pursuant to Consent Order 650X00347 shall be distributed in accordance with the foregoing Decision.

[FR Doc. 89–30273 Filed 12–28–89; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 3700–8]

Announcement of Availability of Landfill Subsidence Information for the Charles George Superfund Site in Tyngsborough, MA

AGENCY: Environmental Protection Agency.

ACTION: Announcement of availability of landfil subsidence information with request for comments.

SUMMARY: The U.S. Environmental Protection Agency (EPA) announces the availability of new information for public review on landfill subsidence and potential impacts of continued subsidence on the synthetic landfill cap presently being constructed at the Charles George Landfill Superfund site in Tyngsboro, MA. This information consists of the following materials:

1. Interim Technical Memorandum Evaluation of Charles George Landfill Settlement (November 1988, Ebasco Services, Inc.); 2. Technical Memorandum Evaluation of Charles George Landfill Subsidence (September 1989, Ebasco Services, Inc.) 3. Memorandum from Jack Hoar, Camp Dresser & McKee, Inc. ("CDM") to Dave Dickerson, EPA (September 7, 1989); 4. Memorandum with attachment from Jack Hoar, CDM, to Dave Dickerson, EPA (November 6, 1989); 5. Letter with attachment from Guy Vaillancourt, E.C. Jordan Co., to David Dickerson, EPA (November 28, 1989); 6. Memorandum from David Dickerson, EPA, to file (December 4, 1989).

This information includes recent landfill survey data, estimates and potential impacts of future subsidence as well as new strength test information relating to the synthetic landfill cap composite. This new information indicates that landfill settlement may continue at this site, but that the composite strength of the synthetic cap materials is sufficient to maintain the cap's integrity given the projected differential (i.e., uneven) settlement at the site.

EPA has concluded, at this time, that the information identified above does not warrant a modification in design of the landfill cap to account for landfill subsidence.

DATE: The public is invited to submit written comments on this new information no later than January 12, 1990.

ADDRESSES: Comments: Written comments must be submitted to: Mr. David Dickerson, U.S. EPA Waste Management Division, MA Superfund Section (HRS-CAN3), John F. Kennedy Building, Boston, MA 02203, (617) 573–5735. The information is availabe for public review as part of the site records at the following two locations: 1) Littlefield Public Library, 252 Middlesex Road, Tyngsboro, MA 02879, (508) 649–7361. Hours: Mon., Tues. & Fri.: 9:00 a.m.–5:00 p.m., Wed. & Th.: 9:00 a.m.–9:00 p.m., and Sat.: 9:00 a.m.–noon. 2) EPA Records Center, 90 Canal St., 1st floor, Boston, MA 02108, (617) 573–5729. Hours: Mon-Fri: 8:30 a.m.–1:00 p.m. and 2:00 p.m.–5:00 p.m.

The new information, the comments submitted by the public, and EPA's response to significant comments will become part of the site Administrative Record.

FOR FURTHER INFORMATION CONTACT: Mr. David Dickerson, at the address and phone number noted above under Comments.

Dated: December 19, 1989.

Stephen F. Ells,

Acting Regional Administrator, Region I.

[FR Doc. 89–30251 Filed 12–28–89; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3700–9]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075.

Availability of Environmental Impact Statements Filed December 18, 1989 Through December 22, 1989 Pursuant to 40 CFR 1506.9.

EIS No. 890355, DSuppl, COE, CT, NY, Western Long Island Sound (WLIS III), Dredged Material Disposal Site, Designation, Connecticut and New York, Due: February 12, 1990, Contact: Dr. Thomas J. Fredette (617) 647–8563.

EIS No. 890356, DSuppl, COE, IA, Red Rock Dam and Lake Red Rock Operation and Maintenance Project, Operation and Maintenance Changes, Des Moines River, Marion County, IA, Due: February 12, 1990, Contact: Joe Slater (309) 788–6361.

EIS No. 890357, Draft, AFS, AK, Frosty Bay Timber Sale, Implementation, Frosty Study Area, Tongass National Forest, Wrangell Ranger District, AK, Due: February 27, 1990, Contact: Richard K. Kohrt (907) 874–2323.

EIS No. 890358, Draft, UAF, AZ, Williams Air Force Base (AFB) Auxiliary Airfield Construction and Operation, 82nd Flying Training Wing Station, Implementation, Pinal County, AZ, Due: February 12, 1990,

Contact: Catherine Hitchins (512) 652–2321.

EIS No. 890359, Draft, UAF, NH, Pease Air Force Base (AFB) Closure, 509th Air Refueling Squadron, Deactivation of 13 KC–135A Tanker Aircraft and FB–111 Fighter/Bomber Aircraft, Implementation, NH, Due: February 13, 1990, Contact: Dr. Hugh Stirts (402) 294–3684.

EIS No. 890360, Draft, UAF, CA, George Air Force Base Closure, 37th Tactical Fighter Wing, Relocation to Mountain Home AFB, Idaho and Davis Monthan AFB in Arizona, Implementation, San Bernardino County, CA, Due: February 13, 1990, Contact: Captain Wilfred Cassidy (804) 764–4430.

Dated: December 26, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89–30278 Filed 12–28–89; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3701–1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared December 11, 1989 through December 15, 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 the Federal Register dated April 7, 1989 (54 FR 15006).

Draft EISs

ERP No. DS–FHW–A41880–NY, Rating EC2, Elmira North-South Arterial Construction, South Section, NY–14/328 to Clements Center Parkway at Pennsylvania Avenue, Funding, City of Elmira and Town of Southport, Chemung County.

Summary

EPA expressed concerns regarding the project's potential to impact wetlands and water quality and requested that the final supplemental EIS provide additional information on these resources, including mitigation measures for potential impacts.

ERP No. D–FHW–C40724–PR, Rating 3, PR–3 Relocation, between the Municipalities of Fajardo and Humacao, Funding, PR.

Summary

EPA believes that the draft EIS fails to present an adequate impact assessment of alternatives. Accordingly, meaningful analysis of the respective proposals is impossible. EPA has requested that FHWA prepare a draft supplemental EIS so that the impacts of the project can be addressed. EPA has concerns about the project's potential to have secondary impacts as well as direct impacts to landfills, wetlands, surface and ground water quality, floodplains, and farmland.

ERP No. D–FHW–E40725–AL, Rating EC2, Finley-East Lake Boulevard Extension, 26th Street North to Carson Road, Funding and 404 Permit, City of Birmingham, Jefferson County, AL.

Summary

EPA's review concluded that there was potential for stream and urban wildlife habitat degradation. Air quality impacts could not be assessed accurately with the information presented in the document.

ERP No. D–FHW–G40125–TX, Rating LO, I–30/I–35W Interchange Improvements, Forest Park Boulevard to Riverside Drive and Hattie Street to Luella Street, Funding, Tarrant County.

Summary

EPA has no objections to the proposed action as described.

ERP No. D–OSM–E01009–TN, Rating EO1, Flat Fork and Mud Creek Watershed Surface Coal Mining Operations, Unsuitable Land Designation, Approval, Morgan County, TN.

Summary

EPA's review concluded that proposed surface mining activities would result in moderate to severe impacts to the unique resources of Frozen Head State Park and Natural Area, under several of the mining scenarios. Accordingly, EPA recommended selection of the no surface-mining alternative.

Final EISs

ERP No. FS–FHW–A41710–NY, Southern Tier Expressway Construction, Corning Area, NY–415 to NY–352, Funding, Steuben County, NY.

Summary

EPA has no objections to the implementation of this project.

Dated: December 26, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89–30279 Filed 12–28–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

December 21, 1989.

The Federal Communications Commission has submitted the following information collection requirements to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act, as amended (44 U.S.C. 3501–3520).

Copies of the submissions may be purchased from the Commission's copy contractor. International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037. Persons wishing to comment on these information collections should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–3785. Copies of these comments should also be sent to the Commission. For further information contact Jerry Cowden, Federal Communications Commission, (202) 632–7513.

OMB Number: 3060–0150.

Title: EEO Recordkeeping Requirement and Developmental Report Requirement (sections 22.307 and 22.406).

Action: Extension.

Respondents: Businesses (including small businesses).

Frequency of Response: Recordkeeping requirement; semi-annual reporting; annual reporting.

Estimated Annual Burden: 116 responses; 1,200 recordkeepers; 63,348 hours total annual burden; 48.14 hours average burden per respondent or recordkeeper.

Needs and Uses: Public Mobile Radio applicants issued developmental authorizations are required to submit reports pursuant to Section 22.406 of FCC rules. Section 22.307 requires the retention of EEO data. The information is used by the FCC, other licensees of the spectrum, and the public to assure that licensees are operating in accordance with their authorizations and the rules and to enable the FCC to investigate complaints of harmful interference.

OMB Number: 3060–0384.

Title: Annual Auditor's Certification (CC Docket No. 86–111).

Action: Extension.

Respondents: Businesses.

Frequency of Response: Annually.

Estimated Annual Burden: 40 responses; 16,000 hours total annual burden; 400 hours average burden per response.

Needs and Uses: Tier 1 local exchange carriers and dominant interexchange carriers are required to submit an auditor's attestation annually demonstrating the application of the Commission's cost allocation standards to their particular operations.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 89-30211 Filed 12-28-89; 8:45 am]

BILLING CODE 6712-01-M

Applications; Steele Communication Co., Inc., et al.

1. The Commission has before it the following mutually exclusive applications for 5 new FM stations:

Applicant	City/State	File no.	MM docket no.
A. Steele Communications Company Inc.	Derby Center, VT	BPH-870724MC	89-545
B. Northeast Kingdom Broadcasting, Inc.	Derby Center, VT	BPH-870727MC	
C. Hayley M. Campbell	Derby Center, VT	BPH-870727MH	
D. Memphremagog Media, Inc.	Derby Center, VT	BPH-870727MN	
E. Derby Hometown Broadcasters, Limited Partnership	Derby Center, VT	BPH-870727MP	
Issue Heading	Applicants		
1. Comparative	A-E		
2. Ultimate	A-E		

II.

Applicant	City/State	File no.	MM docket no.
A. Major-Keene Partnership	Key West, Florida	BHP-870615MH	89-540
B. CSJ Investments, Inc.	Key West, Florida	BHP-870615MK	
C. David H. Smith, Maureen L. Smith, James E. Spisiak, Patricia B. Spisiak d/b/a Keys Broadcasting System.	Key West, Florida	BHP-870615MW	
D. Ocean Front Radio Limited Partnership	Key West, Florida	BHP-870615MZ	
E. Conch Communication Corp.	Key West, Florida	BHP-870615NA	
F. South Star Communications, Inc.	Key West, Florida	BHP-870615ND	
G. Key West Broadcasting Company	Key West, Florida	BHP-870615NE	
Issue Heading	Applicants		
1. See Appendix	D		
2. See Appendix	D		
3. See Appenix	D		
4. Environmental Impact	B,E		
5. Air Hazard	G		
6. Comparative	A-G		
7. Ultimate	A-G		

III.

Applicant	City/State	File no.	MM docket no.
A. Hughes-Moore Associates, Inc.	Midway, Kentucky	BPH-870612MC	87-544
B. Herbert Regenstreif	Midway, Kentucky	BPH-870615MI	
C. Midway Communications, Ltd.	Midway, Kentucky	BPH-870615MT	
D. Belhouse & Associates, Inc.	Midway, Kentucky	BPH-870615MV	
Issue Heading	Applicant(s)		
1. Comparative	A, B, C, D		
2. Ultimate	A, B, C, D		

IV.

Applicant	City/State	File no.	MM docket no.
A. Thelma Poff	Ripley, Ohio	BPH-880114MF	89-502
B. James P. Gray	Ripley, Ohio	BPH-880114MW	
Issue Heading	Applicant(s)		
1. Comparative	Both applicants		
2. Ultimate	Both applicants		

V.

Applicant	City/State	File no.	MM docket no.
A. Value Radio Corporation	Lomira, WI	BPH-870617MI	89-539
B. Donald G. Jones d/b/a Michael Dean	Lomira, WI	BPH-870617MJ	
C. Lomira Broadcasting Company	Lomira, WI	BPH-870618MD	
Issue Heading	Applicants		
1. Air Hazard	C		
2. Comparative	A, B, C		
3. Ultimate	A, B, C		

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete test may also be purchased from the Commission's duplicating contactor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistance Chief, Audio Services Division, Mass Media Bureau.

Appendix

Key West, Florida

1. To determine whether Sonrise Management Services, Inc. is an undisclosed party to the application of D. (Ocean Front).

2. To determine whether D's (Ocean Front) organizational structure is a sham.

3. To determine, from the evidence adduced pursuant to issues 1 through 2 above, whether D (Ocean Front) possesses the basic qaulifications to be a licensee of the facilities sought herein.

[FR Doc. 89-30212 Filed 12-28-89; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Solicitation of Comments for Study With Respect to Directors' and Officers' Liability Insurance and Depository Institution Bonds Which Is Mandated by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Solicitation of comments.

SUMMARY: Pursuant to section 220(b)(3) of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA") Public Law 101-73, 103 Stat. 265-66, enacted Aug. 9, 1989, a report will be prepared and transmitted to Congress on or before February 9, 1990. This report will concern directors' and officers' liability insurance and depository institution bonds, and the availability and terms of such insurance for directors and officers of insured depository institutions, together with any appropriate legislative recommendations. The purpose of this notice is to solicit comments, suggestions and any relevant data or statistics from interested parties on the issues to be explored in the study.

DATE: Comments must be received by January 29, 1990.

ADDRESS: Send written comments to the Federal Deposit Insurance Corporation, Legal Division—Room 4018, 550 17th Street, NW., Washington, DC 20429, Attention: M. Lauck Walton.

FOR FURTHER INFORMATION CONTACT: M. Lauck Walton, Counsel, (202) 898-8697.

SUPPLEMENTAL INFORMATION:

Background

The legal liability of bank directors and officers may be established through breach of the common law duties of care or loyalty and through violation of various federal and state statutory and regulatory provisions.

With respect to depository institution bonds, 12 U.S.C. 1828(e) provides that "The [FDIC] may require any insured bank to provide protection and indemnity against burglary, defalcation, and other similar insurable losses. Whenever any insured bank refuses to comply with any such requirement the [FDIC] may contract for such protection and indemnity and add the cost thereof to the assessment otherwise payable by such bank."

Federally chartered savings associations may be required to indemnify their directors and officers. 12 CFR 545.121. Further, 12 CFR 563.19 requires insured savings associations to maintain bond coverage for each director or officer who has "control over or access to cash or securities of such institution."

In addition, federal regulators of depository institutions permit depository institutions to purchase liability insurance to provide protection to their directors and officers for claims arising from certain acts (or failures to act) in their capacity as directors and officers, and to provide reimbursement to the depository institution for indemnifications of directors and officers.

The Mandated Study

As required by section 220(b)(3) of the FIRREA, the study will review the availability of, and need for, directors' and officers' liability insurance and depository institution bonds. The study shall include: consideration of State laws limiting liability for directors and officers; and the effect of contractual provisions which purport to limit insurance coverage when an institution is placed in receivership or conservatorship; or when a claim is made by the Federal Deposit Insurance Corporation or other governmental instrumentality; or when claims are made by one insured against another insured. Comments are requested by the FDIC, the Secretary of the Treasury and the Attorney General, addressing the effect of such limiting language in insurance policies on the ability of depository institutions to attract and retain qualified officers and directors.

Additionally, comments addressing the effect of inclusion or exclusion of such limiting language on the future availability of insurance are requested.

Responding insurance carriers are encouraged to set forth, in detail, by year, actual premium income, related investment income, and loss experience for (1) directors and officers liability policies covering directors and officers of (a) banks and (b) thrifts and (2) bonds covering (a) banks and (b) thrifts; (A) the dollar amount and percent of all such losses involving failed depository institutions; (B) the dollar amount and percent of all such losses that were paid to the FDIC, FSLIC, or receivers of a failed depository institution; (C) the dollar amount and percent of all such losses that did not involve FDIC or FSLIC in any capacity but did involve claims by one insured against another insured; (D) the dollar amount and percent of all such losses that involved claims first made after the depository institution failed. Concerns about the confidentiality of business information in any response should be resolved by Mr. Walton.

Section 220(b)(3) of FIRREA mandates that, within six months of the date of enactment, the FDIC, together with the Secretary of the Treasury and the Attorney General, "shall report the findings from the study to the Congress." Moreover, section 220(b)(3) requires that the report contain "legislative recommendations, if appropriate."

Dated at Washington, DC this 12th day of December 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89-30200 Filed 12-28-89; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL HOUSING FINANCE BOARD

[FHFB 89-16]

Prices for Federal Home Loan Bank Services

AGENCY: Federal Housing Finance Board.

ACTION: Notice of Prices for Federal Home Loan Bank Services.

SUMMARY: The Federal Housing Finance Board ("FHFB") is publishing the prices charged by the Federal Home Loan Banks ("FHLBanks") for (1) processing and settlement of items ("negotiable order of withdrawal or NOW"); and (2) demand deposit accounting ("DDA") and other services offered to member and other eligible institutions.

EFFECTIVE DATE: December 29, 1989.

FOR FURTHER INFORMATION CONTACT: Amy R. Maxwell, (202) 906-7865, or William J. Carey, (202) 906-6656, Federal Housing Finance Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: Section 11(e) of the Federal Home Loan Bank Act ("Bank Act") (12 U.S.C. 1431(e)) authorizes the FHLBanks (1) to accept demand deposits from member institutions, (2) to the drawees of payment instruments, (3) to engage in collection and settlement of payment instruments drawn on or issued by members and other eligible institutions, and (4) to engage in such incidental activities as are necessary to the exercise of such authority. Section 11(e)(2)(B) of the Bank Act (12 U.S.C. 1431(e)(2)(B)) requires the FHLBanks to charge fees for services authorized in that section, which fees are "to be determined and regulated by the FHLB consistent with the principles set in section 11A(c) of the Federal Reserve Act." FHLB regulations, at 12 CFR 943.6, currently state that the Director of the Office of District Banks and the Director of the Office of Policy and Economic Research of the former Federal Home Loan Bank Board (or their designees) approve and publish these fees at least annually. These duties are now being handled by the appropriate officers of the FHLB. The fees for 1989 will be published at this time, but compliance for 1989 will be determined in 1990 when data for the entire year is available. The regulations require the FHLBanks to follow four basic pricing principles as follows:

(1) Services must be priced explicitly.

(2) Services must be available to member and nonmember depository institutions on an equal basis.

(3) Over the long run, fees must cover direct and indirect costs and must also cover an imputed cost that includes taxes paid and the return capital that would have been provided if the services had been furnished by a private firm.

(4) Interest on float must be charged at the Federal Funds rate.

In 1980, the former Federal Home Loan Bank Board developed a methodology to determine compliance with these four principles, which is based on discounted cash flows from the NOW and DDA services. Since the FHLBanks had very few assets employed in the provision of these services and only projections of future income from NOW services, the methodology adopted at that time was appropriate. Compliance with the pricing principles focused on a five-year time span to recover all direct and indirect costs of these services.

At the end of 1985, the FHLBanks completed five years of NOW processing services. Both NOW services and DDA type services are mature activities with an asset base and normal income flows. In recognition of this evolution, the former Federal Home Loan Bank Board developed an up-to-date methodology substantially similar to that adopted by the Federal Reserve System to monitor pricing of these services.

The following section summarizes the adopted methodology, which will continue to ensure that FHLBank NOW and DDA services are not priced in a manner that would provide unfair competition to private firms.

Methodology

Two major issues arise in determining appropriate pricing methodology. First, competitor firms must be identified. Second, adjustment must be made for the taxes and return on capital that prices of competitor firms must cover. This adjustment is sometimes referred to as a Private Sector Adjustment Factor ("PSAF").

The methodology was developed based on bank holding companies as competitor firms. Although firms in other industries could be chosen as competitors, commercial banks are generally the most frequent competitors in item processing and related services. Similarly, the Federal Reserve Bank also has chosen bank holding companies as competitors for development of adjustments for taxes and the imputed cost of capital.

Adjustment for Taxes and Return on Capital

In order to compare competitor data to the FHLBanks, several broad assumptions were established as follows:

(A) NOW and DDA services may be combined under the Board's pricing approval methodology.

(B) Compliance with NOW/DDA pricing guidelines is on an individual FHLBank basis.

(C) One set of bank holding company data will be applied to FHLBanks, rather than applying regional competitor data to regional FHLBanks.

(D) FHLBank data, which is required for the NOW/DDA pricing methodology, may be determined on an individual FHLBank basis as follows: (1) NOW/DDA prices; (2) earnings on balances generated from item processing; (3) direct and indirect costs; and (4) assets employed in NOW/DDA services.

Based on the previous assumptions, appropriate bank holding company data

and FHLBank data can be incorporated into the pricing methodology.

The pricing methodology is as follows:

(A) FHLBank NOW/DDA costs are adjusted (increased) for the cost of financing the assets (primarily plant and equipment) employed in the provision of NOW/DDA services.

(B) NOW/DDA costs are increased for sales taxes that would have been paid if subject to such tax.

(C) NOW/DDA costs are adjusted for the cost of float at the Federal Funds rate.

(D) Imputed income taxes are applied to pre-tax NOW/DDA income using a five-year average from bank holding company data (20.42% rate).

(E) The after tax rate of return on capital from NOW/DDA services is compared to the after tax return on capital of bank holding companies (13.40% rate).

These adjustment factors ensure that the NOW/DDA services are priced in a competitive manner. Also, the factors are similar to the adjustments made by the Federal Reserve System and represent a conservative approach consistent with the intent of Congress that pricing encourage competition and efficiency in the provision of these services.

In accordance with these principles, the FHFB has reviewed the 1989 prices for FHLBank services which are published herewith. In early 1989, compliance with the pricing principles was tested based upon projected levels of service for each FHLBank. Final compliance and approval for 1989 will be determined in early 1990 when data for the entire year is available. At that time, preliminary compliance tests for 1990 will be performed and the 1990 prices will be published thereafter so that the FHFB's monitoring of the pricing policy is continuous. The services and their prices which are published herewith are divided into two categories: (1) NOW services involved in the processing and settlement of items drawn on or issued by member institutions ("Schedule A"); and (2) services relating to demand deposit accounts and other services maintained by member and other eligible institutions with the FHLBanks ("Schedule B").

The services described in the attached schedules are not identical for any two FHLBanks, as each FHLBank's program is tailored to meet the needs of the member institutions in the FHLBank's district. Furthermore, the volume of services rendered varies significantly among the districts, with the result that the costs of providing the services also vary from district to district. In light of these considerations, the FHFB continues its practice of approving separate district fee structures rather than adopting a uniform pricing scheme. This policy is consistent with the congressional intent that pricing encourage competition.

It is not required that each processing step or transaction performed by a FHLBank be specifically priced. This policy permits the FHLBanks to establish fee schedules that are in line with the marketing practices of providers of correspondent services in each district. The FHFB hereby gives notice of the following fee schedules for Federal Home Loan Bank services:

Schedule A: Item Processing and Settlement Services (1989 NOW Services)

DISTRICT 1.—FEDERAL HOME LOAN BANK OF BOSTON

[Services not provided]

DISTRICT 2.—FEDERAL HOME LOAN BANK OF NEW YORK (1989 NOW SERVICES)

Services	Fee
Standard Intercept (per item)	$.050
Standard Intercept-Delayed Check (per item)	.035
Check Safekeeping (a combined minimum monthly charge of $250 applicable):	
First 50,000 items/month (per item)	.025
50,001 plus items/month (per item)	.010
Check Bulkfiling (a combined minimum monthly charge of $250 applicable):	
First 50,000 items/month (per item)	.030
50,001 plus items/month (per item)	.015
Interdistrict Transportation	.005
Statement Rendering:	
Bulk Filing items:	
First 10,000 statements/month (per statement)	.32
10,001 plus statements/month (per statement)	.15
Check Safekeeping items (per statement)	.05
Return Items:	
First 2,000 items/month (per item)	3.50
2,001 plus items/month (per item)	2.00
Discount (Magnetic Tape) (per item)	1.00
Return Items without entry (per item)	6.00
Late Return Premium	1.00
FRB Large Dollar Notification	4.25
Photocopies (per copy)	2.50
Original Item Retrieval (per item)	4.00
Datafax High Dollar Items—Front only (per item	1.50
Datafax High Dollar Items—Both Sides (per item)	2.00
Counter Item Filming (per item)	.035
Counter Item Sorting (per item)	.035
Notices or Advertising Inserts (per insert)	.01
Monthly History Microfiche (per 100,000 items)	8.00
Monthly History Microfiche-Additional Copies (per fiche card)	1.00
Cycle Changes (per cycle)	25.00
Cycle Exception Maintenance (per mo. per account)	.50

DISTRICT 2.—FEDERAL HOME LOAN BANK OF NEW YORK (1989 NOW SERVICES)—Continued

Services	Fee
Data Center Conversions (per conversion)	500.00

DISTRICT 3.—FEDERAL HOME LOAN BANK OF PITTSBURGH (1989 NOW SERVICES)

Services	Fee
NOW Account Processing:	
Items per month	
First 25,000 (per item)	$0.0360
25,001-58,500 (per item)	.0335
58,501-91,500 (per item)	.0310
91,501-125,000 (per item)	.0285
125,001-158,500 (per item)	.0260
158,501-191,500 (per item)	.0235
191,501-350,000 (per item)	.0210
350,001-500,000 (per item)	.0185
500,001 plus (per item)	.0160
NOW Account Backroom Service:	
Truncated.	
Items per month	
0-25,000 (per item)	.0370
25,001-58,500 (per item)	.0355
58,501-91,500 (per item)	.0340
91,501-125,000 (per item)	.0325
125,001-158,500 (per item)	.0310
158,501-191,500 (per item)	.0295
191,501-350,000 (per item)	.0280
350,001-500,000 (per item)	.0255
500,001 plus (per item)	.0230
Non-truncated	
Items per month	
0-25,000 (per item)	.0470
25,001-58,500 (per item)	.0455
58,501-91,500 (per item)	.0440
91,501-125,000 (per item)	.0425
125,001-158,500 (per item)	.0410
158,501-191,500 (per item)	.0395
191,501-350,00 (per item)	.0380
350,001-500,000 (per item)	.0355
500,011 plus (per item)	.0330
Modified Backroom	
Reduce non-truncated prices by (per item)	$.01
Over-the Counter Checks (per item)	.15
Return Call (per item)	.75
Late Return Call (per item)	.66
Items Over $2,500 Returned to FRB (per item)	5.25
Check Copies (per copy)	3.00
Telephone/FAX Check Copy (per copy)	3.75
Check Retrieval (per item)	1.50
Statement Envelopes—Actual Cost	
Small Standardized (per envelope)	.05
Small Customized (per envelope)	.07
Large (per envelope)	.46
Mid-cycle statement rendering:	
Purged Statement (per item—minimum charge of $2.50)	.50
Non-purged Statement (per statement)	2.50

DISTRICT 4.—FEDERAL HOME LOAN BANK OF ATLANTA (1989 NOW SERVICES)

NOW Account Services	Fee
Daily delivery (items per month):	
1st 25,000 (per item)	$0.040
Over 25,000 (per item)	.035
Bulk filing (items per month):	
1st 10,000 (per item)	.045

DISTRICT 4.—FEDERAL HOME LOAN BANK OF ATLANTA (1989 NOW SERVICES)—Continued

NOW Account Services	Fee
10,000–25,000 (per item)	.043
25,001–50,000 (per item)	.040
50,001–75,000 (per item)	.038
75,001–100,000 (per item)	.035
100,001–150,000 (per item)	.030
Over 150,000 (per item)	.025
Statement matching (items per month):	
1st 10,000 (per item)	.070
10,000–25,000 (per item)	.068
25,001–50,000 (per item)	.065
50,001–75,000 (per item)	.063
75,001–100,000 (per item)	.060
100,001–150,000 (per item)	.055
Over 150,000 (per item)	.050
Special statements (IRA, savings, etc.) (per statement)	.020
Multiple statement inserts (per statement)	[1] .010
No mail statements (per statement)	.050
Truncation:	
1st 10,000 (per item)	.030
10,000–25,000 (per item)	.028
25,001–50,000 (per item)	.025
50,001–75,000 (per item)	.023
75,001–150,000 (per item)	.020
Over 150,000 (per item)	.015
Statement rendering (in-house processors):	
Finesort (per item)	.015
Cyclesort (per item)	.015
Statement rendering (per statement)	.25
Return items (per item)	3.00

DISTRICT 4.—FEDERAL HOME LOAN BANK OF ATLANTA (1989 NOW SERVICES)—Continued

NOW Account Services	Fee
Large dollar return items (per item)	4.00
Delayed return items (per item)	4.00
Facsimile:	
Large dollar (per item)	1.50
On request (per item)	2.00
Bookkeeping and Acc't No. rejects (per item)	2.50
Over-the-counter items (per item)	.035
Photocopies (per item)	2.00
Without entry items (per item)	[2] 4.50
Finesort (check number)—Special accounts (per item)	.02
Prime rejects ($0.25 per item over 2% reject rate)	.25
Special services:	
Disaster recovery service:	
Subscription fee:	
Standard output format (per format)	3,000.00
Specialized output format (minimum additional)	500.00
Monthly availability fee:	
One-year contract (per contract)	300.00
Two years contract (per contract)	250.00
Three years contract (per contract)	200.00
Service activation fee (per activation)	1,500.00
Daily activity fee	([3])

DISTRICT 4.—FEDERAL HOME LOAN BANK OF ATLANTA (1989 NOW SERVICES)—Continued

NOW Account Services	Fee
Custom coding (for mergers, branch acquisitions and sales, etc.) (per hour)	100.00
Special research requests:	
Pull original truncation item from file (per item)	3.00
Research request for 12 or more items ($30 per hour per person plus per item)	1.00
Special handling (if required by 2 or more account number formats resulting from mergers, conversions, branch acquisitions, etc; charging will begin three months after effective date if still required) (per month)	500.00
Microfilm (per roll)	35.00

[1] One insert free with a charge of one cent for each insert over one per statement.
[2] A Without Entry Item is a check which is sent back to the depositing institution to secure proper endorsement or obtain a refund for a forged endorsement or signature.
[3] See current fee schedule.

Notes:
The minimum monthly billing for NOW service options is $200.00.
Prices for all options include data transmission to on-line or in-house processors.
Actual item delivery expense will be charged to the institution as incurred, including postage under "Statement Matching" above.
The price per item for the service options of Daily Delivery, Bulkfiling, Statement Matching and Truncation are stand-alone fees, not incremental fees.

DISTRICT 5.—FEDERAL HOME LOAN BANK OF CINCINNATI (1989 NOW SERVICES)

Item/Month	Service: Daily return	Truncation	Bulkfiling w/ out statement stuffing	Bulkfiling with statement stuffing
1to 50,000	$0.0350	$0.0350	$0.0375	$0.0575
50,001 to 100,000	.0250	.0250	.0260	.0560
100,001 to 150,000	.0150	.0150	.0175	.0500
150,001 to 200,000	.0090	.0090	.0115	.0450
200,001 and over	.0075	.0075	.0100	.0440

Special services	Fee
Check retrieval or inspection of original item	$1.50
Photocopy	1.00
Advertising insertion (per item)	.02
Posted "on-us":	
a. With FHLB encoding (per item)	.03
b. Without FHLB encoding (per item)	.01
Statement stuffing for truncated statement (per statement)	.01
Additional sorting upon request:	
a. Fine sorting (per item)	.005
b. Cycle sorting (per item)	.005
Large dollar return notification (per item)	2.00
Return items processed by bank:	
First 1,000	2.00
All others	1.00
Qualifications requirements of EFAA (per item)	([1])
Return items processed by NOW user:	
Qualifications requirements of EFAA (per item)	.50
Return item clearing fee ([2]):	
Cincinnati and Cleveland operations centers (per item)	.10
Nashville operations center (per item)	.075
Special processing requests	([3])
Multiple service discount (the following percentage off basic service fees)	5.00

[1] No charge.
[2] A higher fee is assessed to users not currently under contract price schedule.
[3] Negotiable.

DISTRICT 6.—FEDERAL HOME LOAN BANK OF INDIANAPOLIS (1989 NOW SERVICES)

Transaction Service						
Monthly volume	Safe-keeping		Turn-around (daily or cycled)		Complete	
	Per item	Cost	Per item	Cost	Per item	Cost
0 to 5,000	$0.045	$225	$0.053	$265	$0.077	$385
5,001 to 10,000	.037	185	.048	240	.075	375
10,001 to 15,000	.036	180	.044	220	.073	365
15,001 to 25,000	.031	310	.037	375	.072	720
25,001 to 50,000	.030	750	.033	825	.070	1,750
50,001 to 75,000	.026	650	.030	750	.066	1,625
75,001 to 100,000	.023	575	.027	675	.065	1,625
100,001 to 125,000	.021	525	.024	600	.064	1,600

Ancillary Service	Fee	
	Indiana	Michigan
Settlement only (per month) (plus $3.00/journal entry)	$100.00	$100.00
Over-the-counter items and microfilm (per item)	.035	.035
No MICR/OTC	.50	.50
Photocopies and facsimiles	2.50	2.50
Encoding errors	2.75	2.75
Certified checks	1.00	1.00
Late returns	.50	.50
Invalid returns	.50	.50
Large dollar signature verification	.50	.50
Invalid accounts	.50	.75
Return items—Fax or phone	2.15	2.65
Return items—PC	2.15	2.15
Return items—Mainframe	2.15	1.90
Fine sort numeric sequence	.02	.02

Note: Minimum processing fee of $40.00 per month will apply for total NOW services.

DISTRICT 7.—FEDERAL HOME LOAN BANK OF CHICAGO (1989 NOW SERVICES)

Item Processing				
Items per month	Daily returns	24-hour delay	Bulk file	Truncation
0 to 20,000	$.030	$.028	$.029	$.021
20,001 to 50,000	.029	.027	.028	.021
50,001 to 75,000	.028	.026	.027	.020
75,001 to 100,000	.027	.025	.026	.020
100,001 to 200,000	.026	.024	.025	.019
200,001 to 300,000	.025	.023	.024	.018
300,001 to 400,000	.024	.022	.023	.017
400,001 to 500,000	.023	.021	.022	.016
500,001 to 750,000	.022	.020	.021	.015
750,001 to 1,000,000	.021	.019	.020	.014
1,000,001 to 1,500,000	.020	.018	.019	.014
1,500,001 and over	.019	.017	.015	.014

Ancillary Service	Fee
Counter Item Processing (per item)	$0.01
Qualified Return Item Processing	
0–20 items	6.00
21–50 items	5.50
51–75 items	5.00
76–100 items	4.50
101–500 items	4.00
501–1,000 items	3.50
1,001–1,500 items	3.00
1,501–2,000 items	2.50
2,001 or more items	2.00
Statement Preparation	
Regular Checking Statements	.450
Money Market Statements	.200
Savings Account Statements	.200

Ancillary Service	Fee
Statements Without Checks	.200
Statement Stuffers	.015
Phone Return Requests (addition fee per item)	1.00
Facsimile Return Requests (incoming) (per item)	[1]
Large Dollar Return—telephone notification to Bank of first deposit	5.00
Non-FRB Inclearing Totals (per call)	1.50
Postage/Courier	[2]
Facsimile Equipment	[2]
Photocopies (per item)	3.00
Facsimile of items ($2,500 or over) (per item)	1.00
Cash Letter Facsimile (per page)	2.00
Sorts (per item)	.010
Monthly Recap (per item)	.0025
Data transmission (per item)	
0–2,500 items ($10 month minimum)	.004
2,501–10,000 items ($10 month minimum)	.004
10,001–12,500 items ($50 month minimum)	.004
12,501–50,000 items ($50 month minimum)	.004
50,001–10,000 items (no minimum)	.003
100,001 or more items (no minimum)	.002
NOW Settlement Only (per month)	500.00
NOW Minimum Monthly Charge (per month)	250.00

[1] No additional charge.
[2] Actual cost.

District 8.—Federal Home Loan Bank of Des Moines (1989 NOW Services)

Check processing fee schedule

Item processing monthly volume level	Basic fee (truncated)	Daily cycle [1,2]	Cycle/ monthly [2]
1 to 25,000	$0.021	$0.017	$0.020
25,001 to 50,000	.017	.013	.016
50,001 to 75,000	.015	.011	.014
75,001 to 175,000	.013	.009	.012
175,001 to 400,000	.012	.008	.011
400,001 to 750,000	.010	.007	.010
750,001 to 1,100,000	.009	.006	.009
1,100,001 to 1,500,000	.008	.005	.008
1,500,001 to 4,000,000	.006	.004	.007
4,,000,001 to 6,500,000 [3]	.0058	.004	.007
6,500,001 to 9,000,000 [3]	.0054	.003	.006
9,000,001 & Over [3]	.0052	.003	.006

Return items

Volume level	Basic service [4]	Telephone request [4]	Forward collection only [5]		
			Unqualified	Qualified [5]	Premium
Kansas City Regional Center					
1–2000	$1.60–2.65	$3.50	$0.60	$0.24	
2001–4000	1.15–1.85		.60	.24	
4001–Over	.80–1.60		.55	.20	
St. Louis Regional Center					
1–2000	$1.50–2.60	$3.50	$0.60	$0.20	
2001–4000	1.00–1.85		.60	.20	
4001–Over	.60–1.60		.50	.20	
Des Moines Regional Center					
1–2000	$1.65–2.65	$3.50	$0.60	$0.25	
2001–4000	1.15–1.90		.60	.25	
4001–Over	.75–1.65		.55	.25	
Minneapolis Regional Center					
1–2000	$1.70–2.70	$3.50	$0.70	$0.28	$0.34
2001–4000	1.20–1.95		.70	.28	.34
4001–Over	.80–1.70		.65	.28	.34
Regulation J Notification $3.00/item at all centers.					

Other services	Fee
Posting file (per item)	$0.0005
Reject Re-entry (per reject)	.04

Other services	Fee
Stop payments (per stop)	5.00
Photocopies/microfilm copies (per copy)	2.75
Counter items with MICR encoding (per item)	.04
Counter items without MICR encoding (per item)	.10
Original item research (per item)	2.75
Certified checks (per item)	.50
Signature verification (per page)	1.00
Facsimile transmission (per transmission)	1.50
Telephone check inquiry (per inquiry)	1.00
Settlement:	
Daily settlement reporting (per month)	25.00
Settlement only (inclearings or returns) (per month)	100.00
Third party settlement (per month)	350.00
Microfiche—monthly reports (per month)	25.00
Microfilm (per item)	.01
Research (per hour)	20.00
Audit (the lesser of $20.00/hour+.50/copy, or per item)	2.75
Special sorting options:	
Account separators (per item with a $175.00 minimum)	.003
Truncated items returned unsorted (per item)	.002
Truncated items returned sorted (per item with a $250.00 minimum)	.012
Sequence number order (per item)	.005
Other miscellaneous fine sorting (per item)	.005
Special services	
Back-up service:	
Set-up charge (one time)	500.00–1,500.00
Monthly maintenance	([7])
File maintenance:	
Mergers/acquisitions (each)	500.00
Multiple R/T numbers (per number per month)	50.00
Parameter file maintenance (per change)	25.00
Multiple sorter pockets (per pocket per month)	300.00
Data servicer conversion (per conversion)	500.00

[1] 15% surcharge for same day daily return.
[2] Fees for daily and cycle/monthly return are in addition to the basic fee.
[3] Volume levels above 4 million are priced on a decremental basis and are provided in the Des Moines and Minneapolis Regional Centers.
[4] Full service processing. Excludes Large Dollar Notification required under Regulations CC and J.
[5] Return items received for forward collection.
[6] Items must be fully qualified using heat sensitive strips.
[7] Negotiable plus actual monthly usuage.

Note: Minimum charge of $250.00 per month will apply for total NOW Services.

District 9.—Federal Home Loan Bank of Dallas (1989 NOW Services)

Service		
Basic Service-items/month	Daily	Truncated
Tier 1: 0 to 50,000	$.0325	$.0275
Tier 2: 50,001 to 100,000	.0300	.0250
Tier 3: 100,001 to 150,000	.0250	.0200
Tier 4: 150,001 to 200,000	.0200	.0150
Tier 5: 200,001 to 500,000	.0150	.0100
Tier 6: 500,001 to 1,000,000	.0100	.0075
Tier 7: 1,000,000 and Over	.0080	.0050

Return Items

Items/month	
Tier 1: 1–500	$1.50
Tier 2: 501–Over	1.00
Return Item	
Qualification (per item)	.25

Other Services	Fee
Commercial Item (each)	$.0200
Counter Items (Integration)	.0325
Counter Items (capture/microfilm only)	.0100
Photocopies	.50
Original Check Retrieval (per check)	150
Large Dollar Notification	425
Statement Preparation:	
Statements (each)	.065

Other Services	Fee
Items (each MICR document)	.008
Inserts	.01
Statement Separators	.01
Facsimile:	
Large Dollar, Full Face, FHLB Standard Amount (per page)	1.00
Large Dollar, Full Face, Less Than FHLB Standard (per page)	2.00
Special Research (per hour)	

DISTRICT 10.—FEDERAL HOME LOAN BANK OF TOPEKA (1989 NOW SERVICES)

Service Return Items Per Month	Fee Per Item
NOW Processing Fees:	
1 to 50	$3.00
51 to 2,500	1.25
2,501 to 4,000	.95
4,001 to 6,000	.60
6,001 to 8,000	.30
8,001 to 12,000	.25
12,001 & over	.20

Items per month	Truncated	Cycled
1 to 10,000 (per item)	$.020	$.035
10,001 to 25,000 (per item)	.018	.034
25,001 to 50,000 (per item)	.015	.031
50,001 to 100,000 (per item)	.013	.026
100,001 to 250,00 (per item)	.011	.020
250,001 to 500,000 (per item)	.010	.015
501,001 750,000 (per item)	.009	.013
750,001 to 1,000,000 (per item)	.008	.011
1,000,001 & over (per item)	.007	.010

Other services	Fee
Minimum Monthly Processing Fee	$500.00
Settlement—(w/FHLB processing)	(1)
Settlement Only (per month)	100.00
Item Retrieval (Photocopy—per item)	2.00
Mass Photocopy Requests (per hour)	12.00
(per item)	.15
Over-The-Counter Items (Microfilmed and Filed—per item)	.03
Large Item Return Notification (per item over $2500)	3.00
Fed Fee Return Item Reg CC Increase (per item)	.16
NOW Statement Matching:	
Truncated Statement	$.05
Cycled Statement for 1–50 Checks	.15
For each additional check over 50	.01
Per Insert	.01
Postage	(2)
Latex Envelopes	(3)

[1] No charge.
[2] At cost.
[3] Latex envelopes—provided by association.

DISTRICT 11.—FEDERAL LOAN BANK OF SAN FRANCISCO (1989 NOW SERVICES)

Inclearing services	Volume price based on total items per month						
	0 to 250,000	250,001 to 750,000	750,001 to 1,000,000	1,000,001 to 1,500,000	1,500,001 to 2,000,000	2,000,001 to 2,500,000	Over 2.5 million
Basic caputure service (Min. charge $500/mo.):							
Capture/finesort/microfilm	$0.042	$0.037	$0.032	$0.026	$0.024	$0.022	$0.021
Return item processing	2.00	1.75	1.50	1.25	1.25	1.25	1.25
Comprehensive check processing service (Min. charge $750/mo.):							
Capture/file/microfilm/finesort	.042	.037	.032	.026	.024	.022	.021
Statement preparation (truncated)	.15	.14	.13	.13	.13	.13	.13
Statement preparation (standard)	.35	.30	.28	.28	.28	.28	.28
Return item processing	2.00	1.75	1.50	1.25	1.25	1.25	1.25
Over-the-counter items	.045	.045	.045	.045	.045	.045	.045
Statement inserts	.03	.03	.0275	.025	.025	.025	.025

Miscellaneious services	Fee
Late return item transmission—after 2:00 p.m. (per item)	$0.25
Second request on previously reconciled adjustment (per occurrence)	10.00
Truncated item retrieval (pler item)	3.00
Generic envelopes (each)	.025
Microfilm:	
Second copy of film daily (per month)	75.00
Special request copy (per copy)	5.00
Fine sort microfilm:	
One master and one duplicate (per cycle)	10.45
Statement fee (per statement)	.002
Same day microfiche:	
2 copies with hardcopy processed item listing and exceeded dollar report (per month)	75.00
Hardcopy exceeded dollar report only (per month)	65.00
Additional microfiche (per copy)	1,00
Special fine sort (per item)	.04
Photocopies (per copy)	3.00
Non-standard statement inserts (per insert)	.05
MICR line alterations (per item)	.75
DDA account maintenance Fee:	
Regular DDA account (per month)	15.00
Zero balance account (per month)	30.00
Supplementary service fees: Thirty day advance notice is required on all branch sales, branch mergers, branch acquisitions or service bureau changes.	
Custom programming:	
1. Breakout of items by routing transit number and/or branch number (inlcude listing)	2,000.00
2. Breakout and capture of items (Processed items/mocrofilm/commingled with other items for service bureau)	3,000.00
3. Breakout, capture, and separate tape produced, including above items	4,500.00
4. Selective account programming (maximum 50 accounts) in addition to regular programming requirements	1,500.00
5. Special cycle coding	1,500.00
6. Service bureau conversion	3,000.00
7. One-half of the original programming fee will be assessed in the event of a cancellation notice given less than 7 days in advance of effective date	
Statement handling:	
Set-up fee/branch outsort of items	250.00
Standard statement rendition (close-out statements) (each)	.50
Non-standard statement rendition:	
First 90 days (each)	.75
After 90 days (each)	1.00
Non-standard processing: Outsort and redirect items (per day)	25.00

None: Other services and prices available upon request.

District 12.—Federal Home Loan Bank of Seattle (1989 NOW Services)

Service item	Fee
Base per item fees:	
Truncation service (per item)	$0.025
Non-truncation service (per item)	.030
Combined service	(1)
Cumulative volume credits:	
25,001 to 50,000 items per month (per item)	.0025
50,001 to 75,000 items per month (per item)	.0025
75,001 to 100,000 items per month (per item)	.0025
100,001 to 200,000 items per month (per item)	.0025
200,001 to 400,000 items per month (per item)	.0050
400,001 to 600,000 items per month (per item)	.0050
600,001 or more items per month (per item)	.0025
Large dollar signature verifications (each)	.75
Return item handling:	
NSFs, account closed, etc. (each)	.80
Regulation J, large dollar returns	(2)
FRB Regulation CC handling fee (per item)	.34
Photocopy requests (NOW User) (each)	1.00
Research requests (NOW User) (each)	1.00
Photocopy requests (Non-User) (each)	5.00
Research requests (Non-User) (each)	5.00
Special fine sorts (per item)	.01
Statement services:	
Burst or fold only for statements (per statement) (minimum of $30.00 per month)	.005
With checks inserted (per item)	.02
Without checks (per statement)	.06
Advertising inserts	(3)
Monthly minimum fee for service (per month)	250.00
Miscellaneous and out-of-pocket expenses: Courier, postage, etc	(3)

[1] Per above charge for each service.
[2] No charge.
[3] As required.

Note: Additional discount may be arranged for contractual commitments. Prices may vary in some circumstances. For additional information, contact the Correspondent Services Marketing Department.

Schedule B: Demand Deposit and Other Services (1989 DDA Services)

DISTRICT 1.—FEDERAL HOME LOAN BANK OF BOSTON

Services	Fee
Account maintenance (per account, per month)	$7.50
Checks and items paid (per item)	.15
Mail deposits (per item)	.20
Federal Reserve settlement (per item) [1]	.60
Internal transfers and zero balance transfers	([2])
Others transfers (per transfer)	.10
Domestic wire transfers:	
In (per wire)	4.50
Out (per wire)	7.00
Telephone advices	([2])
International wire transfers	([3])
Special statements (per statement)	2.50
Stop payments (per item)	9.50
Automated reconcilement:	
Paper issues input (per issue)	.065
Magnetic tape issues input (per issue)	.035
Automated reconcilement service charge (per account, per cutoff)	5.00
Paid only reconcilement, daily advices, monthly reports, audit confirmations, voided items input, zero-balance transfer and fine sort of items	([2])
Look-up and photocopies of checks (per item)	2.50
Truncation (per item)	.01
Depository transfer checks (DTC's) (per item)	.20

[1] Federal Reserve Settlements include ACH, Series E-Bond Redemption, Cash Letter Settlements (Inclearings and Outclearings), Regulation D Reserve Pass-Throughs, Treasury Tax and Loan Settlements.
[2] No Charge.
[3] Fee varies based on current international rates and cable remittance fees.

Notes:
All prices are subject to change.
All collected IDEAL WAY deposits earn immediate interest paid in hard dollars monthly via credit to the member's account at month end. Interest rates are set daily.
Fees for services are paid in hard dollars monthly via a debt to the member's account.
No compensations balance requirements.
No reserve requirements.

DISTRICT 2.—FEDERAL HOME LOAN BANK OF NEW YORK (1989 DDA SERVICES)

DEPOSIT SERVICES

Items deposited	Unencoded	Encoded
First 100,000 items/month	$0.070	$0.050
100,001 to 300,000 items/month	.065	.045
300,001 plus items/month	.060	.040
Early delivery discount (weekdays):		
5:30 p.m. deadline	.015	.010
7:00 p.m. deadline	.005	.005

Service	Fee
Saturday permium (per item)	$0.01
Cash letter deposit (per deposit)	.50
Depository endorsement premium	.005
Return item (per item)	1.50
Return item (unendorsed) (per item)	8.75
Domestic item (unendorsed) (per item)	15.00
Foreign collection (per item)	8.00
Bond collection (minium)	40.00
Return coupons (per return)	6.50
Unendorsed return coupons (per return)	15.00
Security coupon collection (per envelope)	4.50
Photocopies (per copy)	5.00
Savings bond redemption (per transmittal)	3.00
Reject repairs (encoded only per item)	.10
Lockbox service:	
Remittance processing:	
First 50,000 items/month (per item)	.15
50,001 plus items/month (per item)	.10
Check deposit (per check)	.05
Return item (per check)	1.50
Exception item (per item)	.12
Stop file maintenance (per month)	150.00
Deposit notification (per month)	75.00
Envelope return (per day)	15.00
Photocopies (per copy)	5.00

Service	Fee
Set-up fees:	
Coupon formats (per format)	250.00
Data center programming (per data center)	25.00
Daily reports microfiche (per item)	.001
Daily reports microfiche—Additional copies per month (per set)	15.00
Coin and curreny service:	
Shipments	(1)
Cash order[2] (per order)	10.00
Cash return (per return)	10.00
Late orders/returns (per order/return)	35.00
Rolled coin (per roll)	.065
Deposits:	
Currency verification (per $1000)	1.00
Coin verification (loose coin) (per bag)	1.00
Coin verification (rolled coin) (per bag)	10.00
DISBURSEMENT SERVICES	
Checks and money orders:	
First 5,000 items/month (per item)	.26
5,001 to 10,000 items/month (per item)	.23
10,001 to 25,000 items/month (per item)	.17
25,001 plus items/month (per item)	.13
Zero reconcilement premiun:	
Issuance reported via magnetic tape (per item)	.03
Issuance reported via paper (per item)	.05
FUNDS TRANSFER	
Wires in (per wire)	4.00
Wires out (per wire)	9.00
Safekeeping services:	
Maintenance:	
Less than 25 securities (per month)	33.00
More than 25 securities (per month)	75.00
Per item charge:	
Physical securities (per month)	6.00
Book entries (per month)	3.50
Purchases and sales (per transaction)	30.00
Maturities (per transaction)	10.00
Coupons, principal and interest payments (per transaction)	7.00
MISCELLANEOUS CORRESPONDENT SERVICES	
Depository transfer checks (per check)	5.00
Single check deposits (per check)	2.00
Savings bond redemption (per transmittal)	3.00
Savings bond sales (per transmittal)	1.50
Federal recurring payments (per transaction)	3.00
Automated clearing house transactions (per transaction)	3.00
Treasury tax and loan accounts (per transaction)	3.00
Electronic daily advice reporting (EDAR) consolidated balance reporting transaction detail	(3)
Settlement only (per service) (per month)	250.00
Paper items (per item)	1.50
Pass-through reserves (per month)	25.00

[1] Price varies by location.
[2] Cash orders must be placed and funded one day prior to delivery.
[3] Fees for special services will be negotiated based on the number of transactions. Fees are subject to change based on Federal Reserve announcements.
Note: A minimum monthly service charge of $300 applies to the Remittance Processing.

DISTRICT 2.—FEDERAL HOME LOAN BANK OF PITTSBURGH (1989 DDA SERVICES)

Services	Fee
Deposit processing service:	
Deposit ticket entery (per entry)	$0.25
Deposit transfer voucher (per entry)	1.75
Mail Deposit Ticket Entry (per entry)	2.25
Deposit item transit:	
Items per month:	
0 to 25,000 (per item)	.0325
25,001 to 58,500 (per item)	.0319
58,501 to 91,500 (per item)	.0314
91,501 to 125,000 (per item)	.0308
125,000 to 158,500 (per item)	.0303
158,501 to 191,500 (per item)	.0297
191,501 and over (per item)	.0292
Deposit item encoding:	
Items per month:	
0 to 25,000 (per item)	.0275
25,001 to 58,500 (per item)	.0270
58,501 to 91,500 (per item)	.0265
91,501 to 125,000 (per item)	.0260
125,001 to 158,500 (per item)	.0255

DISTRICT 2.—FEDERAL HOME LOAN BANK OF PITTSBURGH (1989 DDA SERVICES)—Continued

Services	Fee
158,501 to 191,500 (per item)	.0250
191,501 and over (per item)	.0245
Deposit item return (per item)	1.50
Deposit item photocopy (per item)	3.00
Deposit pickup (per pickup)	6.25
Return check courier service (per month)	85.00
Check and money order clearing service:	
Clearing item processing (per item)	.11
Clearing item reconciliation copy processing:	
By manual input (per item)	.06
By magnetic tape input (per item)	.03
Clearing item fine sorting for return with bank statements (per item)	.06
Stop-payment order processing (per entry)	9.75
Imprinting checks and money orders	(1)
Standard earnings checks (per item)	.05
Federal Reserve inclearing settlement (per month)	100.00
Electronic wire transfer of funds:	
Outgoing wires:	
Receiving bank on-line (Federal Reserve) (per transfer)	6.00
Receiving bank off-line (Federal Reserve) (per transfer)	9.75
Incoming wires (per transfer)	3.50
ACH debit/credit (per item)	.05
Lockbox service:	
Lockbox item processing (per item)	.31
Deposit item transit (per item)	(2)
Deposit ticket entry (per transfer)	.25
Transportation (per month)	50.00
Account maintenance (per acct./month)	15.00
Account overdraft penalty	(3)
Collection service:	
Foreign items	(4)
Bond coupons:	
West (per envelope	4.75
East (per envelope)	4.75
COIN AND CURRENCY EASTERN SERVICE	
Requisition:	
Currency (per strap)	.30
Coin (per bag)	1.00
Coin (per box)	2.50
Deposit:	
Currency/food coupons (per $1,000 or part thereof)	1.00
Coin (per bag)	1.75
Transportation:	
Zone 1 (per stop)	19.95
Zone 2 (per stop)	25.50
COIN AND CURRENCY WESTERN SERVICE	
Requisition:	
Currency (per $1,000 or part thereof)	.30
Coin (per box)	1.50
Deposit:	
Currency (per $1,000 or part thereof)	1.00
Coin:	
Unsorted	7.50
Sorted	1.25
Food coupons:	
Unsorted	3.00
Sorted	1.75
Transportation:	
Western Pennsylvania (per stop)	13.35
West Virginia:	
Zone 1 (per stop)	31.00
Zone 2 (per stop)	35.20
SAFEKEEPING AND INVESTMENT	
Trade executed for a member (per transaction)	10.00
Receipt of security:	
Bearer (per transaction)	28.00
Registered (per transaction)	28.00
DTC (per transaction)	10.00
PTC (per transaction)	10.00
Fed book-entry at Chase (per transaction)	8.00
Fed book-entry at Fed (per transaction)	1.00
Delivery of security:	
Bearer (per transaction)	28.00
Registered (per transaction)	28.00
DTC (per transaction)	10.00
PTC (per transaction)	10.00
Fed book-entry at Chase (per transaction)	8.00

DISTRICT 2.—FEDERAL HOME LOAN BANK OF PITTSBURGH (1989 DDA SERVICES)—Continued

Services	Fee
Fed book-entry at Fed (per transaction)	2.25
Redemption of security:	
Bearer (per transaction)	20.00
Registered (per transaction)	30.00
DTC (per transaction)	10.00
PTC (per transaction)	0.00
Fed book-entry at Chase (per transaction)	8.00
Fed book-entry at Fed (per transaction)	0.00
Collection of principal and interest payments on mortgage-back securities:	
registered (per collection, per pool)	15.00
PTC (per collection, per pool)	2.50
Fed book-entry at Chase (per collection, per pool)	2.00
Fed book-entry at Fed (per collection, per pool)	.50
Account maintenance (per month)	10.00
Transfer security from one account to another account/pledge:	
Physical form (per transaction)	5.00
Book entry (per transaction)	5.00
Retail-reop custodial service (per month)	30.00
Issue safekeeping:	
Bearer with coupons (per month, per issue)	4.00
registered (per month, per issue)	3.00
Fed book-entry at Fed (per month, per issue	1.00
Fed book-entry at Chase (per month, per issue)	1.50
DTC (per month, per issue)	1.75
PTC (per month, per issue	2.00
Money market (per month, per issue)	2.50
GNMA registered (per month, per issue)	4.50
Market value pricing (per month)	50.00
Corporate actions:	
Calls, tenders, conversions (per transaction)	50.00
Stock divideneds, stock splits (per transaction)	24.00
Delivered collateral	[5]

[1] Direct cost pass-through from supplier.
[2] Refer to Deposit Processing Serivce—Deposit Item Transit fees.
[3] Greater of $75 or the interest on the amount of the overdraft calculated at a dialy interest rate that is equal to the highest advance rate plus 3%.
[4] Pass-through.
[5] Greater of $4.00 per million per month of outstanding advances, advance commitments, letters or credit, and interest rate swaps, or a monthly $10 flat fee.

DISTRICT 4.—FEDERAL HOME LOAN BANK OF ATLANTA (1989 DDA SERVICES)

Demand deposit service	Fee
Checks paid [1] (per item):	
Monthly Statement:	
Items finesorted into check number order (per item)	$0.12
Items truncated (per item)	.08
Photocopies (demand items/statements/advices) (per item)	2.50
Stop payment (per item)	12.00
Range stop payments (per item returned)	12.00
Without entry [2] items (per item)	4.50
Deposit transfer checks (DTC) (per item)	4.00
Wire transfers:	
Incoming (per item)	([3]) 3.00
Outcoming (per item)	([3]) 4.00
Phone advice (per wire)	([3]) 2.50
Interbank transfer (per transfer)	2.50
Securities and safekeeping:	
Purchases—versus payment	15.00
Purchases—free	25.00
Sales—versus payment	15.00
Sales—free	25.00
Maturities	10.00
Principal and interest posting (including mortgage-backed securities	4.00
Account maintenance (monthly charge per issue based on several issues held)	3.00
Pledge/release transactions	15.00
Retail repurchase monthly maintenance fee	100.00
Account reconciliation service:	
Full reconciliation—magnetic tape ($25.00 min./mo.) (per issue)	.0325
Full reconciliation—paper issue ($25.00 min./mo.):	
Encoded amounts (per issue)	.0475
Unencoded amounts (per issue)	.07
Partial reconciliation ($15.00 min./mo.) (per paid item)	.03
Range reconciliation ($15.00 min./mo.) (per paid item)	.03
DDA paid tape ($15.00/tape plus)	.03
Alternative demand disbursement service (fee checks, stop payments, photocopies and supplies. Earnings and/or pricing based on average dollar amount of issued items and number of days outstanding)	.00–.30
Deposit processing service:	
Unencoded check (per item)	([5]) $.06

DISTRICT 4.—FEDERAL HOME LOAN BANK OF ATLANTA (1989 DDA SERVICES)—Continued

Demand deposit service	Fee
Encoded checks (per item)	([3]) .04
Foreign checks (per item)	5.00
Bond coupons (per envelope)	3.50
Deposited checks returned (per entry)	2.00
Automated clearinghouse (ACH) Service:	
Originating—$15.00 per tape plus (per item)	.07
Receiving—$100.00 settlement per months plus (per item)	.05
Settlement only services:	
Automated clearinghouse (ACH) (per month)	100.00
Currency and coin (per month)	100.00
Deposit of items at Fed (per month)	100.00
NOW (per month)	100.00
Multiple settlement services discount:	
1 Service	100.00
2 Services (10%)	180.00
3 Services (15%)	255.00
4 Services (20%)	320.00
Other Settlement Services:	
Treasury tax and loan (TT&L) (per entry)	3.50
Savings bonds (per entry)	3.50
Non-cash collections (per entry)	3.50
Currency and coin service (per order)	3.50
Audit confirmations (per request)	15.00

[1] The checks paid charge includes at no additional charge: monthly account maintenance, internal transfers, and special statement drops.
[2] A Without Entry Item is a check which is sent back to the depositing institution to secure proper endorsement or obtain a refund for forged endorsement or signature.
[3] Federal Reserve charges are reflected in these prices. Any changes in Federal Reserve prices may result in adjustments to these prices.

Notes:

Overdrafts incur a penalty calculated at 4% over the current short-term variable advance rate, with a minimum charge of $50.00 per occurrence.
Check printing costs are charged directly to the institution.
Special research requests of 12 or more items will be charged at $30 per manhour plus $1 per item.
Magnetic tapes sent to members and not returned to the Bank within 90 days will be billed at $12.00 per tape.

DISTRICT 5.—FEDERAL HOME LOAN BANK OF CINCINNATI (1989 DDA SERVICES)

Demand deposit account services	Per item charge
Paid items	$0.085
Magnetic tape reconciliation	.045
Advice reconciliation	.050
Fine sorting	.01
Check and money order truncation	([1])
Stop payments	6.00
Wire transfer-in	2.00
Wire transfer-in—Telephone confirmation	3.00
Wire transfer-out	5.00
Charges	.15
Credits	.15
Photocopies	1.00
Large dollar return notification	2.00
Settlement agent with Federal Reserve:	
ACH (per active month)	100.00
Treasury tax and loan (per active month)	100.00
Bond activity (per active month)	100.00
Currency and coin (per active month)	100.00
Check deposit activity (per active month)	300.00
Security purchases (per active month)	100.00
Check deposit returns only (per active month)	50.00
NOW activity (per active month)	300.00
Credit card activity (per active month)	100.00

ALTERNATIVE DISBURSEMENT SERVICE

Settlement day option	Per item charge
MONEY ORDERS/DIVIDEND CHECKS	
1-day	$0.03
2-day	0.07
Tuesday weekly	0.13

Official Checks

Settlement day option	Per item charge	Earnings incentive [2]	
		Under 10,000 checks/month	10,000 plus checks/month
1-day guaranteed	$0.01	1.5 days	2.5 days
1-day variable	0.01	75 percent of float balance	95 percent of float balance.
2-day guaranteed	0.03	0.25 day	0.50 day
2-day variable	0.03	50 percent of float balance	60 percent of float balance.

Special Transfer Account

Settlement day option	Per item charge
If checks are needed to transfer member's balances to other demand accounts or to satisfy internal bookkeeping requirements, the following Alternative Disbursement option is provided:	
2-day	$0.10

Check Deposit Service

Cincinnati Operations Center	Fee	
	Unencoded	Encoded
Cincinnati City	$0.0250	0
Cincinnati RCPC (Special)	.0250	0
U.S. Treasury	.0250	0
Cincinnati RCPC	.0450	$0.0325
Columbus City/RCPC	.0475	.0350
Louisville City/RCPC	.0475	.0350
Other FRB (1-day)	.0825	.0700
Other FRB (2-day)	.0925	.0800

Discount	Monthly volume range
Volume discounts on all items when total deposited items fall within below listed categories:	
7.5 percent	100,001–200,000.
15.0 percent	200,001 and over.

	Per item charge
Additional services:	
Photocopy (per item)	$1.00
Dishonored item return by bank (per item)	.25
Large dollar return notification (per item)	2.00
Non-cash collection service—minimum:	
Non-cash item (per item)	5.00
Security coupon collection (per envelope)	5.00
Coupon return item (per item)	10.00
Foreign item (per item)	5.00
Food Stamp cash letter (per cash letter)	1.00
Municipal bonds (per item)	5.00
Savings bonds	([3])
Government coupons	([4])
Depository transfer checks (DTC) (per item)	5.00
Cash letter fee (per letter)	([5]).50

Check Deposit Service

Cleveland Operations Center	Fee	
	Unencoded	Encoded
Cleveland City/RCPC (Special)	$0.0250	$0.0150
U.S. Treasury	.0250	.0150
Cleveland City	.0425	.0300
Cleveland RCPC	.0475	.0325
Columbus City/RCPC	.0475	.0350
Other FRB	.0800	.0675

Discount	Monthly volume range
Volume discounts on all items when total deposited items fall within below listed categories:	
7.5 percent	100,000–200,000.
15.0 percent	200,001 and over.

	Per item charge
Additional services:	
Photocopy (per item)	$1.00
Dishonored item return by bank (per item)	.25
Large dollar return notification (per item)	2.00
Non-cash collection service—minimum:	
Non-cash item (per item)	5.00
Security coupon collection (per envelope)	5.00
Coupon return item (per item)	10.00
Foreign item (per item)	5.00
Food Stamp cash letter (per cash letter)	1.00
Municipal bonds (per item)	5.00
Savings bonds	([6])
Government coupons	([7])
Depository transfer checks (DTC) (per item)	5.00
Cash letter fee (per letter)	([8]).50

Check Deposit Service

Nashville Operations Center	Fee	
	Unencoded	Encoded
Nashville City	$0.0375	$0.0250
Nashville RCPC	.0450	.0325
U.S. Treasury	.0275	.0150
Nashville NOW On-Us	.0275	.0150
DDA On-Us	.0275	.0150
Louisville RCPC([9])	.0675	.0650
Other FRB	.0775	.0650

Discount	Monthly volume range
Volume discounts on all items when total deposited items fall within below listed categories:	
7.5 percent	100,001–200,000.
15.0 percent	200,001 and over.

	Per item charge
Additional services:	
Photocopy (per item)	$1.00
Dishonored item return by bank (per item)	.25
Large dollar return notification (per item)	2.00
Non-cash collection service—minimum:	
Non-cash item (per item)	5.00
Security coupon collection (per envelope)	5.00
Coupon return item (per item)	10.00
Foreign item (per item)	5.00
Food Stamp cash letter (per cash letter)	1.00
Municipal bonds (per item)	5.00
Savings bonds	([10])
Government coupons	([11])
Depository transfer checks (DTC) (per item)	5.00
Cash letter fee (per letter)	([12]).50

Currency and coin service	Fee
MEMBERS IN KENTUCKY & OHIO	
Preparation charge:	
Currency for members in northern Ohio (per order)	$10.00
Currency for members in Kentucky and southern Ohio (per order)	9.25
Wrapped coin (per box)	2.00
Deposits of coin and currency:	
Strapped currency (per strapped deposit)	5.00
Currency (per mixed or unfilled straps)	6.00
Coin-loose (same denomination) (per bag)	2.00
Coin-loose (mixed denomination) (per bag)	4.00
Coin-wrapped (same denomination) (per bag)	4.00
Coin-wrapped (mixed denomination) (per bag)	8.00

Currency and coin service	Fee
MEMBERS IN NASHVILLE AND MEMPHIS FEDERAL RESERVE TERRITORIES	
Preparation charge:	
Currency and/or loose coin (per order)	3.00
Wrapped coin for members in the Nashville FRT (per roll)	.0375
Pick-up of currency and coin (per occurrence)	1.00
Safekeeping service	
Receive or deliver (per transaction):	
Book entry	10.00
Physical	35.00
Redemption (per transaction):	
Book Entry	15.00
Physical	30.00
Interest coupons (per transaction)	4.00
Pledges (per transaction):	
Book entry	15.00
Physical	25.00
Account maintenance (per month)	20.00
Safekeeping account maintenance (per month)	25.00
Retail repurchase account maintenance (per month)	15.00
Contemporaneous reserve settlement (per month)	50.00
LOCKBOX SERVICES	
OCR standard item fee	.15
Includes:	
Courier pickup at lockbox.	
Microfilming of check and document.	
Transmission to service bureau.	
Management reports.	
Check deposit fee (encoding and clearing).	
Certain exception handling.	
ADDITIONAL SERVICES	
Lockbox rental	[13]
Photocopies (per copy)	1.00
Hot file update (add or delete) (per update)	.50
Hot file update (magnetic tape) (per tape)	10.00
Courier/postage	[14]
Dishonored item returned by bank (per item)	.25
Reject or unmatched item	[15]
Other desired services	[16]
Large dollar return notification (per item)	2.00

[1] No charge.
[2] The earnings incentive is a monthly interest payment credited directly to the members's demand account. The interest rate is 10 basis points above the average 91-day Treasury Bill rate.
[3] No charge.
[4] No charge.
[5] $.25 per "Cash Letter" when depositing over 100,000 items per month.
[6] No charge.
[7] No charge.
[8] $.25 per "Cash Letter" when depositing over 100,000 items per month.
[9] Louisville RCPC items deposited within a mixed cash letter by 7:00 p.m. Monday-Thursday.
[10] No charge.
[11] No charge.
[12] $.25 per "Cash Letter" when depositing over 100,000 items per month.
[13] Actual cost.
[14] Actual outgoing.
[15] No fee.
[16] Cost basis.

Notes:
IFTS Interest—Members' daily collected funds in excess of their compensating balance automatically IFTS interest.
For transportation charge, please contact the Bank for specific fee relative to the member's area. ATM fit money for Northern Ohio is available at a slightly higher fee.
Members can pay the above DDA service fees explicitly or implicitly through a compensating balance.

DISTRICT 6.—FEDERAL HOME LOAN BANK OF INDIANAPOLIS (1989 DDA SERVICES)

Cash management service	Paid check charge	Advices	
		Paper	Tape
Stop payments (per stop)	$6.00	Photocopies (per copy)	$2.50
Collected balances will earn at cash management service daily posted rate.		Fine sort numeric sequences (per item)	.016

Other services	Michigan	Indiana
Transit item deposit service:		
Pre-encoded—Government PMO's, NOW intercept	$0.019	

Other services	Michigan	Indiana
City items	.027	.027
RCPC items	.027	.027
Other district items	.058	.060
Unencoded:		
City items	1.00	1.00
RCPC items	1.00	1.00
O. D. items	1.00	1.00
Other fees:		
Photocopies	2.50	2.50
Adjustment on pre-encoded work	2.75	2.75
Return items	1.00	1.25
Bonds and coupons handling fee	4.75	5.25
Settlement only (per month plus $3.00 per journal entry)	100.00	100.00
Cash letter	1.00	.50
Deposit adjustment	.30	.30
Collection items	5.00	5.00
Food Stamp adjustment fee	2.50	
Foreign items (separate cash letter)	.35	.35
Foreign item (mixed cash letter)	.35	.35
Foreign item adjustment fee	1.00	
Lockbox services:		
Truncation deposit items	.029	.029
Untruncated deposit items	.027	.027
Coin and currency Program:		
Metropolitan areas of Indianapolis and Detroit— per delivery by armored truck service	27.50	29.00
Outside metropolitan areas—fees vary depending upon the distances involved (per delivery by armored truck service		45.00
Rolled coin (per roll)	.035	
Returns (per deposit)	3.00	6.00
Order (member uses own courier)		15.00
Wire transfer services:		
In (per transfer) domestic	2.50	
Out (per transfer) domestic	5.00	
International wires	25.00	
Depository transfer checks: (per check)	2.00	
Automated clearinghouse (ACH) service:		
Per tape	7.00	
Per item (originator)	.02	
Settlement only	50.00	
MACHA, INDEX	(1)	
Treasury tax and loan settlement service: Per transaction	2.00	
Charge card transaction: Per transaction	1.50	
Mortgage remittance:		
Untruncated	2 .270	
Truncated	2 .290	

1 The higher of $2.00 or actual costs.
2 Varies by service level.

District 7.—Federal Home Loan Bank of Chicago (1989 DDA Services)

Monthly volume	Non-truncated accounts	Truncated accounts
A. Demand accounts:		
Items processed:		
0 to 7,500	$0.110	$0.090
7,501 to 10,000	.100	.080
10,001 to 12,500	.090	.070
12,501 to 15,000	.080	.060
15,001 to 25,000	.075	.055
25,001 and over	.070	.050

Services	Fee
Alternative demand disbursement service:	
800 series—next day remittance	(1)
900 series—three day remittance (per item issued)	$0.050
Ancillary services fees:	
Special sorts (per item)	.010
Reconciliation:	
Non-encoded items (per item)	.070
Encoded items (per item)	.020
Magnetic tape items (per item)	.020
Stop payments (per stop placed)	12.00
Photocopies (per item)	3.00
Account maintenance (per account per month)	20.00
Additional statements (per statement)	10.00
Request for money order forms	(2)
Postage/Courier	(2)
Dial-A-Statement:	
Per month or	25.00

Services	Fee
Per year or	250.00
Per statement	1.00
B. Deposit processing:	
Checks deposit drawn on:	
Federal Home Loan Bank of Chicago:	
FHLB intercept customers.	
Postal money orders	0.015
U.S. Treasury check	0.015
City of Chicago financial institutions:	
0–10,000	.030
10,001–25,000	.028
25,001 and over	.026
Non-Federal Reserve Chicago RCPC (clearinghouse items):	
0–10,000	.036
10,001–25,000	.034
25,001 and over	.032
Chicago RCPC financial institutions (Routing Numbers 0711, 0712, 0719, 2711, 2712, 2719):	
0–10,000	.048
10,001–25,000	.046
25,001 and over	.044
Transit items—other Federal Reserve District financial institutions:	
0–10,000	.075
10,001–25,000	.073
25,001 and over	.071
Selected high dollar endpoints	.500
Other services:	
CMS information requests by phone (per call)	1.50
Bank confirmation (each)	5.00
Programming rate (per hour)	40.00
Emergency processing:	
Initial fee	2,000.00
Monthly retainer	250.00
Activation fee	500.00
Per item fee	(3)
Ancillary service fees: Check encoding (per item)	.050
Return items:	
Deposits tickets	(4)
Charge backs (per item)	2.00
Noncash collection items:	
Coupons (per envelope) plus registered mail costs)	6.00
Foreign items (per item plus collection cost	7.50
Food Stamps deposited (per item)	.020
Coin and currency orders (per order/per branch)	3.00
Postage/Courier	(4)

	Encoded items	Non-encoded items
Minneapolis region:		
City and local	$0.0275	$0.0227
Regional RCPC	.0395	.0227
Regional premium	.0525	.0227
County	.0435	.0227
Transit	.0725	.0227
St. Louis region:		
City and local	$.0345	$.027
Regional RCPC	.0375	.027
Regional premium	.0425	.027
County	.0400	.027
Transit	.0745	.027

Services	Fee
C. Money transfers:	
Wire transfers:	
Wire-in	$4.00
Repetitive out	5.00
Wire-out	7.00
In-with call advice	7.00
International surcharge	25.00
ACH originations (per month)	40.00
Customer direct access:	
CDA-in	3.00
CDA-out	3.00
CDA access fee (per month)	50.00
Quick deposit drafts: Quick drafts	6.00

Services	Fee
D. Safekeeping:	
Receipt or delivery:	
Book entry item	40.00
Physical item	50.00
FMNA/FHLMC P&I Coupon collection	5.00
Collection at Maturity	[5]
Annual maintenance (billed quarterly):	
Par amount under $5 million	200.00
Par amount $5 million or over (per million)	45.00
Monthly reports	[5]
Registration fees	[6]
Transfer to or from pledge status	60.00
Maintenance of collateral for FHLB advances:	
Place note and mortgage in vault:	
Deliver with listing only	2.00
Delivery with listing and computer tape	2.00
Remove note and mortgage from vault	2.00
Annual maintenance charge (per quarter)	4.00

[1] No charge.
[2] Actual cost.
[3] Standard per item fee charged at lowest volume level. Relationship pricing discount not applicable.
[4] Actual cost.
[5] No charge.
[6] Actual cost.

Notes: The FHLBC reimburses a maximum of $50.00 per thousand for the institutions' check printing for alternative demand disbursement service. A copy of the bill for the check order must be received by the FHLBC within 90 days of invoice date in order to receive payment.

District 8.—Federal Home Loan Bank of Des Moines (1989 DDA Services)

DDA Service Activity	Fee
Account Maintenance	$6.00
Account Reconciliation	6.00
Check Printing Costs	[1]
Drafts Paid:	
Truncated	.045
Non-Truncated	.055
Controlled Disbursement	.080
Stop Payments	7.00
Ledger Credits	.30
Ledger Debits	.20
Bankwires in:	
With Phone Advice	3.00
Bankwires Out:	
Without Phone Advice	4.00
With Phone Advice	6.00
Special Cut-off Statements	3.00
Account Reconciliation Tape Issues	.02
Issue Encoding	.045
Pre-encoded Issues	.030
ACH Transactions:	
Fed Charges	[1]
Settlement Charges	.500
Miscellaneous Charges/Special Processing	[1]
Coupons Deposited (per envelope)	3.00
Collections:	
Foreign Checks	3.00
Domestic Checks	3.00
Proof of deposit service	
Entry Fee for all items	.003
Re-enter Rejects	.04
Data Transmission (per transmission)	1.50
Fine Sort "on-us" items	.005
Printed Reports—Standard (per report)	1.00
Plus (per page)	.05
Optional	[2]
Plus (per page)	.05
Minimum monthly billing	40.00
Facsimile Transaction (per transmission)	1.50
Account Transaction Info. (per call)	1.00
Miscellaneous Charges/Special Processing	[3]

Deposit Processing Fee Schedule

	Encoded	Package Sort
Check Clearing Fees:		
a. Des Moines Center:		
Local	$.025	
Regional	.035	
Regional—Premium	.040	
Transit	.0525	
b. Minneapolis Center:		
Local	.020	
Regional	.032	
Regional—Premium	.045	
Country	.036	
Transit	.065	
c. St. Louis Center:		
Local	.027	.018
Regional	.030	.023
Regional—Premium	.035	NA
Country	.0325	.027
Transit	.067	.063

	Fee
Other fees at the Des Moines, Minneapolis, and St. Louis Regional Processing Centers:	
Encoding Fee—St. Louis	$.025
Encoding Fee—Des Moines or Minneapolis	.0225
Return Item Processing:	
Return Items	.75
Large Dollar Notification (Reg. J) (per item)	3.00
Special Handling:	
Subtotal by office	1.50
Individual Entries (per entry)	.50
Telephone Notification Less Than $2,500 (per item)	.60
Balance/Availability Reporting (per month)	30.00
Endpoint Analysis (per day)	20.00
Non-Processable Items (Pre-Encoded) (per item)	.15
Photocopies (per copy)	2.75
Research (per hour)	20.00
Currency/Coin Orders—St. Louis	4.00
Currency/Coin Orders—Des Moines or Minneapolis	2.00
Foreign Currency Deposits (per deposit)	5.00
Foreign Currency Orders (per order)	2.50
Per Cash Deposit (Credit Tickets):	
Standard Packaging	.50
Non-Standard Packaging	10.00
Special Cash Orders/Deposits	(*)
Food Coupons—Des Moines or St. Louis	.02
Food Coupons—Minneapolis	.04
Federal Reserve Bank Settlement Entries (per entry)	.50
Additional Services (St. Louis Center):	
Package Sort:	
Local	.018
Regional	.023
Country	.027
Transit	.063

Deposit Processing Fee Schedule—Kansas City Center

	Less than 20,000	20,001–50,000	50,001–100,000	100,001–200,000	Greater than 200,001
Deposit Item Charges:					
Local Items—1010, 3010, 0000—Select 2865, 3012	$.019	$.019	$.017	$.017	$.017
Country Items 1011, 1012, 1019, 0865, 2865—Select 2815, 2810	.029	.029	.028	.028	.028
Regional Items—Other FRB Select	.067	.055	.055	.052	.047
Transit Items—Other FRB	.079	.075	.069	.067	.063
Special Package Sort of Transit Items Only ($2.00 per package plus)	.085	.085	.085	.079	.079
Encoding Charge	.025	.025	.0225	.0225	.020
Return Items	.075	.075	.075	.065	.065

Other services at Kansas City Regional Center	Fee
Return Items:	
Special Handling	$1.50
Subtotal by office	.50
Individual Entries (per entry)	.60
Telephone Notification Less Than $2,500 (per item)	3.00
Large Dollar Notification (Reg. J) (per item)	3.00
Collection/Settlement Service:	
Treasury/Municipal Coupons (per envelope)	3.00
Treasury/Municipal Bonds (per bond)	3.00
Other Collections (per item plus actual charges)	3.00
Federal Reserve Settlement Entries (per entry)	.50
Cash Services:	
Currency/Coin orders (per order)	3.00
Special orders (per order plus actual charges)	3.00
Foreign Currency orders (per order)	5.50
Currency/Coin Deposits:	
Standard Packaging (per deposit)	.50
Non-standard Packaging (per deposit)	10.00
Foreign Currency Deposits (per deposit)	5.00
Balance/Availability Reporting (per month)	30.00
Endpoint Analysis (each, over two per year)	30.00
Photocopies/Microfilm copies (per copy)	2.75
Audit (the lesser of: $2.75 per copy) (or $20 per hour plus per copy)	.50
Research (per hour)	20.00

Statement Rendering Service	Fee
Statement Per Month—Non-Truncated:	
First 5,000	.18
Next 5,000	.165
Over 10,000	.15
Statement Per Month—Truncated	.05
Statement Inserts	.005
Other Mailings	.05
Surcharge for One Cycle Per Month (percentage)	10
Fine sort counter items for statement insertion	.005
Sort counter items without MICR	.02
Courier Postage and Envelopes	.([6])
Pre-Sort Only (per item)	[6].02
Pricing to Forward Cycle Items to Data Processor for Statement Handling	
Insertion of Trigger/Separator Tickets:	
Sorting (per item)	.003
Trigger Ticket Expense (per account)	.012
Insertion of Rejects (per reject)	.040
Photocopies of Missing Items (per copy)	2.75
Courier, Postage, and Boxes	([5])
Monthly Fee for Special Handling (per cycle with a minimum fee of $75)	25.00

Lockbox service	Fee
1. Basic Service([7]):	
Mortgage	$.12–.25
Consumer	.09–.15
Retail-Commercial	.07–.15
Wholesale-Commercial	.15–.55
Credit Card	.07–.15
Data Capture and Transit	.015–.030
2. Item Preparation Charge; Data Entry (per item)	.05
3. Microfilm Remittances and/or Checks (per item)	.01
4. Credit/Posting Advice (per advice)	.25
5. Photocopies:	
Recurring (per copy)	.05
On Request (per copy)	.25
6. Facsimile Transmissions:	
Recurring (per page)	.85
On Request (per page)	1.50
7. Microfilm Copies (per copy)	2.75
8. Payment Discounts Calculated (per discount)	.25
9. Telephone Inquiry or Notification (per call)	1.00
10. Foreign Item Processing:	
U.S. Dollars (per check)	.75
Foreign Currency (per check)	3.50

Lockbox service	Fee
11. Process Cash Payment (each)	5.00
12. Daily Reporting (monthly charge)	50.00
13. Courier/Postage	([8])
14. Storage (Envelopes and remittance material retained unsorted for 14 days and destroyed)	([9])
15. Minimum Monthly billing (excluding actual charges)	175.00
16. New Account Set-up([10])	50.00–500.00
17. Special Services	([11])

Automated Clearing House ("ACH") Fee Schedule	Fee
ACH Pass-Through	([12])
Receiver Service:	
Tape Pick-up	$1.25
Per Item on Tape:	
Local DB/CR	.01
Out-of-State DB/CR	.01
Prenotes	.01
Addendas	.01
Warehousing	.0025
FRB/ACH Pass-Through	([12])
Reformatted Tape	10.00
FRB/ACH Settlement (per entry)	.50
Origination Service:	
Set-up New Account (one time charge)	50.00
Formatted Tape	10.00
Reformatted Tape	10.00
Per Item on Tape (ACH origination fee plus per item)	.05
Paper Input:	
Monthly Maintenance	20.00
Data Entry Per Item (ACH origination fee plus per item)	.25
Day Cycle Deposit Charge:	
Local DB/CR	.055
Out-of-State DB/CR	.055
Prenotes	.055
Addendas	.055
Night Cycle Deposit Charge Premium:	
Local DB/CR	.07
Out-of-State DB/CR	.07
Prenotes	.07
Addendas	.07
Warehousing Per Item	.025
Originator Volume Discount Monthly:	
5,000 to 20,000	.005
20,000 and over	.01
Return Items	1.00
Transportation Charges	([13])
Special Service/Handling	([13])
Telephone Advice:	
Per Call	2.00
Miscellaneous	([14])
Visa/Mastercard Processing Service	
Monthly Settlement (Merchant Program, Cardholder Program, or both)	55.00
Sales Drafts and Cash Advance Tickets Deposited	.01
Adjustments, Returns, Corrections, Income Distributions (All Entries)	.50

[1] Actual cost. [2] At a quoted rate. [3] Actual cost.
[4] Standard order fee plus actual charges. [5] Actual cost. [6] The Pre-Sort Only fee for the St. Louis Regional Center is .015 per item.
[7] Open envelope; screen per instructions; and verify payee, signature and amount. Record date on check, remittance, envelope or correspondence as requested. Balance checks to remittances and post credits to account specified. A specific fee is negotiated in the ranges shown above depending upon the number and degree of difficulty of task requirements of individual members. Data Capture and Transit includes use of derogatory file as required. Rejects are pulled, balanced, and return per instructions.
[8] Actual cost. [9] Beyond 14 days price negotiated. [10] A one time charge. [11] Price negotiated.
[12] Actual. [13] Negotiated rate. [14] Actual.

NOTES: Refer to the Deposit Processing Fee Schedule for deposited item charges and encoding fees.
Associations that have changed Data Processors and have more than one MICR account number corresponding to one statement account number are subject to additional fees.
Visa/Mastercard Processing Service fees will be charged through the members' account analysis.

DISTRICT 9.—FEDERAL HOME LOAN BANK OF DALLAS (1989 DDA SERVICES)

Demand deposit account service	Fee
Checks/money orders paid:	
Checks cycled (per item)	$.15
Checks truncated (per item)	.13
Reconciliation of check/money order:	
Magnetic tape (per item)	.02
MICR (per item)	.07

DISTRICT 9.—FEDERAL HOME LOAN BANK OF DALLAS (1989 DDA SERVICES)—Continued

Demand deposit account service	Fee
Fine sort (per item)	.006
Credits/adjustments (per item)	(1)
Wire transfer:	
In	2.00
Out	4.00
Stop payments (per item)	5.00
Exception item return (per item)	2.50
Depository transfer checks (per item)	4.00
Photocopy (per item)	2.50
Account maintenance (for accounts with more than 1,000 transactions per month) (per association)	25.00
Voids	(1)
Credits/adjustments	(1)
Account activity reporting	(2)
Checks/money order forms (above standard check)	(3)
Paid items mailed to association	(3)
Overdrafts (per daily occurrence and interest at special variable advance rate plus 3%)	50.00
Special research (per hour)	12.00

Deposit Processing Fees

	Dallas, Texas (except S.E.), N. Louisiana, New Mexico	New Orleans, S. Louisiana, S. Mississippi	Little Rock, Arkansas, N. Mississippi	VIA Memphis FED	Houston, Southeast Texas
Deposit items:					
Postal money orders, U.S. Treasury Checks (per item)	$.022	$.025	$.025	$.03	$.025
Local items (per item)	.022	.025	.025	.03	.025
RCPC items (per item)	.026	.025	.035	.03	.040
Other fed items (per item)	.065	.060	.0625	.07	.065
Encoding charge (per item)	.025	.025	.020	.025	.025
Returned items (per item)	1.50	1.50	1.50	1.50	1.50
Cash letter fee (per letter)				1.75	
Non-cash collection services:					
Security coupons (per envelope)	2.75	2.50	2.50	2.50	2.75
Food stamps and coupons (per deposit)	1.50	1.50	1.50	1.50	1.50
Foreign items (per item)	6.50	6.50	2.50	2.50	6.50
All others (drafts, etc.) (per item)	2.75	2.50	2.50	2.50	2.75

Coin and Currency Services Fee

Preparation and handling fees [4]:	
Delivery ($5.00 minimum):	
Coin (per roll)	$.10
Currency (per strap)	.50
Container:	
Dallas, Houston, or San Antonio City	.50
All others, Texas, N. Louisiana and New Mexico	.37
Deposit [4] ($5.00 minimum):	
Coin (per bag)	.75
Currency (per strap)	.65
Emergency orders (additional per hour)	75.00
Security charge (per $1,000 delivered or deposited)	.18
Transportation charges (quoted per round trip for delivery, deposit, or both):	
Dallas, El Paso, Houston or San Antonio delivery (per shipment)	15.00
All other in Texas ($12.00 per stop or $22.00 per single) (plus per mile between Federal Reserve city and delivery point)	15
Rock Center deliveries	(5)
Arkansas or Northern Mississippi deliveries	(5)
New Orleans city delivery (one-way) (per shipment)	15.00
All other in Louisiana (per round trip from New Orleans based on Louisiana tariffs)	40.00-75.00
Southern Mississippi	(5)
Registered mail	(6)
Delay of armored carrier (per fifteen (15) minute interval or fraction thereof)	18.00

[1] No charge.
[2] Toll free by telephone.
[3] Actual costs.
[4] Customers in Northern Louisiana should call for quote.
[5] Call FHLBank for price quote.
[6] Actual postage cost.

DISTRICT 10.—FEDERAL HOME LOAN BANK OF TOPEKA (1989 DDA SERVICES)

DDA service	Fee
Demand deposit accounting:	
Full service demand plus accounting (includes automatic branch control reconciliation, reporting of full account activity) (per item)	
Cycle	$.15
Truncated	.12
Demand plus accounting (standard summary statement, must be able to process magnetic tapes) (per item)	
Cycle	.11
Truncated	.08
Large item return notification ($2,500 & over) (per item)	3.00
Wire transfers & reserves:	
Wire transfers	
Incoming (per item)	3.00
Outgoing (per item)	5.00
Pass-through reserves (per month)	25.00
Lockbox processing:	
Items per month	Fee per item
1–50,000	.15
50,001–80,000	.145
80,001–120,000	.14
120,001–160,000	.135
160,001–over	.13
Monthly processing fee	100.00
Photocopy retrieval (per item)	2.00
Exception item review/processing (each)	.07
Safekeeping charges:	
Interest payment fees	
Interest payments other than mortgage-backed principal and interest payments	[1]
Mortgage-backed principal and interest monthly payments (per advice)	2.50
Safekeeping account maintenance fee (per month)	[2]
Segregation and pledge activity fee	
Segregation account maintenance (per association—per month)	[1]
Joint custody, pledges to third party, pledges to the FHLB as collateral for advances, other pledges and segregation (per receipt and release per security)	10.00
Transaction fees	
Federal reserve book-entry eligible securities including treasuries, agencies, FNMA, FHLMC mortgage-backed certificates (per receipt and redemption)	2.50
MBSCC depository eligible GNMA mortgage-backed certificates (per receipt and redemption)	32.00
Physical securities; DTC eligible securities and book-entry New York federal reserve eligible securities (per receipt and redemption)	32.00

Processing Fees:	Kansas City	Oklahoma City	Topeka	Omaha	Wichita	Denver
	Enc/Unenc	Enc/Unenc	Enc/Unenc	Enc/Unenc	Enc/Unenc	Enc/Unenc
Deposit Processing:						
Local	$.02/.045	$.025/.043	$.02/.038	$.025/.043	$.02/.04	$.015/.033
RCPC	.03/.055	.038/.056	.039/.057	.038/.056	.025/.045	.023/.041
Country	.03/.055	.038/.056	.039/.057	.038/.056	.025/.045	.029/.047
Transit	.075/.10	.067/.085	.067/.085	.067/.08	.075/.095	.067/.085

Returns (per item)	$0.60
Collections (per item plus subsequent handling fees)	3.00
Coin and Currency (per phone call)	2.50
Courier and Armored Car Costs	[2]
Research & Mass Photocopy Requests ($12.00 per hour per item)	.15
Investar Fee Schedule:	
United States government, United States government agencies, mortgage-backed securities and consolidated mortgage obligations (percentage)	1/32 of 1%

[For discounted securities such as United States treasury bills, bankers acceptances, United States government agency discount notes and commercial paper, the following schedule will apply:]

Amount	Maturity	Basis point fee
Less than $500,000	90 days	10
	180 days	7
	360 days	5
$500,000–$1,000,000	90 days	7
	180 days	5
	360 days	3
$1,000,000–$3,000,000	All maturities	3

[For discounted securities such as United States treasury bills, bankers acceptances, United States government agency discount notes and commercial paper, the following schedule will apply:]

Amount	Maturity	Basis point fee
$3,000,000–$5,000,000	All maturities	2

Service	Basis point fee
Domestic certificates of deposit and eurodollar certificates of deposit	5
Corporate notes	1/32 of 1%
Over-the-counter debt options	1/32 of 1%
Strips and zero coupon bonds with a maturity of over seven years	3

[1] No charge.
[2] A monthly charge of 1/12 of 1/125 of 1 percent of par balance of the first $200 million of portfolio. A monthly charge of 1/12 of 1/235 of 1 percent on the balance over $200 million. Fee is calculated on the month-end par balance of each account. The fee is charged on the last day of the month.
[3] As charged.
Note: For the Investar Service a minimum fee of $35 will be charged per ticket.

DISTRICT 11.—FEDERAL HOME LOAN BANK OF SAN FRANCISCO (1989 DDA SERVICES)

Services	Fee
Out-Clearing Services	
Deposit Processing Services:	
Depository Service Charges (minimum charge)	$300.00
Deposit Processing:	
5:30 P.M. Deposit Deadline:	
Encoded items deposited [1]:	
Mixed (per item)	.080
Group Sort (per item)	.125
Encoding Fee (per item)	.02
8:03 P.M. Deposit Deadline:	
Encoded Items Deposited:	
Twelve District (per item)	.05
Out of Region (per item)	.085
Encoding Fee (per item)	.015
10:30 P.M. Deposit Deadline:	
Encoded Items Deposited:	
Twelve District (per item)	.05
Out of Region (per item)	.085
Encoding Fee (per item)	.002
Other Charges:	
Deposit Ticket (per ticket)	1.10
Commercial Deposits (per ticket)	1.10
Returned Items (per item)	1.10
End-Point Deposit Analyses Reports (per month)	30.00
Monthly Account Maintenance (per account)	15.00
Photocopies (per copy)	3.00
Special Research (per hour)	30.00
Returning Bank Services:	
Mixed Cash Letter (each)	2.00
Raw Returns	.55
Notice of Nonpayment for Large Dollar Item	2.00
Large Dollar Item Cash Letter	([3])
Depository Return Processing (per item)	1.10
Collection Services:	
Clean Collection (per item)	7.50
Documentary Collection (per item)	15.00
Savings Bond (per transmittal)	7.50
Coupon Collection (per envelope)	15.00
Foreign Drafts [3]:	
Foreign Collection (per item)	20.00
Canadian Cash Letter (per item)	1.00
Canadian Return Item Notification (per item)	5.00
Returned Items (per item)	7.50
Food Coupons (per item)	.15
Collection Return Handling Fee (per item)	3.00
Coin and Currency Services:	
Furnished ($3.00 per order, plus)	.85
Currency (per $1,000)	.85
Coin (per roll)	.07
Deposited ($1.50 per deposit plus):	
Currency (per $1,000)	.90
Coin (loose, per roll)	.09
Other Charges:	
Late Cash Order (per order)	25.00
Coordination of Transportation (per branch)	12.00

DISTRICT 11.—FEDERAL HOME LOAN BANK OF SAN FRANCISCO (1989 DDA SERVICES)—Continued

Services	Fee
Basic Account Services	
Monthly Account Maintenance:	
Regular Accounts (per account)	$15.00
Zero Balance Accounts (per account)	30.00
Checks Deposited (per item)	1.10
Items Returned (per item)	1.10
Daily Statements	(4)
Out-of-Cycle	7.00
ACH Debits/Credits (per settlement transaction)	0.25
Wires:	
Incoming (per wire)	7.00
Intra-day notification base change of $50.00 monthly plus (per wire)	.25
Outgoing (per wire)	10.00
Immediate Advice (per wire)	10.00
Service (per wire)	5.00
Book Transfers (per transaction)	6.00
Passthrough Reserve Services (per month)	100.00
Overdraft Charges (minimum charge)	(5)
Account Reconcilement Services	
Fully Balanced Reconcilation:	
Account Maintenance (per month)	100.00
Checks Paid (per item)	0.13
Checks Paid Truncated (per item)	0.08
Reconciliation Charge (per item)	0.015
Issue Input Method:	
MICR (per item)	0.115
Tape (per item)	0.055
Direct Transmission ($5.00 per transmission plus per item)	0.045
Partial Reconcilation:	
Account Maintenance (per month)	60.00
Checks Paid (per item)	0.13
Checks Paid-Truncated (per item)	0.08
Issue Input Method:	
MICR (per item)	0.115
Tape (per item)	0.055
Direct Transmission ($5.00 per transmission plus per item)	0.045
Miscellaneous Services:	
Fine Sort (per item)	0.045
Microfilm (per roll)	10.00
Magnetic Tape Output (paid checks) ($25.00 per tape, plus per item)	.02
Data Transmission ($5.00 per transmission, plus per item)	0.025
Stop Payment (per item)	7.50
Range Stops, less than 50 (per consecutive range)	25.00
Range Stops, greater than 50 (per consecutive range)	50.00
Microfiche Reports (per fiche)	3.00
Photocopies (per copy)	3.00
Basic Reconcilation:	
Account Maintenance (per month)	45.00
Checks Paid (per item)	0.115
Checks Paid-Truncated (per item)	0.065
Expanded DDA:	
Account Maintenance (per month)	30.00
Checks Paid (per month)	0.115
Checks paid-Truncated (per item)	0.065
Other Options:	
Special Statements (per statement)	5.00
Off-Cycle (per statement)	7.00
Optional Statement (per statement)	5.00
Special Research (per hour)	30.00
Mortgage Safekeeping Services	
FHLB Collateral:	
Deposits (per loan)	3.00
Withdrawals (per loan)	4.00
Reviews (per loan)	3.50
Custody Fee (monthly)	0.30
Local Agency Collateral:	
Deposits (per loan)	2.25
Withdrawals (per loan)	2.25
Reviews (per loan)	2.50
Custody Fee (monthly)	0.20
State Collateral:	
Deposits (per loan)	2.25
Withdrawals (per loan)	3.25
Reviews (per loan)	2.50
Custody Fee (monthly)	0.20
Other Collateral:	
Deposits (per loan)	2.25
Withdrawals (per loan)	2.25
Reviews (per loan)	2.50
Custody Fee (monthly)	0.15

DISTRICT 11.—FEDERAL HOME LOAN BANK OF SAN FRANCISCO (1989 DDA SERVICES)—Continued

Services	Fee
Free:	
Deposits (per loan)	$2.00
Withdrawals (per loan)	2.00
Reviews (per loan)	2.50
Custody Fee (monthly)	0.15
Other Fees:	
Local Agency Report Filing Fee (quarterly)	150.00
Minimum Transaction Fee	50.00
Other	(6)
Securities Safekeeping Services	
Deposits/Withdrawals/Maturities:	
Book Entry (per transaction)	15.00
Definitive (per transaction)	50.00
Pledging of Securities:	
Deposits/Withdrawals/Maturities:	
FHLB Securities	30.00
Local Securities	27.50
State and Repo Securities	25.00
Other Securities:	
Depoits (per transaction)	40.00
Withdrawals (per transaction)	25.00
Custody Fees:	
Book Entry (per month per issue)	1.00
Definitive (per month per issue)	2.50
Registration of Certificates	(7)
Special Handling	(7)
Local Agency Report Filing Fee (per quarter)	150.00
Account Maintenance (per month)	150.00
Lockbox Services	
Remittance Processing:	
Coupons ((per item)	.18
Exception Processing (per item)	.23
Check processing:	
Next Day Availability—8:30 p.m. availability schedule (per check)	.05
Same Day Availability—5:30 p.m. availability schedule (per check)	.085
Return Item Processing:	
Reclear (per item)	1.10
Returned Items (per item)	1.10
Account Maintenance (per month)	15.00
Reporting and Transfer Services	
Automated Balance Reporting (via terminal or PC):	
One-time Set-up fee, per account	25.00
Daily Balance Reporting:	
—(first account per month)	75.00
—(each additional account per month)	25.00
Automated Detail Transaction Reporting:	
One-time Set-up fee, per account	10.00
Daily Balance Reporting:	
—(first account per month)	45.00
—(each additional account per month)	10.00
—(plus per transaction reported)	.20
Voice Balance Reporting:	
Option 1—Includes Detail Daily Balance:	
—(first account per month)	175.00
—(each additional account per month)	100.00
Option 2—Balance Only of Daily Balance—(each account per month)	75.00
Automated Book Transfer Services:	
Monthly Maintenance (per member)	5.00
Automated Book Transfer (per transaction)	4.00
Corrections (per correction)	2.50
Implement Service or Charge Member Set-up (per transfer set-up)	10.00
Optional Services—Automated Book Transfer Report ($2.50 per report plus per field reported)	.10
Remittance Program	
Next Day Remittance (1 day):	
Issue input captured on-line:	
Greater than 40,000 items per month (per item)	.02
Less than 40,000 items per month (per item)	.05
Issue input captured off-line (per item)	.17
MICR copy-amount encoded (per item)	.18
MICR copy-amount not encoded (per item)	.19
Second Day Remitance (2 day):	
Issue input captured on-line (per item)	.10
Issue input captured off-line (per item)	.23
MICR copy-amount encoded (per item)	.24
MICR copy-amount not encoded (per item)	.25
Third Day Remittance (3 day):	
Issue input captured on-line (per item)	.17
Issue input captured off-line (per item)	.28
MICR copy-amount encoded (per item)	.29

DISTRICT 11.—FEDERAL HOME LOAN BANK OF SAN FRANCISCO (1989 DDA SERVICES)—Continued

Services	Fee
MICR copy-amount not encoded (per item)	$ .30

[1] A mixed presentment is defined as a cash letter for which 33 percent of the total number of items represents end points other than the four direct send banks. If desired, the nondirect send portion of the group can be presented on a separate cash letter for processing against a more favorably priced deadline (i.e., 8:30).
[2] No charge.
[3] All Canadian items over $500 and all non-Canadian foreign items must be submitted as a foreign collection.
[4] No charge.
[5] Bank's Overnight Cash Needs Rate plus 2% (rate published by Bank's Credit Services Department). Minimum charge of $50.00
[6] At cost.
[7] At cost plus 20 percent.

NOTES: The Mortgage Safekeeping fee schedule provides for completion of the respective transaction within 8 business days of receipt by the Bank of required documenation (up to 1,000 Non-Bank transactions).
Remittance pricing includes reconcilement, stop payments, photocopies, check pricing on-line inquiries, and other unique features of the program.

DISTRICT 12.—FEDERAL HOME LOAN BANK OF SEATTLE (1989 DDA SERVICES)

Services	Fee
Official Checks, Money Orders and Cashier' Checks:	
Monthly account Maintenance (per account)	$15.00
Accounting funding:	
ACH cash concentration service (per transfer)	1.00
Wire transfers:	
One in and one out each day	([1])
Additional incoming wires (per wire)	2.00
Additional outgoing wires (per wire)	3.00
International wires (per wire)	22.50
Customer wires (per wire)	3.00
Inter-bank account transfers	([1])
Paid items:	
CheckOne account (per item)	.11
CheckOne-plus account ($25.00 per tape, plus)(per item)	.11
MasterOne account, mag tape input (per item)	.12
MasterOne account, check copy input (per item)	.14
Substandard MICR item manual posting (per item)	.24
Stop payments:	
Prior to 2:30 p.m. PST deadline (per stop)	7.00
After 2:30 p.m. PST deadline (per stop)	10.00
Photocopy research requests (per item)	1.50
Monthly account reconciliation (per account)	15.00
Microfiche statements (per account)	4.00
Large Dollar verifications:	
$10,000 endorsement verification	([1])
$100,000 signature verification	([1])
Miscellaneous and out of pocket expenses	([2])
Incoming collections (per item)	9.50
Securities safekeeping schedule:	
Monthly account maintenance (per account)	20.00
Monthly custody:	
Book entry (per security)	1.25
Physical securities, including MBSCC (per security)	3.25
Eurodollar (per security per $1,000 of value)	.05
Receipt/delivery/redemption:	
Book entry (per security)	11.50
Physical securities, including MBSCC (per security)	24.00
Eurodollar (per security)	50.00
Account switch:	
Book-entry, between safekeeping accounts (per switch)	11.50
Book entry, between safekeeping and collateral accounts (per switch)	17.00
Physical, including MBSCC securities, between safekeeping accounts (per switch)	24.00
Physical, including MBSCC securities, between and collateral accounts (per switch)	27.00
Eurodollar, between safekeeping accounts (per switch)	45.00
Eurodollar, between safekeeping and collateral accounts (per switch)	50.00
Income collection:	
Principal and interest payments (P&I) (per pool)	6.50
Other income collections (per security)	2.00
Corporate reorganizations (per reorganization)	50.00
Audit verifications (per request)	8.00
Post-deadline requests (per securities)	50.00
Same day turnarounds (per securities)	15.00
Monthly minimum fee (per month)	50.00
Special services (per hour)	25.00
Miscellaneous and out-of-pocket expenses shipping, registration, etc	([3])
Custody services—pledged securities (collateral) services fee schedule:	
Montly account Maintenace (per account)	45.00
Monthly custody:	
Book entry (per security)	2.25
Physical, including MBSCC securities (per security)	3.75
Eurodollar (per security per $1,000 of value)	.075

DISTRICT 12.—FEDERAL HOME LOAN BANK OF SEATTLE (1989 DDA SERVICES)—Continued

Services	Fee
Receipt/delivery/redemption:	
Book entry (per security)	$17.00
Physical, including MBSCC securities (per security)	27.00
Eurodollar (per security)	55.00
Account switch:	
Book-entry, between collateral and safekeeping accounts (per switch)	17.00
Book-entry, between collateral accounts (per switch)	22.00
Physical, including MBSCC securities, between collateral and safekeeping accounts (per switch)	27.00
Physical, including MBSCC securities between collateral accounts (per switch)	29.00
Eurodollar, between collateral and safekeeping accounts (per switch)	50.00
Eurodollar, between collateral accounts (per switch)	55.00
Income collections:	
Principal and interest payments (P&I) (per roll)	6.50
Other income collections (per security)	2.00
Corporate reorganizations (per reorganization)	50.00
Audit verifications (per request)	8.00
Post-deadline requests (per security)	50.00
Same day turnarounds (per security)	15.00
Monthly minimum (per month)	50.00
Special services (per hour)	25.00
Miscellaneous and out-of-pocket expenses shipping, registration, etc	(1)
Settlement services fee schedule:	
ACH settlement (per entry)	.25
Contemporaneous reserve settlement (per month)	75.00
NOW account settlement (per month)	165.00
Federal reserve settlement (per month)	165.00
Seattle Check Processing Center	
Depository services fee schedule:	
Deposits (per deposit)	.40
Deposited items—unecoded:	
City (per item)	.055
RCPC (per item)	.065
Other federal reserve banks (per item)	.080
FHLB (per item)	.050
U.S. government postal money orders (per item)	.040
Deposited items-encoded:	
City (per item)	.035
RCPC (per item)	.045
Other federal reserve banks (per item)	.070
FHLB (per item)	.035
U.S. government postal money orders (per item)	.025
Food coupons (per item)	.025
Reject items (per item)	.25
Return items (per item)	1.25
Collection items (per item)	6.00
Salt Lake City Check Processing Center	
Depository services fee schedule:	
Deposits (per deposit)	.25
Deposited items—unencoded:	
City (per item)	.05
RCPC (per item)	.05
Other Federal Reserve Banks (per item)	.065
FHLB (per item)	.035
U.S. Government Postal Money Orders (per item)	.035
Deposited items—encoded:	
City (per item)	.03
RCPC (per item)	.03
Other Federal Reserve Banks (per item)	.06
FHLB (per item)	.025
U.S. Government Postal Money Orders (per item)	.020
Reject Items (per item)	.25
Return Items (per item)	2.00
Collection Items (per item)	6.00

[1] No charge.
[2] As required.
[3] As required.
[4] As required.

Note: Prices may vary in some circumstances. For additional information, contact the Correspondent Service Marketing Department.

Dated: December 22, 1989.

By the Federal Housing Finance Board.

Mary K. Bush,

Managing Director.

[FR Doc. 89-30269 Filed 12-28-89; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 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.: 224–004161–007
Title: San Francisco Port Commission Terminal Agreement
Parties: San Francisco Port Commission (Port); Marine Terminals Corporation
Synopsis: The Agreement extends the term of the basic agreement for five years commencing on January 1, 1990 and continuing through December 31, 1994. The Agreement also provides for increased compensation to the Port.

By Order of the Federal Maritime Commission.

Dated: December 22, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89–30173 Filed 12–28–89; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 212–010027–023
Title: Brazil/U.S. Atlantic Coast Agreement
Parties: Companhia de Navegacao LLoyd Brasileiro; Companhia de Navegacao Maritima Netumar; American Transport Lines, Inc.; Empresa Lineas Maritimas Argentinas S.A.; A. Bottacchi S.A. de Navegacion C.F.I.I.; A/S Ivarans Rederi; Van Nievelt, Goudriaan and Co. B.V.
Synopsis: The proposed modification extends the special carrying adjustment for Wheels for Automobiles through December 31, 1989.

Agreement No.: 212–010320–019
Title: Brazil/U.S. Gulf Ports Agreement
Parties: Companhia de Navegacao Lloyd Brasileiro; Compania Maritima Nacional; American Transport Lines, Inc.; Empresa Lineas Maritimas Argentinas S.A.; A. Bottacchi S.A. de Navegacion C.F.I.I.; Transportacion Maritima Mexicana S.A.
Synopsis: The proposed modification deletes Transportacion Maritima Mexicana S.A., as a party to the Agreement. In addition, the modification extends the special carrying adjustment for Wheels for Automobiles through December 31, 1989.

Agreement No.: 202–011241–001
Title: USA–North Europe Rate Agreement
Parties: A.P. Moller-Maersk Line; Atlantic Container Line BV; Compagnie Generale Maritime (CGM); Gulf Container Line (GCL), BV; Hapag Lloyd AG; Incotrans BV; Nedlloyd Lijnen BV; P&O Containers (TFL) Limited; Sea-Land Service, Inc.
Synopsis: The proposed amendment would delete Liverpool as an alternate port.

Agreement No.: 202–011242–001
Title: North Europe–USA Rate Agreement
Parties: Atlantic Container Line BV; Compagnie Generale Maritime (CGM); Gulf Container Line (GCL), BV; Hapag Lloyd Ag; Incotrans BV; Nedlloyd Lijnen BV; P&O Containers (TFL) Limited; Sea-Land Service, Inc.
Synopsis: The proposed amendment would delete Liverpool as an alternate port.

Agreement No.: 217–011267
Title: Genesis/MARCOMEX Space Charter Agreement
Parties: Genesis Container Line, Ltd.; Maritima Colombia Exporta, Ltda. d/b/a MARCOMEX
Synopsis: The proposed Agreement permits the parties to establish space charter arrangements in the trade between ports in Colombia, South America, including the Island of San Andres, and South Florida ports of the United States.

Agreement No.: 203–011268
Title: New Zealand/United States Interconference and Carrier Discussion Agreement
Parties: Pacific Coast-New Zealand Rate Agreement; New Zealand/U.S. Atlantic & Gulf Shipping Lines Rate Agreement; Associated Container Transportation (Australia) Ltd. (PACE Line); Australia-New Zealand Direct Line; Hamburg-Sudamerikanische; Dampfschifffahrts-Gesellschaft; Eggert & Amsinck (Columbus Line); Blue Star Line, Ltd.
Synopsis: The proposed agreement would permit the parties to exchange information and reach non-binding consensus on matters of interest, including rates and service, in the trade from New Zealand and adjacent islands to the United States and all of its possessions and territories.

By Order of the Federal Maritime Commission.

Dated: December 22, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89–30174 Filed 12–28–89; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Community Bank System, Inc., et al.; Applications To Engage de novo In Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be

accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 17, 1990.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President), 33 Liberty Street, New York, New York 10045:

1. Community Bank System, Inc., Dewitt, New York; to engage *de novo* in making commercial loans pursuant to § 225.25(b)(1) of the Board's Regulation Y. Comments on this application must be received by January 11, 1990.

B. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President), 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Star Banc Corporation, Cincinnati, Ohio; to engage *de novo* in making equity investments in limited partnerships designed to promote community welfare through the rehabilitation of housing for low- and moderate-income people pursuant to § 225.25(b)(6) of the Board's Regulation Y. This activity will be conducted in the Cincinnati, Ohio, area.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President), 925 Grand Avenue, Kansas City, Missouri 64198:

1. Hooker National Bancshares, Inc., Hooker, Oklahoma; to engage *de novo* in the sale of general lines of insurance in Hooker, Oklahoma, a town with a population of substantially less than 5,000 pursuant to § 225.25(b)(8)(iii)(A) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 22, 1989.

Jennifer J. Johnnson,

Associate Secretary of the Board.

[FR Doc. 89-30190 Filed 12-28-89; 8:45 am]

BILLING CODE 6210-01-M

NCNB Corp., Charlotte, NC Request for Exception From Tying Provisions

NCNB Corporation, Charlotte, North Carolina ("NCNB"), has requested, pursuant to section 106 of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1971 *et seq.*) ("Section 106"), that the Board grant an exception in order to permit NCNB to consolidate its separate credit card operations into one subsidiary bank and continue to offer reduced annual fees and periodic interest rates on credit card accounts to customers who maintain certain deposit account relationships with other NCNB subsidiary banks. Although section 106 permits a bank to fix or to vary the consideration for extending credit or furnishing services on condition that a customer also obtain a traditional banking service (loan, discount, deposit or trust service) from that bank, it prohibits a bank from engaging in these same activities on condition that the customer obtain any additional credit or services from any other subsidiary of the bank's parent bank holding company. The Board may grant, however, an exception that is not contrary to the purposes of this provision.

NCNB, a multi-state bank holding company, currently offers to customers of each subsidiary bank who choose to maintain a specified minimum balance in their deposit accounts the opportunity to qualify for reduced interest rates and fees on credit cards that are issued by the same bank. This optional program is permissible under section 106 because the bank is offering a variation in consideration for extending credit or furnishing a service on condition that the customer also obtain a traditional banking service (a minimum deposit from the same bank.

NCNB is considering the centralization of certain of its credit card activities into a single bank, either one of its existing subsidiary banks or a new special-purpose credit card bank, to serve as the issuer and processor of most of its credit cards. If centralization occurs, the subsidiary bank offering the special reduced-rate credit card program may be different from the subsidiary bank where the customer maintains a deposit account or obtains another banking service. In addition to its current program of special interest rates on credit card balances for customers with minimum bank deposit balances, NCNB anticipates offering other service packages in which advantageous credit card terms would be offered to customers who utilize other NCNB traditional banking services, such as loan services, at any subsidiary bank. Accordingly, the variation in consideration afforded by the bank under the special reduced-rate credit card programs would be conditioned upon a customer obtaining additional banking services from the subsidiary banks of the bank's parent holding company, and would therefore be barred by the literal terms of section 106 without an exemption from the Board.

In support of its request for an exemption, NCNB maintains that the legislative history of section 106 reveals a Congressional intent not to restrict the marketing and pricing of traditional banking services or combinations thereof by either a single bank or affiliate banks in a multi-bank holding company system. Accourding to NCNB, granting its request would not result in an inter-mingling of banking and nonbanking services, and would be pro-competitive by affording customers an option for obtaining credit card services at a lower cost.

Notice of the request is published solely in order to seek the views of interested persons on the issues presented by the request and does not represent a determination by the Board that the request meets or is likely to meet the standards of Section 106.

Any request for a hearing on these issues must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the request for exemption.

The request may be inspected at the offices of the Board of Governors.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary of the Board of Governors of the Federal Reserve System, Washington, DC 20551 not later than January 29, 1990.

Board of Governors of the Federal Reserve System, December 22, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-30191 Filed 12-28-89; 8:45 am]

BILLING CODE 6210-01-M

Citicorp; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise

noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated at the offices of the Board of Governors not later than January 18, 1990.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Citicorp, New York, New York; to acquire the Merchant Draft Processing Business of FCC National Bank, Wilmington, Delaware, and thereby engage in making, acquiring, and servicing loans such as would be made by a credit card company through its subsidiary, Citicorp Credit Services, Inc., pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 22, 1989.

Jennifer J. Johnnson.

Associate Secretary of the Board.

[FR Doc. 89–30189 Filed 12–28–89; 8:45 am]

BILLING CODE 6210–01–M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and section 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 11, 1990.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Arthur Temple, Diboll, Texas; to acquire 12.2 percent of the voting shares of Diboll State Bancshares, Inc., Diboll, Texas, and thereby indirectly acquire Diboll State Bank, Diboll, Texas, and thereby indirectly acquire People National Bank, Lufkin, Texas.

2. Arthur, Temple, Diboll, Texas; to acquire 21.36 percent of the voting shares of First Community Financial Corporation, Lufkin, Texas, and thereby indirectly acquire Community State Bank, Lufkin, Texas.

3. Arthur Temple, Diboll, Texas; to acquire 5.13 percent of the voting shares of Pineland Bancshares, Inc., Pineland, Texas, and thereby indirectly acquire Pineland State Bank, Pineland, Texas.

Board of Governors of the Federal Reserve System, December 22, 1989.

Jennifer J. Johnnson.

Associate Secretary of the Board.

[FR Doc. 89–30192 Filed 12–28–89; 8:45 am]

BILLING CODE 6210–01–M

GENERAL SERVICES ADMINISTRATION

Consortium of Federal, Academic and Industry Logistics Experts

Meeting Notice: Notice is hereby given that the Consortium of Federal, Academic, and Industry Logistics Experts will meet January 24, 1990, from 10:00 am to 12:00 noon in Crystal Mall Building 4, Room 1129, Arlington, Virginia. Notice is required by the Federal Advisory Committee Act, 5 U.S.C. App. 2, and the implementing regulation, 41 CFR 101–6.

The purpose of the meeting is to provide a forum for discussion of logistics issues. The agenda for this meeting will include a presentation by Mr. Lawrence J. Rizzi, General Services Administration, Office of Acquisition Policy. The subject is the impact of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418 section 5164) which requires Federal activities to use the Metric System of Measurement in all procurements by 1992.

The meeting will be open to the public.

For further information contact Mr. William B. Foote, Assistant Commissioner for Customer Service and Marketing, GSA/FSS, Washington, DC 20406, telephone (703) 557–7970.

Dated: December 15, 1989.

Donald C.J. Gray,

Commissioner, Federal Supply Service, GSA.

[FR Doc. 89–30235 Filed 12–28–89; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Revised Determination of 1990 Contribution and Benefit Bases

AGENCY: Social Security Administration, HHS.

ACTION: Notice.

SUMMARY: The Secretary has determined—

(1) The Social Security contribution and benefit base to be $51,300 for remuneration paid in 1990 and self-employment income earned in taxable years beginning in 1990;

(2) The "old-law" contribution and benefit base to be $38,100 for 1990.

The above determinations are in accordance with the requirements of section 10208 of Public Law 101 239 and supersede those announced in the **Federal Register** on October 31, 1989 (54 FR 45801).

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Kunkel, Office of the Actuary, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965–3013.

SUPPLEMENTARY INFORMATION:

Section 230(c) of the Social Security Act (the Act) provides a table with the contribution and benefit base for each year 1978, 1979, 1980, and 1981. For years after 1981, section 230(b) of the Act contains a formula for determining the contribution and benefit base.This formula uses the increase (if any) in the average of the total wages as the basis for determining the new contribution and benefit base. The average of the total wages is also used to index other program amounts, such as the earnings required for a quarter of coverage.

Under current regulations, the average of the total wages is calculated from individuals' wages subject to income tax, as reported on W–2 forms filed by employers. Contributions to certain

qualified cash or deferred arrangements are not subject to income tax (but distributions from such arrangements may be taxable). Such contributions are known as deferred compensation amounts and have been treated as wages subject to Social Security taxes since 1984.

Because the deferred compensation amounts are not subject to income taxes, the data used to calculate the average of the total wages understate wages by such amounts. As a result, the annual adjustments in all the wage-indexed program amounts have not reflected the effects that year-to-year changes in deferred compensation amounts have on the average of the total wages. Section 10208 of Public Law 101–239, enacted December 19, 1989, provides for the inclusion of deferred compensation amounts in the determination of the average of the total wages. This permits the effects of year-to-year changes in deferred compensation amounts on the annual increases in the average of the total wages to be reflected in future adjustments of wage-indexed program amounts. These effects will begin with changes in such program amounts from calendar year 1992 to calendar year 1993.

Section 10208 of Public Law 101–239 also provides a transitional rule for computing the average of the total wages used in the formula for determining the contribution and benefit base and the "old-law" contribution and benefit base. The transitional rule is used to determine the bases for 1990, and will be used to determine the bases for 1991 and 1992.

Under the transitional rule, the contribution and benefit base for 1990 will reflect the effect of an additional increase of 2 percentage points in average wages, over and above the previously determined average-wage increase announced earlier this year. This additional increase results in the newly determined contribution and benefit base of $51,300 for 1990.

The transitional rule for 1991 and 1992 provides a smooth transition to the revised measure of the average of the total wages, which takes account of the deferred compensation amounts.

As a result of section 10208 of Public Law 101–239, both the contribution and benefit base and the "old-law" contribution and benefit base for 1990, as published in the **Federal Register** on October 31, 1989, have been superseded, and are revised as shown below.

Average of the Total Wages Under the Transitional Rule

General

For purposes of determining the 1990 contribution and benefit base and the 1990 "old-law" contribution and benefit base, the new statute provides a deemed average of the total wages for 1988.

Computation

The average of the total wages for 1988 is deemed to be equal to the amount announced in the **Federal Register** on October 31, 1989, plus 2 percent of the average wage amount announced for 1987, as provided by the statute under the transitional rule.

Amount

The average wage amount announced for 1988 in the **Federal Register** on October 31, 1989 (54 FR 45801) was $19,334.04. The average wage amount announced for 1987 in the **Federal Register** on October 31, 1988 (53 FR 43932) was $18,426.51. Two percent of $18,426.51 is $368.53, and the sum of this amount and $19,334.04 is $19,702.57. Therefore, the deemed average wage for 1988 for the purposes described above is $19,702.57.

Contribution and Benefit Base

General

The contribution and benefit base is $51,300 for remuneration paid in 1990 and self-employment income earned in taxable years beginning in 1990.

The contribution and benefit base serves two purposes:

(1) It is the maximum annual amount of earnings on which Social Security taxes are paid.

(2) It is the maximum annual amount used in determining a person's Social Security benefits.

Computation

Section 230(c) of the Act provides a table with the contribution and benefit base for each year 1978, 1979, 1980, and 1981. For years after 1981, section 230(b) of the Act contains a formula for determining the contribution and benefit base. Under the prescribed formula as modified by Public Law 101–239, the contribution and benefit base for 1990 shall be equal to the 1989 base of $48,000 multiplied by the ratio of (1) the deemed average amount, per employee, of total wages for the calendar year 1988 to (2) the average amount of total wages for the calendar year 1987. Section 230(b) further provides that if the amount so determined is not a multiple of $300, it shall be rounded to the nearest multiple of $300.

Average Wages

The average wage for calendar year 1987 was previously determined to be $18,426.51. The deemed average wage for calendar year 1988 has been determined to be $19,702.57 as stated herein.

Amount

The ratio of the deemed average wage for 1988, $19,702.57, compared to that for 1987, $18,426.51, is 1.0692513. Multiplying the 1989 contribution and benefit base of $48,000 by the ratio 1.0692513 produces the amount of $51,324.06, which must then be rounded to $51,300. Accordingly, the contribution and benefit base is determined to be $51,300 for 1990.

"Old-Law" Contribution and Benefit Base

General

The 1990 "old-law" contribution and benefit base is $38,100. This is the base that would have been effective under the Act without the enactment of the 1977 amendments. The base is computed under section 230(b) of the Act as it read prior to the 1977 amendments, and as it has been modified by Public Law 101–239.

The "old-law" contribution and benefit base is used by:

(1) The Railroad Retirement program to determine certain tax liabilities and tier II benefits payable under that program to supplement the tier I payments which correspond to basic Social Security benefits,

(2) The Pension Benefit Guaranty Corporation to determine the maximum amount of pension guaranteed under the Employee Retirement Income Security Act (as stated in section 230(d) of the Act), and

(3) Social Security to determine a "year of coverage" in computing the "special minimum" benefit and in computing benefits for persons who are also eligible to receive pensions based on employment not covered under section 210 of the Act.

Computation

The base is computed using the automatic adjustment formula in section 230(b) of the Act as it read prior to the enactment of the 1977 amendments. Under the formula as modified by Public Law 101–239, the "old-law" contribution and benefit base shall be the "old-law" 1989 base multiplied by the ratio of (1) the deemed average amount, per employee, of total wages for the calendar year of 1988 to (2) the average amount of total wages for the calendar year of 1987. If the amount so

determined is not a multiple of $300, it shall be rounded to the nearest multiple of $300.

Average Wages

The average wage for calendar year 1987 was previously determined to be $18,426.51. The deemed average wage for calendar year 1988 has been determined to be $19,702.57 as stated herein.

Amount

The ratio of the deemed average wage for 1988, $19,702.57, compared to that for 1987, $18,426.51, is 1.0692513. Multiplying the 1989 "old-law" contribution and benefit base amount of $35,700 by the ratio of 1.0692513 produces the amount of $38,172.27 which must then be rounded to $38,100. Accordingly, the "old-law" contribution and benefit base is determined to be $38,100 for 1990.

(Catalog of Federal Domestic Assistance Programs Nos. 13.802 Social Security—Disability Insurance; 13.803 Social Security—Retirement Insurance; 13.805 Social Security—Survivor's Insurance.)

Dated: December 22, 1989.

Louis W. Sullivan,

Secretary of Health and Human Services.

[FR Doc. 89-30231 Filed 12-28-89; 8:45 am]

BILLING CODE 4190-11-M

Health Care Financing Administration

[BPD-665-N]

Medicare Program; Legislative Changes Concerning Payment to Hospitals for Federal Fiscal Year 1990

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

ACTION: Notice of legislative changes.

SUMMARY: This notice describes those portions of sections 6001, 6002, 6003(a), (b), and (d), 6004(a) and (b), 6021, 6101, 6110, and 6205(b) of the Omnibus Budget Reconciliation Act of 1989 that affect Federal fiscal year 1990 payments to prospective payment hospitals and hospitals excluded from the prospective payment system and that are self-implementing. The changes required by these sections affect the prospective payment rates, rural referral centers, payments for capital-related costs, periodic interim payments, cancer hospitals, and payments for nursing and allied health education.

EFFECTIVE DATE: December 29, 1989.

FOR FURTHER INFORMATION CONTACT:
John Eppinger, (301) 966-4510—Extension of Sequestration, Capital-Related Payments, and Periodic Interim Payments
Barbara Wynn, (301) 966-4529—All Other Issues

SUPPLEMENTARY INFORMATION:

I. Background

On September 1, 1989, we published a final rule (54 FR 36452) to implement the prospective payment system for Federal fiscal year (FY) 1990. In that rule, we set forth the methods, amounts, and factors for determining the FY 1990 prospective payment rates. We also established, for cost reporting periods beginning during FY 1990, new target rate percentages for determining the rate-for-increase limits for hospitals excluded from the prospective payment system.

Under that final rule, in accordance with sections 1886(d)(3)(A) and 1886(b)(3)(B)(i) of the Social Security Act (the Act), the applicable percentage increase in the average standardized amounts for prospective payment hospitals and the hospital specific rate for sole community hospitals was the percentage increase in the hospital market basket; that is, 5.5 percent. Hospitals excluded from the prospective payment system had their target amounts increased by 5.5 percent also.

In the September 1, 1989 final rule, we also made the following changes:

- For discharges occurring in FY 1990, we reduced the relative weight of each diagnosis-related group (DRG) by 1.22 percent to account for the increase in the case-mix index value between FY 1986 and FY 1988 that resulted from changes in the manner in which cases were classified and assigned to DRGs.
- We revised the regulations to clarify that a cancer hospital that elects payment on a reasonable cost basis continues to be subject to the requirements of the prospective payment system with respect to hospital inpatient services (specifically, the provisions concerning the payment for capital-related costs and the availability of periodic interim payments).
- Section 9302(d)(2) of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509) had provided that hospitals that were classified as rural referral centers as of October 21, 1986 would continue that status without periodic verification. Because these provisions were due to expire effective for cost reporting periods beginning on or after October 1, 1989, we stated that we would reinstate the triennial reviews for hospitals with rural referral center status to ascertain that they continue to meet the qualifying criteria. Hospitals would be allowed to retain their status only if they have met the criteria for 2 of the last 3 years or if they meet the criteria for the current year.

II. Summary of New Legislation

On December 19, 1989, the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239) was enacted. This notice announces the provisions of sections 6001, 6002, 6003(a), (b), and (d), 6004(a) and (b), 6021, 6110, and 6205(b) of Public Law 101-239 that affect Medicare payments to hospitals in FY 1990 and are self-implementing.

Section 6001 of Public Law 101-239 maintains the 2.092 percent reduction in payments under part A through December 31, 1989, as required under the final sequester order issued by the President on October 16, 1989, pursuant to section 252(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 (generally referred to as the Gramm-Rudman-Hollings Act) (Pub. L. 99-177). Section 11002 of Public Law 101-239 establishes a new government-wide sequestration for the period January 1, 1990, through September 30, 1990. Section 6001 of Public Law 101-239 contains a provision intended to assure that the January 1, 1990, through September 30, 1990, sequestration does not result in an additional reduction for services covered under part A of the Medicare program. We will issue separate instructions on the implementation of this provision shortly.

Section 6002 of Public Law 101-239 amended section 1886(g)(3)(A) of the Act by adding paragraph (v) to provide that payments for capital-related costs of inpatient hospital services of hospitals under the prospective payment system are to be reduced by 15 percent for payments attributable to portions of cost reporting periods or discharges occurring during the period beginning January 1, 1990 and ending September 30, 1990. Sole community hospitals are exempt from this provision under section 1886(g)(3)(B) of the Act.

Section 6003(a) of Public Law 101-239 amended section 1886(b)(3)(B)(i) of the Act to specify that the applicable update factors for discharges occurring on or after January 1, 1990 and before September 1, 1990 are—

- The market basket percentage increase plus 4.22 percent (which is 9.72 percent above FY 1989 rates) for hospitals located in rural areas;
- The market basket percentage increase plus 0.12 percent (which is 5.62 percent above FY 1989 rates) for hospitals located in large urban areas; and
- The market basket percentage increase minus 0.53 percent (which is 4.97 percent above FY 1989 rates) for hospitals located in other urban areas.

For the purpose of computing payment rates for discharges occurring on or after October 1, 1990, these update factors are deemed to have been in effect for discharges occurring on or after October 1, 1989.

Under the provisions of section 6003(a) of Public Law 101–239, we have recomputed the standardized amounts effective for discharges occurring on or after January 1, 1990; that is, we replaced the update factor applied to the standardized amounts in the September 1, 1989 final rule with the update factors specified in section 6003(a) of Public Law 101–239. As a result of these updates to the standardized amounts, specifically the update for rural hospitals, which is larger than the update for either large urban hospitals, or other urban hospitals, it was necessary to recalculate the budget neutrality factors that are required by section 1886(d)(8)(D) of the Act in applying the special provisions for certain rural hospitals that are deemed urban under section 1886(d)(8)(B) of the Act. Section 1886(d)(8)(D) of the Act specifies that, in recalculating the budget neutrality factors, two payment conditions must be met. First, the FY 1990 standardized amounts are to be adjusted so as to ensure that total aggregate payments under the prospective payment system after implementation of the provisions of sections 1886(d)(8)(B) and 1886(d)(8)(C) of the Act are equal to the aggregate prospective payments that would have been made absent these provisions. That is, the additional payments to those rural hospitals that have been deemed urban must be financed through a reduction in the urban standardized payment amounts. Second, the rural standardized amounts are to be adjusted so that aggregate payments to those rural hospitals that have not been deemed urban are not changed as a result of these provisions.

The following are the budget neutrality factors that were used to establish the standardized amounts effective for discharges occurring on or after October 1, 1989:

Urban: .999400
Rural: .999240

The budget neutrality factors for the standardized amounts effective for discharges occurring on or after January 1, 1990 are as follows:

Urban: .999516
Rural: .999244

Section 1886(d)(5)(A) of the Act requires that, in addition to the basic prospective payment rates, payments must be made for discharges involving day outliers and may be made for discharges involving cost outliers. Section 1886(d)(3)(B) of the Act correspondingly requires that the urban and rural standardized amounts, respectively, be separately reduced by the proportion of estimated total DRG payments attributable to outlier payments for hospitals located in urban areas and those located in rural areas. Because of the revised update amounts set forth in this document, the outlier adjustment factor for rural hospitals must be revised. The outlier adjustment factor applied to the rural standardized amounts in the September 1, 1989 final rule was .978241. The outlier adjustment factor applied to the rural standardized amounts to establish the payment rates effective for discharges occurring on or after January 1, 1990 is .978500. The outlier adjustment factor applied to the urban standardized amounts remains at .943622. There is no change in the outlier thresholds. The revised standardized amounts effective for discharges occurring on or after January 1, 1990 are shown in Tables 1a, 1b, and 1c.

Sole community hospitals are currently paid a blended payment rate that is comprised of a Federal portion (based on 25 percent of the Federal regional rate) and a hospital-specific portion. The hospital-specific portion equals 75 percent of the hospital-specific rate for the cost reporting period. Section 6003(e)(1)(B) of Public Law 101–239 added section 1886(b)(3)(C) of the Act. Clause (ii) of that section specifies the hospital-specific rate for a given cost reporting period is the hospital-specific rate for the preceding 12-month cost reporting period updated by the applicable percentage increase under section 1886(b)(3)(B)(i) of the Act for discharges occurring in the fiscal year in which the cost reporting period begins. Thus, effective for cost reporting periods beginning on or after October 1, 1989, the hospital-specific rate of sole community hospitals will be updated by the percentage increase applicable to the geographic area in which the hospital is located. Under section 6003(a)(2) of Public Law 101–239, that increase is applicable to discharges occurring on or after January 1, 1990. For example, hospitals located in rural areas will receive an update of 9.72 percent effective for discharges occurring on or after January 1, 1990. For those sole community hospitals with cost reporting periods beginning on or after October 1, 1989 and before January 1, 1990, the hospital-specific rate will be updated by 5.5 percent (the market basket percentage increase) for discharges occurring before January 1, 1990 and by the applicable percentage increase for the geographical area for discharges occurring on or after January 1, 1990.

Public Law 101–239 did not change the increase in the target amount for hospitals and units excluded from the prospective payment system. Thus, for excluded hospitals and units, the increase in the target amount that became effective on October 1, 1989 has not been changed. The increase in the target amount continues to be 5.5 percent, which is the market basket percentage increase.

Section 6003(b) of Public Law 101–239 amended section 1886(d)(4)(C) of the Act to ratify the 1.22 percent reduction in the weighting factor for each DRG for discharges occurring in FY 1990 that was provided for in the September 1, 1989 final rule. Section 6003(b) of Public Law 101–239 also provided that future recalibrations for discharges in a fiscal year (beginning with FY 1991) are to be budget neutral. In addition, the Secretary is to include recommendations regarding adjustments to weighting factors in his annual March 1st report to Congress concerning the estimated recommendation for the update factor for the next fiscal year.

Under section 6003(d) of Public Law 101–239, a hospital that was classified as a rural referral center (under section 1886(d)(5)(C) of the Act) as of September 30, 1989 (including a hospital covered under section 9302(d)(2) of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509) will continue to be classified as a rural referral center for cost reporting periods beginning on or after October 1, 1989 and before October 1, 1992.

Section 6004(a) of Public Law 101–239 amended section 1886(d)(1)(B) of the Act to exclude from the prospective payment system a hospital that the Secretary classifies on or before December 31, 1990 as a hospital involved extensively in treatment for or research on cancer (cancer hospital). Also to be excluded from the prospective payment system is a hospital that the Secretary classifies on or before December 31, 1991 as a cancer hospital, and which, on the date of the enactment of this provision, is located in a State operating a demonstration project under section 1814(b) of the Act. Exclusion from the prospective payment system will apply to cost reporting periods beginning on or after October 1, 1989 for hospitals approved as cancer hospitals on or before December 19, 1989 and for cost reporting periods beginning on or after the date of such classification for all subsequently approved hospitals.

A hospital that the Secretary has determined to be a cancer hospital is

eligible to receive periodic interim payments under section 1815(e)(2) of the Act effective January 18, 1990 if it meets the criteria for receiving such payments.

Under section 6004(a)(3)(B) of Public Law 101–239, for hospitals classified as cancer hospitals as of December 19, 1989, the reduction for payments of capital-related costs of inpatient services that had been applied to these hospitals as prospective payment hospitals has been eliminated effective for portions of cost reporting periods or discharges occurring on or after October 1, 1986.

For hospitals classified as cancer hospitals after December 19, 1989, the reduction for payment of capital costs is eliminated for cost reporting periods beginning on or after the date of the classification.

Section 6004(b) of Public Law 101–239 amended section 1886(b)(3) of the Act by adding a new subparagraph (E) to provide that, for cost reporting period beginning on or after April 1, 1989, the base year for determining target amounts for cancer hospitals is to be the hospital's cost reporting period beginning during FY 1987 unless the use of FY 1982 and intervening updates creates a higher target amount.

Section 6021 of Public Law 101–239 amended section 1815(e) of the Act by adding a new paragraph (4) concerning payment on a periodic interim basis. Under this new provision, a hospital created by the merger or consolidation of two or more hospitals or hospital campuses is eligible to receive periodic interim payment under section 1815(e)(1)(B) of the Act if—

- At least one of the hospitals or campuses received periodic interim payments under section 1815(e)(1)(B) of the Act before the merger or consolidation; and
- Each of the merging or consolidating hosptials or campuses would be eligible to receive periodic interim payment under section 1815(e)(1)(B)(i) if the hospitals or campuses were treated as independent hospitals.

This amendment applies to payments made for discharges occurring on or after January 18, 1990, for hospitals that meet the criteria for receiving periodic interim payments.

Section 6101 of Public Law 101–239 maintains the 2.092 percent reduction in payment under part B through March 31, 1990, as required under the final sequester order issued by the President on October 16, 1989, pursuant to section 252(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 (generally referred to as the Gramm-Rudman-Hollings Act) (Pub. L. 99–177). We will issue separate instructions with respect to sequestration for the period from April 1, 1990 through September 30, 1990, that are required by section 11002 of Public Law 101–239.

Section 6110 of Public Law 101–239 amended section 1861(v)(1)(S) of the Act to provide that payments for capital-related costs of outpatient services of all hospitals, other than sole community hospitals, are to be reduced by 15 percent for payments attributable to portions of cost reporting periods occurring during FY 1990 (October 1, 1989 through September 30, 1990). This reduction is made before determining the blended payment amount for ambulatory surgical services and for radiology services and other diagnostic procedures performed in an outpatient hospital setting.

Under section 6205(b) of Public Law 101–239, the Secretary is prohibited from recouping or otherwise reducing or adjusting Medicare payments to hospitals before October 1, 1990 for overpayments to hospitals as a result of a determination that costs reported for nursing or allied health education programs were allowable only as routine operating costs and therefore excluded from the medical education payments made outside of the prospective payment system.

The Secretary is required to issue proposed regulations addressing payment of these costs by July 1, 1990. The rule must provide for a comment period of not less than 60 days. The Secretary must consult with the Prospective Payment Assessment Commission and assure that any final rule is not effective before the later of October 1, 1990 or 30 days after publication of the final rule in the **Federal Register.**

Several provisions of Public Law 101–239 are effective on April 1, 1990. These provisions affect—

- Sole community hospitals;
- Disproportionate share hospitals;
- Rural hospitals that are not sole community hospitals, have 100 or fewer beds, and 60 percent or more of their inpatient days or discharges during their cost reporting period that began during FY 1987 are attributable to Medicare patients; and
- The wage index values of hospitals that are located in rural counties that have been deemed to be located in an adjacent urban area.

In addition, there is a provision that expands the authority under section 1886(b)(4) of the Act to grant adjustments to an excluded hospital's or unit's target amount to allow a change in the base year upon which the target amount is based. These provisions will be implemented through a separate rulemaking document.

III. Tables

This section contains the tables referred to in section II of this notice. For purposes of this notice, and to avoid confusion, we have retained the designations of Tables that were first used in the September 1, 1983 initial prospective payment final rule (48 FR 39844). Tables 1a, 1b, and 1c are presented below. The tables are as follows:

Table 1a.—National Adjusted Standardized Amounts, Labor/Nonlabor

Table 1b.—Regional Adjusted Standardized Amounts, Labor/Nonlabor

Table 1c.—Adjusted Standardized Amounts for Puerto Rico, Labor/Nonlabor

TABLE 1a.—NATIONAL ADJUSTED STANDARDIZED AMOUNTS, LABOR/NONLABOR

Larbe urban		Other urban		Rural	
Labor-related	Nonlabor-related	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
2,508.17	888.39	2,468.47	874.32	2,433.28	673.92

TABLE 1b.—REGIONAL ADJUSTED STANDARDIZED AMOUNTS, LABOR/NONLABOR

	Large urban		Other urban		Rural	
	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
1. New England (CT, ME, MA, NH, RI, VT)	2633.87	927.35	2592.17	912.66	2697.21	799.48
2. Middle Atlantic (PA, NJ, NY)	2366.31	880.00	2328.84	866.07	2583.13	755.79
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	2525.91	810.81	2485.92	797.97	2469.28	655.37
4. East North Central (IL, IN, MI, OH, WI)	2664.24	959.31	2622.06	944.13	2500.49	728.39
5. East South Central (AL, KY, MS, TN)	2424.22	734.17	2385.84	722.54	2447.30	611.13
6. West North Central (IA, KS, MN, MO, NE, ND, SD)	2526.61	874.11	2486.61	860.26	2378.68	652.91
7. West South Central (AR, LA, OK, TX)	2512.07	805.32	2472.29	792.56	2281.25	600.45
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	2422.48	863.34	2384.12	849.68	2319.23	695.12
9. Pacific (AK, CA, HI, OR, WA)	2357.18	985.34	2319.86	969.73	2243.70	778.00

TABLE 1c.—ADJUSTED STANDARDIZED AMOUNTS FOR PUERTO RICO, LABOR/NONLABOR

	Large urban		Other urban		Rural	
	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
Puerto Rico	2227.89	398.58	2192.64	392.26	1626.42	301.07
National	2474.78	829.01				

IV. Regulatory Impact Statement

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact statement for any notice that would be likely to result in one of the following: 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. In addition, 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 notice such as this will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, States and individuals are not entities, but we consider all hospitals to be small entities. Also, section 1102(b) of the Act requires us to prepare a regulatory impact analysis that conforms to section 604 of the RFA unless the Secretary certifies that this notice will not have a significant impact on the operations of a substantial number of small rural hospitals.

We have determined that this notice, in itself, will not produce any effects that would meet any of the criteria of E.O. 12291 or of the RFA since the amendments to which this notice pertains are already in effect, or will go into effect without the publication of this notice. Implementation of these amendments is not dependent on the publication of this document. Therefore, we have determined that a regulatory impact analysis under E.O. 12291 and a regulatory flexibility analysis under the RFA are not required. For the same reasons, we have determined and the Secretary certifies that this notice will not have a significant impact on a substantial number of small rural hospitals or on any other small entities.

V. Other Required Information

A. Waiver of 30-Day Delay in Effective Date

We normally provide a delay of 30 days in the effective date. However, because the provisions of this notice merely summarize statutory amendments that are self-implementing or that require only the ministerial application of established formulas and data bases, and because the effective dates of the provisions are on or before January 1, 1990, a delayed effective date is unnecessary. Therefore, we find good cause to waive the usual 30-day delay.

B. Paperwork Reduction Act

This notice does not impose paperwork or information collection requirements. Consequently, it 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. 3501–3511).

(Sections 1815(e), 1861(v), and 1886 of the Social Security Act (42 U.S.C. 1395g(e), 1395x(v), and 1395ww) and sections 6001 and 6205(b) of Pub. L. 101–239)

Dated: December 22, 1989.

Louis B. Hayes,

Acting Administrator, Health Care Financing Administration.

Approved: December 26, 1989.

Louis W. Sullivan,

Secretary.

[FR Doc. 89–30317 Filed 12–28–89; 8:45 am]

BILLING CODE 4120–01–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 December 22, 1989.

(Call PHS Reports Clearance Officer on 202–245–2100 for copies of package)

1. Health Professions Student Loan (HPSL) and Nursing Student Loan (NSL) Administrative Requirements (Regulation and Policy)—0915–0047—This information is needed to document that schools are properly administering the HPSL and NSL programs in accordance with statutory and regulatory requirements. This is an extension of approval for reporting requirements formerly approved under 0915–0046 (Debt Management Report), 0915–0014 (Loan Information Disclosure

Requirements), and 0915–0115 (Administrative Hearing Reporting Requirements). These requirements will be incorporated into the approval for the HPSL/NSL Administrative Requirements (0915–0047). *Respondents:* Individuals or households, non-profit institutions.

	No. of respondents	No. of hours per response	No. of responses per respondent
School Disclosure:			
Loan Repayment & Delinquent Accounts:			
57.206(a)(2) & 57.210(b)(1)(x)	320	3 mins.	113
Student Reporting:			
Financial Aid Transcript:			
57.206(a)(3) & 57.306(a)(2)	10,500	15 mins.	1
School Reporting:			
Disability Cancellation:			
57.211(a) & 57.311(a)	100	30 mins.	1
Admin. Hearing Reporting Requirements:			
57.215(a)(2), 57.216.(a)(d), 57.315(a)(1)(ii), 57.316(a)(d)	15	3 hrs.	1
Six Month DMR:			
57.215(a) & 57.315(a)	1,970	3 hrs.	1
Three Month DMR:			
57.215(a) & 57.315(a)	1,120	1 hr.	2
School Recordkeeping:			
Cost of Attendance:			
57.206(b)(2) & 57.306(b)(2)(ii)	850	Range: 18 mins.—NSL 70 mins.—HPSL	1
Death Cancellation:			
57.211(b) & 57.311(b)	178	1 min.	1
HPSL Repayment Records:			
57.215(b)(c)	320	28.75 hrs.	1
NSL Repayment Records:			
57.315(a)(2)(3)	1,360	2.5 hrs.	1
Loan Information Disclosure—Schools:			
57.208(c)	300	5 mins.	82

Estimated Annual Burden: 28,843 Hours.

2. HIV Testing Performance Evaluation Program—NEW—The CDC needs information describing the testing practices and characteristics of laboratories that are performing or plan to perform testing for the Human Immunodeficiency Virus (HIV) that causes AIDS. The information will be used to improve the quality of HIV testing. Respondents will include hospitals, health departments, blood banks, and private laboratories. *Respondents:* Businesses or other for-profit; *Number of Respondents:* 1,600; *Number of Responses per Respondent:* 1; *Average Burden: per Response:* 1 hour; *Estimated Annual Burden:* 1,600 Hours.

3. National Nosocomial Infections Surveillance System (NNIS)—0920–0012—The NNIS data system determines the magnitude of various nosocomial infection problems and national trends in the rates of infection and detects nosocomial infection outbreaks that occur when contaminated medical products or devices are distributed nationally. *Respondents:* Businesses or other for-profit; *Number of Respondents:* 146; *Number of Responses per Respondent:* 688; *Average Burden per Response:* .027 hours; *Estimated Annual Burden:* 2,728 Hours.

4. IHS Community Health Representative Activity Reporting Sample—0917–0010—The information collection obtained Indian Health Service (IHS) Community Health Representative (CHR) program data on: service category, health area, setting, patient's age and sex, referred from, referred to, and minutes providing service or in travel. This information is collected during one week per month, reporting to IHS quarterly, and used by CHS project managers and IHS Area Office and Headquarters staff for program planning, allocation of resources, management and evaluation purposes. *Respondents:* State or local governments (tribal); *Number of Respondents:* 1,411; *Number of Responses per Respondent:* 4; *Average Burden per Response:* 1.5 hours; *Estimated Annual Burden:* 8,466 Hours

5. Drug Abuse Warning Network (DAWN)—0930–0078—DAWEN is an epidemiologic surveillance system designed to identify licit and illicit drugs and substances associated with drug abuse morbidity and mortality, to monitor drug abuse trends and patterns, and to provide drug-specific data useful for national and local drug abuse policy planning and for assessment of public health hazards associated with drug abuse. *Respondents:* State or local governments, businesses or other for-profit, non-profit institutions.

	No. of respondents	No. of hours per response	No. of responses per respondent
Hospital Emergency Rooms	639	.19 hrs.	278
Medical Rooms	87	.14 hrs.	123

Estimated Annual Burden: 24,068 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: December 22, 1989.

James M. Friedman,

Acting Deputy Assistant Secretary for Health (Planning and Evaluation).

[FR Doc. 89-30234 Filed 12-28-89; 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-N-52]

Notice of 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: December 29, 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) 755-7300; TDD number for the hearing- and speech-impaired (202) 755-5965. (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 about 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.

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: John Carr, Code 20 YAW, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332, (202) 325-0474; Department of Agriculture: Marsha Pruitt, USDA, 14th and Independence Avenue SW., South Bldg., Room 1566, Washington, DC 20250, (202) 477-5225.

Dated: December 21, 1989.

Paul Roitman Bardack,

Deputy Assistant Secretary for Program Policy Development and Evaluation.

Suitable Land (by State)

(Number of Properties [ ])

KENTUCKY

Upper Cumberland River Basin [3]
Bell County
Pineville, KY
Landholding Agency: GSA
Location: Located between Pine and Walnut Streets; GSA # 4-D-KY-588 (excess)
Comment: 0.50 acres in three parcels surrounded by private property

MASSACHUSETTS

Portion Former GSA Depot [1]
Beale and Lincoln Streets
Hingham, MA
Landholding Agency: GSA
Location: GSA # 2-GR-MA-762; adjacent to Lincoln Plaza Shopping Center (excess)
Comment: 1.37 acres; current use road apron

NEW JERSEY

Naval Reserve Center [1]
Trenton & Merselis Avenues
Clifton, NJ
Landholding Agency: NAVY
Location: Passaic County (excess)
Comment: 1.56 acres

Suitable Building (by State)

(Number of Properties [ ])

NEW HAMPSHIRE

East Rumney Road [1]
East Rumney Road
Rumney, NH
Landholding Agency: AGRICULTURE
Location:
Comment: wood frame; no utilities

Unsuitable Land (by State)

(Number of Properties [ ])

WYOMING

Lander National Guard Target Range [1]

Freemont County
Lander, WY
Landholding Agency: GSA
Location: Directly east of Lander; GSA # 7–D–WY–530
Reason:
Within airport runway clear zone
Other environmental
Comment: solid waste disposal landfill
Unsuitable Building (by State)
(Number of Properties [ ])
WASHINGTON
Midway Substation Community [35]
Benton County
Richland, WA
Landholding Agency: GSA
Location: 35 miles NW of Richland; GSA # 9–B–WA–991 (excess)
Reasopn:
Secured area
Contamination
Comment:

Note: McConnell Air Force Base property (GSA 7–D–KS–477–M) listed in the Federal Register on 9/29/89 was mistakenly identified as unsuitable. The property was listed in the Federal Register on 2/7/89 as suitable.

[FR Doc. 89–30128 Filed 12–28–89; 8:45 am]
BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–00–4212–11; N–21980]

Termination of Recreation and Public Purposes Classification and Order Providing for Opening of Land; Nevada

December 15, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates Recreation and Public Purposes classification, N–21980 in its entirety. The land will be opened to the public land laws generally, including the mining laws.

EFFECTIVE DATE: Termination is effective with the publication of this document. The land will be open to entry at 10:00 a.m. on January 29, 1990.

FOR FURTHER INFORMATION CONTACT: Mary Clark, BLM Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, NV 89520, 702–328–6330.

SUPPLEMENTARY INFORMATION: Pursuant to Section 7 of the Taylor Grazing Act (48 Stat. 1272) and the authority delegated by Appendix 1 of Bureau of Land Management Manual 1203, dated April 14, 1987, Recreation and Public Purposes Classification N–21980 is hereby terminated in its entirety:

Mount Diablo Meridian, Nevada
T. 20 S., R. 60 E.,
Sec. 10, S½SE¼SE¼NW¼.

The area described contains five (5) acres in Clark County, Nevada.

The classification was made pursuant to the Act of June 14, 1926, as amended, in response to an application from Las Vegas Bible Studies and a lease was subsequently issued. Said lease has since expired and a determination has been made that the classification is no longer appropriate.

At 10:00 a.m. on January 29, 1990, the land will be open to the operation of the public land laws, subject to valid existing rights, existing classifications and withdrawals, pending lawsuits, and requirements of applicable law. All valid applications received prior to or at 10:00 a.m. on January 29, 1990 will be considered as simultaneously filed. All other applications received will be considered in the order of filing.

At 10:00 a.m. on January 29, 1990, the land will also be open to the operation of the mining laws. Appropriation of land under the general mining law prior to the date and time of restoration is unauthorized. Any such attempt 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. The land remains open to the mineral leasing and material sale laws.

Edward F. Spang,
State Director, Nevada.

[FR Doc. 89–30179 Filed 12–28–89; 8:45 am]
BILLING CODE 4310–HC–M

[CA–056–00–4332–10]

Closure Order for Public Use; California

ACTION: Closure order for public use.

SUMMARY: Notice is hereby given related to the closure of Bureau of Land Management (BLM) administered lands to all public use in accordance with regulations contained in 43 CFR subpart 8364.1. Approximately 2,000 acres located in portions of sections 18, 19, T2S, R2W, Humboldt Meridian, and sections 13, 24, 25, 36, T2S, R3W, Humboldt Meridian, and known as the west slope of the King Range Extension Area will be temporarily closed to all public use From December 20, 1989 through January 10, 1990 to protect persons, property, and public lands and resources. Employees, agents and permittees of the BLM, private landowners or residents who require access through the closed area may be exempt from this closure as determined by the authorized officer.

DATE: This closure order is effective December 20, 1989.

SUPPLEMENTARY INFORMATION: The purpose of this temporary emergency closure order is to protect the public lands and resources affected from disturbance and damage which would result from the anticipated gathering of up to 3,000 people associated with the Rainbow Tribe over a two week period. This sensitive and environmentally fragile coastline, consisting of the Mattole River estuary, pristine tidepools, twenty significant archaeological sites, the Punta Gorda Lighthouse which is listed on the National Register of Historic Places, and populations of the rare and sensitive Layia carnosa plant species would be adversely impacted by the sheer numbers of people concentrated in such a relatively small area. Health and sanitation problems would immediately arise as only one outhouse exists at the semi-developed Mattole Campground and no potable drinking water is available nearby. This could result in pollution of the estuary and negatively affect salmon and steelhead populations and waterfowl that feed in the area. The extensive foot traffic throughout the vegetated dunes and wetland habitat would kill off an estimated 25% of the vegetation due to trampling. Some visitors would be inclined to enter the fenced archaeological shell middens or examine unfenced sites causing disturbance. The pristine tidepools are extemely susceptible to damage caused by trampling which would severely damage these biological marine resources.

These activities would be in violation of Federal regulations pursuant to 43 CFR subpart 8365.1. Violations are punishable by a fine not to exceed $1,000.00 and/or imprisonment not to exceed twelve (12) months.

Maps showing the area closed to public use are posted at the boundaries and are available at the Arcata Resource Area Office, 1125 16th Street, Room 219, Arcata, CA 95521.

Edwin G. Katlas,
Acting District Manager.

[FR Doc. 89–30260 Filed 12–28–89; 8:45 am]
BILLING CODE 4310–40–M

[CA-056-00-4333-10]

Decision To Designate a Portion of the King Range National Conservation Area, CA, an Area of Critical Environmental Concern

ACTION: Notice of ACEC designation.

SUMMARY: Notice is hereby given related to a 1981 planning decision to designate a portion of the King Range National Conservation Area an Area of Critical Environmental Concern (ACEC) in accordance with PL 94–579 and regulations contained in 43 CFR part 1600. Approximately 7.5 miles of ocean beach strand from the north end of the Mattole River estuary south to Sea Lion Gulch is designated and ACEC because of its outstanding cultural, historic, riparian, botanical, biological and recreation values which require special management action.

DATE: This action is effective as of January 1, 1990.

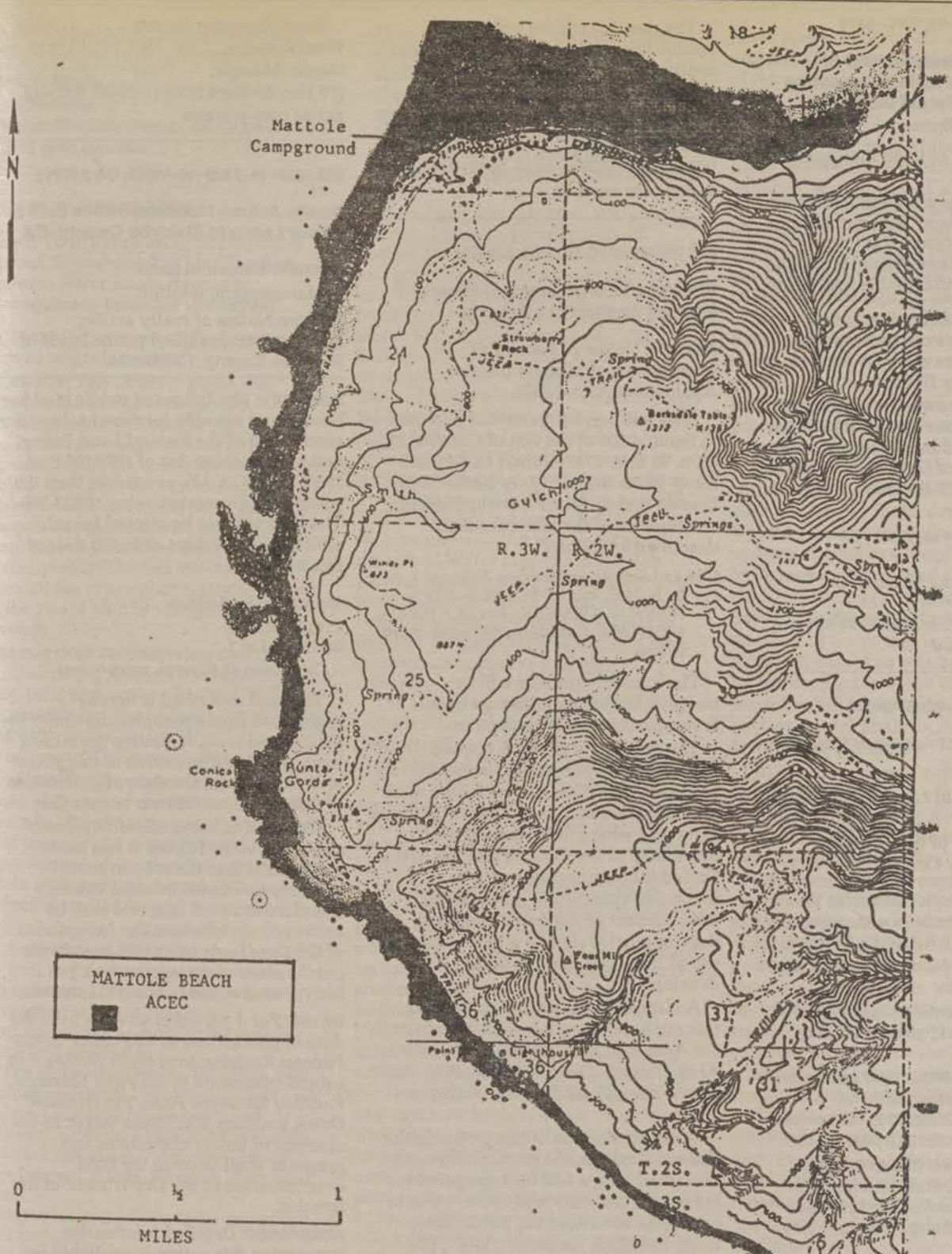
SUPPLEMENTARY INFORMATION: During 1980 and 1981 BLM conducted resource inventories covering approximately 2,000 acres of newly acquired land known as the King Range Extension Area. Documentation of the plannng decisions made at that time were deferred until the County's local Coatal Plan was completed. This would help insure that Federal, State and local plans for the area were consistent. Now that the local Coastal Plan is approved, BLM is issuing, by means of this **Federal Register**, official notification to designate the beach strand of an ACEC.

Maps of the "Mattole Beach" ACEC are available at the BLM Arcata Resource Area office and are posted at the local post office as well as the Mattole compground.

John T. Lloyd,

Arcata Area Manager.

BILLING CODE 4310-40-M


N
Mattole
Campground
Strawberry
Rock
Spring
Barnidge Table
Gulch
Teel Springs
R.3W.
R.2W.
Spring
25
Spring
Conical
Rock
Punta
Gorda
Spring
36
31
36
31
T.2S.
3S.
MATTOLE BEACH
ACEC
0
½
1
MILES

[OR931-00-6321-02; GPO-087]

Availability of Draft Record of Decision for Managing Competing Vegetation on Forest Lands in Western Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of draft "Record of Decision" emanating from the Final Environmental Impact Statement, Western Oregon Program, Management of Competing vegetation.

DATES: Due to a delay in printing, written comments on the proposed record of decision will now be accepted through February 16, 1990.

FOR FURTHER INFORMATION CONTACT: Requests for copies as well as written comments should be addressed to: Tom Aufenthie, Project Lead, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Dated: December 19, 1989.

Elaine Zielinski,

Deputy State Director for Lands and Renewable Resources.

[FR Doc. 89-30262 Filed 12-28-89; 8:45 am]

BILLING CODE 4310-33-M

[OR-010-84-6332-02; GPO-089]

Lakeview District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting of the Lakeview District Advisory Council.

SUMMARY: This notice provides the schedule and agenda of a meeting of the Lakeview District Advisory Council.

DATE: Thursday, January 11, 1990, 10:00 a.m. until 3:00 p.m.

ADDRESS: The meeting will be held at the Bly Fire Hall, Highway 140, Bly, Oregon.

FOR FURTHER INFORMATION CONTACT: Renee Snyder, Bureau of Land Management, P.O. Box 151, Lakeview, OR 97630; telephone (503) 947-6110.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include:

1. Opening remarks, introductions
2. Election of chairperson and vice chairperson
3. Review of minutes of last meeting
4. Discussion and recommendation on the adequacy of the Draft Eligibility and Suitability Report for the Upper Klamath Wild and Scenic River Study.
5. Statements from the public, if any
6. Set date and tentative agenda for next meeting.

The meeting will be open to the public. Interested persons may submit written statements for the Council's consideration.

Judy Ellen Nelson,

District Manager.

[FR Doc. 89-30263 Filed 12-28-89; 8:45 am]

BILLING CODE 4310-33-M

[AZ 020-41-5410-10; AZA-24062]

Receipt of Conveyance of Mineral Interest Application; Arizona

AGENCY: Notice of Receipt of Conveyance of Mineral Interest Application AZA-24062.

Notice is hereby given that pursuant to Section 209 of the Act of October 21, 1976, 90 Stat. 2757, Robert O. Barber, Kerry Bjorn Barber, Mary Barber and Brenda Barber Straw have applied for conveyance of the mineral estate described as follows:

Gila and Salt River Meridian Arizona, T. 19 S., R. 14 E., sec. 27, W½NE¼, NW¼, N½SW¼, NW¼SE¼; sec. 28, N½NE¼, NE¼NW¼. Containing 480 acres, more or less.

The mineral interests will be conveyed in whole or in part upon favorable mineral examination.

The purpose is to allow consolidation of surface and subsurface ownership for the lands described above, where there are no known mineral values or in those instances where the reservation of ownership of the mineral interest in the United States interferes with or precludes appropriate non-mineral development of the lands and such development would be a more beneficial use of the lands than its mineral development.

Additional information concerning this application may be obtained from the Area Manager, Phoenix Resource Area, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Upon publication of this notice in the **Federal Register**, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application or two years from the date of the filing of the application, September 29, 1989, whichever occurs first.

Dated: December 15, 1989.

Henri R. Bisson,

District Manager.

[FR Doc. 89-30264 Filed 12-28-89; 8:45 am]

BILLING CODE 4310-32-M

[CA-050-43-7122-10-VO49; CA 24024]

Realty Action; Noncompetitive Sale of Public Lands in Siskiyou County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; noncompetitive sale of public lands in Siskiyou County, California.

SUMMARY: The following public land has been found suitable for direct sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 USC 1713), at not less than the estimated fair market value of $22,250. The land will not be offered for sale until at least 60 days after the date of this notice.

Mount Diable Meridian

T. 41 N., R. 8 W.
Section 8: Lot 1.

Containing 45.40 acres, more or less.

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

This land is being offered by direct sale to Quentin Tobias. It has been determined that the subject parcel contains no known mineral values; therefore, mineral interests may be conveyed simultaneously. Acceptance of the direct sale offer will qualify the purchaser to make application for conveyance of those mineral interests.

DATES: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Area Manager, Redding Resource Area, 355 Hemsted Drive, Redding, California 96002. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

ADDRESSES: Detailed information concerning this action is available for review at the office listed above.

FOR FURTHER INFORMATION CONTACT: Patricia Cook, Realty Specialist, Redding Resource Area, at the above address.

SUPPLEMENTARY INFORMATION: The patent, when issued, will contain certain

reservations to the United States and will be subject to existing right-of-ways.

Mark T. Morse,

Area Manager.

[FR Doc. 89-30265 Filed 12-28-89; 8:45 am]

BILLING CODE 4310-40-M

Bureau of Reclamation

Intent To Prepare an Environmental Impact Statement (EIS) for the San Joaquin River Basin Resource Management Initiative (Initiative)

AGENCY: Department of the Interior, Bureau of Reclamation.

SUMMARY: The Department of the Interior, Bureau of Reclamation (Reclamation), will prepare an EIS on the Initiative, which is designed to pursue, in conjunction with the State of California, opportunities to improve the water-related environment in the San Joaquin River Basin with particular emphasis on fisheries, wetlands, and water quality. The EIS will take into account the renewal of water contracts in the Friant Unit of the Central Vally Project.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Denny, Project Manager (MP-720), (916) 978-4067 or Mr. Will Tully, Environmental Specialist (MP-750), (916) 978-5131, 2800 Cottage Way, Sacramento, California 95825.

SUPPLEMENTARY INFORMATION: The basic objective of the San Joaquin River Basin Resource Management Initiative is to improve the water-related environment of the San Joaquin River Basin with particular emphasis on fisheries, wetlands, and water quality.

The Initiative will seek the participation of State and local agencies, as well as private water resource organizations. The Initiative will be consistent with the Secretary's responsibilities and obligations under State and Federal law.

The study area for the Initiative will include the entire San Joaquin River and Tulare Lake hydrologic basins of California. Major rivers to be included are the Stanislaus, Tuolumne, Merced, San Joaquin, Kings, Kaweah, Tule, and Kern.

Improvement efforts to be examined will include:

—Increased conjunctive use of groundwater and surface water supplies.
—Rehabilitation of conveyance facilities to conserve surface water.
—Coordination of operation of basin reservoirs.
—Development of offstream storage on wetland habitat.
—Construction of a salmon hatchery.
—Improvement in fish screening facilities at diversions.
—Development of water exchanges and modifications in points of diversion, if feasible, to allow additional releases below Friant Dam and other non-federal dams in the San Joaquin River Basin.

In addition, the Initiative will examine price and conservation aspects of project operations to promote efficient and environmentally sound resource use. The Initiative, and the environmental impact statement (EIS) which will be performed under the Initiative in consultation with appropriate federal agencies, will reflect State primacy over water allocation and the non-discretionary nature of the right under federal reclamation law to long-term renewal of Friant Unit water service contracts at existing quantities. The full scope of the Initiative and EIS will be determined through a NEPA scoping process, but will address aspects of water projects in the San Joaquin Basin, including but not limited to price, conservation, duration of long-term contracts, voluntary transfers to improve economic efficiency, and time, manner, and efficiency of water delivery.

The Initiative will explore these opportunities while continuing the delivery of water supplies from the Friant Unit of the Central Valley Project for municipal and industrial, and agricultural purposes. Reclamation will offer contracts to the water districts with the following provision in Article 14 thereof:

14. (d) Notwithstanding any other provisions of the contract, all provision of this contract are subject to modification by the United States based on compliance with applicable federal environmental laws, including the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA). Future decisions with respet to project operations issues addressed by the San Joaquin River Basin Resource Management Initiative (the "Initiative"), defined for purposes of this contract in subarticle (e), will also be subject to compliance with such laws. The provisions of this contract covering right to long-term renewal and quantity of water (except as otherwise provided by reclamation law) are non-discretionary and not subject to change as a result of compliance with NEPA.

(e) For purposes of this contract, the Initiative will include at a minimum the preparation of an envionmental impact statement and review under the Endangered Species Act of the water-related environment of the San Joaquin River Basin, such review to take into account at a minimum the renewal of all of the water supply contracts for the Friant Unit in the following manner:

(1) The EIS will examine the water related environment of the San Joaquin River Basin with particular emphasis on fisheries, wetlands, and water quality. At a minimum, the EIS will examine the effects on the human environment of continued operation of the Friant Unit considering the following aspects: changes in water price, changes in conservation practices, changes in duration of the long-term contracts (that is, terms exceeding 10 years up to 40 years), voluntary transfers to improve economic efficiency, and changes in project operations such as the time, manner, and efficiency of delivery of the water and the reasonable foreseeable consequences of each of these changes, such as changes in the demand for water for irrigation purposes. Other matters may be examined if determined to be reasonably related as a result of the EISA scoping process. Although the Bureau has no authority to alter the quantity of water that is set forth in Article 3, except as otherwise provided by reclamation law, the EIS will consider this matter as part of its environmental analysis to the extent set forth in this paragraph.

(2) The Department will promptly initiate a consultation process on the Initiative with the Fish and Wildlife Service (FWS) under section 7 of the Endangered Species Act, which will, at a minimum, take into account the renewal of all of the Friant Unit water service contracts and each of the aspects reviewed in the EIS and described in subarticles (e)(1). The Bureau of Reclamation will describe any Initiative issues which go beyond the issues described in the preceding sentence and provide the best available scientific and commercial data regarding the Initiative issues to FWS. The FWS will then issue a biological opinion on whether any action proposed under the Initiative is likely to jeopardize the existence of any endangered or threatened species or is likely to result in the destruction or adverse modification of any designated or proposed criteria habitat of such species.

Scoping for preparation of the draft EIS is expected to begin in January 1990. A draft EIS is scheduled to be released in July 1992, and the final EIS is expected to be available in January 1993. A future notice will be published

in the Federal Register to more fully detail the scoping process.

Joseph Hunter,

Acting Commissioner, Bureau of Reclamation.

[FR Doc. 89-30180 Filed 12-28-89; 8:45 am]

BILLING CODE 4310-09-M

INTERNATIONAL BOUNDARY AND WATER COMMISSION

Placement of Lane Dividers on The Bridge of the Americas (Cordova Bridge) El Paso, Texas; Finding of No Significant Impact

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Based on an environmental assessment, the U.S. Section finds that the proposed action to resolve an international concern regarding the structural integrity of the Cordova Bridge by reducing stress on the bridge caused by loaded commercial trucks until rehabilitation work can be done is not a major federal action that would have a significant adverse affect on the quality of the human environment. Therefore, pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Final Regulations (40 CFR parts 1500 through 1508); and the U.S. Section's Operation Procedures for Implementing section 102 of NEPA, published in the Federal Register September 2, 1981 (46 FR 44083); the U.S. Section hereby gives notice that an environmental impact statement will not be prepared for the proposed project.

ADDRESS: Mr. M.R. Ybarra, U.S. section Secretary, International Boundary and Water Commission, United States and Mexico, U.S. Section, 4171 North Mesa Street, C-310, El Paso, Texas 79902. Telephone: 915/534-6698, FTS 570-6698.

SUPPLEMENTARY INFORMATION:

Proposed Action

The action proposed is that the United States Section of the International Boundary and Water Commission (U.S. Section and Commission, respectively) place physical lane dividers at the outermost north and south bound traffic lanes of the Cordova Bridge to separate the flow of passenger vehicle traffic from that of commercial trucks. The proposed action would be taken to resolve an international concern regarding the structural integrity of the Cordova Bridge by reducing stress on the bridge caused by loaded commercial trucks until rehabilitation work can be done.

Alternatives Considered

Six alternatives were considered

The Preferred Alternative is to install a concrete curb delineating the extreme right-hand lanes into each country for commercial traffic. The curb would be 8" across the top, 12" across the bottom and 12" high. The curb would be precast in 10-foot lengths and rigidly attached to the bridge deck by anchors. Signs designating the right-hand lane of the bridge reserved for commercial traffic only would also be placed at strategic locations.

Double Stripe. A painted double stripe was considered as a means of delineating a commercial truck traffic lane. A double solid white stripe signifying no lane change allowed would be painted on the road surface. Signs designating the right-hand lane of the bridge reserved for commercial traffic only would also be placed at strategic locations.

Barrels. Fifty-five gallon drums filled with sand were considered as an alternative to provide lane delineation. These barrels would be a physical barrier placed along the lane divider stripe. Signs designating the right-hand lane of the bridge reserved for commercial traffic only would also be placed at strategic locations.

Precast Concrete Wall. Concrete highway median barriers (Jersey barriers) were considered as a means of physically separating the truck traffic lane from the passenger traffic. Jersey barriers have bases measuring 2'3" tapering to a narrow top 8" wide and are 2'8" tall. They would be rigidly attached along the lane divider stripe separating the right-hand lane from the remaining traffic lanes. Signs designating the right-hand lane of the bridge reserved for commercial traffic only would also be placed at strategic locations.

Painted Lane. Completely painting the right-hand lane was considered to designate commercial traffic use only. Signs designating the right-hand lane of the bridge reserved for commercial traffic only would also be placed at strategic locations.

The No Action Alternative. Under this alternative, no painting of stripes, lanes, nor placement of physical barriers would be done on the Cordova Bridge. No steps would be taken to separate passenger traffic from commercial traffic on the bridge.

Environmental Assessment

The U.S. Section completed the Draft Environmental Assessment for the proposed action on December 14, 1989, and it is currently available for review and comment.

Finding of the Environmental Assessment

The Draft Environmental Assessment finds that the preferred alternative does not constitute a major federal action which would cause a significant local, regional, or national impact on the environment since it:

1. Would effectively reduce dead load weight on the bridge thus slowing the unusually rapid deterioration caused by concentrated loads of commercial trucks on the bridge.
2. Would effectively reduce congestion on the bridge by providing for a clear separation of passenger vehicles from commercial trucks.
3. Would improve air quality at the bridge by reducing traffic congestion and expediting movement of vehicles through inspection facilities.
4. Would provide the least possible lane encroachment into already undersized traffic lanes and thus improve the safety of people traveling on the bridge. This would minimize the danger of impact by errant vehicular operation.
5. Would not present a hazard to pedestrians trying to cross the bridge laterally at unauthorized locations.
6. Would not affect fish and wildlife including endangered and threatened species that might be found in the area.
7. Would not affect cultural resources listed on or determined to be eligible for listing on the National Register of Historic Places.

On the basis of the Draft Environmental Assessment, the U.S. Section has determined that an environmental impact statement is not required for the proposed action to provide a means to efficiently control the vehicular traffic on the Cordova Bridge by separating the flow of automobile traffic from that of commercial trucks.

An environmental impact statement will not be prepared unless additional information which may affect this decision is brought to our attention within thirty (30) days of the date of this Notice.

The Draft Environmental Assessment and Draft Finding of No Significant Impact have been forwarded to the Environmental Protection Agency and various Federal, State, and local agencies and interested parties. A

limited number of copies of these documents are available to fill single copy requests at the above address.

Dated: December 15, 1989.

Suzette Zaboroski,

Staff Counsel.

[FR Doc. 89-30178 Filed 12-28-89; 8:45 am]

BILLING CODE 4710-03-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-291]

Certain Insulated Security Chests; Designation of Investigation as More Complicated and Extension of Deadline for Completion of Investigation by One Month

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has designated the above-captioned investigation "More complicated" and has extended the administrative deadlines for issuance of the presiding administrative law judge's (ALJ's) final initial determination (ID) and for completion of the investigation by one month, i.e., until January 8, 1990, and April 9, 1990, respectively.

FOR FURTHER INFORMATION CONTACT: Carol McCue Verratti, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1088. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

AUTHORITY: The authority for this action is contained in section 337(b)(1) of the Tariff Act of 1930 (19 U.S.C. 1337(b)(1)), and in §§ 210.59(a) and 210.53(c) of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.59(a) and 210.53(c)).

SUPPLEMENTARY INFORMATION: On November 28, 1989, the presiding ALJ in this investigation issued an ID (Order No. 11) pursuant to Commission interim rules 210.59(a) and 210.53(c) designating this investigation more complicated. The reasons for designating the investigation more complicated were discovery delays caused in large part by the fact that the one active respondent in the investigation is proceeding without benefit of counsel and is unfamiliar with the Commission's procedural rules. Accordingly, the ALJ was forced to permit the parties to conduct discovery after the close of the evidentiary hearing so that the record would be as complete as possible. This caused the ALJ to be delayed in commencing work on the final ID.

In addition to the delays arising from this investigation, the ALJ's schedule was further complicated by unexpected developments in a concurrent section 337 investigation over which the presiding ALJ in this investigation also presides. In that investigation there were extensive prehearing and discovery motions and the evidentiary hearing concluded approximately two weeks later than originally expected. This also prevented the ALJ from working on the final ID in this investigation.

Although designation of this investigation as a more complicated investigation extends the statutory time period for completion of the investigation from 12 to 18 months, Order No. 11 extended the deadline for issuance of the final ID by only one month. The Commission has, therefore, also extended the administrative deadline for completion of the investigation by one month, *i.e.*, until April 9, 1990.

The ID and all other nonconfidential documents in the record of the investigation are available for public inspection during official office 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., Room 112, Washington, DC 20436, telephone 202-252-1802.

By order of the Commission.

Issued: December 22, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-30201 Filed 12-28-89; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 290 (Sub-No. 5) (90-1)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Interstate Commerce Commission.

ACTION: Approval of rail cost adjustment factor and decision.

SUMMARY: The Commission has approved the first quarter 1990 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The first quarter RCAF (Unadjusted) is 1.088. The first quarter RCAF (Adjusted) is 1.056, a decrease of 0.4 percent from the fourth quarter RCAF (Adjusted) of 1.060. Maximum first quarter 1990 RCAF rate levels may not exceed 99.6 percent of maximum fourth quarter 1989 RCAF rate levels.

DATES: Effective January 1, 1990.

FOR FURTHER INFORMATION CONTACT: William T. Bono (202) 275-7354; Robert C. Hasek (202) 275-0938; TDD for hearing impaired (202) 275-1721.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or telephone (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 275-1721.]

This action will not significantly affect either the quality of the human environment or energy conservation.

Decided: December 22, 1989

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Lamboley, Phillips, and Emmett. Commissioner Lamboley commented with a separate expression.

Kathleen M. King,

Acting Secretary.

[FR Doc. 89-30250 Filed 12-28-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 335X)]

CSX Transportation, Inc.; Abandonment Exemption in Polk County, FL

Applicant has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon its 1.29-mile line of railroad between mileposts AY-876.71 and AY-878.0, near Agricola, Polk County, FL.

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 January 28, 1990 (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 January 8, 1990.[3] Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by January 18, 1990, 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: Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by January 3, 1990. 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: December 20, 1989.

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See* Exemption of Out-of-Service Rail Lines, 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.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Kathleen M. King,

Acting Secretary.

[FR Doc. 89-29981 Filed 12-28-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

In accordance with Departmental Policy, 28 C.F.R. § 50.7, notice is hereby given that on December 18, 1989, a proposed Consent Decree in *United States* v. *General Refuse Services, Inc., et al.*, Civil Action No. C-3-89-484, was lodged with the United States District Court for the Southern District of Ohio (Western Division). This action, brought under sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9606 and 9607, arose from the existence of a hazardous waste site located north of Troy, Ohio known as the Miami County Incinerator site.

Under the settlement, 120 settling defendants have agreed to perform certain response actions at the site to remediate the North and South Landfills, the ash disposal pit, the ash pile, the liquid disposal area, site groundwater, the former scrubber wastewater lagoon and the Eldean tributary. Details of the remedy are set forth in a Record of Decision (ROD) issued by the Environmental Protection Agency (EPA) on June 30, 1989. Subsequently, EPA modified certain aspects of the ROD. These modifications retain the performance standards contained in the ROD but are more cost effective than the design requirements of the ROD. Details of the modifications are described in a notice published in a local newspaper and made available at the Monroe County Public Library by EPA in compliance with Section 117 (c) and (d) of CERCLA, 42 U.S.C. 9671 (c) and (d).

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. *General Refuse Services, Inc., et al.*, Ref. No. 90-11-3-286.

The proposed Decree may be examined at the Offices of the United States Attorney, Civil Division, 200 W. Second Street, Dayton, Ohio 45402; at the United States Environmental Protection Agency (Region V), Office of Regional Counsel, 111 West Jackson Street, 3rd Floor, Chicago, Illinois 60604; and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1647, 9th Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $32.40 (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. 89-30266 Filed 12-28-89; 8:45 am]

BILLING CODE 4410-10-M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Department policy, 28 CFR 50.7, and section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), notice is hereby given that on December 12, 1989, a proposed consent decree in *United States* v. *Trans-Tech, Inc.*, Civil Action No. *HAR 89-3392*, was lodged with the United States District Court for the District of Maryland.

The proposed consent decree requires the defendant to reimburse the Hazardous Substance Superfund $373,767.21 in response costs incurred by the Environmental Protection Agency (EPA) to address the release or threat of release of hazardous substances at the Adamstown Groundwater Site in Adamstown, Maryland. The parties to the consent decree are the United States and Trans-Tech, Inc.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Trans-Tech, Inc.*, DOJ Ref. 90-11-3-413.

Copies of the proposed consent decree may be examined at the Office of the United States Attorney, District of Maryland, 8th Floor, U.S. Courthouse,

101 West Lombard Street, Baltimore, MD 21201, and at the Region III office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1647, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice. In requesting a copy please enclose a check in the amount of $1.90 (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. 89-30267 Filed 12-28-89; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Proposed Termination of Final Judgments

Notice is hereby given that defendants Union Camp Corporation and Bemis Company, Inc. have filed with the United States District Court for the Eastern District of Virginia separate motions to terminate the final judgments in *United States* v. *Union Camp Corporation and Bemis Company, Inc.*, Civil No. 5005-A; and that the Department of Justice ("Department"), in a stipulation also filed with the Court, has consented to termination of the judgments as to both Union and Bemis, but has reserved the right to withdraw its consent pending receipt of public comments. The complaint in this case (filed on November 4, 1968) alleged that defendants conspired to restrain and monopolize interstate trade and commerce in the manufacture and sale of mesh window paper bags (used principally for packaging potatoes) by asserting patent claims they knew to be invalid and by agreeing (with each other and with Union's licensees) to refuse patent licenses to certain applicants. The complaint also alleged that Union attempted to monopolize such manufacture and sale by improperly controlling entry therein and that Bemis did so by improperly using a patent it obtained by fraud and thus knew to be invalid.

The judgments (entered against defendant Union on February 24, 1969, and against defendant Bemis on July 1, 1969) require, among other things, that until the end of 1996 Union attach a copy of its judgment to any claim of infringement of certain patents, and that Bemis (a) distribute to certain of its personnel copies of its judgment plus instructions for compliance therewith, and (b) impose on certain Bemis personnel a duty to report to management any facts such personnel learn which would invalidate or prevent issuance of any Bemis patent. The judgments also enjoin Union from (a) asserting the validity of certain patents which it believes should not have been issued or should be declared invalid, and (b) consulting or agreeing with current or prospective licenses over whether to grant further licenses under certain patents; and enjoin Bemis from (a) filing or further prosecuting any patent application, or enforcing or threatening to enforce any patent, whenever it learns of facts which would prevent the issuance of or would invalidate the patent, and (b) consulting or agreeing with its licensors or licensees over whether to grant additional patent licenses.

The Department has filed with the Court a memorandum setting forth the reasons why the Department believes that termination of the judgments would serve the public interest. Copies of the complaint and final judgments, defendants' motion papers, the stipulation containing the Government's consent, the Department's memorandum, and all further papers filed with the Court in connection with these motions will be available for inspection at Room 3233, Antitrust Division, Department of Justice, 10th Street and Pennsylvania Avenue NW., Washington, DC 20530 (telephone 202/633-2481), and at the Office of the Clerk of the United States District Court for the Eastern District of Virginia, 200 South Washington Street, Alexandria, Virginia 22314. Copies of any of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the decrees to the Department. Such comments must be received within the sixty (60) day period established by court order, and will be filed with the Court. Comments should be addressed to Robert E. Bloch, Chief, Professions and Intellectual Property Section, Antitrust Division, Department of Justice, Washington, DC 20530 (telephone: 202/724-7425).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89-30268 Filed 12-28-89; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 88-22]

Marijuana Scheduling Petition; Denial of Petition

This is a final order of the Administrator of the Drug Enforcement Administration (DEA) denying the petition of the National Organization for Reform of Marijuana Laws (NORML) to reschedule the plant material marijuana from Schedule I to Schedule II of the Controlled Substances Act. This order follows a rulemaking on the record as prescribed by the Controlled Substances Act, 21 U.S.C. 801, *et seq.*, and the Administrative Procedures Act, 5 U.S.C. 551, *et seq.* There are seven parties in the rulemaking proceeding. Four parties, NORML, the Alliance for Cannabis Therapeutics (ACT), the Cannabis Corporation of America (CCA), and Carl Eric Olsen, comprised the pro-marijuana parties, those advocating the rescheduling of marijuana from Schedule I to Schedule II. The three remaining parties, who advocated that marijuana remain in Schedule I, were DEA, the National Federation of Parents for a Drug-Free Youth, and the International Association of Chiefs of Police (IACP).

The two issues involved in a determination of whether marijuana should be rescheduled from Schedule I to Schedule II are whether marijuana plant material has a currently accepted medical use in treatment in the United States, or a currently accepted medical use with severe restrictions; and whether there is a lack of accepted safety for use of marijuana plant material under medical supervision. After a thorough review of the record in this matter, the Administrator rejects the recommendation of the administrative law judge to reschedule marijuana into Schedule II and finds that the evidence in the record mandates a finding that the marijuana plant material remain in Schedule I of the Controlled Substances Act.

The pro-marijuana parties advocate the placement of marijuana plant material into Schedule II for medical use in the treatment of a wide variety of ailments, including nausea and vomiting associated with chemotherapy, glaucoma, spasticity in amputees and

those with multiple sclerosis, epilepsy, poor appetite, addiction to drugs and alcohol, pain, and asthma. The evidence presented by the pro-marijuana parties includes outdated and limited scientific studies; chronicles of individuals, their families and friends who have used marijuana; opinions from over a dozen psychiatrists and physicians; court opinions involving medical necessity as a defense to criminal charges for illegal possession of marijuana; state statutes which made marijuana available for research; newspaper articles; and the opinions of laypersons, including lawyers and associations of lawyers. The Administrator does not find such evidence convincing in light of the lack of reliable, credible, and relevant scientific studies documenting marijuana's medical utility; the opinions of highly respected, credentialed experts that marijuana does not have an accepted medical use; and statements from the American Medical Association, the American Cancer Society, the American Academy of Ophthalmology, the National Multiple Sclerosis Society, and the Federal Food and Drug Administration that marijuana has not been demonstrated as suitable for use as a medicine. Each of these areas will be discussed separately.

The record contains many research studies which have been published in scientific journals and many unpublished studies conducted by individual states. In order to evaluate the validity of any research study many factors must be considered. Certain scientific practices have been generally accepted by the scientific community which are designed to increase the validity of experimental studies. Studies or research projects which do not follow these accepted scientific practices have very limited, if any, credibility. A review of such studies must first examine the degree to which researchers control, or hold constant, all the variables which could affect the results, except the variable being studied. For example, if you wish to evaluate the effectiveness of marijuana on a group of glaucoma patients, you must control any other medication which the patient is taking. Otherwise, it is impossible to conclude that the results are attributable to the marijuana.

The second factor, or aspect of the design of a research project which must be evaluated, is the placebo effect. This is the tendency of research subjects to act and respond in a manner they believe is expected of them. To eliminate this factor, research subjects are usually "blinded," or not informed, of what drug they are receiving. Results of non-blind studies are questionable since they could be attributable, in large part, to psychological reactions of subjects rather than any real effects from the experimental drug. The next factor which must be minimized or eliminated for a research study to be valid is the expectation of the researcher. This is especially true where the effect being measured is subjective and not objective. For example, if the researcher is evaluating if the patient is nauseated, that is very subjective. If the researcher knows which patients are receiving the experimental drug, his perception of the results could be significantly altered.

Other factors to be considered when evaluating the validity of research include the number of subjects in the study, how the subjects are selected for the study, the length of the study, or how many times the experimental drug is administered, and the measurement of results in quantifiable, objective terms. The fewer the subjects in a research study, the less valid the results. If the sample of subjects is not statistically significant, the chances of the same results being duplicated in other individuals is reduced. Subjects for a research study should be randomly selected and representative of the population that is targeted to use the drug. Testing of marijuana in cancer patients for relief of nausea and vomiting should not be limited to those who have previously used marijuana recreationally and request its use in the study. The length of a study is particularly significant when the drug is to be used to treat a chronic condition such as glaucoma or spasticity. Studies based upon acute or one-time administration of the drug must be viewed with caution when the goal is treatment of a chronic condition. The effectiveness of the drug for long-time administration and the existence of side effects resulting from chronic use will not be revealed in acute studies.

In addition to factors related to the design and execution of a research study, there are two other factors which must be reviewed in evaluation of a research study. Research results are always considered tentative or preliminary until they have been replicated or confirmed by another researcher. The research study must be reported in sufficient detail to permit others to repeat it. Finally, publication of a study in a scientific journal, especially a journal which subjects an article to review prior to publication, adds validity to a study. Journal publication subjects a study to review and scrutiny by the scientific community and opens the door to replication of the studies. Unpublished studies are inherently suspect.

While research studies with the limitations mentioned above may provide useful and preliminary data which will be valuable in designing further studies, research studies with substantial limitations are not sufficient to support a determination that a drug has an accepted medical use. Both the published and unpublished research studies submitted by the pro-marijuana parties in this proceeding to support marijuana's medical use suffer from many deficiencies. They are, in essence, preliminary studies. None of these studies has risen to the level of demonstrating that marijuana has an accepted medical use for treatment of any medical condition. The three medical conditions for which the majority of evidence in the record was presented are: (1) Nausea and vomiting associated with chemotherapy, (2) glaucoma, and (3) spasticity associated with amputation or multiple sclerosis. Evidence presented in each area will be discussed separately.

Nausea and Vomiting

Five studies were presented by the pro-marijuana parties to support the medical use of marijuana as an antiemetic. The first study by Sallan, et al., *Antiemetic Effect of Delta-9-Tetrahydrocannabinol in Patients Receiving Cancer Chemotherapy*, 293 New England Journal of Medicine, 795–797(1975), utilized synthetic tetrahydrocannabinol (THC) and not the plant material marijuana. Although delta-9-THC is an active ingredient in the marijuana plant material, marijuana contains over 400 other chemicals. At least 61 of these chemicals are cannabinoids. All these chemicals could have some effect on the human body. Since THC is only one of many active ingredients in marijuana, THC studies are of very limited value in evaluating the therapeutic utility of marijuana. The route of administration, smoking versus oral injection, is a significant difference between use of marijuana and THC. Therefore, the results of the Sallan study are of little or no benefit in evaluating the medical utility of marijuana for treatment of nausea and vomiting associated with chemotherapy.

The second study compared a combination of pure THC and marijuana to placebo cigarettes. This study by Chang, et al., *Delta-9-Tetrahydrocannabinol as an Antiemetic in Cancer Patients Receiving High-Dose Methotrexate*, 91 Annals of Internal Medicine, 819–824 (1979), was

randomized, double-blind, and placebo controlled. The study concluded, "that a combination of oral and smoked THC is a highly effective antiemetic compared to placebo * * *" This study was limited to 15 subjects, some of whom received both marijuana and THC at the same time. The validity of the results of this study is severely limited by its small size and administration of the mixture of the two drugs, THC and marijuana. The study is not helpful in determining the therapeutic utility of marijuana alone in treating nausea and vomiting.

The third study conducted by Dr. Thomas J. Ungerleider, a psychiatrist, involved the administration of marijuana to 16 bone marrow transplant patients suffering from severe nausea and vomiting from radiation therapy. The results of this study are of little value due to the limited number of patients, the subjective nature of the data, and the fact that the results of the study were never published. The conclusion that there was less nausea and vomiting with use of marijuana was based upon the subjects' and researcher's subjective determination. There were no objective measurements, such as number of incidents or frequency of vomiting. During cross-examination, Dr. Ungerleider indicated that the results of the study were not published because there was not enough hard data.

The fourth study compared marijuana to THC as an antiemetic. Levitt, et al,. *Randomized Double Blind Comparison of Delta-9-Tetrahydrocannabinol (THC) and Marijuana As Chemotherapy Antiemetics.* (Meeting Abstract), 3 Proc. Annu. Meet. Am. Soc. Clin. Oncol. 91 (1984). It concluded that THC is superior to marijuana in controlling nausea and vomiting. A specific formulation of synthetic THC has been approved for marketing and is available as a prescription drug for treatment of nausea and vomiting associated with cancer chemotherapy.

The fifth study presented by the pro-marijuana parties is actually a group of programs, collectively labeled "Controlled Substances Therapeutic Research Programs," conducted by six states in the 1970's and 1980's. These programs involved the use of both marijuana cigarettes and synthetic THC capsules. The programs were given Investigational New Drug (IND) approval by the Food and Drug Administration (FDA) and the marijuana and THC were supplied by the Federal Government. The protocols of these programs were very loosely constructed. There were no controls. That is, there were no individuals who did not take the experimental drugs to compare with those who did. The studies were not blind or double-blind. Every research subject knew what drug they were receiving and, in many cases, were permitted to request either marijuana or THC. The studies were not randomized. In most instances, the results were measured by the subject's subjective evaluation of the drug's effectiveness. This is even more of a problem where the drug in question is a psychotropic or mind-altering substance like marijuana, which by its very nature makes some individuals feel "high," and may distort their perception of physical symptoms. There were no objectively measured results. The results were not published in scientific journals and, in some cases, data were lost or not recorded. The number of individuals who actually smoked marijuana in these studies was relatively small. These state studies were born of compassion and frustration. They abandoned traditional scientific methods in favor of dispensing marijuana to as many individuals as possible on the chance that it might help them. Though well-intentioned, these studies have little scientific value.

The research studies presented by the pro-marijuana parties in this proceeding do not support a conclusion that marijuana has a therapeutic use for treatment of nausea and vomiting associated with chemotherapy.

The pro-marijuana parties presented many testimonials from cancer patients, their families, and friends about the use of marijuana to alleviate nausea and vomiting associated with chemotherapy. These stories of individuals who treat themselves with a mind-altering drug, such as marijuana, must be viewed with great skepticism. There is no scientific merit to any of these accounts. In many cases the individuals were taking a variety of other medications and were using anything which might help treat the cancer as well as the nausea. They were using marijuana purchased on the street, and were unaware of the strength of the drug. They were not using the drug under medical supervision. Many of these individuals had been recreational users of marijuana prior to becoming ill. These individuals' desire for the drug to relieve their symptoms, as well as a desire to rationalize their marijuana use, removes any scientific value from their accounts of marijuana use. There is no doubt that these individuals and their loved-ones believed that marijuana was beneficial. The accounts of these individuals' suffering and illnesses are very moving and tragic; they are not, however, reliable scientific evidence, nor do they provide a basis to conclude that marijuana has an accepted medical use as an antiemetic.

There were many physicians and other medical experts who testified in this proceeding. In reviewing the weight to be given to an expert's opinion, the facts relied upon to reach that opinion and the credentials and experience of the expert must be carefully examined. The experts presented by the pro-marijuana parties were unable to provide a strong scientific or factual basis to support their opinions. In addition, many of the experts presented by the pro-marijuana parties did not have any expertise in the area of research in the specific medical area being addressed. The pro-marijuana parties presented the testimony of five psychiatrists to support the use of marijuana as an antiemetic. None of these individuals is an oncologist, nor have they treated cancer patients. Three of the psychiatrists, Drs. Grinspoon, Ungerleider and Zinberg are current or former board members of NORML or ACT. All these physicians indicated that they relied on scientific studies which they had read, their experience with cancer patients, or stories from others, to reach their conclusions. When questioned on cross-examination as to which studies they relied upon, most were unable to list one study. A review of the available literature has already demonstrated the unreliability of the studies that exist. The testimonials upon which these psychiatrists relied are also scientifically suspect. The opinions of these psychiatrists are, therefore, of little value in determining whether marijuana is therapeutically useful as an antiemetic.

Two pharmacologists, Drs. Morgan and Jobe, presented testimony on behalf of the pro-marijuana parties. Dr. Morgan is a professor at the City College of New York. He does not treat patients, nor is he an oncologist. His opinions are based upon a review of scientific studies and stories told to him by others. He has ties to NORML and is in favor of legalizing marijuana. Dr. Jobe is a pharmacologist and psychiatrist. He testified that his knowledge of marijuana's effects as a drug are based upon a review of the literature and stories from individuals undergoing chemotherapy. On cross-examination, Dr. Jobe indicated that this anecdotal information came from approximately four or five individuals. He also indicated that his knowledge of the scientific studies conducted with marijuana was not current. The opinions of Drs. Morgan and Jobe are of little value in determining whether marijuana has a medical use.

Two general practitioners, Drs. Weil and Kaufman, also provided testimony on behalf of the pro-marijuana parties. Neither are oncologists, nor do they treat cancer patients. Dr. Weil is a wellness counselor at a health spa, and Dr. Kaufman is an officer of a company that audits hospital quality control programs. Dr. Weil has written a number of books on drugs and admitted that he has personally used every mind-altering, illicit drug he has written about. Dr. Kaufman stopped practicing medicine in 1974, and was unable to provide any information on cross-examination regarding the basis for his opinion that marijuana has an accepted medical use. Neither Dr. Weil nor Dr. Kaufman has a credible basis for their opinions regarding marijuana, and, therefore, their testimony will be disregarded.

Four oncologists presented testimony on behalf of the pro-marijuana parties. They were Drs. Goldberg, Silverberg, Bickers, and Stephens. Dr. Goldberg is a board certified oncologist, but practices primarily internal medicine. She only administers chemotherapy to one or two patients a year. In her career, she has administered chemotherapy to no more than ten patients whom she believed to be using marijuana. On cross-examination, she could not recall any studies regarding marijuana. Dr. Goldberg was a member and financial contributor to NORML. Dr. Silverberg has practiced oncology for 20 years. He is a Professor of Clinical Oncology at the University of California at San Francisco, but is not a board certified oncologist. In his testimony, Dr. Silverberg indicated that there was voluminous medical research regarding marijuana's effectiveness in treating nausea and vomiting. On cross-examination, Dr. Silverberg could not identify any studies, and was forced to admit that he had been incorrect and that there were, in fact, very few studies conducted using marijuana as an antiemetic. Although Dr. Silverberg has advised patients to use marijuana to control nausea and vomiting associated with chemotherapy, he has never been involved in any research nor has he documented any of his observations. Dr. Bickers is an oncologist in New Orleans and is a Professor of Medicine at the Louisiana University School of Medicine. Although Dr. Bickers claims that young patients have better control over nausea and vomiting after using marijuana, he has never documented this claim. Dr. Bickers was unable to identify any scientific information which he relied upon in reaching his conclusion regarding marijuana. Dr. Stephens, an oncologist, Professor of Medicine and Director of Clinical Oncology at the University of Kansas, characterized marijuana as a "highly effective, and in some cases, critical drug in the reduction of chemotherapeutically-induced emesis." During cross-examination, Dr. Stephens stated that he was unaware of any scientific studies which had been done with marijuana, and that he had never done research or treated patients with marijuana. He indicated that he received his information about the patient's use of marijuana from the nursing staff or the patient's family. None of these oncologists based their opinions about marijuana on scientific studies or their own research. Most did not base their opinions on their direct observations, but on the opinions of others. In light of lack of scientific basis for these opinions, they will be given little regard.

The agency presented the testimony of nationally recognized experts in oncology. Dr. Ettinger, a Professor of Oncology at Johns Hopkins School of Medicine, is the author of over 100 published articles on cancer treatment. Dr. Ettinger testified:

> There is no indication that marijuana is effective in treating nausea and vomiting resulting from radiation treatment or other causes. No legitimate studies have been conducted which make such conclusions.

He continued by stating that:

> Although extensive research has been conducted using * * * (THC) * * * as antiemetic treatment for cancer chemotherapy patients, very little research has actually been conducted using marijuana * * * for the same purpose. Most of the information concerning marijuana's effectiveness is anecdotal or comes from uncontrolled studies.

Dr. Gralla, a Professor of Medicine at Cornell University Medical College, and an Associate Attending Physician at Sloan-Kettering Memorial Cancer Center, is an oncologist who has spent his entire professional career devoted to cancer research and treatment. Dr. Gralla has conducted extensive research with antiemetic drugs and testified that there are currently many new medicines that control nausea and vomiting associated with chemotherapy more effectively than marijuana. He also stated that most physicians and oncologists have little interest in marijuana because of its negative side effects and other problems associated with its use. In conclusion, Dr. Gralla stated that he and his fellow cancer specialists at Sloan-Kettering do not accept marijuana as being medically useful to treat nausea and vomiting associated with chemotherapy.

Dr. Laszlo, currently Vice President of Research for the American Cancer Society, is an expert who has devoted the majority of his over 30 years in medicine to the treatment of cancer. During his career, he spent eleven years as the Director of Clinical Programs at the Duke University Comprehensive Cancer Center. Dr. Laszlo has authored numerous scientific articles about cancer research and treatment and has written a book titled, *Antiemetics and Cancer Chemotherapy*. In his testimony for this proceeding, Dr. Laszlo stated that he does not advocate the use of marijuana as an antiemetic, in part, because there has not been sufficient testing of marijuana to show that it is a safe and effective drug. He also indicated that because there are other available, highly effective antiemetics, a physician does not need to resort to a crude drug such as marijuana. Dr. Laszlo concluded that marijuana does not have a currently accepted medical use in the United States for treatment of nausea and vomiting resulting from cancer chemotherapy.

The American Cancer Society provided DEA with its policy statements regarding medical use of marijuana. The administrative law judge refused to admit this document into evidence in this proceeding, relegating it to the "public comment" section of the record. The Administrator, however, considers this document to be extremely relevant and, indeed, of substantial importance in this matter. The American Cancer Society has, and continues to, support research with substances which may provide relief to cancer patients, including marijuana. It states, however, that the results of clinical investigations are insufficient to warrant the decontrol of marijuana for medical use. The American Medical Association has expressed a similar opinion.

The Food and Drug Administration has provided DEA with a scientific and medical evaluation of marijuana, as well as testimony from one of its leading pharmacologists. Evaluating marijuana against its criteria for safety and effectiveness, FDA has concluded that there is inadequate scientific evidence to support a finding that marijuana is safe and effective for treating nausea and vomiting experienced by patients undergoing chemotherapy.

The pro-marijuana parties presented cases in which courts did not convict individuals of a crime associated with possession and use of marijuana based upon a legal defense of "medical necessity." These cases have no relevance to this proceeding which relates to marijuana's possible medical

use. The courts found only that these individuals, who were seriously ill and believed that marijuana would help them, did not have criminal intent in possessing or using marijuana. The judges and juries in these proceedings were not deciding medical and scientific facts, but legal issues. These decisions do not provide scientific evidence that marijuana has a medical use.

The pro-marijuana parties also presented evidence that 34 states passed laws permitting marijuana's use for medical purposes in those states. These laws provided that marijuana should be available for medical research. The term "research" is essential to a reading of these statutes. These laws made marijuana available for research and, in some states, set up research programs to study marijuana's safety and effectiveness as a medicine. These statutes are read for what they are, encouraging research involving marijuana. They are not an endorsement by state legislatures that marijuana has an accepted medical use in treatment.

The numerous testimonials and opinions of lay persons which were presented in this proceeding by the pro-marijuana parties are not useful in determining whether marijuana has a medical use. While experiences of individuals with medical conditions who use marijuana may provide a basis for research, they cannot be substituted for reliable scientific evidence. For the many reasons stated in the previous discussion of scientific evidence, these statements can be given little weight. Similarly, endorsements by such organizations as the National Association of Attorneys General, that marijuana has a medical use as an antiemetic, are of little persuasive value when compared with statements from the American Cancer Society and the American Medical Association.

Glaucoma

The pro-marijuana parties presented several studies to support their contention that marijuana has a medical use for treatment of glaucoma. In order for a drug to be effective in treating glaucoma it must lower the pressure within the eye for prolonged periods of time and actually preserve sight or visual fields. The studies relied upon by the pro-marijuana parties do not scientifically support a finding that marijuana has a medical use for treatment of glaucoma. Five of the studies presented by the pro-marijuana parties are pure THC studies. As previously noted, THC is only one constituent among hundreds found in marijuana. Therefore, the consequences of an individual ingesting pure THC as compared to smoking marijuana are vastly different. A few of the studies presented do document that heavy doses of marijuana over a short time period reduce eye pressure in most individuals. However, there are no studies which document that marijuana can sustain reduced eye pressure for extended time periods. The acute, or short-term, studies also show various side effects from marijuana use, including lowered blood pressure, rapid heart beat, and heart palpitations. In a 1979 study conducted by Drs. Merritt, Crawford, Alexander, Anduze, and Gelbart, the conclusions included a statement: "It is because of the frequency and severity with which untoward events occurred that marijuana inhalation is not an ideal therapeutic modality for glaucoma patients."

The pro-marijuana parties presented testimonials of individuals who suffer from glaucoma and believe their condition has benefited from the use of marijuana. Most of these individuals used marijuana recreationally prior to discovery of their illness. Chief among the individuals presenting statements was Robert Randall. Mr. Randall is president of ACT, and has been on NORML's Board of Directors since 1976. He has been a strong advocate for medical use of marijuana. Mr. Randall also has glaucoma. Mr. Randall began smoking marijuana as a college student in 1968, long before he was diagnosed in 1972 as having glaucoma. At that time Mr. Randall was treated with standard glaucoma medications. In the mid 1970's Mr. Randall was involved in a preliminary research study conducted by Dr. Robert Hepler. Dr. Hepler conducted some of the first published short-term marijuana studies relating to glaucoma. Dr. Hepler told Mr. Randall that he believed that marijuana in combination with other standard glaucoma medications would be helpful in reducing his eye pressure. In 1975, Mr. Randall was arrested for growing and possessing marijuana. His defense was medical necessity. Subsequently, he began receiving marijuana under an Investigational New Drug (IND) protocol sponsored by his physician. He also continued to receive standard glaucoma medications. Since 1978, Mr. Randall has been treated by Dr. North. Mr. Randall receives marijuana from the Federal Government and continues to take standard glaucoma medications. Two physicians who treated Mr. Randall, including Dr. North, testified that Mr. Randall's eye pressure appears to have been controlled and his vision kept stable for the last several years.

Mr. Randall smokes approximately 8 to 10 marijuana cigarettes a day. Since Mr. Randall continues to take other glaucoma medications, his controlled eye pressure cannot be attributable solely to marijuana use. In fact, Dr. North testified that Mr. Randall needs the standard medications as well as marijuana, and that the marijuana itself is not totally effective in decreasing Mr. Randall's eye pressure. Mr. Randall's experience with marijuana, although utilized under a physician's directions, is not scientific evidence that marijuana has an accepted medical use in treatment of glaucoma. Dr. Merritt, one of Mr. Randall's physicians, responded to the question of why he did not publish the results of Mr. Randall's treatment by saying, "A single isolated incident of one person smoking marijuana is not evidence for other ophthalmologists who may want to use the drug."

Dr. Hepler, the physician who conducted preliminary studies with marijuana and initially advised Mr. Randall to use marijuana with his other medications, now states that there is insufficient scientific evidence to conclude that marijuana is effective in treating glaucoma. The pro-marijuana parties rely primarily on the opinions of two of Mr. Randall's physicians, Drs. North and Merritt, in supporting their contention that marijuana has a medical use in treatment of glaucoma. Dr. North indicated that his conclusion that marijuana has a medical use in treatment of glaucoma is based solely on his observations of Mr. Randall. Dr. Merritt is a board certified ophthalmologist and researcher who has authored many articles on the use of marijuana and cannabinoids to reduce eye pressure. Dr. Merritt based his opinion that marijuana has a medical use in treatment of glaucoma on published scientific studies, treatment of Mr. Randall, and treatment of other glaucoma patients. As previously stated, all the available studies concern high doses of marijuana taken over short periods of time. Even Dr. Merritt admitted that there are no studies to show that marijuana repeatedly lowers eye pressure over long time periods. The maintenance of lowered eye pressure is crucial in treating individuals with glaucoma. On cross-examination, Dr. Merritt was unable to provide either the specific number of individual patients he had observed or any scientific data relating to those patients. Although Dr. Merritt is a well-known ophthalmologist, the basis for his opinion that marijuana has a medical use in the treatment of glaucoma is not scientifically sound.

The agency presented several experts who testified that there is insufficient scientific evidence to support a conclusion that marijuana has a medical use in treatment of glaucoma. In addition to Dr. Hepler, they include Dr. George Spaeth, Professor of Ophthalmology, Director of the Glaucoma Service at Will's Eye Hospital in Philadelphia and President of the American Glaucoma Society; and Dr. Keith Green, Professor of Ophthalmology, pharmacologist and researcher who has conducted research with both marijuana and THC. Perhaps the most persuasive evidence concerning the use of marijuana in treating glaucoma is the opinion of the American Academy of Ophthalmology, an organization representing 12,000 physician members and 6,000 other medical professionals who specialize in the treatment of ophthalmology. The Academy has concluded that insufficient data exists to demonstrate the safety and efficacy of using smoked marijuana in the treatment of glaucoma. FDA has also determined that there is insufficient evidence to conclude that marijuana has a medical use in treatment of glaucoma.

Spasticity

In support of their contention that marijuana has a medical use in treatment of spasticity in amputees and those with multiple sclerosis, the pro-marijuana parties presented three studies involving THC, testimonials of individuals with spasticity who use marijuana, medical opinions, and state court decisions on the medical necessity defense. The three studies presented by the pro-marijuana parties were very small studies. All three totalled 17 patients, and used THC, not marijuana, to treat spasticity. There are no studies using marijuana to treat spasticity. These studies do not provide a scientific basis to conclude that marijuana has a medical use in treating spasticity.

Dr. Denis Petro, a board certified neurologist, testified on behalf of the pro-marijuana parties that he believes that marijuana has a currently accepted medical use in treating spasticity. He testified that his opinion is based on the THC studies, experiences and observations of patients, and historical accounts of marijuana use. Dr. Petro knew of no studies in which marijuana was used to treat spasticity. He testified that his information from patients consisted of them telling him how the street marijuana these patients used at home affected their spasticity. He did not conduct any clinical studies or make objective measurements. Dr. Petro's opinion is not based upon any reliable scientific evidence. The same psychiatrists and general practitioners who reported marijuana had a medical use in treating nausea and vomiting and glaucoma also stated that marijuana had a medical use in treating spasticity. None of these physicians based their opinions on reliable scientific evidence.

The agency presented the testimony of national experts in the area of multiple sclerosis and spasticity. Dr. Kenneth Johnson is the Chairman of the Department of Neurology at the University of Maryland School of Medicine and manages the Maryland Center for Multiple Sclerosis (MS). He is the author of over 100 scientific and medical articles on MS. Dr. Johnson has spent most of his medical career researching MS and has diagnosed and treated more than 6,000 patients with the disease. He testified that he is unaware of any legitimate research involving marijuana to treat symptoms of MS. He further stated that, "[t]o conclude that marijuana is therapeutically effective without conducting vigorous testing would be professionally irresponsible." Dr. Donald Silberberg, Chairman of the Department of Neurology at the University of Pennsylvania School of Medicine and Chief of Neurology Service at the Hospital of Pennsylvania, has been actively researching and treating MS for most of his career. He has written over 130 medical articles on MS. He concluded that not only is there no legitimate medical or scientific evidence to support a conclusion that marijuana is effective in treating MS or spasticity, but that long-term treatment of MS patients with marijuana could be worse than the original disease. Dr. Silberberg placed no value on the reports of patients who claimed relief of their symptoms with marijuana because of the sporadic and episodic nature of MS attacks.

The National Multiple Sclerosis Society has concluded that marijuana is not an accepted medical treatment for spasticity. Dr. Stephen Reingold, Assistant Vice President for Research of the National Multiple Sclerosis Society, indicated in his testimony that because there are no well-designed, well-controlled research studies using marijuana to treat spasticity, the society does not endorse or advocate the use of marijuana for such a purpose.

The evidence presented by the pro-marijuana parties regarding use of marijuana to treat various other ailments such as pain, decreased appetite, alcohol and drug addiction, epilepsy, atopic neurodermatitis, scleroderma and asthma was limited to testimony of individuals who had used marijuana for those conditions and the testimony of the psychiatrists or general practice physicians mentioned earlier. There is not a shred of credible scientific evidence to support any of their claims.

With regard to marijuana's safety for use under medical supervision, the Administrator must again rely on the scientific evidence. While the pro-marijuana parties argue that no one has died from marijuana use, and the individuals who use it have testified that they have not experienced adverse effects, there is little or no scientific evidence to support their claims. For example, while Robert Randall claims marijuana smoking has had no adverse effect on his health or respiratory system, he has not had a physical examination or pulmonary function test in over ten years.

In order to be effective, a drug's therapeutic benefits must be balanced against, and outweigh, its negative or adverse effects. This has not been established with marijuana. As the previously discussed evidence has demonstrated, there is as yet no reliable scientific evidence to support marijuana's therapeutic benefit. It is, therefore, impossible to balance the benefit against the negative effects. The negative effects of marijuana use are well-documented in the record. Marijuana smoking, the route of administration advocated by many witnesses presented by the pro-marijuana parties, causes many well-known and scientifically documented side effects. These include decreased blood pressure, rapid heart rate, drowsiness, euphoria, disphoria and impairment of motor function, not to mention various negative effects on the respiratory and pulmonary systems. Therefore, the only conclusion is that marijuana is not safe for use under medical supervision, because its safety has not been established by reliable scientific evidence.

In summary, the Administrator finds that there is insufficient, and in many instances no, reliable, credible, scientific evidence, supported by properly conducted scientific research, to support a conclusion that marijuana has a medical use to treat any ailment or disease. In addition, there is a lack of scientific evidence to support a conclusion that marijuana is safe for use under medical supervision. This agency, and the Government as a whole, would be doing the public a disservice by concluding that this complex psychoactive drug with serious adverse effects has a medical use based upon

anecdotal and unreliable evidence. The evidence presented by the pro-marijuana parties in this proceeding consisted of a few published scientific studies involving marijuana and THC, testimony of general practice physicians and psychiatrists, and testimony of individuals who have used marijuana for various medical conditions. The majority of these individuals did not use marijuana under medical supervision and used "street" marijuana. In contrast, recognized, credentialed specialists in the fields of oncology, glaucoma and multiple sclerosis, and organizations involved in medical research in these areas, have concluded that marijuana does not have an accepted medical use in treatment in the United States. The Administrator would be abdicating his responsibility to the public if he concluded that marijuana has a medical use and is safe for use under medical supervision.

The preceding discussion is based upon the Administrator's review of the entire record in this matter. This record contains volumes of documents and testimony. The procedural history of this scheduling has extended for many years. The procedural history and the findings of fact and conclusions of law upon which the Administrator's decision is based are set forth below.

Procedure

This rulemaking proceeding was originally initiated by a petition filed by NORML on May 18, 1972, with the Bureau of Narcotics and Dangerous Drugs (BNDD). This petition requested that marijuana be removed from the Controlled Substances Act, or in the alternative, be moved to Schedule V of the Act. After a series of proceedings, including hearings before BNDD and DEA and remands by the United States Court of Appeals for the District of Columbia Circuit, the matter was again the subject of a DEA hearing. This hearing followed a 1980 remand by the United States Court of Appeals for the District of Columbia Circuit, *NORML v. DEA and HEW*, No. 79-1660 (D.C. Cir. Oct. 16, 1980), in which the Court ordered DEA to refer all matters to the Department of Health and Human Services (HHS) for a scientific and medical evaluation and recommendation for scheduling. The matter was forwarded to HHS by DEA, and the Food and Drug Administration (FDA) published "Proposed Recommendations to the Drug Enforcement Administration Regarding the Scheduling Status of Marijuana and Its Components and Notice of Public Hearing," in the **Federal Register**. 47 FR 28141 (1982). On September 16, 1982, FDA conducted a legislative-type hearing at which it received written and oral testimony. On May 13, 1983, the Assistant Secretary for Health forwarded his department's scientific and medical findings and scheduling recommendation regarding marijuana plant material to the Administrator of DEA. In this document the Assistant Secretary recommended that marijuana plant material continue to be controlled in Schedule I. On July 2, 1987, the Assistant Secretary for Health submitted a letter to the DEA Deputy Administrator in which he stated that it continued to be the position of the Department of Health and Human Services that marijuana continue to be controlled in Schedule I based upon its lack of accepted medical use in treatment in the United States.

This current proceeding was initiated by publication of a notice of hearing in the **Federal Register** on June 24, 1986, which advised any individual interested in participating in the proceedings to file a written notice of such intent. Seven organizations or individuals participated in the proceeding. Four prehearing conferences were held in late 1986 and 1987. Direct and rebuttal testimony were filed in written affidavit form. Fourteen days of hearings, for the purpose of cross-examination of witnesses, were held in three cities. All parties were permitted to file proposed findings of fact, conclusions of law and argument with Administrative Law Judge Francis L. Young. The pro-marijuana parties, as petitioners, filed their proposed findings on April 15, 1988. The Government filed its proposed findings on May 16, 1988. The pro-marijuana parties then filed rebuttal on June 3, 1988. The administrative law judge issued his opinion and recommended ruling, findings of fact, conclusions of law and decision on September 6, 1988. Exceptions to the administrative law judge's recommended decision were filed by NORML, ACT, and the Government. By letter dated December 9, 1988, the administrative law judge forwarded the entire record to the Administrator of DEA.

The Administrator has carefully reviewed the entire record in this matter and hereby issues this final order as prescribed by 21 CFR 1316.67. The Administrator does not accept the recommendation of the administrative law judge that marijuana has an accepted medical use in treatment of some medical conditions, that marijuana has accepted safety for use under medical supervision, and that marijuana should be rescheduled into Schedule II of the Controlled Substances Act. The Administrator finds that marijuana must remain in Schedule I of the Controlled Substances Act because it has no accepted medical use in treatment of any condition in the United States and it is not safe for use under medical supervision. The Administrator has reviewed the proposed findings of fact submitted by all parties and those formulated by the administrative law judge. The Administrator adopts the findings of fact submitted by the Government as his own and in their entirety. They are as follows:

Findings of Fact

1. The cannabis plant (*Cannabis sativa L.*) is an annual weed which belongs to the plant family Cannabaceae. This family has only one genus, the genus *Cannabis* which consists of one highly variable species, *sativa*. Many varieties of this species are known to exist.

2. Over 400 different chemicals have been identified in the extracts of the plant *Cannabis sativa*. They belong to 18 chemical classes of organic compounds. There are at least 61 different cannabinoids. The proportions and concentrations of these cannabinoids, including THC, differ from plant to plant depending on growing conditions, age of the plant, and factors surrounding harvest. THC levels found in cannabis may vary from less than 0.2% in some plants to greater than 10% in high quality plants.

3. Cannabis or marijuana cannot be defined chemically, nor can it be easily standardized. No totally reliable classification system based on a single chemical analysis exists. Twenty-one (21) cannabinoids have been clinically evaluated. Most of this testing centered on the psychotropic effects of the compounds, and only eight or nine of the cannabinoids have been tested for therapeutic utility. These studies have only been cursory except for the testing of synthetic THC. Cannabigerol (CBG) cannabinoids show antibacterial activity against gram positive bacteria, and have been shown to effect basic cell metabolism. Cannabinol (CBN) type compounds have exhibited anticonvulsant, anti-inflammatory, immunological, and behavioral effects. CBN has also exhibited possible potentiation of THC effects in man. Cannabidiol (CBD) has exhibited anticonvulsant activity.

4. As well as significant variations in naturally occurring active substances in natural cannabis, there are variations in the active substances based on conditions under which the plant material has been maintained or stored.

THC is labile to air oxidation forming cannabinol (CBN). Cannabidiol (CBD), in the presence of oxygen and light and upon heating, is converted to cannabielsoic acids.

5. It is not known how smoking or burning marijuana plant material affects the chemical composition of cannabinoids and their products. A large number of pyrolytic products is produced by burning that have not been identified for most of the constituents in *Cannabis*. Smoking as a dosage form to deliver marijuana to the human body is unsuitable for medical treatment due to: (1) Lack of standardization of the marijuana, (2) lack of knowledge of the amounts of each constituent available, (3) lack of knowledge of the activity of the chemicals while burning, (4) amount of product ingested being dependent on the individual's smoking technique, and (5) possible carcinogenic effect of smoking. There are no drugs which are delivered by smoking which are medically used in the United States.

6. *Cannabis sativa L.* was one of the first plants to be used by man for fiber, food, medicine, and in social and religious rituals. There were approximately 20 traditional medicinal uses of cannabis preparations in the 19th century. These included those recognized in 19th century medicine as well as folkloric use. These uses were based upon tradition and experience rather than scientific proof. Early literature is replete with reports of the inconsistent or contradictory effects of marijuana preparations. The cannabis used for medical purposes in the United States and in Western medicine from the mid-19th to the early 20th century was cannabis extract which was orally administered as tinctures and pills. By 1938, marijuana preparations were seldom used in medical practice, and the American Medical Association stated that, "Cannabis at the present time is slightly used for medicinal purposes * * * " In 1941, marijuana passed out of the *National Formulary* and *The United States Pharmacopeia.*

7. Historically, man used natural plants to treat various ailments. With the advent of science, man began to use plant extracts to determine their effects. These extracts were crude drugs. Fifty years ago *The United States Pharmacopeia* listed many crude drugs. In recent times, scientists discovered that crude extracts owed their activity to chemical compounds and began isolating the chemical compounds from the plants and their extracts. Current technology emphasizes the development of synthetics of natural drugs by using the natural drugs as models.

8. Currently, there are only four plants used in their natural states for medical purposes in the United States. Three others are utilized in crude extract form. These include ipecac and opium extracts, which must meet standards for potency and purity established in *The United States Pharmacopeia* before they can be used for medical purposes. In contrast to variations in cannabinoid content evident in cannabis, naturally occurring opium derivatives remain quantitatively stable and the potency can be chemically standardized.

9. Modern drug research is based on the use of well-defined preparations of pure compounds which, when administered to patients, allow reproducible results. The problems associated with using natural substances as drugs include the inability to regulate the doses of active constituents, and the interaction of the active constituents with other potentially active compounds in the natural substance. The presence of active constituents in most natural drugs may vary based on genetic factors, country of origin and growing conditions. As a result, most natural drugs cannot meet established quality control standards in the United States. Before a drug substance may be used in the practice of medicine, it must have a composition of active ingredients that has been established and accepted as standard. Such standardization, which includes identity, purity, potency, and quality, is specified in either a New Drug Application (NDA) or an official compendium such as *The United States Pharmacopeia* or *National Formulary.*

10. There is no difference in the pharmacological effect between the THC isolated from cannabis and the synthetically produced THC which is now marketed in the United States.

11. In the late 1960's, the Department of Health, Education and Welfare (DHEW) initiated a process to facilitate research with marijuana and THC. The FDA reviewed Investigational New Drug (IND) applications for marijuana and THC, assisted researchers and physicians in preparing IND protocols, and sent out information packets and model protocols.

12. The IND procedure is the process by which drugs are introduced into man and their safety and effectiveness is evaluated over a period of years. The stated objectives of the FDA in regulating the clinical testing of new drugs are to "protect the rights and safety of human subjects of such testing while, at the same time, facilitating the development and marketing of beneficial drug therapies." The Food, Drug, and Cosmetic Act emphasizes the need to carry out scientifically valid studies as well as the need to control the investigational drug supply and obtain informed consent of the subject or patient. The drug used in the study must be able to be traced to the patient, and the investigator must submit annual reports to FDA and report adverse reactions.

13. The protocols for the INDs with marijuana, especially the state protocols and the protocols for individual patients did not describe controlled studies. Controlled studies are necessary as the basis of a New Drug Application (NDA). No NDA for marijuana has been submitted to FDA for approval. Thus, marijuana remains an investigational drug subject to IND requirements. Due to the lack of an approved NDA, marijuana is not available by prescription in the United States.

14. As of January 6, 1987, there were 30 active INDs for marijuana; 82 INDs for marijuana have been discontinued.

15. The National Institute on Drug Abuse (NIDA) has shipped a total of 160,700 marijuana cigarettes for human studies from 1976 to 1986. Fifty-nine thousand (59,000) cigarettes were shipped to eight sponsors for human use outside state-sponsored programs. More than half of those, 30,900 cigarettes, were shipped to one sponsor during that period.

16. Thirty-four states have passed legislation concerning the use of cannabis (marijuana) and THC by physicians. Of these states, at least 24 define this use of marijuana and THC as research. Of these 34 states, only 17 states (New Mexico, Illinois, Louisiana, Washington, Florida, Michigan, Oregon, Colorado, California, Nevada, Ohio, West Virginia, Georgia, Arizona, New York, Vermont and Tennessee) had approved INDs for marijuana or marijuana/THC as of March 1, 1984. Ten state-sponsored programs received marijuana cigarettes from the NIDA during the period 1978 to 1986. During this period 101,700 cigarettes were distributed to those states; California received 38,700 cigarettes, the most of any state. New Mexico received 8,700 cigarettes in the period from 1978 to 1986. In 1986, four state programs received a total of 1,860 cigarettes. In March 1982, a National Conference on the Therapeutic Application of Cannabinoids was held. The report of that conference indicates that "state programs in general had a small volume of participation and a high loss of data." The report also concluded that the designs of the state programs varied widely.

17. The California Research Advisory Panel, a California government agency, sponsored the California Cannabis Therapeutic Research Program. After six years of operation, from 1979 to 1986, the Research Advisory Panel found that only 101 patients received 210 treatments with marijuana cigarettes. Slightly more than one-third of the patients received a second treatment of marijuana cigarettes. Approximately 20 percent of the patients stopped using the cigarettes either because the cigarettes were ineffective, or the side effects were too severe.

18. Approximately 250 individuals received marijuana and/or THC capsules under the New Mexico Controlled Substances Therapeutic Research Program from February 1979 to June 1986 for control of nausea and vomiting associated with cancer chemotherapy. For admission to the program, patients must have experienced nausea and vomiting in previous chemotherapy. An average of four to six individuals a month participated in the program. Approximately 20 New Mexico physicians participated in the state-wide program. There was no randomization in the study; the patients themselves chose to use either marijuana or THC. They were also free to switch from one drug to the other once they began treatment. Under the program, 16 individuals switched from one drug to the other; 13 switched from cigarettes to capsules, the others from capsules to cigarettes. Of the patients selected for evaluation, 94 used THC capsules and 75 used marijuana cigarettes. There was no objective measurement of success or failure. The patients evaluated themselves based upon the degree of nausea and vomiting in previous chemotherapy sessions as compared with the degree of nausea and vomiting when marijuana or THC was used.

19. One hundred-five patients enrolled in the State of Georgia marijuana and THC research study which was designed to evaluate the efficacy and toxicity of marijuana and THC as an antiemetic in cancer patients undergoing chemotherapy treatment. Emory University enrolled 85 patients in their marijuana and THC research study. Thirty-eight patients from the State of Georgia study, and 81 patients from the Emory University study were evaluated. Of the 119 patients evaluated in the combined studies, 44 smoked marijuana; the other 75 used THC capsules. The success rate for use of THC capsules was 76 percent, and the success rate for smoking marijuana was 68.2 percent. Success was measured by patient self-assessment or satisfaction. The primary reason for marijuana's failure as a treatment was the patients' intolerance of the cigarettes, or its failure to improve nausea and vomiting.

20. Of the 165 individuals evaluated in the Michigan Therapeutic Research Project for the years 1980–1982, 83 received only marijuana. Another 31 received marijuana after receiving Torecan (a phenothiazine in the same family as Compazine) during the same trial. The purpose of the trial (Trial A) was to evaluate the efficacy of marijuana to control nausea and vomiting induced by cancer chemotherapeutic agents. Thirty-four (34) of the patients discontinued the study because they did not like smoking marijuana. Twenty-one (21) patients reported the adverse effect of sleepiness/fatigue, 13 reported sore throat, 7 reported headache, and 4 reported being light-headed after smoking marijuana. Of 93 individuals who smoked marijuana at the first patient session, 14 reported no nausea, 31 reported mild nausea, 22 reported moderate nausea, and 19 reported severe nausea. Of the 93 patients who smoked marijuana in the initial session, 63 percent reported they felt "high," and 58 percent reported no increased appetite stimulation.

21. The State of New York Controlled Substances Therapeutic Research Program Report for 1982 indicates that by the end of July 1982, 840 marijuana cigarettes had been distributed to 45 patients under the New York program. These 45 patients had 99 treatment episodes. The treatment of 18 patients was evaluated, and 15 found that they benefited from smoked marijuana in some manner. For the period from November 1981 to May 1986, 199 patients received marijuana cigarettes under the New York program. During that period, 6,044 marijuana cigarettes were distributed. Of the 199 patients who received marijuana, only 90 were evaluated. The evaluations were based solely on patient self-assessments of nausea and vomiting, appetite, physical status, mood, "high" feeling, and a record of the amount of drug taken. The program was also plagued by lack of compliance with reporting procedures. The results of the evaluations indicated that large percentages of the individuals who received chemotherapeutic agents which are known to produce moderate to severe emesis failed to respond to the smoked marijuana. The New York Summary Report concluded that while preliminary results of the "Inhalation Marijuana Research Project" were encouraging, further analysis, more data, and more research are needed.

22. The July 1983 Report of the State of Tennessee program to evaluate marijuana and THC in treatment of nausea and/or vomiting associated with cancer therapy indicates that 43 patients have been enrolled in the program. Of these, 27 were evaluated. The patients enrolled in the program self-evaluated their nausea and vomiting, appetite and food intake, physical state, mood, high, and dosages of the drugs they received. Twenty-one (21) of the 27 patients used marijuana cigarettes. Nineteen (19) of the 21 evaluated the cigarettes as successful, success being defined as partially, moderately or very effective. The major reason for failure of marijuana cigarettes was smoking intolerance.

23. Nausea and vomiting (emesis) are common side effects of cancer chemotherapy. Vomiting is controlled by two distinct areas in the brain, the vomiting center and the chemoreceptor trigger zone (CTZ). Various cancer chemotherapeutic agents can trigger the vomiting center and the CTZ, thus causing nausea and vomiting. The incidence of emesis resulting from cancer chemotherapy often depends upon the type of agent used for the chemotherapy treatment. Chemotherapeutic agents most often associated with emesis also induce emesis of the greatest severity. Cisplatin causes the highest incidence of emesis, whereas methotrexate causes only a moderate incidence of emesis. Other factors not specifically related to chemotherapy can also influence a patient's emesis, such as emotional status, alcohol consumption, age, and past chemotherapy experience.

24. Prior to 1980, little research was conducted regarding antiemetics used to treat nausea and vomiting related to cancer chemotherapy. At that time, the most commonly used antiemetic was Compazine (prochlorperazine). Compazine was largely ineffective in treating emesis caused by most cancer chemotherapy regimens. Since 1980, research with new antiemetics has proliferated. As a result of this additional research, several new and highly effective antiemetics and their combinations are now available including: metoclopramide, thiethylperazine malate, haloperidol, dexamethasone, diphenhydramine, droperidol, fluphenazine hydrochloride, perphenazine, lorazepam, dronabinol (synthetic THC) in sesame oil in a soft gelatin capsule, and nabilone (a synthetic substance chemically and pharmacologically similar to THC).

25. To properly evaluate the effectiveness of a new antiemetic drug, researchers must perform carefully conducted randomized, double-blind testing of the drug against either a placebo or an established antiemetic, using a statistically significant patient population. Several factors are important when planning or evaluating an antiemetic study; these include: (a) Standardization of the emetic stimulus, (b) accuracy in data collection, with the use of objective parameters, such as the number of emetic episodes and the volume and duration of emesis, (c) standardization of patient population, with an indication of whether or not patients had previously received chemotherapy, and (d) proper selection of route of administration, and drug schedule and dosage, based upon proper trials with the agent. In addition, it is important to determine quantitatively the efficacy of antiemetic agents used singularly, so that results can be compared and further trials, including combination studies, can be planned appropriately.

26. For a new antiemetic drug to be considered effective, it must be as effective or more effective in controlling emesis than the currently-available antiemetics.

27. Relatively few scientific or medical studies have been conducted to evaluate marijuana's effectiveness as an antiemetic. Information concerning marijuana's antiemetic properties is primarily anecdotal. The research that has been conducted with marijuana has been primarily in the form of loose, uncontrolled studies which provide little valuable information as to the drug's effectiveness. Most research with marijuana has been conducted under state protocols. The state sponsored research conducted thus far has not employed carefully controlled double-blind, randomized testing of marijuana, nor has it involved large patient populations. As a result, little reliable information can be gleaned from these types of studies.

28. Based upon the lack of quality testing, marijuana's antiemetic activity is not as established as that of THC or other available antiemetics. There are no double-blind randomized studies which have concluded that marijuana is as effective or more effective than synthetic THC, or any of the other currently available antiemetics. In fact, in 1984, the only controlled, randomized, double-blind, crossover study comparing the antiemetic effectiveness of smoked marijuana to orally ingested synthetic THC involved 20 patients and concluded that orally ingested THC was superior to smoked marijuana.

29. Although THC is usually a constituent present in marijuana, since marijuana also contains at least 60 other active cannabinoids in varying quantities, the results of antiemetic trials using THC cannot be extrapolated in evaluating marijuana's antiemetic properties. For example, cannabidiol, a constituent present in marijuana, can potentiate some effects of THC, while suppressing other effects, including the antiemetic effect.

30. No formal, well-controlled studies have been conducted which compare marijuana's effectiveness as an antiemetic against any of the currently available antiemetics such as metoclopramide, haloperidol, dexamethasone, prochlorperazine, nabilone, lorazepam, or any of the highly effective combinations of available antiemetics.

31. The only studies which have been conducted using marijuana as an antiemetic include the following: (1) The state programs (discussed previously); (2) the study mentioned above which compared smoked marijuana to oral synthetic THC and concluded that THC was more effective; (3) a "compassionate" study conducted by Thomas J. Ungerleider involving 16 bone marrow transplant patients. In that study, the efficacy of the drug was measured only by subjective testing techniques; and (4) a study conducted by Alfred E. Chang which involved 15 patients receiving methotrexate chemotherapy.

32. The purpose of the Chang study was to compare the antiemetic effectiveness of THC to a placebo. Initially in the study, patients randomly received either an oral THC capsule or placebo capsule prior to chemotherapy. Neither the patients nor the researchers were aware of which drug they received. Three separate chemotherapy trials were conducted during the study. Only if the patient vomited during a trial would he or she receive a marijuana cigarette for the remaining doses of that chemotherapy trial. All patients who received marijuana cigarettes were experienced smokers. The study does not indicate how many patients resorted to smoking marijuana during each trial. Since six patients did not vomit at all on the THC, they did not receive marijuana cigarettes. The purpose of the study was not to compare the effectiveness of oral THC to marijuana but, rather, to compare THC's effectiveness against a placebo. Dr. Chang concluded that the combination of oral THC and smoked marijuana is a highly effective antiemetic in patients receiving methotrexate chemotherapy. Although Dr. Chang found that smoked marijuana was more reliable than oral THC in achieving therapeutic blood levels, he also found that it had drawbacks in patient acceptability; patients complained of its adverse taste, which induced nausea and vomiting in some instances. He also surmised that patients who are nonsmokers may not be willing and/or able to smoke marijuana. Based upon these drawbacks, Dr. Chang concluded that "an alternative parenteral drug route needs to be established if THC [or marijuana] is to have wide clinical acceptability." In addition, he determined that additional studies relating to drug tolerance, effectiveness against nausea and vomiting produced by other chemotherapy regimens, and comparisons with conventional antiemetics needed to be conducted.

33. A study conducted by Stephen E. Sallan, M.D., which is cited by both NORML and ACT, involved a double-blind, randomized evaluation of the antiemetic effect of synthetic THC capsules in 16 patients receiving chemotherapy (although 22 patients participated in the study, only 16 received oral THC). There is no indication as to what types of chemotherapeutic agents were administered to the patients during the study. Dr. Sallan concluded that THC had antiemetic effects. In addition, he made some "preliminary observations" comparing the antiemetic effect of smoked marijuana and oral THC capsules, based upon some patients' illicit use of marijuana which was neither qualitatively nor quantitatively controlled. He found that "[f] or most patients, both smoked and oral routes had identical effects." This study was not a scientific comparative study of smoked marijuana and oral THC, but rather a formal comparison between oral synthetic THC and placebo.

34. Even in its limited use, marijuana has not been shown to be very effective in reducing nausea and vomiting when used with chemotherapeutic agents which produce severe emesis.

35. In contrast to marijuana, synthetic oral THC (dronabinol), nabilone, metoclopramide, and other currently available antiemetics have been tested extensively through well-designed, controlled double-blind studies for both safety and efficacy. For example, more than 1,300 patients were tested with synthetic THC before it was made available as a Schedule II drug. Marijuana, on the other hand, has only been tested in 20 patients in a formal

comparative study, and roughly less than 500 patients in loosely controlled state studies.

36. Neither marijuana nor oral THC has been demonstrated to be an effective antiemetic for patients receiving radiation therapy. In a THC study conducted at UCLA, Dr. Ungerleider concluded that oral THC was only slightly more effective than Compazine in controlling emesis caused by radiation therapy. No studies evaluating marijuana's effectiveness in this area were introduced during this proceeding.

37. Since the advent of the new, highly effective antiemetics, few cancer chemotherapy patients discontinue treatment as a result of nausea and vomiting.

38. Although the newer antiemetics and their combinations have been shown to be highly effective in treating emesis, even in conjunction with chemotherapy treatments known to produce severe nausea and vomiting in most patients, a small number of patients are refractory to all antiemetic treatment. There is no scientific or medical reason to believe that patients who do not respond well to currently-available antiemetics would respond any better after smoking marijuana. The only method to determine marijuana's effectiveness for that purpose would be to conduct controlled double-blind trials with the drug in that group of patients.

39. There is no scientific or medical support for the hypothesis that marijuana or any of the cannabinoids are effective in treating emesis in children receiving chemotherapy. Again, only controlled trials comparing marijuana to other available antiemetics could support that contention. No such trials have been conducted as of this time.

40. Smoking as a route of administration for antiemetics has not been demonstrated to be more advantageous than intravenous or oral administration. The claimed advantage of self-titration through smoking is only a hypothesis and has not been scientifically proven. In fact, oral administration of antiemetics is highly effective if effective antiemetics are given. Intravenous administration also is highly effective, especially since most chemotherapy agents are intravenously administered as well.

41. Currently available antiemetics are also highly effective in outpatient care. Most patients can receive the newer antiemetics on an outpatient basis. There is no scientific or medical reason to conclude that marijuana is better-suited than currently available antiemetics in the treatment of emesis of outpatients. Carefully conducted clinical trials would be needed to demonstrate otherwise.

42. In addition to not being as effective or more effective than currently-available antiemetics, the use of smoked marijuana in the treatment of emesis in cancer patients has significant drawbacks. As a psychoactive substance, marijuana causes anxiety and panic in inexperienced users. Marijuana smoking also caused nausea and vomiting in some patients, and left an unpleasant residual taste. Because tachycardia and orthostatic hypotension are negative side effects of marijuana smoking, it should not be administered to patients with heart problems such as arteriosclerotic heart disease and angina. Marijuana smoking can also lead to pulmonary problems including bronchitis and emphysema. Marijuana is a crude plant material which contains pathogenic bacteria that could prove harmful to immuno-compromised patients with various cancers or leukemias. The cannabinoids present in marijuana can further suppress the immune functions of individuals whose immune systems are already severely compromised by chemotherapeutic agents. Also, few patients can tolerate marijuana smoking. In fact, in the state programs employing marijuana, significant numbers of patients either switched from smoking to oral THC capsules or withdrew from research because they could not tolerate smoking marijuana. In Dr. Ungerleider's study involving 16 bone marrow transplant patients, three dropped out of the study because they found marijuana smoking to be undesirable, even though at the time of the study, no other antiemetics were available to them. In addition, because of the lack of standardization of the drug and varying smoking techniques, there is a problem with bioavailability and reproducibility of an administered dose of the drug. If the dose is not constant from treatment to treatment, the patient may go unprotected.

43. The combination of currently available antiemetics produce less side effects than do each of the drugs given individually. These combinations produce less side effects than the cannabinoids, including marijuana. There is no scientific or medical evidence which demonstrates that marijuana produces fewer and less severe side effects than the currently-available antiemetics.

44. Patient satisfaction with the combination antiemetic therapy is greater than that seen with marijuana.

45. Interest in research using marijuana to treat emesis in cancer chemotherapy patients has waned as the availability of new, highly-effective antiemetics has increased.

46. Patient interest in using marijuana to treat emesis caused by chemotherapy has also declined in recent years.

47. The oncological community does not consider marijuana to have currently accepted medical use in the United States for the treatment of emesis caused by cancer chemotherapy. In addition, David Ettinger, M.D., Richard Gralla, M.D., and John Laszlo, M.D., each a highly respected oncologist and antiemetic researcher who has treated numerous patients and conducted extensive research with various cannabinoids and highly effective antiemetics, have concluded that based upon their research and knowledge of the field, marijuana does not have a currently accepted medical use in the United States for the treatment of emesis caused by cancer chemotherapy, nor has it been proven safe for use under medical supervision.

48. The American Cancer Society has concluded that insufficient research has been conducted to advocate that marijuana be used as an antiemetic for chemotherapy patients.

49. In its 1984 report, the National Academy of Sciences did not make any conclusions regarding marijuana's accepted medical use in the treatment of emesis in cancer chemotherapy patients. The only conclusion made in the report was that marijuana's antiemetic properties were less established than those of synthetic THC.

50. The American Medical Association has concluded that marijuana does not have a currently accepted medical use in the United States for the treatment of emesis caused by cancer chemotherapy, nor has it been proven to be safe for use under medical supervision.

51. Glaucoma is a term which describes a group of chronic ocular diseases which cause an increase in intraocular pressure that damages the retina and optic nerve and can lead to an eventual loss of vision. The most common form of glaucoma is primary open-angle glaucoma (POAG). This form of glaucoma is caused by an obstruction in the pathways for fluid exit from the eye while fluid inflow continues unabated. As a result, the pressure within the eye (intraocular pressure) increases beyond a level tolerated by the eye and can cause damage to the retina and optic nerve.

52. Persons suffering from glaucoma have intraocular pressures which are higher than their eyes can tolerate. Traditionally, glaucoma was measured

by a statistical measure of intraocular pressure (a norm), meaning that if an individual's pressure was higher than the average, he was thought to have glaucoma; if the pressure was below the norm, he was thought not to have glaucoma. It is now known that this is not the proper method for diagnosing glaucoma. Ninety-five percent of individuals with statistically-elevated intraocular pressure are never afflicted with glaucoma, while one-third of glaucomatose individuals have intraocular pressures in the statistically normal range.

53. Effective treatment for glaucoma involves the use of pharmaceutical agents or surgical procedures that prevent progressive optic nerve damage. If intraocular pressure can be lowered sufficiently, it can usually alter the course of the glaucoma. But, merely reducing intraocular pressure is not necessarily beneficial to the eye, and pressure reduction does not necessarily prevent glaucomatose optic nerve damage. For a treatment to be effective, it must lower intraocular pressure sufficiently to prevent additional damage to the optic nerve and retina, and also not cause unacceptable damage to the eye or to other parts of the body. In addition, it must be able to sustain the lowered pressure and preserve visual function for the patient's lifetime.

54. When new glaucoma treatments are tested for efficacy, they are evaluated for their ability to sufficiently lower intraocular pressure and to maintain visual fields. To properly measure the treatment's effect on both, it must be used in long-term testing. Timolol, a drug currently used to treat glaucoma, has been tested in this manner. Before it was approved for use in treating glaucoma, timolol was rigorously tested in 300 to 400 persons through controlled, double-masked clinical trials. These studies involved treating patients with the drug for a minimum of three months, with a majority of the studies lasting for six months or more, during which time, the patients' visual fields were measured to determine whether there had been any progression of the disease. In addition, other conventional glaucoma medications have proven their efficacy through years of clinical experience. The miotics, epinephrine compounds and carbonic anhydrase inhibitors have been proven effective in lowering intraocular pressure and preserving visual function.

55. The most efficacious way of delivering any drug to the eye is through a topical drop, rather than by systemic application. Topical application reduces the possibility of systemic adverse effects from a drug since the total amount of the drug being delivered to the body is considerably less.

56. In 1971, Robert S. Hepler, M.D. and Ira R. Frank, M.D. published preliminary results of one of the first experiments which measured the effect of smoked marijuana on intraocular pressures of normal, healthy males. The study involved acute administration of smoked marijuana through an ice-cooled water pipe to eleven youthful men who did not suffer from glaucoma. After the one-time administration of the marijuana, nine subjects experienced decreases in intraocular pressure which ranged from 16 percent to 45 percent, one subject experienced a 4 percent increase in intraocular pressure, and one subject experienced no change following smoking. These results were later published in 1974 as part of a larger study in which Thomas J. Ungerleider, M.D. participated, aimed at measuring pupillary constriction, intraocular pressure, tear production, and conjunctival hyperemia (redness and irritation of the eye). The overall study involved 21 healthy subjects who smoked marijuana in an ice-cooled water pipe. Only the 11 subjects described in the earlier publication were tested for changes in intraocular pressures. In addition to the results of changes in intraocular pressures, the authors also noted that smoking marijuana was associated with minor decreases in pupillary size, decrease in tear production, and conjunctival hyperemia. Central visual acuity, refraction, peripheral visual fields, binocular fusion and color vision were not altered by the single-dose administration of the marijuana. In addition, the authors noted that fatigue and sleepiness occurred several hours following the marijuana-induced "high".

57. There are no published scientific reports or studies which demonstrate marijuana's ability to lower intraocular pressures in long-term chronic testing of glaucomatose research subjects. The only long-term study reported was one conducted by Dr. Hepler at U.C.L.A. The study evaluated responses of 19 normal, non-glaucomatose patients for a period of 94 days. The results of the 94-day study were not available at the time Dr. Hepler's paper was published. The only conclusions made were that in the normal research subjects, intraocular pressure showed a prompt drop as soon as the subjects began to smoke, and that there were no indications of cumulative effects upon the intraocular pressure response.

58. There are few published scientific reports or studies which evaluate marijuana's effect on lowering intraocular pressure in glaucomatose individuals. All of the studies involve acute administration of the drug and each involve relatively small numbers of research subjects. In 1976, Drs. Hepler and Petrus reported the results of their study which involved 12 research subjects who suffered from galucoma. Each subject was seen on four occasions. On one occasion, the subjects were given a placebo in a smokable form; on the other occasions, the subjects were either given oral (synthetic) THC or smoked marijuana. Some of the resarch subjects continued their usual courses of medication during the testing. The published study only reported the results of four of the research subjects. Two subjects failed to achieve a reduction in intraocular pressue. Also, the study did not indicate which of the four subjects, if any, had continued their conventional medication during the study. The study did not differentiate between the effectiveness of marijuana or oral THC. The researchers concluded that "patients with proven glaucoma frequently, although not invariably, demonstrate substantial decrease in intraocular pressure following smoking of marijuana or ingestion of THC." In 1976, Drs. Hepler, Frank and Petrus reported on the results of another small study involving 11 galucomatose individuals who were observed after acute administration of marijuana. Of the 11 patients studied, seven demonstrated drops in intraocular pressure averaging 30 percent. The remaining four did not experience any drop in intraocular pressure.

In 1979, Drs. Merritt and Crawford published results of an acute study of the effects of marijuana and placebo on 16 glaucomatose research subjects. They concluded that "inhaled tetrahydrocannabinol (delta-9-tetrahydrocannabinol) lowers blood pressure and intraocular pressure, commensurately with tachycardia [rapid heart rate], in systemic normotensive and hypertensive glaucoma patients." In 1980, Drs. Merritt, Crawford, Alexander, Anduze, and Gelbart reported the results of a study which observed the effect of acute administration of marijuana and placebo to 18 glaucoma patients. They concluded that acute administration of marijuana lowered both intraocular pressure and blood pressure in a heterogenous glaucoma population. They also noted that eight of the patients suffered from anxiety with tachycardia and palpitations; five

suffered from postural hypotension (reduction in blood pressure upon standing); 18 suffered from sensory alterations including hunger, thirst, euphoria, drowsiness and chills; and nine suffered from conjunctival hyperemia and ptosis (drooping upper eyelid). Based on the side effects, the researchers concluded that "it is because of the frequency and severity with which untoward events occurred that marijuana inhalation is not an ideal therapeutic modality for glaucoma patients." A total of no more than 50 glaucomatose individuals have been administered smoked marijuana in a research setting.

Approximately 40 of these individuals received marijuana during limited acute trials of the drug. The progress of the other individuals, who included Robert Randall and other individuals who used marijuana in conjunction with their conventional glaucoma medications, were never published since they only involved anecdotal observations, providing insufficient data to report which would be useful for other ophthalmologists in treating patients with glaucoma.

59. In 1976, Dr. Mario Perez-Reyes reported the results of his preliminary study of acute intravenous administration of various cannabinoids on intraocular pressure. Twelve normal, nonglaucomatose patients were injected with a variety of cannabinoids which are present in marijuana; the cannabinoids were administered individually so that the effects could be evaluated separately. He concluded that several of the cannabinoids had intraocular pressure lowering qualities, including delta-8-tetrahydrocannabinol, which is less psychoactive than THC. THC appears to be the most effective cannabinoid for acutely reducing intraocular pressure, but is also the most psychoactive. Although marijuana, which consists of various cannabinoids, would have a different effect on eye pressure than one of its single constituents, the literature indicates that the effect would either be the same or less.

60. There are no published scientific or medical reports which evaluate marijuana's ability to preserve the visual function of glaucomatose individuals.

61. None of the IND reports or studies submitted in this processing have compared marijuana's effectiveness in lowering intraocular pressure and preserving visual function to any of the currently accepted glaucoma medications. Although not proven through comparative studies, it is accepted that reductions in intraocular pressure continue for longer periods of time following administration of either timolol, pilocarpine, or phospholine iodide, than following administration of smoked marijuana.

62. No evidence was introduced in this proceeding from states which have scientific protocols for researching marijuana's effect in the treatment of glaucoma. In 1986, the California Research Advisory Committee reported the results of its research protocol in this area which covered only the use of THC. Only one individual received marijuana cigarettes for glaucoma. This was after the Research Advisory Panel mailed information about the program to ophthalmologists throughout the State of California. Rhode Island reported that 28 ophthalmologists in that state were contacted to determine if they had any interest in conducting research with marijuana. None of the ophthalmologists contacted responded affirmatively. Those who responded to the inquiry claimed that the drugs which were currently available sufficiently controlled glaucoma.

63. Acute administration of marijuana has demonstrated unacceptable negative side effects in research subjects participating in glaucoma studies. These side effects include orthostatic hypotension, tachycardia, conjunctival hyperemia, euphoria, dysphoria, drowsiness, depersonalization, difficulty in concentrating and thinking, impairment of motor coordination. Since the drop in intraocular pressure after smoking marijuana noted in acute studies lasts for approximately four to five hours, with the maximal fall occurring about one to two hours after administration, to be considered in treating glaucoma, marijuana would have to be administered six to eight times per day for the duration of disease. Such use constitutes chronic administration of the drug. The negative effects of chronic administration of marijuana have not been adequately tested. Yet, specific unacceptable negative effects can be attributed to chronic administration of marijuana. These include: possible brain damage, sore throat, rhinitis, bronchitis and emphysema; suppression of luteinizing hormone secretion in women (which affects the production of progesterone); abnormalities in DNA synthesis, mitosis and growth; carcinogenicity; and genetic mutations.

64. While marijuana plant material and some cannabinoids have been shown to lower intraocular pressure in acutely-treated normal human volunteers and glaucoma patients, it may lower intraocular pressure without preventing visual impairment in glaucoma patients. As noted above, there has been no documentation that marijuana use preserves the visual function of glaucomatose individuals. Because acute studies have shown that marijuana appears to act by lowering intraocular pressure and blood pressure concomitantly, there is some concern that lowering the blood pressure limits the blood supply to the optic nerve. Since the optic nerve relies on a constant supply of blood to function adequately, there is a concern that by reducing its blood supply by lowering systemic blood pressure, visual function will be further impaired in glaucomatose individuals.

65. Based on the lack of documented evidence showing its utility in lowering introacular pressure in the long-term and maintaining visual function, coupled with the adverse side effects associated with its use, most experts agree that smoked marijuana has not been proven to be a viable drug for the treatment of glaucoma. These medical and scientific experts include: Mario Perez-Reyes, M.D. (a source often cited by NORML and ACT); Robert Hepler, M.D.; Keith Green, Ph.D.; George Spaeth, M.D.; Leo Hollister, M.D.; Reese Jones, M.D.; and Raphael Mechoulam, Ph.D. In addition, in previously published articles, John Merritt, M.D., a witness for ACT, has taken the position that marijuana's use in treating glaucoma is unacceptable because of the frequent and untoward side effects associated with its use. Also, the American Academy of Ophthalmology, an organization which represents more than 12,000 physician members and approximately 6,000 other medical professionals who specialize in the field of ophthalmology, has taken the position that insufficient data exists to demonstrate the safety and efficacy of using smoked marijuana in the treatment of glaucoma. The National Academy of Sciences, another source frequently cited by NORML and ACT, also concluded that smoking marijuana is not suitable for the treatment of glaucoma.

66. Multiple Sclerosis (MS) is the major cause of neurological disability among young and middle-aged adults. It is a life-long disease which attacks the myelin sheath (the coating surrounding the message-carrying nerve fibers in the brain and spinal cord). Once the myelin sheath is destroyed, it is replaced by plaques of hardened tissue known as sclerosis. The plaques can obstruct impulses along the nerve systems which will produce malfunctions in the body parts affected by the damaged nervous system. The symptoms can include one or a combination of the following:

weakness, tingling, numbness, impaired sensation, lack of coordination, disturbances in equilibrium, double vision, loss of vision, involuntary rapid eye movement, slurred speech, tremors, stiffness, spasticity (involuntary and abnormal contractions of muscle or muscle fibers), weakness of limbs, sexual dysfunction, paralysis, and impaired bladder and bowel functions. Spasticity can also result from serious injuries to the spinal cord, not related to MS. The effects of MS are sporadic in most individuals, and the symptoms occur episodically, either triggered by the malfunction of the nerve impulses or by external factors. Because of the variability of symptoms of the disease, MS is difficult to detect and diagnose. There is no known prevention or cure for MS; instead, there are only treatments for the symptoms.

67. There are no published scientific reports or studies which evaluate marijuana's effectiveness in treating spasticity. The only existing information regarding the use of marijuana to treat the effects of MS or spasticity is primarily anecdotal. Anecdotal information is only useful for providing a basis for conducting controlled research with the drug to evaluate its effectiveness. In order to sufficiently verify that a drug is effective for treating MS or spasticity, double-blind, controlled studies must be conducted on large groups of persons.

68. The only studies evaluating the effect of cannabinoids on MS and spasticity employed synthetic THC or cannabidiol. These studies have been uniformly small, and the data presented are insufficient to evaluate the nature and quality of controls used. In 1981, Drs. Denis J. Petro and Carl Ellenberger published the results of a limited acute study using synthetic THC. That study involved the acute administration of oral synthetic THC to nine MS patients. The researchers noted that the spasticity scores of four of the nine patients improved significantly after the administration of the synthetic THC; one patient improved after receiving the placebo; only two of three patients who felt improved actually demonstrated improvement by objective criteria. The EMG index of spasticity (electromyography—a method of measuring reflex responses, neuromuscular function and condition, and extent of nerve lesion) was impractical in five of the nine patients. The researchers concluded that further study should be conducted to determine the effectiveness of THC or one of its derivatives in treating spasticity. In a 1986 abstract, W. C. Hanigan, R. Destree, and X. T. Troung reported the results of a 20-day study in which they administered oral synthetic THC to five spastic patients. They concluded that two patients experienced significant reductions in stretch resistance and reflex activity; and one patient withdrew from the study because of negative emotional side effects. In another abstract, R. Sandyk, P. Consroe, L. Stern and S. R. Snider, evaluated the effects of cannabidiol (a major non-psychoactive cannabinoid of marijuana) on three patients suffering from Huntington's Disease (a progressive central nervous system disease characterized by muscular twitching of the limbs or facial muscles). The first week they noted mild improvement in choreic movements. Further improvement was noted the second week and remained stable for another two weeks. The only side effects observed were cases of transient, mild hypotension.

69. There are no reported scientific or medical studies which have compared the effectiveness of marijuana, or its derivatives, with conventional treatments for MS and spasticity. There is no indication that marijuana would be more effective or safer than currently available treatments. In addition, conventional drugs may reduce spasticity with fewer side effects than marijuana.

70. No long-term clinical studies employing marijuana, or any of its derivatives, have been conducted with respect to treating MS or spasticity.

71. The long-term safety of using marijuana to treat MS and spasticity has yet to be established. Marijuana's long-term effects on memory and intellect, its pulmonary effects, risks in pregnancy, and tolerance to the drug, are unresolved. Since marijuana may have undesirable side effects at doses necessary to reduce spasticity, the use of marijuana for long-term treatment such as is needed to treat MS and spasticity would be worse than the disease itself.

72. None of the state reports submitted in this proceeding indicate that any state research with marijuana was conducted with respect to spasticity. The National Multiple Sclerosis Society does not advocate the use of marijuana to treat spasticity associated with MS. In addition, the International Federation of Multiple Sclerosis Societies does not recommend marijuana's use in treating spasticity. Also, noted neurologists who specialize in treating and conducting spasticity research, including Drs. Silberberg and Johnson, concluded that marijuana has not been proven to have an accepted medical use in the treatment of spasticity, nor has it been proven to be safe under medical supervision. Dr. Denis Petro, a witness for ACT, concluded in his synthetic THC study that "research needs to cover a larger and better controlled sample before any definitive statement would be possible."

73. Epilepsy involves the progressive recruitment of normal brain neurons into rhythmic and then high frequency bursting. With the overwhelming of inhibitory restraints, the pauses between bursts disappear and are replaced by tonic high frequency firing and the seizure appears. A prominent feature of epilepsy is its episodic nature.

74. There are no studies of the effects of crude marijuana on existing epileptic symptoms in man. Only survey and case report data are available. In 1976, Dennis M. Feenely reported the results of his survey among young epileptics in the Journal of the American Medical Association. In that survey, young epileptics were questioned about their illicit use of marijuana, amphetamine, LSD, barbiturate, cocaine and heroin. Most of the subjects reported that marijuana had no effect on their seizures. In addition, one subject reported that his marijuana use reduced the frequency of seizures, while another subject claimed that marijuana caused him to have seizures. Also, published case reports indicate marijuana's conflicting properties of both reducing and causing seizures. Although case reports and surveys of this type are not highly reliable sources of scientific information, they follow the conflicting pattern suggested in animal studies employing synthetic THC.

75. Smoked marijuana has only been tested on experimental epilepsy in one study. That study evaluated marijuana's effect on seizures in five mongrel dogs. After chronic administration of marijuana smoke, two of the five dogs exhibited grand mal convulsions. In a study involving the administration of marijuana smoke to normal rats, "popcorn convulsions" (involuntary vertical jumping) were observed in 50 percent of the animals after 6 to 9 exposures to the drug.

76. Because of its potential to induce convulsant seizures, marijuana should not be used by epileptics.

77. Cannabidiol (CBD) has also been studied for its anticonvulsant effects in animals. CBD is neither psychoactive nor convulsant. Conclusions drawn from animal testing of this drug suggest that CBD shows promise as an anticonvulsant, and that its use should be clinically investigated in human

epilepsy to determine its therapeutic utility.

78. Marijuana has not been proven to be an effective appetite stimulant, or antianorectic drug. Most studies have involved oral THC rather than marijuana. In a doubleblind study employing smoked marijuana, normal patients using marijuana increased their caloric intake more than those using the placebo, but the variability was too great to draw any conclusions. Studies employing THC have failed to demonstrate an appreciable appetite stimulating or antianorectic effect. State reports of cancer chemotherapy patients receiving either synthetic THC or marijuana have failed to support any claims of marijuana's appetite stimulating properties. Several of the currently available antiemetics have appetite-stimulating properties. With patients undergoing cancer chemotherapy, controlling emesis generally eliminates problems with anorexia or appetite loss. Marijuana has not been compared with currently available antiemetics to evaluate its appetite stimulating properties.

79. There is no scientific or medical indication that marijuana is effective in the treatment of either alcoholism or drug addiction. Recent studies now demonstrate that abuse of marijuana and alcohol are frequently combined. In addition, animal studies present no evidence that marijuana is more effective than currently available treatments for opiate withdrawal.

80. Marijuana has not been demonstrated to be an effective analgesic. Studies have demonstrated that marijuana and THC both increase and decrease pain. In addition, there is no indication that marijuana or synthetic THC are as effective or more effective than currently available analgesics.

81. Marijuana has not been shown to be effective in the treatment of asthma and bronchial spasms. Although smoked marijuana and THC were found to have bronchodilating effects following acute and short-term administration, smoke, even if it provides relief, is not desirable for asthmatics. Also, long-term smoking of marijuana reduces bronchodilation and causes significant airway obstruction.

82. Although marijuana has also been suggested for several other medical problems, there is insufficient scientific data to support its use for these purposes. Although marijuana and some of the cannabinoids have sedative or hypnotic effects, their activity is not constant, nor is there any indication that marijuana is even comparable to currently-available antianxiety and insomnia medications. There also is no support for marijuana's use as an antidepressant drug. Nor is there sufficient indication that marijuana, or its constituents, would be a useful medical alternative in the treatment of hypertension, neoplasms (tumors), infections, or migraine headaches.

83. One of the primary methods for determining whether a particular drug is safe for use under medical supervision is to weigh its actual therapeutic benefit against its negative or unintended side effects. A side effect is a pharmacologic activity other than the desired effect. If the measurable therapeutic benefits of the drug outweigh its negative effects, the drug is generally considered safe for use; if the negative effects outweigh the therapeutic benefits, the drug is not considered safe for its intended use.

84. In evaluating the negative side effects of a drug, several factors are taken into consideration. Generally, initial animal studies are conducted to determine the drug's toxicity. An LD-50 is established (the dose which causes death in 50 percent of the animals tested). Factors other than the LD-50 are also considered in determining safety and toxicity. Additional pharmacological data is also needed, including the drug's bioavailability, metabolic pathways and pharmacokinetics. Acute and chronic testing must be conducted; first in animals, then in humans.

85. Most pharmacological research with cannabis or its constituents has actually been conducted with orally ingested THC, rather than smoked marijuana. Although the pharmacologic effects are presumed to be similar, the studies with oral THC do not provide a complete picture of marijuana's effects. Few of the other cannabinoids have been pharmacologically evaluated. The health consequences from smoking marijuana are likely to be quite different than those of orally ingested THC. Yet most of the chronic animal studies have been conducted with oral or intravenous THC.

86. There is a need for more information about the metabolism of the various marijuana constituents and their biologic effects. This requires many more animal studies. Then the pharmacologic information obtained from the animal studies must be tested in clinical studies involving humans. The pharmacologic testing of cannabinoids in animals thus far has shown that while they do not appear to be highly toxic, they exert some alteration in almost every biological system that has been studied.

87. Well-designed studies on the health effects of marijuana are relatively few. This is especially true with respect to chronic studies. Field studies in this area are deficient. Most are too small to detect unusual or rare consequences which could be of great importance. In addition, only modest research has been conducted using healthy male volunteers; very limited studies have been conducted using females, older individuals, or persons in poor health. The studies using marijuana on healthy male volunteers lead to a biased conclusion that the drug is safe without properly evaluating the populations at risk. To eliminate any such bias and to expand our knowledge of the chronic, long-term effects of marijuana use, sophisticated epidemiological studies of large populations, similar to those conducted for alcohol and tobacco use, must be done. It may take years of extensive research before all of marijuana's deleterious effects become apparent.

88. The acute effects of marijuana use are fairly well established. Marijuana smoking usually causes acute changes in the heart and circulation which are characteristic of stress, including rapid heart rate (tachycardia), orthostatic hypotension, and increased blood concentrations of carboxyhemoglobin (hemoglobin combined with carbon monoxide). Therefore, the drug is not indicated for persons who suffer from cardiovascular problems including angina, congestive heart failure, and arteriosclerosis. In addition, acute marijuana use also causes euphoria; dysphoria; anxiety; confusion; psychosis; drowsiness; convulsions; and impairment of motor coordination, tracking ability and sensory and perceptual functions. Based upon these effects, marijuana should not be used by anxious or depressed, or unrecognized psychotic individuals, and epileptics.

89. Many persons who have smoked marijuana in a research setting could not tolerate its harshness and complained of throat soreness and other problems associated with smoking as a route of administration. In addition, many patients cannot, and will not, smoke a substance like marijuana for therapeutic purposes.

90. Even though inadequate studies have been conducted concerning the effects of long-term chronic use of marijuana, certain detrimental effects on respiratory and pulmonary functions are well-established. Marijuana smoke inhibits pulmonary antibacterial defense systems, possibly making marijuana users more susceptible to bacterial infections of the lung. One chronic smoking experiment tested pulmonary functions of healthy volunteer subjects

before and after 47 to 59 days of daily smoking of approximately five cigarettes per day. The study concluded that very heavy smoking for only six to eight weeks caused mild but significant airway obstruction. In addition, a study of heavy hashish (a crude smokable preparation of cannabis resin) users revealed a high incidence of bronchopulmonary consequences, including chronic bronchitis, chronic cough, and mucosal changes of squamous metaplasia (a precancerous change). Chronic smoking can also result in emphysema.

91. Regular and frequent marijuana smoking causes preneoplastic changes in airways similar to those produced by smoking tobacco. Marijuana smoke does not contain nicotine; but like tobacco, it does have an equally complex aerosol of particles in a vapor phase that form a tar mixture. The mixture contains many of the same hydrocarbons contained in tobacco tars which are thought to be associated with cancer causation. Marijuana also contains more tar than tobacco cigarettes. Animal studies using smoked marijuana have documented the growth of precancerous cells after 30 months. Dr. C. Leuchtenberger, a professor at the Swiss Institute for Experimental Cancer Research, noted that exposure of human lung explants to fresh marijuana or tobacco cigarette smoke evoked abnormalities in DNA synthesis, mitosis, and growth with consequent genetic disturbances that may lead to malignant transformation. The abnormalities were more pronounced following exposure to marijuana than to tobacco smoke. These findings were later confirmed in a similar study. Marijuana smoke also contains benzene, a substance associated with leukemia, and 2-aminonapthalene, which causes bladder cancer.

92. Recent evidence also indicates that marijuana can depress an individual's immune function. The immune system's sensitivity to marijuana depends on the cannabinoid compound and varies among immune cell types. In addition to the various cannabinoids, bacteria present in the plant material can further affect the immune function. A number of microbial contaminants have been isolated from marijuana samples, including pathogenic aspergillus, *Klebsiella pneumoniae, Enterbacter agglomerans,* group D streptococcus, *Enterbacter cloace, Bacillus* sp. and salmonella enteritis. The bacteria were found in both licit and illicit supplies of marijuana. At the Memorial Sloan-Kettering Cancer Center, it is estimated that 60 patients die each year from invasive aspergillus. Aspergillus was cultured from samples of marijuana from patients who developed invasive pulmonary and allergic bronchopulmonary aspergillus. The data supports the theory that marijuana smoking during periods of immunosuppression (as during cancer chemotherapy), may lead to infection. Therefore, because of its own immunosuppression properties, and its propensity for causing infections in immunosuppressed individuals, marijuana smoking may be contraindicated in cancer chemotherapy patients.

93. Studies conducted with respect to passive inhalation of heavy marijuana smoke demonstrate that passive inhalation of a substantial amount of sidestream marijuana can produce subjective effects, plasma levels of THC and urinary cannabinoid metabolites, in subjects similar to those found after the smoking of marijuana. The researchers concluded that with sufficient time and high marijuana smoke conditions, it becomes difficult to distinguish between active smoking and passive inhalation.

94. Marijuana has also produced genetic and non-genetic birth defects in many animal species. Pure THC is not thought to produce permanent alterations of genes in cells studied to date, but other components of cannabis smoke can cause such mutations. When animals of one generation were exposed to cannabis smoke during pregnancy, birth defects were found in the third generation, suggesting that a gene change had been transmitted through second generation animals which were only exposed to cannabis smoke prior to birth. Cannabis smoke has been related to the increased numbers of early fetal deaths, decreased fetal weight, and an increased death rate at birth in study animals. Although there have been some cases reported of deformed babies being born to marijuana smoking mothers, no causal links can be made based upon the limited evidence. Further human research is necessary to establish or rule out such effects. Based upon the insufficient and inconclusive research in this area, pregnant women and those with marginal fertility may be at risk in smoking marijuana, even at moderate levels.

95. Chronic marijuana use may also have a toxic effect on the human brain. Preliminary studies indicate that THC changes the way sensory information gets into and is acted on by the hippocampus. Chronic exposure damages and destroys nerve cells and causes other changes which are identical to normal aging and may be additive to the aging process. Therefore, chronic marijuana use could result in serious or premature memory disorders. The results of these studies are now being confirmed.

96. Animal studies and some human studies have found that in males, sperm count and motility are decreased during cannabis use. In female animals, THC suppresses the secretion of luteinizing hormone. Prolonged suppression would eventually lower gonadal steroid levels. Whether these changes have any effect on human sexual function and fertility is not yet known.

97. In addition to the known and suspected health risks associated with marijuana use, there is also evidence to suggest that tolerance to its therapeutic effects also develops.

98. The National Academy of Sciences found that the dose of marijuana necessary to produce a therapeutic benefit is often close to one that produces an unacceptable frequency of toxic side effects.

99. The severity and frequency of negative side effects experienced from marijuana smoking exceed those caused by accepted medications used to treat glaucoma, emesis and Multiple Sclerosis and spasticity.

100. Because of its unacceptable side effects and undetermined therapeutic utility, smoked marijuana is not recommended for the treatment of glaucoma, emesis, Multiple Sclerosis and spasticity, epileptic seizures and convulsions, asthma, appetite loss or anorexia, alcoholism and drug abuse, pain and inflammation, anxiety, insomnia, migraine headaches, hypertension, depression, infections or tumors.

Conclusion

The Administrator finds that the administrative law judge failed to act as an impartial judge in this matter. He appears to have ignored the scientific evidence, ignored the testimony of highly-credible and recognized medical experts and, instead, relied on the testimony of psychiatrists and individuals who used marijuana. The administrative law judge relied heavily on anecdotal accounts of marijuana use by both physicians and seriously ill persons. The administrative law judge's findings of fact ignored any evidence presented by the Government. For example, in his findings regarding marijuana and nausea and vomiting associated with chemotherapy, Judge Young cites many of the physicians presented by the pro-marijuana parties by name as accepting marijuana as "medically useful." Not once in his

findings or discussion does the judge acknowledge or mention the Government's experts. Not once does the judge mention why he chose to find the pro-marijuana parties' evidence more credible. The administrative law judge failed to acknowledge the position of a major organization of physicians, the American Medical Association; and those of organizations whose existence is dedicated to the treatment and study of the diseases at issue such as the American Cancer Society, the National Academy of Ophthalmology and the National Multiple Sclerosis Society. He chose instead to rely on the testimony of a very small number of physicians. Most significantly, the administrative law judge did not follow the standard for "accepted medical use in treatment in the United States," and "accepted safety for use * * * under medical supervision" established by the Administrator in previous scheduling proceedings. The administrative law judge chose, instead, to develop his own standard for both accepted medical use and accepted safety; standards which were specifically rejected by the Administrator in the scheduling of 3,4-methylenedioxymethamphetamine (MDMA).

The administrative law judge did not even apply his own standard consistently. While the administrative law judge found that marijuana had an accepted medical use in treatment of nausea and vomiting associated with chemotherapy; of spasticity associated with multiple sclerosis and amputation; and of pain associated with hyperparathyroidism; he concluded that it did not have accepted medical use in treatment of glaucoma. His rationale was that in applying his standard of accepted medical use, which is that a "significant minority" of physicians accept marijuana as medically useful, there were not enough physicians to establish such a "significant minority" with respect to glaucoma. In contrast, he found that one physician's opinion was sufficient to establish an accepted medical use of marijuana with regard to hyperparathyroidism, because that was a rare disease.

The Administrator rejects the administrative law judge's findings and conclusions. They were erroneous; they were not based upon credible evidence; nor were they based upon evidence in the record as a whole. Therefore, in this case, they carry no weight and do not represent the position of the agency or its Administrator. The inadequacy of Judge Young's analysis of the case is exemplified by his acceptance of, and reliance upon, irresponsible and irrational statements propounded by the pro-marijuana parties. Such statements include the following: "marijuana is far safer than many of the foods we commonly consume. For example, eating ten raw potatoes can result in a toxic response. By comparison, it is physically impossible to eat enough marijuana to induce death." That such a statement would come from the proponents of marijuana is understandable. To give it the weight of an administrative law judge's finding is appalling.

The Administrator has accepted the agency's findings of fact as his own. In order to conclude that these facts support a conclusion that marijuana remain in Schedule I, they must be applied to the criteria set forth in the Controlled Substances Act for substances in Schedule I.

The three criteria are found at 21 U.S.C. 812(b)(1) and are as follows:

(a) The drug or other substance has a high potential for abuse.

(b) The drug or other substance has no currently accepted medical use in treatment in the United States.

(c) There is lack of accepted safety for use of the drug or other substance under medical supervision.

For purposes of this proceeding, the parties stipulated that marijuana has a high potential for abuse. The criteria for substances listed in Schedule II also includes that the drug has a high potential for abuse.

The issue of what "currently accepted medical use in treatment in the United States," and "accepted safety for use * * * under medical supervision" mean, has been the subject of a previous scheduling proceeding involving the drug MDMA. In that proceeding, the Administrator did not adopt Judge Young's recommendation and defined both phrases to mean approved for marketing as safe and effective pursuant to the Food, Drug, and Cosmetic Act. 51 FR 36552, October 8, 1986. The Administrator's decision was reviewed by the United States Court of Appeals for the First Circuit in *Grinspoon* v. *DEA*, 828 F.2d 881 (1987). The Court remanded the matter to the Administrator finding that his standard was too restrictive. The Court did not suggest a standard to be adopted and, instead, stated that "Congress has implicitly delegated to the Administrator the authority to interpret these portions of the CSA* * *" *Grinsooon*, p. 892. The Administrator then published a revised final rule in which he listed several characteristics of a drug or other substance which has an "accepted medical use in treatment in the United States." 53 FR 5156, February 22, 1988. These characteristics are:

1. Scientifically determined and accepted knowledge of its chemistry;

2. The toxicology and pharmacology of the substance in animals;

3. Establishment of its effectiveness in humans through scientifically designed clinical trials;

4. General availability of the substance and information regarding the substance and its use;

5. Recognition of its clinical use in generally accepted pharmacopeia, medical references, journals or textbooks;

6. Specific indications for the treatment of recognized disorders;

7. Recognition of the use of the substance by organizations or associations of physicians; and

8. Recognition and use of the substance by a substantial segment of the medical practitioners in the United States.

These characteristics rely heavily on verifiable scientific data and acceptance by the medical community. These two areas go hand-in-hand, as aptly demonstrated by the record in this proceeding. Most physicians and organizations of physicians rely on scientific data in formulating their opinions regarding the safety and effectiveness of a drug and whether they will provide it for their patients. Many of the experts and organizations who concluded that marijuana did not have an "accepted medical use in treatment in the United States," stated that they reached this conclusion because of the lack of adequate scientific data to support the safety and efficacy of marijuana. The Administrator also notes that the Controlled Substances Act and its legislative history require him to consider scientific evidence in determining the schedule in which a drug should be placed. For example, the Controlled Substances Act at 21 U.S.C. 811(c) lists eight factors to be considered in evaluating the three scheduling criteria. Included among those factors are "scientific evidence of its pharmacological effect, if known" and "the state of current scientific knowledge regarding the drug or other substance." In addition, the Controlled Substances Act requires the Administrator to request a scientific and medical evaluation from the Secretary of Health and Human Services. The Administrator is then bound by the Secretary's recommendation as to scientific and medical matters. 21 U.S.C. 811(b). In this proceeding, the Assistant Secretary for Health has provided the Administrator with an extensive

scientific and medical evaluation in which it was recommended that marijuana remain in Schedule I because there is insufficient scientific and medical evidence to conclude that marijuana is a safe and effective drug.

It is clear from the evidence presented in this proceeding that marijuana does not have the characteristics of a drug which has an "accepted medical use in treatment in the United States." Because of the complex composition of marijuana, containing over 400 separate constituents (many of which have not been tested) varying from plant to plant, the chemistry, toxicology and pharmacology of marijuana is not established. As discussed previously, the effectiveness of marijuana has not been documented in humans with scientifically-designed clinical trials. While many individuals have used marijuana and claim that it is effective in treating their ailments, these testimonials do not rise to the level of scientific evidence. Marijuana is available from the Federal Government to those researchers who obtain proper licensure. However, the evidence suggests that only small numbers of researchers and physicians have obtained marijuana for this purpose, and that some research programs sponsored by states had trouble getting physicians to participate. The vast majority of physicians do not accept marijuana as having a medical use. Marijuana is not recognized as medicine in generally accepted pharmacopeia, medical references, journals or textbooks. As evidenced by expert physician testimony and the statements of many professional medical and research organizations, marijuana is not accepted by organized medicine or a substantial segment of the physician population. The administrative law judge's conclusion that a "respectable minority" of physicians is all that is necessary to establish accepted medical use in treatment in the United States is preposterous. By placing a substance in Schedule II, the Administrator, and through him, the Federal Government, establishes a national standard for drug use. Using the same criteria as medical malpractice cases to determine a national standard of medical acceptance is untenable. It must be recognized that in every profession, including the medical and scientific community, there are those that deviate from the accepted practices of the profession. These deviations may be the beginning of new revolutionary treatments or they may be rejected as quackery. The opinions of those few physicians and scientists are not sufficient to create a finding of national acceptance. The Administrator feels that, in light of the potential risks of declaring a drug has an accepted medical use in treatment in the United States, he must adhere to the strict standard that was established in the MDMA proceeding. It is clear that the evidence conclusively demonstrates that marijuana does not have an accepted medical use in treatment in the United States or an accepted medical use with severe restrictions.

The Administrator's standard for "accepted safety for use * * * under medical supervision" was also stated in the second MDMA final rule published on February 22, 1988. 53 FR 5156. The tests for determining accepted safety of a drug were stated as follows:

> The first requirement in determining safety of a substance is that the chemistry of the substance must be known and reproducible. The next step is to conduct animal toxicity studies to show that the substance will not produce irreversible harm to organs at proposed human doses. Limited clinical trials may then be initiated, but they must be carefully controlled so that adverse effects can be monitored and studies terminated if necessary * * * safety in humans is evaluated as a risk/benefit ratio for a specific use. 53 FR 5158.

It is clear that marijuana cannot meet the criteria set forth above for safety under medical supervision. The chemistry of marijuana is not known and reproducible. The record supports a finding that marijuana plant material is variable from plant to plant. The quantities of the active constituents, the cannabinoids, vary considerably. In addition, the actions and potential risks of several of the cannabinoids have not been studied. Animal toxicity studies with marijuana show several potential risks or hazards of marijuana use, especially when the marijuana is smoked. These hazards have not been evaluated against the benefit or effectiveness of the drug. This is due, in great part, to the fact that marijuana's effectiveness in treating specific medical conditions has not been established by reliable scientific studies. Since a proper risk/benefit ratio cannot be made, the safety of marijuana for medical use cannot be demonstrated. Such lack of information is the basis for the majority of the medical and scientific community, and the Food and Drug Administration, concluding that marijuana does not have "accepted safety for use * * * under medical supervision." The Administrator, therefore, concludes that marijuana lacks "accepted safety for use * * * under medical supervision."

As a final note, the Administrator expresses his displeasure at the misleading accusations and conclusions leveled at the Government and communicated to the public by the pro-marijuana parties, specifically NORML and ACT. These two organizations have falsely raised the expectations of many seriously ill persons by claiming that marijuana has medical usefulness in treating emesis, glaucoma, spasticity and other illnesses. These statements have probably caused many people with serious diseases to experiment with marijuana to the detriment of their own health, without proper medical supervision, and without knowing about the serious side effects which smoking or ingesting marijuana may cause. These are not the Dark Ages. The Congress, as well as the medical community, has accepted that drugs should not be available to the public unless they are found by scientific studies to be effective and safe. To do otherwise is to jeopardize the American public, and take advantage of desperately ill people who will try anything to alleviate their suffering. The Administrator strongly urges the American public not to experiment with a potentially dangerous, mind-altering drug such as marijuana in an attempt to treat a serious illness or condition. Scientific and medical researchers are working tirelessly to develop treatments and drugs to treat these diseases and conditions. As expressed in the record, treatments for emesis (nausea and vomiting) associated with cancer chemotherapy have advanced significantly in the last ten years. Recent studies have shown an over 90 percent rate of effectiveness for the new antiemetic drugs and therapies. NORML and ACT have attempted to perpetrate a dangerous and cruel hoax on the American public by claiming marijuana has currently accepted medical uses. The Administrator again emphasizes that there is insufficient medical and scientific evidence to support a conclusion that marijuana has an accepted medical use for treatment of any condition, or that it is safe for use, even under medical supervision.

Based upon the evidence in the record and the conclusions discussed previously, the Administrator, under the authority vested in the Attorney General by section 201(a) of the Controlled Substances Act (21 U.S.C. 811(a)) and delegated to the Administrator of the Drug Enforcement Administration by regulations of the Department of Justice, 28 CFR 0.100(b), hereby orders that marijuana remain a Schedule I controlled substance as listed in 21 CFR 1308.11(d)(14).

This order is effective December 29, 1989.

Dated: December 21, 1989.
John C. Lawn,
Administrator.
[FR Doc. 89-30126 Filed 12-28-89; 8:45 am]
BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determinations 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 supersedes 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.

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

FLORIDA, FL89-45 (January 6, 1989).	p. 206a p. 206c
NEW YORK:	
NY89-2 (January 6, 1989).....	p. 683 pp. 688, 692 p. 693
NY89-7 (January 6, 1989).....	p. 737 pp. 739, 744
NY89-10 (January 6, 1989).....	p. 769 pp. 770

VOLUME II

IOWA, IA89-5 (January 6, 1989).	p. 41 pp. 42-43

VOLUME III

ALASKA, AK89-1 (January 6, 1989).	p. 1 p. 2
IDAHO, ID89-1 (January 6, 1989).	p. 145 p. 146
OREGON, OR89-1 (January 6, 1989).	p. 307 pp. 308-310, p. 316, pp. 323-324
WASHINGTON, WA89-8 (January 6, 1989).	p. 423 pp. 424-425 p. 426a pp. 46-64f

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 22nd day of December 1989.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 89-30153 Filed 12-28-89; 8:45 am]

BILLING CODE 4510-27-M

Office of the Assistant Secretary for Veterans' Employment and Training

Procedures for Application for Funds: Stewart B. McKinney Homeless Assistance Act, Title VII, Subtitle C, Section 738, Fiscal Year 1990

AGENCY: Office of the Assistant Secretary for Veterans' Employment and Training (OASVET).

ACTION: Notice of availability of funds and of solicitation for grant applications.

SUMMARY: This notice sets forth the procedures for obtaining an application for funds for the operation of a Homeless Veterans' Reintegration Project (HVRP) funded under the Stewart B. McKinney Homeless Assistance Act, title VII, subtitle C, section 738. This solicitation applies to projects administered by the Department of Labor through grants with State and local public agencies.

DATE: The closing date for receipt of a completed application package in response to this notice is February 16, 1990. Applications received after that time will be considered for award only if they are postmarked by the United States Postal Service on or before February 16, 1990.

ADDRESS: A copy of the application package and instructions for completion may be obtained by written request only, including two self-addressed mailing labels, to: U.S. Department of Labor, Office of Procurement Services, Rm. S5220, 200 Constitution Ave., NW., Washington D.C. 20210, Attention: Grant Officer, Reference: SGA 90-01.

FOR FURTHER INFORMATION CONTACT: Ms. Christine Chudd or Ms. Eileen Connors, U.S. Department of Labor, Office of the Assistant Secretary for Veterans' Employment and Training, 200 Constitution Ave., NW., Rm. S1313, Washington, D.C. 20210, telephone (202) 523-9110.

SUPPLEMENTARY INFORMATION: The Office of the Assistant Secretary for Veterans' Employment and Training (OASVET) announces the availability of an application package for its HVRP funds for fiscal year (FY) 1990. Funding for these projects is authorized by the Stewart B. McKinney Homeless Assistance Act, Public Law 100-77, section 738, 101 Stat. 482, 538, (1987), as amended by Public Law 100-628, section 703, 102 Stat. 3224, 3705 (1988), (42 U.S.C. 11447-11450).

The McKinney Act, enacted on July 22, 1987, and amended on November 7, 1988, provides funds to several Federal agencies to administer a variety of programs for homeless persons. Title VII, subtitle C, section 738 of the Act authorizes programs "to expedite the reintegration of homeless veterans into the labor force." There are approximately $1.5 million available in FY 1990 to carry out demonstration HVRPs authorized under Section 738.

Project funding will range from a minimum of $50,000 to a maximum of $250,000. Between 15 and 25 projects will be funded. It is expected that most projects will be in the $100,000 to $150,000 range. Projects will begin no later than September 30, 1990 for a one-year period with an option to renew for an additional year. Funding could begin as early as June 1990.

In keeping with the demonstration nature of the McKinney Act, the program is designed to provide each potential program operator with flexibility in determining the range of employment and training-related activities which best meet the needs of the homeless veteran population in its jurisdiction.

There are three criteria, however, which will be required in each HVRP: (1) An outreach activity staffed by veterans who have experienced homelessness; or, if outreach is deemed not necessary due to the applicant's particular local circumstances, at least one veteran who has experienced homelessness must be employed on staff in a position involving direct client contact; (2) linkages with providers of other services which could benefit homeless veterans, including, where applicable, other recipients of funds under the McKinney Act; and (3) projects must be employment-focused in order to provide the employment and training services needed to reintegrate homeless veterans into the labor force.

This solicitation for grant applications is limited to: (1) the 50 largest U.S. cities and/or (2) jurisdictions which were served through the HVRP in FY 1988 and FY 1989. A list of these jurisdictions follows:

Arizona
- Phoenix
- Tucson

California
- Long Beach
- Los Angeles
- Oakland
- Sacramento
- San Diego*
- San Francisco
- San Jose*

Colorado
- Denver*

District of Columbia

Florida
- Jacksonville*
- Miami

Georgia
- Atlanta*

Hawaii
- Honolulu

Illinois
- Chicago

Indiana
- Indianapolis

Louisiana
- New Orleans*

Maryland
- Baltimore

Massachusetts
- Boston*

Michigan
- Detroit*

Minnesota
- Minneapolis

Missouri
- Kansas City
- St. Louis*

Nebraska
- Omaha

New Jersey
- Newark

New Mexico
- Albuquerque

New York
- Buffalo
- New York*

North Carolina
- Charlotte

Ohio
- Cincinnati
- Cleveland
- Columbus
- Toledo

Oklahoma
- Oklahoma City
- Tulsa

Oregon
- Portland*

Pennsylvania
- Philadelphia
- Pittsburgh*

Tennessee
- Memphis
- Nashville/Davidson*

Texas
- Austin
- Dallas
- El Paso
- Fort Worth
- Houston
- San Antonio*

Virginia
- Virginia Beach

Washington
- Seattle*
- Olympia*
- Tacoma*

Wisconsin*

*FY 1988/1989 HVRP jurisdictions.

Entities which are eligible to submit applications for serving the jurisdictions listed above are limited to State and local public agencies. "Local public agency" refers to any public agency of a general-purpose political subdivision of a State which has the power to levy taxes and spend funds, as well

as general corporate and police powers. (This typically refers to cities and counties).

The application instructions will include a more detailed program description, program guidelines, and approach to implementation. The application package will consist of a standard application form, a narrative description of proposed activities and current services, and a detailed budget.

Criteria for identifying the most promising and effective proposals will be applied, and between 15 and 25 applicants will be identified as potential grantees. Applicants are advised that discussions may be necessary to clarify any inconsistencies in their applications. The evaluation panel scores will serve as the primary basis for selection of applications for potential award. Evaluation by reviewers is advisory only to the Grant Officer.

Signed at Washington, DC, this 21st day of December, 1989.

Thomas E. Collins,

Assistant Secretary for Veterans' Employment and Training.

[FR Doc. 89–30169 Filed 12–28–89; 8:45 am]

BILLING CODE 4510–79–M

THE NEIGHBORHOOD REINVESTMENT CORPORATION

A Program of Technical Services and Limited Financial Assistance for Development of Mutual Housing Associations and Properties

The Neighborhood Reinvestment Corporation announces a program of technical services and limited financial assistance to selected local governments, nonprofit organizations, private sector interests, affordable housing developers and community based leaders who wish to create Mutual Housing Associations with Neighborhood Reinvestment's assistance. This announcement represents an expansion of our existing network of Mutual Housing Associations which are currently in operation or under development in eight cities across the country. Neighborhood Reinvestment also sponsors Neighborhood Housing Services and Apartment Improvement Programs in over 140 cites and over 260 neighborhoods. Successful applicants will receive intensive technical assistance in developing Mutual Housing Associations and sites, as well as targeted financial assistance designed to leverage other resources. Mutual Housing Associations developed through this program will have access to all benefits of membership in the national Neighborworks network.

Mutual Housing Associations are private, nonprofit organizations which own, manage and develop permanently affordable housing on a continuing basis. Residents do not have an equity interest in the property, but enjoy certain benefits similar to home owners, including, among others, the opportunity for long term occupancy. Residents of Mutual Housing and people on the waiting list constitute the majority of the Mutual Housing Board of Directors, the decision making body of the Association. Private sector and government representatives make up the balance of the Board and bring appropriate skills and expertise to the multi-faceted operations of the Association.

Mutual Housing association development are capitalized through a combination of upfront grants and low interest loans which insure permanent affordability for residents. The Association is explicitly committed to using all revenues or resources in excess of operating, maintenance and service costs for the production of additional units. The Mutual Housing Association Board employs a highly competent professional staff and provides sound and responsive property management services to its resident members. Residents participate actively in some home maintenance tasks and enhance and maintain the social fabric of the Association. The Association is committed to contributing to the revitalization of the neighborhoods in which their developments exist, and to preserving the economic, cultural, racial, generational and professional mix of the community.

Mutual Housing offers a housing solution which is affordable, safe, well maintained and resident-directed on a permanent basis. This approach is a logical option for comminities, organizations, groups, or individuals who are exploring solutions for affordable new construction or who are interested in creative alternatives for surplus or foreclosed properties or for existing subsidized rental housing developments whose subsidies are scheduled to expire.

Neighborhood Reinvestment is interested in letters of application which reflect commitments of local leadership and resources to specific site opportunities as well as a commitment to a sound organizational development process. Application letters and supportive material should include:

- A brief outline of community need and demographics
- A brief outline of specific site opportunities citing ownership, available occupancy data, likely resident interest, and potential or actual commitments of resources
- Specific indications of support from local sources and any others who offer resources to the effort.

Neighborhood Reinvestment is prepared to offer assistance and advice to potential applicants and is prepared to be flexible in evaluation of sites and community readiness.

Applications will be acknowledged by a letter or by a request for additional information. Site visits will be scheduled in response to applications of particular interest.

DATES: Letters of Application and supportive material must be received by February 17.

ADDRESS: Four copies of the application should be sent to: Margo Kelly, Deputy Director, Field Operations, Neighborhood Reinvestment Corporation, 80 Boylston Street, Boston, MA 02116.

FOR FURTHER INFORMATION CONTACT: Diane Gordon, (617–565–8447).

Martha A. Diaz-Ortiz,

Assistant Secretary.

[FR Doc. 89–30298 Filed 12–28–89; 8:45 am]

BILLING CODE 7570–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) and Advisory Committee on Nuclear Waste (ACNW); Notice of Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the ACRS full Committee, and of the ACNW, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published November 30, 1989 (54 FR 49372). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that sessions of ACRS full Committee and ACNW meetings designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee and ACNW meetings begin at 8:30 a.m. and ACRS Subcommittee meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during ACRS full Committee and ACNW meetings and when ACRS Subcommittee meetings will start will be

published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the January 1990 ACRS and ACNW full Committee meetings can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone: 301/492-7288, ATTN: Barbara Jo White) between 7:30 a.m. and 4:15 p.m., Eastern Time.

ACRS Subcommittee Meetings

Advanced Pressurized Water Reactors, January 9, 1990, Bethesda, MD. The Subcommittee will continue its review of the Westinghouse Evolutionary Light Water Reactor SP/90 design.

Regulatory Policies and Practices, January 10, 1990, Bethesda, MD has been postponed to March 22, 1990.

Containment Systems, January 10, 1990, Bethesda, MD. The Subcommittee will discuss the NRC staff's document on the Containment Performance Improvement (CPI) Program (all containment types other than the BWR Mark I).

Joint Severe Accidents and Probabilistic Risk Assessment, January 23–24, 1990, Albuquerque, NM. The Subcommittees will continue their review of NUREG–1150, "Severe Accident Risks: An Assessment for Five U.S. Nuclear Power Plants," (Second Draft for Peer Review). Topics tentatively scheduled for discussion at this meeting include: back-end analysis, uncertainties and the expert opinion process.

Structural Engineering, January 24–25, 1990, Albuquerque, NM. The Subcommittee will review structural integrity issues on various containment configurations and Category I structures.

Safety Research Program, February 7, 1990, Bethesda, MD. The Subcommittee will discuss the proposed NRC Safety Research Program and Budget for FY 1991 and other related matters.

Joint Containment Systems and Structural Engineering, February 28, 1990, Bethesda, MD. The Subcommittees will discuss the development of a position or recommendations regarding new containment design criteria for future plants.

Mechanical Components, March 7, 1990, Bethesda, MD. The Subcommittee will review nuclear power plant valve concerns including; (1) status of the MOV program, (2) the status of the check valve program, (3) the status of the diagnostics for check valves (programs on valves import to safety, i.e., butterfly valves), and (5) related valve concerns.

Regulatory Policies and Practices, March 22, 1990, Bethesda, MD. The Subcommittee will review the NRC staff's Draft Rule for license renewal.

Occupational and Environmental Protection Systems, Date to be determined (January/February), Bethesda, MD. The Subcommittee will continue its review of Interim Standard for hot particles.

Systematic Assessment of Experience, Date to be determined (January/February), Bethesda, MD. The Subcommittee will review the proposed power level increase for Indian Point Unit 2.

Decay Heat Removal Systems, Date to be determined (January/February), Bethesda, MD. The Subcommittee will review the NRC staff's proposed resolution of Generic Issue 84, "CE PORVs."

Joint Thermal Hydraulic Phenomena and Core Performance, Date to be determined (January/February), Bethesda, MD. The Subcommittee will continue their review of boiling water reactor core power stability pursuant to the core power oscillation event at LaSalle County Station, Unit 2.

GE Reactor Plants (Nine Mile Point Restart), Date to be determined (January/February), Bethesda, MD—CANCELLED.

Advanced Pressurized Water Reactors, Date to be determined (February), Bethesda, MD. The Subcommittee will discuss the licensing review bases document being developed for Combustion Engineering's Standard Safety Analysis Report-Design Certification (CESSAR–DC).

Thermal Hydraulic Phenomena, Date to be determined (February), Idaho Falls, ID. The Subcommittee will review the details of the modifications made to the RELAP–5 MOD–2 code as specified in the MOD–3 version.

Severe Accidents, Date to be determined (February/March), Bethesda, MD. The Subcommittee will discuss the NRC Severe Accident Research Program (SARP) plan.

Materials and Metallurgy, Date to be determined (February/March), Bethesda, MD. The Subcommittee will review the proposed resolution of Generic Issue 29, "Bolting Degradation or Failure in Nuclear Power Plants."

Decay Heat Removal Systems, Date to be determined (June/July), Bethesda, MD. The Subcommittee will review the proposed resolution of Generic Issue 23, "RCP Seal Failures."

Decay Heat Removal Systems, Date to be determined, Bethesda, MD. The Subcommittee will explore the issue of the use of feed and bleed for decay heat removal in PWRs.

Auxiliary and Secondary Systems, Date to be determined, Bethesda, MD. The Subcommittee will discuss the: (1) criteria being used by utilities to design Chilled Water Systems, (2) regulatory requirements for Chilled Water Systems design, and (3) criteria being used by the NRC staff to review the Chilled Water Systems design.

Reliability Assurance, Date to be determined, Bethesda, MD. The Subcommittee will discuss the status of implementation of the resolution of USI A–46, "Seismic Qualification of Equipment in Operating Plants," and other related matters.

Joint Regulatory Activities and Containment Systems, Date to be determined, Bethesda, MD. The Subcommittees will review the proposed final revision to Appendix J to 10 CFR Part 50, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors."

ACRS Full Committee Meetings

357th ACRS Meeting, January 11–13, 1990, Bethesda, MD. Items are tentatively scheduled.

*A. *NRC Containment Performance Improvement Program (Open)*—Review and report on the proposed NRC containment performance improvement program for light-water reactors. Members of the NRC staff will participate, as appropriate.

*B. *Proposed Final Resolution of Generic Issue B–56, "Diesel Reliability" and Associated Regulatory Guide 1.9, Revision 3 (Open)*—ACRS review and report on the NRC staff's proposed resolution of this generic issue. Members of the NRC staff will participate.

*C. *Meeting with NRC Commissioners (Open)*—Meeting with NRC Commissioners to discuss topics related to ACRS activities, including containment performance criteria for future plants, and activities of NRC regional staffs.

*D. *Meeting with Director of the NRC Office for Analysis and Evaluation of Operational Data (Open)*—Discuss topics of mutual interest, such as the distribution of AEOD resources and use of Augmented Inspection Teams (AITs) vs Incident Investigation Teams (IITs).

*E. *ACRS Subcommittee Activities (Open)*—Hear and discuss reports of designated subcommittee activities, including ACRS Plans and Procedures, such as allocation of resources and procedures for conduct of business.

*F. *Future Activities (Open)*—Discuss anticipated activities of ACRS subcommittees and items proposed for consideration by the full Committee.

*G. *Appointment of ACRS Members (Open/Closed)*—Discuss the status of appointment of new ACRS members.

*H. *Reactor Operating Experience (Open/Closed)*—Briefing and discussion with members of NRC staff of recent reactor incidents and transients that have been evaluated by AEOD. These include: potential interfacing systems LOCA at the Arkansas Nuclear One Unit–2, inoperable HPCI Systems at the Dresden 2 and 3 nuclear units, failure of diesel generator at South Texas Unit 2, and leakage through the RHR suction relief valve at Braidwood Unit 1.

*I. *Interfacing Systems LOCA (Open)*—Briefing and discussion of NRC proposed action plan to deal with the potential for interfacing systems LOCA at nuclear power plants. Members of the NRC staff will participate.

*J. *State of Nuclear Power Program (Open)*—Members will discuss a proposed report to the NRC regarding the state of the nuclear power program in the United States.

*K. *Coherence In The Regulatory Process (Open)*—Discuss proposed ACRS report to the NRC regarding mechanisms to achieve improved coherence in the NRC regulatory process.

*L. *ACRS Report to Congress (Open)*—Discuss the format and content of the ensuing annual ACRS report to the Congress on the NRC Safety Research program and budget.

358th ACRS Meeting, February 8–10, 1990—Agenda to be announced.

359th ACRS Meeting, March 8–10, 1990—Agenda to be announced.

ACNW Full Committee Meetings

16th ACNW Meeting, January 24–26, 1990, Bethesda, MD. Items are tentatively scheduled.

*A. Review of the Technical Position on Seismic Hazards.

*B. Storage of Spent Fuel in NRC-Approved Casks at Power Reactor Sites.

*C. Mr. R. Bangart, Director, DLLWM, will discuss the overall strategy of low-level waste projects and how they fit together to make a coherent program to assure safety.

*D. *American Society for Testing Materials.* The Committee will be briefed on the radioactive waste activities (waste management, disposal, and transport) of the ASTM.

*E. MRS Commission Recommendations—for information.

*F. Briefing on the current schedule for NRC/DOE projects related to the high-level geologic waste repository.

*G. *Committee Activities.* The Committee will discuss anticipated and proposed Committee activities, future meeting agenda, and organizational matters, as appropriate.

17th ACNW Meeting, February 21–23, 1990—Agenda to be announced.

18th ACNW Meeting, March 21–23, 1990—Agenda to be announced.

Dated: December 22, 1989.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 89–30181 Filed 12–28–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–219]

GPU Nuclear Corp. and Jersey Central Power and Light Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR–16 issued to GPU Nuclear Corporation, et. al. (the licensee), for operation of the Oyster Creek Nuclear Generating Station, located in Ocean County, New Jersey.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the Technical Specifications to delete Technical Specification Safety Limit 2.1.E which requires at least two recirculation loops to be fully open except when the reactor vessel head is off and vessel water level is above the main stream nozzle. This proposed amendment would also incorporate this limitation in Technical Specification 3.3.F and that limitation would be revised to require that at least one recirculation loop instead of two be fully open during applicable plant conditions. In addition the proposed change would also require that during power operations if at least four recirculation loops cannot be maintained in service, then hot shutdown or refuel conditions must be reached in 12 hours. Presently the requirement is that the unit be placed in cold shutdown conditions within 24 hours.

The proposed amendment is in accordance with GPU Nuclear Corporation's application dated March 31, 1988, as supplemented November 15, 1988 and August 23, 1989.

The Need for the Proposed Action

The proposed changes to the Technical Specifications are needed so that requirements for recirculation loop operation are consistent with the safety limit and limiting condition for operation definitions in 10 CFR 50.36, are appropriate for different plant conditions and reflect the results of analysis performed.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to Technical Specifications. The proposed revision reclassifies the requirement for unisolated recirculation loops from a safety limit to a Limiting Condition of Operation (LCO). Reducing the requirement from two unisolated loops to one unisolated loop during applicable plant conditions has been analyzed. Hydraulic analysis of the recirculation loops shows adequate hydraulic communication between the annulus and core regions. For this bounding anticipated operational occurrence water level indication is representative of the water level in the core with one unisolated recirculation loop. The primary concern regarding recirculation loop isolation is to maintain adequate hydraulic communication between the annulus and core regions. When conditions permit the reactor to be flooded to a water level above 185 inches Top of Active Fuel (TAF) or when the steam separator and dryer are removed both regions are in hydraulic communication above the core and level readings are indicative of core region level, therefore, there is no need to keep recirculation loops unisolated. The proposed changes to specifications 3.3.F.1 and 3.3.F.2 are editorial and do not change these requirements. The proposed change to specification 3.3.F.3 ensures that the reactor is placed in a condition (i.e., power operation terminated and reactor subcritical) which does not necessitate operation of at least four recirculation loops.

Based on the above, the staff has determined that the proposed Technical Specifications do not alter any initial conditions assumed for the design basis accidents previously evaluated nor do they change operation of safety systems utilized to mitigate them. Therefore, the proposed changes (1) do not involve a significant increase in the probability or consequences of any accident previously evaluated, (2) do not create the possibility of a new or different kind of accident from any accident previously evaluated and (3) do not involve a significant reduction in the margin of safety.

Therefore, the proposed changes do not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative

occupational radiation exposure. Accordingly, the Commission concludes that these proposed actions would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed changes to the Technical Specifications involve the reactor coolant system which is located within the restricted area as defined in 10 CFR Part 20. They do not affect non-radiological plant effluents and have no other environmental impacts. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Prior Hearing in connection with this action was published in the **Federal Register** on May 3, 1988 (53 FR 15756). No request for hearing or petition for leave to intervene was filed following this notice.

Alternatives to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed actions, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and the requirements for recirculation loop operation would not be consistent with the safety limit and limiting condition for operation definitions in 10 CFR 50.36.

Alternative Use of Resources

The action would involve no use of resources not previously considered in the Final Environmental Statement (FES) for the Oyster Creek Nuclear Generating Station.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding No Significant Impact

The staff has determined not to prepare an environmental impact statement for the proposed amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed actions will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated March 31, 1988, as supplemented November 5, 1988 and August 23, 1989 which is available for public inspection in the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and the Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

Dated at Rockville, Maryland, this December 21st, 1989.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–30238 Filed 12–28–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–309]

Maine Yankee Atomic Power Co.; (Maine Yankee Atomic Power Plant)

Exemption

I.

Maine Yankee Atomic Power Company (the licensee) is the holder of Facility Operating License No. DPR–36 which authorizes operation of the Maine Yankee Atomic Power Plant (the facility) at steady-state reactor power levels not in excess of 2700 megawatts thermal. The license provides, among other things, that the licensee is subject to all rules, regulations, and Orders of the Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect. The facility consists of a pressurized water reactor located at the licensee's site in Wiscasset, Maine.

Section 50.54(q) of 10 CFR part 50 requires a licensee authorized to operate a nuclear power reactor to follow and maintain in effect emergency plans that meet the standards of 10 CFR 50.47(b) and the requirements of Appendix E to 10 CFR part 50. Section IV.F.3 of Appendix E requires that each licensee at each site shall exercise with offsite authorities such that the State and local government emergency plans for each operating reactor site are exercised biennially, with full or partial participation by State and local governments, within the plume exposure pathway emergency planning zone (EPZ).

The NRC may grant exemptions from the requirements of the regulations which, pursuant to 10 CFR 50.12(a), are (1) authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) present special circumstances. Section 50.12(a)(2)(v) of 10 CFR Part 50 indicates that special circumstances exist when an exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulations.

II.

By letter dated October 27, 1989, the licensee requested an exemption from the schedule requirements of Section IV.F.3 of Appendix E. The last biennial emergency preparedness exercise was a full-participation exercise conducted at the Marine Yankee Nuclear Power Plant on June 9, 1987. The licensee requested that the upcoming exercise be rescheduled to a time convenient to all affected parties. The licensee also requested to be relieved of the requirement to conduct an onsite emergency preparedness exercise this calendar year.

The licensee stated that it was notified by the Federal Emergency Management Agency (FEMA) that FEMA would not be able to observe the scheduled exercise because of the demands on the agency associated with the recent emergencies in California and South Carolina. The licensee further stated that the scenario was developed for this full-participation exercise to evaluate offsite emergency plans and procedures for the plume and ingestion pathway emergency planning zones (EPZs), and it did not believe it would be appropriate to use this scenario with no offsite participation. Additionally, the licensee stated there was insufficient time in which to prepare a new scenario package for NRC review.

On November 6, 1989, the licensee submitted a letter clarifying its request for an exemption from the full-participation exercise scheduled for November 14 and 15, 1989. The licensee reiterated the reason for the request—that FEMA Region I could not evaluate the offsite aspects of the exercise because of their priorities involving assistance to victims of the recent actual disasters in the United States. Also, the licensee provided additional information to support the exemption regarding the status of corrective actions for the offsite deficiencies resulting from the 1987 exercise.

III.

The last full-participation exercise for the Maine Yankee Nuclear Power Plant, the State of Maine, Lincoln and Sagadahoc Counties, and local communities in the plume EPZ was conducted on June 9, 1987. FEMA identified a total of eight deficiencies as a result of this exercise. Six of the eight deficiencies were assigned to the State of Maine and two were assigned to the

plume EPZ community of Phippsburg, Maine. The eight deficiencies are enumerated below, along with the status of the corrective actions taken, as reported by the licensee in its letter of November 6, 1989.

1. Numerous inadequacies in the alert and notification system has been consistently identified since 1981.

In cooperation with Maine Emergency Management Agency (MEMA), Maine Yankee has developed a program to enhance the physical means that presently exist to alert the public in the event of an emergency at the plant that necessitated public protective measures. Implementation of the additional stationary sirens planned are ahead of schedule. Presently 18 of 20 planned sirens have been installed. Power has been provided to most of the new sirens so they are capable of local activation. Installation of the remaining radio activation control equipment should be completed before the end of December 1989.

Additionally, Maine Yankee plans to install a few more sirens in strategic locations that will further enhance the existing alerting system. The licensee plans to have all sirens operable by December 1990.

To augment the stationary sirens, the State of Maine has coordinated the distribution of approximately 230 tone alert radios to public buildings, institutions, schools, hospitals, campgrounds, State parks, etc. An approximate equal number of radios should, depending on final projected siren coverage, be distributed to dwellings by December 31, 1990.

2. The State lacked the mechanism to properly analyze and respond to local protective action decisions, including appropriate emergency broadcast station (EBS) messages.

Appropriate changes have been included in final revisions to the State and community emergency response plans. These plans are targeted for issuance by the end of December 1989.

3. Public Emergency Alerting System (PEAS) telephone inoperable in two towns and its operation was sporadic in several others.

The corrective action is complete; community training was completed on October 25, 1989.

4. Preliminary Maine Yankee protective action recommendations were transmitted over the PEAS telephone along with those actually adopted by the State, which caused confusion in the towns.

State procedures have been revised and training completed.

5. PEAS multi-point telephone operator failed to transmit some messages to local Emergency Operations Centers (EOCs) in a timely manner.

State procedures have been revised and training completed.

6. Protective action recommendations not disseminated to the public within 15 minutes.

Prescripted EBS messages have been developed and their dissemination successfully simulated.

7. Several islands within Phippsburg have no means for alerting the residents/tourists.

The number of dwellings on islands in the EPZ requiring tone alert radios has been dramatically reduced because of enhanced coverage of the newly installed stationary sirens. The alerting capability provided by the new sirens, plus the out-migration of the seasonal residents, has deferred the distribution of tone alert radios until the summer of 1990 to coincide with the return of the seasonal residents.

8. Alerting teams not cognizant of procedures for alerting tourists at campgrounds, beaches, etc.

The corrective action for this deficiency is complete. Additional training has been conducted with community emergency response personnel. We understand that the State has distributed tone alert radios to campgrounds, State parks, etc., as necessary.

The State of Maine has been active in participating in drills and exercises to ensure that their emergency plans and procedures can be adequately implemented in the event of an actual emergency. Numerous training activities have also been conducted. The State, counties, and communities in the Maine Yankee Emergency Planning Zone (EPZ) have fully participated in exercises conducted in 1981, 1982, 1985 and 1987. The State also participated in a mini-exercise in 1983 in which FEMA evaluated the State's capabilities that adequately addressed areas of concern from the previous year's exercise.

Since the last full-participation biennial exercise in 1987, the State has successfully participated in a 2-day ingestion pathway exercise during June 1988 Seabrook and also in two 2-day training exercises during 1988 for the Seabrook plant. The State participated in the partial-participation annual exercise for Maine Yankee conducted in September 1988. This exercise involved the participation of the State of Maine Emergency Response Team and the State's offsite monitoring team members, demonstrating command/control, interface with State representatives, radiological impact assessment, protective action recommendation decisionmaking, communications, and information flow. They also participated, to a limited extent, in the April 1989 mini-drill that involved the actuation, staffing, and operation of the onsite emergency response facilities.

Maine Yankee conducted a tabletop training drill on the ingestion pathway responses and activities for key State of Maine officials in August 1989. The State of Maine Emergency Operations Center (EOC) was fully staffed with the Emergency Response Team, and the Joint Media Center exercised its capability during an October 1989 exercise that was evaluated by personnel from the Institute of Nuclear Power Operations. Exercise controllers/evaluators in the State EOC considered that, overall, the State adequately implemented plans and procedures that would be used in an actual emergency.

Emergency preparedness training sessions were conducted for each of the 16 communities and 2 counties in the plume exposure pathway EPZ between September 12 and October 25, 1989. The team, consisting of representatives from Maine Yankee, the Maine Emergency Management Agency (MEMA), the Maine Division of Health Engineering, and Maine Yankee's consultant, reviewed the key aspects of the community's responsibilities during a radiological emergency. The communities exercised their emergency procedures and checklists, verified equipment operability, and updated community status boards and resource information during a tabletop training drill session.

The requested exemption is necessary because the State, the counties, and the local communities within the 10-mile plume exposure pathway emergency planning zone were not available to fully participate in the emergency preparedness exercise conducted on November 14 and 15, 1989, due to the unavailability of the FEMA personnel necessary for the observation and evaluation of the performance of the offsite organizations. FEMA has indicated that it would be available to evaluate an offsite emergency planning exercise for the facility in the second half of 1990. Although no full participation exercise was held in 1989, the licensee did conduct an onsite exercise using a scenario of limited scope with regard to offsite involvement. The State participated in the exercise from their EOC and from the licensee's Emergency Operations Facility (EOF).

Some of the local communities also participated through their communications networks. Preliminary indications demonstrate that this offsite response was satisfactory.

IV.

Based on a consideration of the facts presented in Section III above and as requested by the licensee, the NRC staff finds that the following factors support the granting of the requested exemption.

a. FEMA was not able to observe the scheduled exercise of November 14 and 15, 1989, as a result of the demands on the agency associated with the recent emergencies in California and South Carolina.

b. The State of Maine, the counties, and the local communities declined to participate fully in the exercise as a result of the absence of FEMA.

c. Significant progress has been made by Maine Yankee and the State of Maine in correcting the deficiencies identified in the full-participation exercise of June 9, 1987.

d. The capability of the State of Maine, the counties and the local communities to respond to an emergency has been demonstrated in full-participation exercises in 1981, 1982, 1985, and 1987.

e. The State's capability to respond to an emergency has also been demonstrated in a mini-exercise in 1983, a 2-day ingestion pathway exercise in June 1988, and a partial-participation exercise in September 1988.

f. Additional State of Maine staff training was accomplished during a tabletop training drill in August 1988 and during a drill of the Emergency Response Team in October 1989.

g. Emergency preparedness training sessions were conducted for the 2 counties and 16 communities in the plume exposure pathway EPZ during September and October 1989.

The requested exemption is a temporary one and is necessary because the State, the counties, and the local communities within the 10-mile plume exposure pathway emergency planning zone were not available to fully participate in the emergency preparedness exercise conducted on November 14 and 15, 1989. In addition, FEMA was not able to observe and evaluate the exercise due to extenuating circumstances. The licensee has made a good faith effort to comply with the regulations by assisting the State in the correction of deficiencies identified as a result of the June 9, 1987 exercise, in participating with the State in training exercises and drills in 1988 and 1989 and in efforts to obtain the full participation of the State during the November 1989 exercise as described in Section III above. Thus, the NRC staff finds that special circumstances exist and exemption may be granted pursuant to 10 CFR 50.12(a)(2)(v). Further, the NRC staff believes that the public health and safety will be better served by the conduct of a full participation exercise in calendar year 1990. At that time, the State of Maine, the counties and the local communities will be available to participate and FEMA would be available to observe and evaluate the exercise.

For these reasons, the Commission has thus determined that, pursuant to 10 CFR 50.12(a)(2)(v), the Exemption requested by the licensee's letters of October 27, 1989, and November 6, 1989, is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security.

Accordingly, the Commission hereby approves the following Exemption:

The Maine Yankee Nuclear Power Plant is exempt from the requirements of 10 CFR Part 50, Appendix E, Section IV.F.3, for the conduct of a biennial offsite full-participation emergency preparedness exercise, provided that such an exercise be conducted during calendar year 1990.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant effect on the quality of the human environment (54 FR 50666). A copy of the licensee's requests for Exemption dated October 27, 1989, and November 6, 1989, are available for public inspection at the Commission's Public Document Room, in the Gelman Building, Lower Level, 2120 L Street NW., Washington, DC, and at the Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578. Copies may be obtained upon written request to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—I/II.

This Exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 22nd day of December 1989.

Bruce A. Boger,

Assistant Director Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-30239 Filed 12-28-89; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-27563; File No. SR-ISCC-89-01]

Self-Regulatory Organizations; International Securities Clearing Corporation; Notice of Filing of Proposed Rule Change Regarding a Modification of Rules To Support the PORTAL System [1]

December 21, 1989.

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 December 11, 1989, International Securities Clearing Corporation ("ISCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-ISCC-89-01) as described in Items I, II, and III below, which Items have been prepared by ISCC.[2] 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 text of the proposed rule change is attached hereto as Exhibit A. In addition, the current link agreement between ISCC and Centrale de Livraison de Valeurs Mobilieres ("CEDEL") has been amended to permit CEDEL to transmit to ISCC data concerning PORTAL investors' accounts at CEDEL.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ISCC 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. ISCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

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[1] "PORTAL" is the common name for a new trading system, Private Offerings, Resale and Trading through Automated Linkages, that is being developed by the National Association of Securities Dealers. For a description of the proposed PORTAL System, *see* Securities Exchange Act Release No. 27470 (November 24, 1989), 54 FR 49164.

[2] On December 14, 1989, ISCC amended its proposed rule change. The substance of that amendment also is described in Items I, II, and III below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule filing is to allow ISCC to accept data from the National Association of Securities Dealers ("NASD") in connection with its PORTAL System for processing through ISCC's current link with CEDEL and to transmit such data to the Depository Trust Company ("DTC") for inclusion in their International Institutional Delivery System. In this regard, the proposed rule filing also details for members the way in which PORTAL transaction data will be processed by ISCC. These details are set forth in Exhibit A which will be an addendum to ISCC's rules. Specifically they detail: (1) When data will be transmitted to ISCC by the NASD; (2) the procedures ISCC will follow and the reports ISCC will prepare upon receipt of such data; (3) when and how data will be transmitted to CEDEL and DTC; and (4) when CEDEL will report back to ISCC the results of their processing. Finally, the proposed rule change would permit ISCC to amend its agreement with CEDEL to allow CEDEL to transmit to ISCC data regarding PORTAL investors' accounts at CEDEL.

B. Self-Regulatory Organization's Statement on Burden on Competition

ISCC does not believe that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments have been solicited or received. ISCC will notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and published 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 approved.

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 ISCC. All submissions should refer to File Number SR–ISCC–89–01 and should be submitted by January 19, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Exhibit A

Amend ISCC's Rule 7 as follows:
Italics. Indicate additions
[Brackets] Indicate deletions

Comparison Operation

* * * * *

Sec. 3 The Corporation may determine, in its discretion, to accept, from self-regulatory organizations, as defined in Securities Exchange Act of 1934, (either directly or through subsidiary or affiliated organizations) trade data on behalf of Members for input to (a) Foreign Financial Institutions in connection with a link established by the Corporation pursuant to Rule 40 and (b) Qualified Securities Depositories.

* * * * *

All new material.
Underlining eliminated.

Addendum D to ISCC Rules

Portal/ISCC Procedures

1. The NASD will create and maintain, daily, both a PORTAL participant masterfile and a PORTAL security masterfile. The purpose of the participant file is to permit the NASD to maintain standing information data in order to reduce the amount of data entry the PORTAL participant must input for each transaction; i.e., name, location, identifying PORTAL, CEDEL and DTC IID account numbers (or symbols), as well as information regarding an institutional investor's Global Custodian, including the name, location and DTC IID account number.

The masterfile for PORTAL securities will list all eligible PORTAL securities by name, PORTAL symbol, ISIN number and CEDEL security number. (This file is used by the NASD to maintain an authorized list of PORTAL-eligible securities so that the transaction input of all participants can be checked by the NASD in order to allow only valid PORTAL security instructions to be input to the system.)

The two masterfiles will be forwarded each business day by the NASD, via it's computer to computer link, to ISCC. ISCC expects to receive these files in one batch at approximately 2:00 p.m. each day the PORTAL marketplace is open for business. ISCC will validate that the data is in the appropriate format (pre-defined by the NASD), that it has appropriate header and trailer records, and the total number of records.

ISCC will then update the PORTAL Participant and Security masterfiles previously received from the NASD prior to processing any PORTAL transaction instructions received from the NASD.

2. The second daily data batch ISCC will receive from the NASD contains the PORTAL transaction instructions for that business day. ISCC expects to receive this file between 4:00 p.m. and 7:00 p.m. on trade date (T).

ISCC will validate that the data is in the appropriate format (pre-defined by the NASD and ISCC), that it has the appropriate header and trailer records, and the total number of records. ISCC will then check that all transaction instructions are for securities that are PORTAL-eligible, according to the PORTAL Security masterfile received from the NASD earlier in the day.

ISCC will then transform the transaction instructions into the appropriate data elements in order to properly reformat the data into CEDEL transaction types and DTC IID instructions, as required.

The reformatting to DTC IID and CEDEL instructions is determined by the data input received from the PORTAL market, and is supplemented by data in the Participant masterfile provided by the NASD earlier in the day. Data is supplemented when the PORTAL transaction record contains defaults to the Participant masterfile, such as for the institution's Global Custodian DTC IID account information, the broker/dealer's symbol or name and location,

and the broker/dealer's CEDEL and/or DTC IID account numbers.

If an instruction is rejected because it contains an invalid (PORTAL non-eligible) security, or because it is in the incorrect format or carriers invalid data (i.e., an alpha in a numeric field or an invalid character), ISCC will notify the NASD through a machine readable file via the CPU to CPU interface between ISCC and the NASD. This file is forwarded to the NASD at approximately 5:00 a.m.–6:00 a.m. on T + 1. There is no opportunity for the PORTAL participant to correct the transaction(s) for trade date processing. The participant will be notified of a reject via ISCC contract sheets that will be forwarded to the participant via the Global Compass PC system at approximately 5:00 a.m.-6:00 a.m. on T + 1. Participants will be required to enter the transaction(s) in question on T + 1.

3. At approximately 10:00 p.m., on T, ISCC will prepare the file for transmission to CEDEL by adding header/trailer records and Job Control Language to have the file recognized by the CEDEL/GEISCO network. The file is sent by ISCC via the GEISCO telecommunications network, using a dial-up modem in its mainframe, at about 11:00 p.m. on trade date. Upon successful transmission, ISCC will receive a confirmation on the total number of records sent during the connection process to GEISCO.

Included with this file will be data received from ISCC's Global Compass system. Participants will be able to instruct both deliveries/receives against payment, as well as free transactions and cash instructions relative to PORTAL accounts. The data received for PORTAL accounts will be checked by ISCC against the PORTAL Security masterfile for security eligibility, and then will be added to the data file bound for CEDEL.

GEISCO takes this data, reviews and edits it for valid data elements only (alpha/numeric, positional, certain logical and account number edits). If any transactions have been duplicated during the input process by the participant, ISCC, GEISCO and CEDEL will be unable to detect this. CEDEL's normal processing procedure is that deliver and receive instructions must match exactly in order for any one side of the instruction to settle. Therefore, any duplicated input will remain on the participant's report as "an open" item. It is the PORTAL participant's responsibility to identify these items and correct them (i.e., cancel them).

CEDEL will maintain these items on their records for approximately 45 business days. At about that time, CEDEL will notify the participant that they will automatically cancel these items unless otherwise instructed. The participant has the option to maintain the open instruction for another 15 business days. If these items remain unsettled after that time, CEDEL will then cancel them.

4. At approximately 1:30–2:00 a.m. on T + 1, ISCC will receive only the GEISCO/CEDEL rejected items identified during their edit process. All other items are deemed to be accepted by GEISCO for further CEDEL processing. The rejected items will be posted to the ISCC contract sheets that are forwarded to the participants via Global Compass. The NASD will be notified of the rejections via the MRO file forwarded by ISCC at approximately 5:00 a.m. to 6:00 a.m.

5. At approximately 11:00 p.m., on T, ISCC will prepare the DTC IID instructions file, and send it to DTC via its CPU TO CPU link. ISCC also utilizes the PORTAL Participant and Security masterfiles (received from the NASD) to create the IID transaction instructions.

The types of standing instruction data elements that ISCC will extract from the masterfiles are the DTC IID account numbers for all interested parties, i.e., Broker/Dealer, Global Custodian, the agent bank's name and location, and the security identification, description and ISIN number.

6. ISCC expects to receive any rejects from DTC within 2 to 3 hours after transmission of the information, i.e., 1:30 a.m.–2:00 a.m. on T + 1. The rejected items will be posted to the ISCC contract sheets that are forwarded to the participants via Global Compass. The NASD will be notified of the rejections via the MRO file forwarded by ISCC at approximately 5:00 a.m. to 6:00 a.m.

7. At approximately 2:00–3:00 p.m. on T + 1, ISCC expects to receive the results (reports) of CEDEL's processing cycle for that day. Included in this file will be the copy of the day's reports for the agent banks' PORTAL accounts. This file will be transmitted to ISCC via the GEISCO Network.

Each day, PORTAL participants will be able to download their CEDEL reports in print image format via the Global Compass System, using a dial-up modem. Participants will be able to print these reports locally, and they will be retained on the Global Compass System for 3 business days.

A machine readable copy of that file, and of the agent banks' file, will be forwarded daily, at approximately 4:00 p.m., to the NASD via its CPU to CPU link to ISCC.

8. ISCC will prepare contract sheets for accepted items that are forwarded to CEDEL and/or DTC for processing. These contract sheets will be forwarded to the participants via ISCC's PC-based Global Compass system. The PORTAL participants can download their contract file from ISCC's mainframe and print the contracts locally. The contracts are expected to be available to the PORTAL participants between 5:00 a.m. and 6:00 a.m. on T + 1.

All rejected items resulting from ISCC, GEISCO or DTC processing (including any items rejected by ISCC for non-PORTAL security eligibility) will also be posted to the contract sheets, with any information as to the reason of the reject that is available. The participant must enter the rejected transaction(s) as new transactions with the appropriate corrections on T + 1.

A machine readable copy of this file will be forwarded to the NASD via its CPU to CPU link to ISCC at the same time.

9. ISCC will retain copies of all input to ISCC from the Global Compass system, all direct input received from the PORTAL marketplace and copies of the reports received from CEDEL. These copies will be retained in microfiche form.

[FR Doc. 89–30253 Filed 12–28–89; 8:45 am]
BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Airport Capacity Funding Advisory Committee Meeting

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Airport Capacity Funding Advisory Committee Meeting.

SUMMARY: Notice is hereby given of the first meeting of the Airport Capacity Funding Advisory Committee.

DATE: The meeting will be held January 16, 1990, at 1 p.m.

ADDRESS: The meeting will be held at the MacCracken Room, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: The Office of Aviation Policy and Plans (APO), 800 Independence Avenue, SW., Washington, DC 20591, telephone 202–267–3296.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Airport Capacity

Funding Advisory Committee to be held January 16, 1990, in the MacCracken Room, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC.

The agenda for this meeting is as follows: A presentation of the Committee's scope and objectives, election of a chairperson, and formulation of the Committee's work program.

Attendance at the January 16 meeting is open to the interested public but limited to space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the Office of Aviation Policy and Plans (APO), 800 Independence Avenue, SW., Washington, DC 20591, telephone 202–267–3296.

Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, DC, on December 22, 1989.

Michael C. Moffet,

Associate Administrator for Policy, Planning, and International Aviation.

[FR Doc. 89–30246 Filed 12–28–89; 8:45 am]

BILLING CODE 4910–13–M

Coast Guard

[CGD 89–107]

Towing Safety Advisory Committee; Meeting of Subcommittees

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 all Subcommittees of the Towing Safety Advisory Committee (TSAC). The subcommittee meetings will be held from 1:30 to 4:00 p.m. on Wednesday, February 7, 1990, in the Sundance Room of the Marriott West Loop, 1700 West Loop South, Houston, Texas. The agenda for the meeting follows:

1. Call to Order
2. Discussion of the following topics: (a) Personnel Manning and Licensing, (b) Tug-Barge Construction, Certification and Operations, (c) Port Facilities and Operations, (d) Personnel Safety and Workplace Standards.
3. Presentation of any new items for consideration by the Subcommittees.
4. Adjournment.

Attendance is open to the public. 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 Second St., SW., Washington, DC 20593–0001, (202) 267–1483.

Dated: December 22, 1989.

M. J. Schiro,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89–30230 Filed 12–28–89; 8:45 am]

BILLING CODE 4910–14–M

[CGD 89–109]

National Offshore Safety Advisory Committee; Meeting

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 National Offshore Safety Advisory Committee (NOSAC). The meeting will be held on February 9, 1990, in the Zapata Gulf Marine Corp. Theatre, 31st floor, South Tower, 711 Louisiana St., Houston, Texas. The meeting is scheduled to run from 8:30 a.m. to 5:00 p.m. Attendance is open to the public. The agenda follows:

A. Subcommittee Reports

1. Subchapter W
2. Vessel Tonnage
3. MODU Code Revision
4. Drug Testing

B. Discussion of Coast Guard Issue Briefs

1. New 46 CFR Subchapter W, Lifesaving Equipment for Large Inspected Vessels, including MODUs and OSVs.
2. Implementation of the Emergency Evacuation Plan (EEP) Regulations for Manned Facilities.
3. Revision to 33 CFR Subchapter N, Regulations on Outer Continental Shelf (OCS) Activities.
4. Revision to 46 CFR Subchapter IA, MODU Regulations.
5. Tonnage Study—Use of Vessel Tonnage in U.S. Laws and Regulations.
6. MODU Licensing and Rulemaking.
7. Waiver of Citizenship Requirements for Crewmembers of OSVs Operating from Foreign Ports, and MODUs Opeating Beyond the U.S. Outer Continental Shelf (OCS).
8. OSVs, Including Liftboats.
9. Special Cargo Requirements for Benzene.
10. Air Quality/Marine Vapor Control.
11. Portable Tanks for the Transportation of Bulk Hazardous Materials by Vessel.
12. Drug testing Update.

C. Other Business

With advance notice, and at the discretion of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify the Executive Director of NOSAC no later than the day before the meeting. Written statements or materials may be submitted for presentation to the Committee at any time; however, to ensure distribution to each member of the committee, 20 copies of the written materials should be submitted to the Executive Director no later than 25 January 1990.

FOR FURTHER INFORMATION CONTACT: Gene Hammel, Exeuctive Director, National Offshore Safety Committee, U.S. Coast Guard Headquarters (G–MP–2), 2100 Second St., SW., Washington, DC 20593–0001, (202) 267–2280.

December 22, 1989.

M. J. Schiro,

Captian, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89–30202 Filed 12–28–89; 8:45 am]

BILLING CODE 4910–14–M

[CGD 89–108]

Towing Safety Advisory Committee; Meeting

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 Towing Safety Advisory Committee (TSAC). The meeting will be held on February 8, 1990, in the Sundance Room of the Marriott West Loop, 1700 West Loop South, Houston, Texas. The meeting is scheduled to run from 8:00 a.m. to 5:00 p.m. Attendance is open to the public. The agenda follows:

A. Sub-committee Reports

1. Personnel Manning and Licensing
2. Tug-Barge Construction, Certification and Operations
3. Port Facilities and Operations
4. Personnel Safety and Workplace Standards

B. Discussion of Coast Guard Issue Briefs

1. Special Area Status for the Gulf of Mexico under Annex V of MARPOL 73/78.
2. 49 CFR Part 40: DOT Drug Testing Procedures.
3. Regulations Implementing Annex V to MARPOL 73/78.
4. Hazardous Materials, Pollution Prevention and Regulation.
5. Air Quality/Marine Vapor Control.
6. Proposed Benzene Standard.
7. Intervals for Required Internal Examination and Hydrostatic Testing of Pressure Vessel Type Cargo Tanks on Barges.
8. Licensing of Pilots; Manning of Vessels—Pilots.
9. Proposed Tankerman Regulations.
10. Brightness of Masthead Lights on Tow Vessels Operating on the ICW.
11. Sidelight Vertical Sector Requirements for Unmanned Barges.
12. Sidelights on Inland Tugs.

C. Other Business Matters

With advance notice, and at the discretion of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify the Executive Director of TSAC no later than the day before the meeting. Written statements or materials may be submitted for presentation to the Committee at any time; however, to ensure distribution to each member of the Committee, 20 copies of the written material should be submitted to the Executive Director no later than 25 January 1990.

FOR FURTHER INFORMATION CONTACT: Gene Hammel, Executive Director, Towing Safety Advisory Committee, U.S. Coast Guard Headquarters (G-MP-2), 2100 Second St., SW., Washington, DC 20593-0001, (202) 267-2280.

Dated: December 22, 1989.

M.J. Schiro,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89-30203 Filed 12-28-89; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

[Docket No. 26101; Summary Notice No. PE-89-48]

Summary of Petition for Exemption Received from America West Airlines

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Notice of petition for exemption.

SUMMARY: Pursuant to the FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of a petition by America West Airlines for an exemption from the Federal Aviation Regulations in order to operate four flights at Washington National Airport above the hourly limits for scheduled air carriers specified in the High Density Rule. The purpose of this notice is to improve the public's awareness of this aspect of the FAA's regulatory activities. Neither the publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATE: Comments received on this petition must identify the petition docket number involved and be received on or before January 5, 1990.

ADDRESSES: Send comments on the petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket [AGC-10], Docket No. 26101, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: David L. Bennett, Office of the Chief Counsel, AGC-230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington DC 20591, (202) 267-3491.

SUPPLEMENTARY INFORMATION: The Petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket [AGC-10], Room 915, FAA Headquarters Building [FOB-10A], Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

Petitioner requested by letter dated December 8, 1989, permission to operate four flights at National Airport, as previously authorized for Braniff Airlines by exemption. Braniff Airlines recently ceased scheduled operations at National Airport and its exemption to operate four flights has been rescinded. The flights require an exemption from Federal Aviation Regulations (FAR) part 93, § 93.123(a), in that they are not conducted under any of the 37 slots per hour permanently allocated for air carrier operations at National Airport.

The FAA is treating the America West letter as a petition for rulemaking under FAR part 11, in order to obtain public comment on the petitioner's request.

Petitioner currently provides service at National Airport using six special temporary slots allocated by lottery in May 1989. These special slots will expire in January 1990, requiring that petitioner cease all such operations unless other authority for operation is obtained.

The FAA notes that Midwest Express Airlines, Inc., has requested by letter that the authorization for four flights formerly granted to Braniff be reallocated by the FAA by lottery, presumably as permanent slots. FAR Subpart S, § 93.225, provides for the allocation of available slots by lottery. The authorization granted to Braniff to operate four flights did not create four permanent slots subject to normal allocation rules. However, comments are invited on the Midwest Express request.

Comments are requested on an expedited basis in order to clarify the petitioner's situation at National Airport at the earliest practical time.

Issued in Washington, DC, on December 22, 1989.

David L. Bennett,

Acting Deputy Assistant Chief Counsel, Regulations and Enforcement Division.

[FR Doc. 89-30247 Filed 12-28-89; 8:45 am]

BILLING CODE 4910-13-M

Federal Railroad Administration

[FRA Docket 87-2, Notice No. 5]

Petition for Extension of Time Metro-North Commuter Railroad Co.; Public Hearing

The Metro-North Railroad Company has petitioned the Federal Railroad Administration (FRA) seeking approval of an extension of time, until December 31, 1992, for the installation of automatic train control systems on trains operating on a connecting line of the Northeast Corridor as set forth by the Federal Railroad Administration's Amended Final Orders published in the Federal Register on Wednesday, October 12, 1988 (53 FR 39834).

After examining the carrier's proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 10 a.m. on February 15, 1990, in Room 3305, Jacob K. Javits Federal Building at 26 Federal Plaza, in New York, New York.

The hearing will be an informal one and will be conducted in accordance with FRA Rules of Practice (49 CFR part

211) by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements by interested parties have been completed, those persons wishing to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC, on December 20, 1989.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 89-30280 Filed 12-28-89; 8:45 am]

BILLING CODE 4910-06-M

[FRA Docket 87-2, Notice No. 6]

Petition for Extension of Time New Jersey Transit; Public Hearing

New Jersey Transit has petitioned the Federal Railroad Administration (FRA) seeking approval of an extension of time, until July 1, 1990, for the installation of automatic train control systems on trains operating on the mainline of the Northeast Corridor as set forth by the Federal Railroad Administration's Amended Final Orders published in the **Federal Register** on Wednesday, October 12, 1988 (53 FR 39834).

After examining the carrier's proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 10 a.m. on February 14, 1990, in Room 3305, Jacob K. Javits Federal Building at 26 Federal Plaza, in New York, New York.

The hearing will be an informal one and will be conducted in accordance with FRA Rules of Practice (49 CFR part 211) by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements by interested parties have been completed, those persons wishing to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC, on December 20, 1989.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 89-30281 Filed 12-28-89; 8:45 am]

BILLING CODE 4910-06-M

[FRA Docket No. 87-2, Notice No. 7]

Southeastern Pennsylvania Transportation Authority; Public Hearing

The Southeastern Pennsylvania Transportation Authority has petitioned the Federal Railroad Administration (FRA) seeking approval of an extension of time, until July 1, 1990, for the installation of automatic train control systems on trains operating on or within track of the Northeast Corridor as set forth by the Federal Railroad Administration's Amended Final Orders published in the **Federal Register** on Wednesday, October 12, 1988 (53 FR 39834).

After examining the carrier's proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 10 a.m. on February 13, 1990, in Room 6306-10, William T. Green Federal Building at Sixth and Arch Streets, Philadelphia, Pennsylvania.

The hearing will be an informal one and will be conducted in accordance with FRA Rules of Practice (49 CFR part 211), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements by interested parties have been completed, those persons wishing to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC, on December 20, 1989.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 89-30282 Filed 12-28-89; 8:45 am]

BILLING CODE 4910-06-M

Urban Mass Transportation Administration

UMTA Sections 3 and 9 Grant Obligations

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation and Related Agencies Appropriations Act, 1990, Public Law 101-164, signed into law by President George Bush on November 21, 1989, contained a provision requiring the Urban Mass Transportation Administration to publish an announcement in the **Federal Register** every 30 days of grants obligated pursuant to sections 3 and 9 of the Urban Mass Transportation Act of 1964, as amended. The statute requires that the announcement include the grant number, the grant amount, and the transit property receiving each grant. This notice provides the information as required by statute.

FOR FURTHER INFORMATION CONTACT: Edward R. Fleischman, Director, Office of Capital and Formula Assistance, Department of Transportation, Urban Mass Transportation Administration, Office of Grants Management, 400 Seventh Street SW., Room 9305, Washington, DC 20590, (202) 366-2053.

SUPPLEMENTARY INFORMATION: The Section 3 program was established by the Urban Mass Transportation Act of 1964 to provide capital assistance to eligible recipients in urban areas. Funding for this program is distributed on a discretionary basis. The Section 9 formula program was established by the Surface Transportation Assistance Act of 1982. Funds appropriated to this program are allocated on a formula basis to provide capital and operating assistance in urbanized areas. Pursuant to the statute UMTA reports the following grant information:

SECTION 3 GRANTS

Transit property	Grant number	Grant amount	Date obligated
Massachusetts Bay Transportation Authority, Boston, MA	MA-03-0160	$27,123,000	11-13-89
Potomac and Rappahanock Transportation Commission, Prince William County, VA	VA-03-0042	1,117,461	11-14-89
Municipality of Metropolitan Seattle, Seattle, WA	WA-03-0064	218,812	11-30-89
Central New York Regional Transportation Authority, Syracuse, NY	NY-03-0251	1,252,250	12-6-89
Regional Transportation District, Denver, CO	CO-03-0043	36,566,250	12-6-89
New Jersey Department of Transportation, Newark, NJ	NJ-03-0082	1,989,999	12-7-89

Section 9 Grants

None.

Issued on December 20, 1989.

Brian W. Clymer,

Administrator.

[FR Doc. 89-30204 Filed 12-28-89; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

Fiscal Service

Renegotiation Board Interest Rate Prompt Payment Interest Rate Contracts Disputes Act

Although the Renegotiation Board is no longer in existence, other Federal Agencies are required to use interest rates computed under the criteria established by the Renegotiation Act of 1971 (Pub. L. 92-41). For example, the Contracts Disputes Act of 1978 (Pub. L. 95-563) and the Prompt Payment Act (Pub. L. 97-177) are required to calculate interest due on claims "* * * at a rate established by the Secretary of the Treasury pursuant to Public Law 92-41 (85 Stat. 97) for the Renegotiation Board."

Therefore, notice is hereby given that, pursuant to the above mentioned sections, the Secretary of the Treasury has determined that the rate of interest applicable for the purpose of said sections, for the period beginning January 1, 1990 and ending on June 30, 1990, is 8-½ per centum per annum.

Dated: December 26, 1989.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 89-30275 Filed 12-28-89; 8:45 am]

BILLING CODE 4810-35-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Monet in the '90s: The Series Paintings" (see list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Museum of Fine Arts in Boston, Massachusetts, beginning on or about February 7, 1990 to on or about April 29, 1990, and at The Art Institute of Chicago, from May 19, 1990 to on or about August 12, 1990, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: December 19, 1989.

Alberto J. Mora,

General Counsel.

[FR Doc. 89-30188 Filed 12-28-89; 8:45 am]

BILLING CODE 8230-01-M

[1] A copy of this list may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number 202/485-7978, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

Corrections

Federal Register
Vol. 54, No. 249
Friday, December 29, 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.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the United Mexican States

Correction

In notice document 89-29293 beginning on page 51446 in the issue of Friday, December 15, 1989, make the following correction:

On page 51447, in the 3rd column, under Category, the 13th and 14th lines should read "[10] 369-D" and "[11] 369-U" respectively.

BILLING CODE 1505-01-D

GENERAL ACCOUNTING OFFICE

4 CFR Part 31

Claims Against the United States; General Procedure

Correction

In rule document 89-29436 beginning on page 51867 in the issue of Tuesday, December 19, 1989, make the following correction:

On page 51867, in the second column, in the fifth and sixth lines, "W.S.C." should read "U.S.C."

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Final Determination That the San Juan Southern Paiute Tribe Exists as an Indian Tribe

Correction

In notice document 89-29260 beginning on page 51502 in the issue of Friday, December 15, 1989, make the following correction:

On page 51505, in the second column, in the eighth line, insert "must be served simultaneously to the petitioner. The petitioner" following "petitioner".

BILLING CODE 1505-01-D

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1221

NASA Seal and Other Devices, and the Congressional Space Medal of Honor

Correction

In rule document 89-18799 appearing on page 32963 in the issue of Friday, August 11, 1989, make the following correction:

§ 1221.113 [Corrected]

In the second column, in amendatory instruction 3, in the first line, "Section 1221.112" should read "Section 1221.113"; and in the section heading that follows "§ 1221.112" should read "§ 1221.113".

BILLING CODE 1505-01-D

federal register

Friday
December 29, 1989

Part II

Department of Energy

Office of Fossil Energy

Electric and Gas Utilities Covered in 1990 by Titles I and III of the Public Utility Regulatory Policies Act of 1978 and Requirements for State Regulatory Authorities To Notify DOE; Notice

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

[Docket No. FE-R-79-43B]

Electric and Gas Utilities Covered In 1990 by Titles I and III of the Public Utility Regulatory Policies Act of 1978 and Requirements for State Regulatory Authorities To Notify DOE

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice.

SUMMARY: Sections 102(c) and 301(d) of the Public Utility Regulatory Policies Act of 1978 (PURPA) require the Secretary of Energy to publish a list, before the beginning of each calendar year, identifying each electric utility and gas utility to which Titles I and III of PURPA apply during such calendar year. The 1990 list is published here as two separate tabulations. Appendix A lists the covered utilities by State and Appendix B lists them alphabetically.

Each State regulatory authority is required, pursuant to sections 102(c) and 301(d) of PURPA, to notify the Secretary of Energy of each electric utility and gas utility on the list for which such State regulatory authority has ratemaking authority. In addition, written comments are requested on the accuracy of the list of electric utilities and gas utilities.

DATE: Notifications by State regulatory authorities and written comments must be received by no later than 4:30 p.m. on February 15, 1990.

ADDRESS: Notifications and written comments should be forwarded to: Department of Energy, Office of Coal and Electricity, FE-50, 1000 Independence Avenue, SW., Room 3F-070, Docket No. FE-R-79-43B, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Steven Mintz, Office of Coal and Electricity, Fossil Energy, Department of Energy, 1000 Independence Avenue, SW., Room 3F-070, FE-52, Washington, DC 20585, Telephone 202/586-9506.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to sections 102(c) and 301(d) of PURPA, Pub. L. 95-617, 92 Stat. 3117 *et seq.* (16 U.S.C. 2601 *et seq.*), hereinafter referred to as the "Act," the Department of Energy (DOE) is required to publish a list of utilities to which titles I and III of PURPA apply in 1990.

State regulatory authorities are required by the Act cited above to notify the Secretary of Energy as to their ratemaking authority over the listed utilities. The inclusion or exclusion of any utility on or from the list does not affect the legal obligations of such utility or the responsible authority under the Act.

The term "State regulatory authority" means any State, including the District of Columbia and Puerto Rico, or a political subdivision thereof, and any agency or instrumentality, which has authority to fix, modify, approve or disapprove rates with respect to the sale of electric energy or natual gas by any utility (other than such State agency). In the case of a utility for which the Tennessee Valley Authority (TVA) has ratemaking authority, the term "State regulatory authority" means the TVA.

Title I of PURPA sets forth ratemaking and regulatory policy standards with respect to electric utilities. Section 102(c) of title I requires the Secretary of Energy to publish a list, before the beginning of each calendar year, identifying each electric utility to which Title I applies during such calendar year. An electric utility is defined as any person, State agency, or Federal agency that sells electric energy. An electric utility is covered by Title I for any calendar year if it had total sales of electric energy for purposes other than resale in excess of 500 million kilowatt-hours during any calendar year beginning after December 31, 1975, and before the immediately preceding calendar year. An electric utility is covered in 1990 if it exceeded the threshold in any year from 1976 through 1988.

Title III of PURPA addresses ratemaking and other regulatory policy standards with respect to natural gas utilities. Section 301(d) of title III requires the Secretary of Energy to publish a list, before the beginning of each calendar year, identifying each gas utility to which title III applies during such calendar year. A gas utility is defined as any person, State agency, or Federal agency, engaged in the local distribution of natural gas and the sale of natural gas to any ultimate consumer of natural gas. A gas utility is covered by title III if it had total sales of natural gas for purposes other than resale in excess of 10 billion cubic feet during any calendar year beginning after December 31, 1975, and before the immediately preceding calendar year. A gas utility is covered in 1990 if it exceeded the threshold in any year from 1976 through 1988.

In previous years, this notice also included a list of electric and gas utilities to which titles II and VII of the National Energy Conservation Policy Act (NECPA) applied. Title II, part 1, of NECPA Pub. L. 95-619 State. 3206 *et seq.*, (42 U.S.C. 8211 *et seq.*), addressed residential conservation service (RCS) programs, and Title VII of NECPA, enacted part of the Energy Security Act, Pub. L. 96-294, 94 Stat. 611 *et seq.* (42 U.S.C. 8701 *et seq.*), and amended by Pub. L. 99-412, 100 Stat. 932 *et seq.*, addressed commercial building and multi-family dwelling conservation programs. Section 211(b) contained a requirement, similar to that of PURPA, that the Secretary of Energy publish a list of electric and gas utilities to which titles II and VII apply. Section 228 of NECPA provides for DOE's authority to carry out the RCS program to expire at midnight June 30, 1989. Therefore, DOE will no longer publish the list of utilities covered by the provisions of NECPA.

In compiling the list published today, the DOE revised the 1989 list (53 FR 52956, December 29, 1988) upon the assumption that all entities included on the 1989 list are properly included on the 1990 list unless the DOE has information to the contrary. In doing this, the DOE took into account information included in public documents regarding entities which exceeded the PURPA thresholds for the first time in 1988. The DOE believes that it will become aware of any errors or omissions in the list published today by means of the comment process called for by this Notice. The DOE will, after consideration of any comment and other information available to the DOE, provide written notice of any further additions or deletions to the list.

II. Notification and Comment Procedures

No later than 4:30 p.m. on February 15, 1990, each State regulatory authority must notify the Department of Energy in writing of each utility on the list over which it has ratemaking authority. Five copies of such notification should be submitted to the address indicated in the "ADDRESS" section of this Notice and should be identified on the outside of the envelope and on the document with the designation "Docket No. FE-R-79-43B." Such notification should include:

1. A complete list of electric utilities and gas utilities over which the State regulatory authority has ratemaking authority;

2. Legal citations pertaining to the ratemaking authority of the State regulatory authority; and

3. For any listed utility known to be subject to other ratemaking authorities within the State for portions of its service area, a precise description of the portion to which such notification applies.

All interested persons, including State regulatory authorities, are invited to

comment in writing, no later than 4:30 p.m. on February 15, 1990, on any errors or omissions with respect to the list. Five copies of such comments should be sent to the address indicated in the "ADDRESS" section of this Notice and should be identified on the outside of the envelope and on the document with the designation "Docket No. FE–R–79–43B." Written comments should include the commenter's name, address and telephone number.

All notifications and comments received by the DOE will be made available, upon request, for public inspection in the Freedom of Information Reading Room, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday.

III. List of Electric Utilities and Gas Utilities

Appendices A and B contain two different tabulations of the utilities that meet PURPA coverage requirements. As stated above, the inclusion or exclusion of any utility on or from the lists does not affect its legal obligations or those of the responsible State regulatory authority under PURPA.

Appendix A contains a list of utilities which are covered by PURPA. These utilities are grouped by State and by the regulatory authority within each State. Also included in this list are utilities which are covered by PURPA but which are not regulated by the State regulatory authority. This tabulation, including explanatory notes, is based on information provided to the DOE by State regulatory authorities in response to the December 29, 1988, **Federal Register** notice (53 FR 52957) requiring each State regulatory authority to notify the DOE of each utility on the list over which it has ratemaking authority, public comments received with respect to that notice, and information subsequently made available to the DOE.

The utilities classified in Appendix A as not regulated by the State regulatory authority in fact may be regulated by local municipal authorities. These municipal authorities would be State agencies as defined by PURPA and thus have responsibilities under PURPA identical to those of the State regulatory authority. Therefore, each such municipality is to notify the DOE of each utility on the list over which it has ratemaking authority.

In Appendix B, the utilities are listed alphabetically, subdivided into electric utilites and gas utilities, and further subdivided by type of ownership: investor-owned utilities, publicly-owned utilities, and rural cooperatives.

The changes to the 1989 list of electric and gas utilities are as follows:

Modifications:

CHANGE—Energas Company (TX) to Atmos Energy Corporation (TX)

Erroneously Listed in 1989 List:

CP National Corporation (OR)

(Public Utility Regulatory Policies Act of 1978, Pub. L. 95–617, 92 Stat. 3117 *et seq.* (16 U.S.C. 2601 *et seq.*); National Energy Conservation Policy Act, Pub. L. 95–619, 92 Stat. 3206 *et seq.*, as amended by Pub. L. 96–294, 94 Stat. 611 *et seq.*, and Pub. L. 99–412, 100 Stat. 932 *et seq.* (42 U.S.C. 8211 *et seq.*))

Issued in Washington, DC on December 21, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

Appendix A

All gas utilities listed below had natural gas sales, for purposes other than resale, in excess of 10 billion cubic feet in any year from 1976–1988.

All electric utilities listed below had electric energy sales, for purposes other than resale, in excess of 500 million kilowatt-hours in any year from 1976–1988.

State: Alabama

Regulatory Authority: Alabama Public Service Commission.

Gas Utilities

Investor-Owned:
- Alabama Gas Corporation
- Alabama-Tennessee Natural Gas Company
- Mobile Gas Service Corporation
- Northwest Alabama Gas Dist.

Electric Utilities

Investor-Owned:
- Alabama Power Company

The following covered utilities within the State of Alabama are not regulated by the Alabama Public Service Commission:

Electric Utilities

Investor-Owned:
- Decatur Electric Dpeartment
- Dothan Electric Department
- Florence Electric Department
- Huntsville Utilities

Rural Electric Cooperatives:
- Joe Wheeler Electric Membership Corporation
- Rural Elecric System

State: Alaska

Regulatory Authority: Alaska Public Utilities Commission.

Gas Utilities

Investor-Owned:
- Enstar Natural Gas Company

Electric Utilities

Rural Electric Cooperatives:
- Chugach Electric Association

Publicly-Owned:
- Anchorage Municipal Light & Power Department

State: Arizona

Regulatory Authority: Arizona Corporation Commission.

Gas Utilities

Investor-Owned:
- Southern Union Gas Company
- Southwest Gas Corporation

Electric Utilities

Investor-Owned:
- Arizona Public Service Company
- Tucson Electric Power Company

Publicly-Owned:
- Trico Electric Cooperative, Inc.

Rural Electric Cooperative:
- Duncan Valley Electric Cooperative, Inc.

The following covered utilities within the State of Arizona are not regulated by the Arizona Corporation Commission:

Electric Utilities

Publicly-Owned:
- Salt River Project Agricultural Improvement and Power District

State: Arkansas

Regulatory Authority: Arkansas Public Service Commission.

Gas Utilities

Investor-Owned:
- Arkansas-Louisiana Gas Company
- Arkansas-Oklahoma Gas Corporation
- Arkansas Western Gas Company
- Associated Natural Gas Company

Electric Utilities

Investor-Owned:
- Arkansas Power and Light Company
- Empire District Electric Company
- Oklahoma Gas And Electric Company
- Southwestern Electric Power Company

Rural Electric Cooperative:
- First Electric Cooperative Corporation

The following covered utility within the State of Arkansas is not regulated by the Arkansas Public Service Commission:

Publicly-Owned:
- North Little Rock Electric Department

State: California

Regulatory Authority: California Public Utilities Commission.

Gas Utilities

Investor-Owned:
Pacific Gas and Electric Company
San Diego Gas and Electric Company
Southern California Gas Company
Southwest Gas Corporation

Electric Utilities

Investor-Owned:
Pacific Gas and Electric Company
Pacific Power and Light Company
San Diego Gas and Electric Company
Sierra Pacific Power Company
Southern California Edison Company
The following covered utilities within the State of California are not regulated by the California Public Utilities Commission:

Electric Utilities

Publicly-Owned:
Anaheim Public Utilities Department
Burbank Public Service Department
Glendale Public Service Department
Imperial Irrigation District
Los Angeles Department of Water and Power
Modesto Irrigation District
Palo Alto Electric Utility
Pasadena Water and Power Department
Riverside Public Utilities
Sacramento Municipal Utility District
Santa Clara Electric Department
Turlock Irrigation District
Vernon Municipal Light Department

Gas Utilities

Publicly-Owned:
Long Beach Gas Department

State: Colorado

Regulatory Authority: Colorado Public Utilities Commission.

Gas Utilities

Investor-Owned:

Greeley Gas Company
Iowa Electric Light and Power Company
Kansas-Nebraska Natural Gas Company
Peoples Natural Gas Company, Division of Internorth, Inc.
Public Service Company of Colorado
Publicly-Owned:
Colorado Springs Department of Utilities (Jurisdiction only sales to another gas utility)

Electric Utilities

Investor-Owned:

Public Service Company of Colorado
Southern Colorado Power Division of Centel
The following covered utilities within the State of Colorado are not regulated by the Colorado Public Utilities Commission:

Gas Utilities

Publicly-Owned:
Colorado Springs Department of Utilities (except sales to another gas utility)

Electric Utilities

Publicly-Owned:
Colorado Springs Department of Utilities
Rural Electric Cooperatives:
Intermountain Rural Association
Moon Lake Electric Association

State: Connecticut

Regulatory Authority: Connecticut Department of Public Utility Control.

Gas Utilities

Investor-Owned:
Connecticut Light and Power Company
Connecticut Natural Gas Corporation
Southern Connecticut Gas Company

Electric Utilities

Investor-Owned:
Connecticut Light and Power Company
United Illuminating Company
Publicly-Owned:
Groton Public Utilities

State: Delaware

Regulatory Authority: Delaware Public Service Commission

Gas Utilities

Investor-Owned:
Delmarva Power and Light Company

Electric Utilities

Investor-Owned:
Delmarva Power and Light Company

State: District of Columbia

Regulatory Authority: Public Service Commission of the District of Columbia

Gas Utilities

Investor-Owned:
Washington Gas Light Company

Electric Utilities

Investor-Owned:
Potomac Electric Power Company

State: Florida

Regulatory Authority: Florida Public Service Commission.

Gas Utilities

Investor-Owned:
City Gas Company of Florida
Peoples Gas System

Electric Utilities

Investor-Owned:
Florida Power Corporation
Florida Power and Light Company
Gulf Power Company
Tampa Electric Company
Publicly-Owned: The Florida Public Service Commission has rate structure jurisdiction over the following utilities—
Gainesville Regional Utilities
Jacksonville Electric Authority
Lakeland Department of Electric and Water
Ocala Electric Authority
Orlando Utilities Commission
Tallahassee, City of
Rural Electric Cooperative: The Florida Public Service Commission has rate structure jurisdiction over the following utilities—
Clay Electric Cooperative
Lee County Electric Cooperative
Sumter Electric Cooperative, Inc.
Withlacoochee River Electric Cooperative

State: Georgia

Regulatory Authority: Georgia Public Service Commission.

Gas Utilities

Investor-Owned:
Atlanta Gas Light Company

Electric Utilities

Investor-Owned:
Georgia Power Company
Savannah Electric and Power Company
The following utilities within the State of Georgia are not regulated by the Georgia Public Service Commission.

Electric Utilities

Publicly-Owned:
Albany Water, Gas & Light Commission
Dalton Water, Light & Sink
Rural Electric Cooperatives:
Douglas County Electric Membership Corporation
Cobb Electric Membership Corporation
Flint Electric Membership Corporation
Jackson Electric Membership Corporation
North Georgia Electric Membership Corporation
Swanee Electric Membership Corporation
Walton Electric Membership Corporation

State: Hawaii

Regulatory Authority: Hawaii Public Utilities Commission.

Gas Utilities

None.

Electric Utilities

Investor-Owned:
Hawaiian Electric Company, Inc.

State: Idaho

Regulatory Authority: Idaho Public Utilities Commission.

Gas Utilities

Investor-Owned:
Intermountain Gas Company
Washington Water Power Company

Electric Utilities

Investor-Owned:
Idaho Power Company
Pacific Power and Light Company
Utah Power and Light Company
Washington Water Power Company

State: Illinois

Regulatory Authority: Illinois Commerce Commission.

Gas Utilities

Investor-Owned:
Central Illinois Light Company
Central Illinois Public Service Company
Illinois Power Company
Iowa-Illinois Gas and Electric Company
North Shore Gas Company
Northern Illinois Gas Company
Panhandle Eastern Pipeline Company
Peoples Gas, Light and Coke Company

Electric Utilities

Investor-Owned:
Central Illinois Light Company
Central Illinois Public Service Company
Commonwealth Edison Company
Illinois Power Company
Interstate Power Company
Iowa-Illinois Gas and Electric Company
Union Electric Company

The following covered utility within the State of Illinois is not regulated by the Illinois Commerce Commission:

Electric Utilities

Publicly-Owned:
Springfield Water, Light and Power Department

State: Indiana

Regulatory Authority: Indiana Public Service Commission.

Gas Utilities

Investor-Owned:
Indiana Gas Company
Northern Indiana Public Service Company
Southern Indiana Gas and Electric Company
Terre Haute Gas Corporation
Publicly-Owned:
Citizens Gas and Coke Utility

Electric Utilities

Investor-Owned:
Indiana and Michigan Power Company
Indianapolis Power and Light Company
Northern Indiana Public Service Company
Public Service Company of Indiana
Southern Indiana Gas and Electric Company
Publicly-Owned:
Richmond Power and Light

State: Iowa

Regulatory Authority: Iowa Commerce Commission.

Gas Utilities

Investor-Owned:
Interstate Power Company
Iowa Electric Light and Power Company
Iowa-Illinois Gas and Electric Company
Iowa Power and Light Company
Iowa Public Service Company
Iowa Southern Utilities Company
Peoples Natural Gas Company, Division of Internorth, Inc.

Electric Utilities

Investor-Owned:
Interstate Power Company
Iowa Electric Light and Power Company
Iowa-Illinois Gas and Electric Company
Iowa Power and Light Company
Iowa Public Service Company
Iowa Southern Utilities Company
Union Electric Company
Publicly-Owned: The Iowa Commerce Commission has service and safety regulation over the following utilities—
Muscatine Power and Water
Omaha Public Power District

State: Kansas

Regulatory Authority: Kansas State Corporation Commission.

Gas Utilities

Investor-Owned:
Anadarko Production Company
Arkansas-Louisiana Gas Company
Gas Service Company
Greeley Gas Company
Kansas-Nebraska Natural Gas Company
Kansas Power and Light Company
Panhandle Eastern Pipeline Company
Peoples Natural Gas Company, Division of Internorth, Inc.
Union Gas System Inc.

Electric Utilities

Investor-Owned:
Empire District Electric Company
Kansas City Power and Light Company
Kansas Gas and Electric Company
Kansas Power and Electric Company
Southwestern Public Service Company
Western Power Division of Centel
Rural Electric Cooperatives:
Midwest Energy Incorporated

The following covered utility within the State of Kansas is not regulated by the Kansas State Corporation Commission:

Electric Utilities

Publicly-Owned:
Kansas City Board of Public Utilities

State: Kentucky

Regulatory Authority: Kentucky Energy Regulatory Commission.

Gas Utilities

Investor-Owned:
Columbia Gas of Kentucky, Inc.
Louisville Gas and Electric Company
Union Light, Heat and Power Company
Western Kentucky Gas Company

Electric Utilities

Investor-Owned:
Kentucky Power Company
Kentucky Utilities Company
Louisville Gas and Electric Company
Union Light, Heat and Power Company
Rural Electric Cooperatives:
Green River Electric Corporation
Henderson-Union Rural Electric Cooperative Corporation

The following covered utilities within the State of Kentucky are not regulated by the Kentucky Energy Regulatory Commission:
Bowling Green Municipal Utilities
Owensboro Municipal Utilities
Pennyrile Rural Electric Cooperative Corporation
Warren Rural Electric Cooperative Corporation
West Kentucky Rural Electric Cooperative Corporation

State: Louisiana

Regulatory Authority: Louisiana Public Service Commission.

Gas Utilities

Investor-Owned:
Arkansas-Louisiana Gas Company
Entex, Inc.
Gulf States Utilities Company

Louisiana Gas Service Company
New Orleans Public Service, Inc. (East and West Bank)
Trans Louisiana Gas Company

Electric Utilities

Investor-Owned:
Arkansas Power and Light
Central Louisiana Electric Company
Gulf States Utilities Company
Louisiana Power and Light Company (West Bank)
New Orleans Public Service, Inc. (East Bank)
Southwestern Electric Power Company
Rural Electric Cooperatives:
Dixie Electric Membership Corporation

The following covered utilities within the State of Louisiana are not regulated by the Louisiana Public Service Commission:

Electric Utilities

Publicly-Owned:
Lafayette Utilities System
Rural Electric Cooperatives:
Southwest Louisiana Electric Membership Corporation

State: Maine

Regulatory Authority: Maine Public Utilities Commission.

Gas Utilities

None.

Electric Utilities

Investor-Owned:
Bangor Hydro-Electric Company
Central-Maine Power Company

State: Maryland

Reglatory Authority: Maryland Public Service Commission.

Gas Utilities

Investor-Owned:
Baltimore Gas and Electric Company
Washington Gas Light Company

Electric Utilities

Investor-Owned:
Baltimore Gas and Electric Company
Conowingo Power Company
Delmarva Power and Light Company of Maryland
Potomac Edison Company
Potomac Electric Power Company
Rural Electric Cooperatives:
Southern Maryland Electric Cooperative, Inc.

State: Massachusetts

Regulatory Authority: Massachusetts Department of Public Utilities.

Gas Utilities

Investor-Owned:
Bay State Gas Company
Boston Gas Company
Colonial Gas Energy System
Commonwealth Gas Company
Lowell Gas Company

Electric Utilities

Investor-Owned:
Boston Edison Company
Cambridge Electric Light Company
Commonwealth Electric Company
Eastern Edison Company
Massachusetts Electric Company
Western Massachusetts Electric Company

State: Michigan

Regulatory Authority: Michigan Public Service Commission.

Gas Utilities

Investor-Owned:
Consumers Power Company
Michigan Consolidated Gas Company
Michigan Gas Utilities Company
Michigan Power Company
Southeastern Michigan Gas Company
Wisconsin Public Service Corporation

Electric Utilities

Investor-Owned:
Consumers Power Company
Detroit Edison Company
Indiana and Michigan Electric Company
Lake Superior District Power Company
Michigan Power Company
Upper Peninsula Power Company
Wisconsin Electric Power Company
Wisconsin Public Service Corporation

The following covered utilities within the State of Michigan are not regulated by the Michigan Public Service Commission:

Gas Utilites

Investor-Owned:
Battle Creek Gas Company

Electric Utilities

Publicly-Owned:
Lansing Board of Water and Light

State: Minnesota

Regulatory Authority: Minnesota Public Utility Commission.

Gas Utilities

Investor-Owned:
Interstate Power Company
Iowa Electric Light and Power Company
Minnegasco, Inc.
Northern Minnesota Utilities—Division of UtiliCorp United, Inc.
Northern States Power Company
Peoples Natural Gas Company—Division of UtiliCorp United, Inc.

Electric Utilities

Investor-Owned:
Interstate Power Company
Minnesota Power and Light Company
Northern States Power Company
Otter Tail Power Company
Rural Electric Cooperative:
Dakota Electric Association

The following covered utilities within the State of Minnesota are not regulated by the Minnesota Public Service Commission:

Electric Utilities

Publicly-Owned:
Rochester Department of Public Utilities
Rural Electric Cooperatives:
Anoka Electric Cooperative

State: Mississippi

Regulatory Authority: Mississippi Public Service Commission.

Gas Utilities

Investor-Owned:
Entex, Incl.
Mississippi Valley Gas Company

Electric Utilities

Investor-Owned:
Mississippi Power and Light Company
Mississippi Power Company

The following covered utilities within the State of Mississippi are not regulated by the Mississippi Public Service Commission.

Electric Utilities

Rural Electric Cooperatives:
Alcorn County Electric Power Association
Coast Electric Power Association
4-County Electric Power Association
Singing River Electric Power Association
Southern Pine Electric Power Association
Tombigbee Electric Power Association

State: Missouri

Regulatory Authority: Missouri Public Service Commission.

Gas Utilities

Investor-Owned:
Associated Natural Gas Company
Gas Service Company
Laclede Gas Company Consolidated
Missouri Public Service Company
Peoples Natural Gas Company Division of Inter-North, Inc.

Electric Utilities

Investor-Owned:
Empire District Electric Company
Kansas City Power and Light Company

Missouri Public Service Company
St. Joseph Light and Power Company
Union Electric Company

The following covered utilities within the State of Missouri are not regulated by Missouri Public Service Commission:

Gas Utilities

Investor-Owned:
Cities Service Gas Company
Publicly-Owned:
Springfield City Utilities

Electric Utilities

Publicly-Owned:
Independence Power and Light Department
Springfield City Utilities

State: Montana

Regulatory Authority: Montana Public Service Commission.

Gas Facilities

Investor-Owned:
Montana-Dakota Utilities Company
Montana Power Company

Electric Utilities

Investor-Owned:
Black Hills Power and Light Company
Montana-Dakota Utilities Company
Montana Power Company
Pacific Power and Light Company
Washington Water Power Company

State: Nebraska

Regulatory Authority-Nebraska Public Service Commission.

The Commission does not regulate the rates and service of the gas and electric utilities of the State of Nebraska.

The following covered utilities within the State of Nebraska are not regulated by the Nebraska Public Service Commission.

Electric Utilities

Publicly-Owned:
Lincoln Electric System
Nebraska Public Power District
Omaha Public Power District

Gas Utilities

Investor-Owned:
Gas Service Company
Iowa Electric Light and Power Company
Iowa Public Service Company
KN Energy, Inc.
Minnegasco, Inc.
Northwestern Public Service Company.
Peoples Natural Gas Company Division of Internorth, Inc.

The governing body of each Nebraska municipality exercises ratemaking jurisdiction over gas utility rates, operations and services provided by a gas utility within its city or town limits. These municipal authorities would be State agencies as defined by PURPA, and thus have responsibilities under PURPA identical to those of the State regulatory authority.

Publicly-Owned:
Metropolitan Utilities District of Omaha

State: Nevada

Regulatory Authority: Nevada Public Service Commission.

Gas Utilities

Investor-Owned:
Southwest Gas Corporation

Electric Utilities

Investor-Owned:
Idaho Power Company
Nevada Power Company
Sierra Pacific Power Company

State: New Hampshire

Regulatory Authority: New Hampshire Public Utilities Commission.

Electric Utilities

Investor-Owned:
Public Service Company of New Hampshire
Rural Electric Cooperatives:
New Hampshire Electric Cooperative, Inc.

State: New Jersey

Regulatory Authority: New Jersey Department of Energy Board of Public Utilities.

Gas Utilities

Investor-Owned:
Elizabethtown Gas Company
New Jersey Natural Gas Company
Public Service Electric and Gas Company
South Jersey Gas Company

Electric Utilities

Investor-Owned:
Atlantic City Electric Company
Jersey Central Power and Light Company
Public Service Electric and Gas Company
Rockland Electric Company

State: New Mexico

Regulatory Authority: New Mexico Public Service Commission.

Gas Utilities

Gas Company of New Mexico

Electric Utilities

Investor-Owned:
El Paso Electric Company
Public Service Company of New Mexico
Southwestern Public Service Company
Texas-New Mexico Power Company
Rural Electric Cooperative:
Duncan Valley Electric Cooperative, Inc.
Lea County Electric Cooperative, Inc.

State: New York

Regulatory Authority: New York Public Service Commission.

Gas Utilities

Investor-Owned:
Brooklyn Union Gas Company
Columbia Gas of New York, Inc.
Consolidated Edison Company of New York, Inc.
Long Island Lighting Company
National Fuel Gas Distribution Corporation
New York State Electric and Gas Corporation
Niagara Mohawk Power Corporation
Orange and Rockland Utilities
Rochester Gas and Electric Corporation

Electric Utilities

Investor-Owned:
Central Hudson Gas and Electric Corporation
Consolidated Edison Company of New York
Long Island Lighting Company
New York State Electric and Gas Corporation
Niagara Mohawk Power Corporation
Orange and Rockland Utilities
Rochester Gas and Electric Corporation

The following covered utility within the State of New York is not regulated by the New York Public Service Commission:

Electric Utilities

Publicly-Owned:
Power Authority of New York

State: North Carolina

Regulatory Authority: North Carolina Utilities Commission.

Gas Utilities

Investor-Owned:
North Carolina Natural Gas Corporation
Piedmont Natural Gas Company
Public Service Company, Inc. of North Carolina

Electric Utilities

Investor-Owned:
Carolina Power and Light Company
Duke Power Company
Nantahala Power & Light Company
Virginia Electric and Power Company

The following covered utilities within the State of North Carolina are not regulated by the North Carolina Utilities Commission:

Electric Utilities

Publicly-Owned:
Fayetteville Public Works Commission
Greenville Utilities Commission
High Point Electric Utility Department
Rocky Mount Public Utilities
Wilson Utilities Department
Rural Electric Cooperatives:
Blue Ridge Electric Membership Corp.
Rutherford Electric Membership Corporation

State: North Dakota

Regulatory Authority: North Dakota Public Service Commission.

Gas Utilities

Investor-Owned:
Montana Dakota Utilities Company
Northern States Power Company

Electric Utilities

Investor-Owned:
Montana Dakota Utilities Company
Northern State Power Company
Otter Tail Power Company

State: Ohio

Regulatory Authority: Ohio Public Utilities Commission.

Gas Utilities

Investor-Owned:
Cincinnati Gas and Electric Company
Columbia Gas of Ohio, Inc.
Dayton Power and Light Company
East Ohio Gas Company
National Gas and Oil Company
West Ohio Gas Company

Electric Utilities

Investor-Owned:
Cincinnati Gas and Electric Company
Cleveland Electric Illuminating Company
Columbus and Southern Ohio Electric Company
Dayton Power and Light Company
Monongahela Power Company
Ohio Edison Company
Ohio Power Company
Toledo Edison Company

The following covered utilities within the State of Ohio are not regulated by the Ohio Public Utilities Commission:

Electric Utilities

Publicly-Owned:
Cleveland Division of Light and Power
Rural Electric Cooperative:
Southern Central Power Company

State: Oklahoma

Regulatory Authority: Oklahoma Corporation Commission

Gas Utilities

Investor-Owned:
Arkansas-Louisiana Gas Company
Arkansas-Oklahoma Gas Corporation
Gas Service Company
Lone Star Gas Company
Oklahoma Natural Gas Company
Southern Union Gas Company
Union Gas System Inc.

Electric Utilities

Investor-Owned:
Empire District Electric Company
Oklahoma Gas and Electric Company
Public Service Company of Oklahoma
Southwestern Public Service Company
Rural Electric Cooperative:
Cotton Electric Cooperative

Gas Utilities

Investor-Owned:
Cities Service Gas Company

State: Oregon

Regulatory Authority: Public Utility Commissioner of Oregon.

Gas Utilities

Investor-Owned:
Cascade Natural Gas Corporation
Northwest Natural Gas Company

Electric Utilities

Investor-Owned:
Idaho Power Company
Pacific Power and Light Company
Portland General Electric Company

The following covered utilities within the State of Oregon are not regulated by the Public Utility Commissioner of Oregon:

Electric Utilities

Publicly-Owned:
Central Lincoln People's Utility District
Clatskanie People's Utility District
Eugene Water and Electric Board
Springfield Utility Board
Rural Electric Cooperatives: Utility
Umatilla Electric Cooperative Association

State: Pennsylvania

Regulatory Authority: Pennsylvania Public Utility Commission.

Gas Utilities

Investor-Owned:
Carnegie Natural Gas Company
Columbia Gas of Pennsylvania, Inc.
Equitable Gas Company
National Fuel Gas Distribution Corporation
North Penn Gas Company
Pennsylvania Gas and Water Company
Peoples Natural Gas Company
Philadelphia Electric Company
T.W. Phillips Gas and Oil Company
UGI Corporation

Electric Utilities

Investor-Owned:
Duquesne Light Company
Metropolitan Edison Company
Pennsylvania Electric Company
Pennsylvania Power Company
Pennsylvania Power and Light Company
Philadelphia Electric Company
UGI—Luzerne Electric Company
West Penn Power Company

The following covered utility within the State of Pennsylvania is not regulated by the Pennsylvania Public Utility Commission:

Gas Utilities

Publicly-Owned:
Philadelphia Gas Works

State: Puerto Rico

Regulatory Authority: Puerto Rico Public Service Commission.

Gas Utilities

None.

Electric Utilities

None.

The following covered utility within Puerto Rico is not regulated by the Puerto Rico Public Service Commission:

Electric Utilities

Publicly-Owned:
Puerto Rico Electric Power Authority

State: Rhode Island

Regulatory Authority: Rhode Island Public Utilities Commission.

Gas Utilities

Investor-Owned:
Providence Gas Company

Electric Utilities

Investor-Owned
Blackstone Valley Electric Company
Narragansett Electric Company

State: South Carolina

Regulatory Authority: South Carolina Public Service Commission.

Gas Utilities

Investor-Owned:
Carolina Pipeline Company
Piedmont Natural Gas Company
South Carolina Electric and Gas Company

Electric Utilities

Investor-Owned:
Carolina Power and Light Company
Duke Power Company
South Carolina Electric and Gas Company

The following covered utilities within the State of South Carolina are not regulated by the South Carolina Public Service Commission:

Electric Utilities

Publicly-Owned:
South Carolina Public Service Authority
Rural Electric Cooperatives:
Berkeley Electric Cooperatives, Inc.
Palmetto Electric Cooperative, Inc.

State: South Dakota

Regulatory Authority: South Dakota Public Utilities Commission.

Gas Utilities

Investor-Owned:
Iowa Public Service Company
Minnegasco, Inc.
Montana-Dakota Utilities Company
Northwestern Public Service Company

Electric Utilities

Investor-Owned:
Black Hills Power and Light Company
Iowa Public Service Company
Montana-Dakota Utilities Company
Northern States Power Company
Northwestern Public Service Company
Otter Tail Power Company

The following covered utility within the State of South Dakota is not regulated by the South Dakota Public Service Commission:

Electric Utilities

Publicly-Owned:
Nebraska Public Power District

State: Tennessee

Regulatory Authority: Tennessee Public Service Commission.

Gas Utilities

Investor-Owned:
Chattanooga Gas Company
Nashville Gas Company

Electric Utilities

Investor-Owned:
Kingsport Power Company

The following covered utilities within the State of Tennessee are not regulated by the Tennessee Public Service Commission:

Electric Utilities

Publicly-Owned:
Bristol Tennessee Electric System
Chattanooga Electric Power Board
Clarksville Department of Electricity
Cleveland Utilities
Greeneville Light and Power System
Jackson Utility Division—Electric Department
Johnson City Power Board
Knoxville Utilities Board
Lenoir City Utilities Board
Memphis Light Gas and Water Division
Murfreesboro Electric Department
Nashville Electric Service
Sevier County Electric System
Rural Electric Cooperatives:
Appalachian Electric Cooperative
Cumberland Electric Membership Corporation
Duck River Electric Membership Cooperative
Gibson County Electric Membership Corporation
Meriwether Lewis Electric Cooperative
Middle Tennessee Electric Membership Corporation
Southwest Tennessee Electric Membership Corporation
Tri-County Electric Membership Corporation
Upper Cumberland Electric Membership Corporation
Volunteer Electric Cooperative

Gas Utilities

Publicly-Owned:
Memphis Light, Gas and Water Division

State: Tennessee

Regulatory Authority: Tennessee Valley Authority.

Gas Utilities

None.

Electric Utilities

Publicly-Owned:
Bowling Green Municipal Utilities
Bristol Tennessee Electric System
Chattanooga Electric Power Board
Clarksville Department of Electricity
Cleveland Utilities
Decatur Electric Department
Florence Electric Department
Greeneville Light and Power System
Huntsville Utilities
Jackson Utility Division—Electric Department
Johnson City Power Board
Knoxville Utilities Board
Lenoir City Utilities Board
Memphis Light, Gas and Water Division
Murfreesboro Electric Department
Nashville Electric Service
Sevier County Electric System
Rural Electric Cooperatives:
Alcorn County Electric Power Association
Appalachian Electric Cooperative
Cumberland Electric Membership Corporation
Duck River Electric Membership Corporation
4-County Electric Power Association
Gibson County Electric Membership Corporation
Joe Wheeler Electric Membership Corporation
Meriwether Lewis Electric Cooperative
Middle Tennessee Electric Membership Corporation
North Georgia Electric Membership Corporation
Pennyrile Rural Electric Cooperative Corporation
Southwest Tennessee Electric Membership Corporation
Tombigbee Electric Power Association
Tri-County Electric Membership Corporation
Upper Cumberland Electric Membership Corporation
Volunteer Electric Cooperative
Warren Rural Electric Cooperative Corporation
West Kentucky Rural Electric Cooperative Corporation

State: Texas

Regulatory Authority: Texas Public Utility Commission.

Gas Utilities

Investor-Owned:
None.

Electric Utilities

Investor-Owned:
Central Power and Light Company
El Paso Electric Company
Gulf States Utilities Company
Houston Lighting and Power Company
Southwestern Electric Power Company
Southwestern Electric Service Company
Southwestern Public Service Company
Texas-New Mexico Power Company
Texas Utilities Electric Company
West Texas Utilities Company
Publicly-Owned:
Lower Colorado River Authority
Rural Electric Cooperatives:
Bluebonnet Electric Cooperative, Inc.
Guadalupe Valley Electric Cooperative, Inc.
Pedernales Electric Cooperative, Inc.
Sam Houston Electric Cooperative, Inc.

The governing body of each Texas municipality exercises exclusive original jurisdiction over electric utility rates,

operations and services provided by an electric utility (whether privately owned or publicly owned), within its city or town limits, unless the municipality has surrendered this jurisdiction to the Texas Public Utility Commission. The Commission hears *de novo* appeals from the decision of such municipalities. These municipal authorities would be State agencies as defined by PURPA, and thus have responsibilities under PURPA identical to those of a State regulatory authority.

The municipally owned electric utilities listed below are not under the commission's original ratemaking jurisdiction.

Electric Utilities

Publicly-Owned:
Austin Electric Department
Garland Electric Department
Lubbock Power and Light
San Antonio City Public Service Board

State: Texas

Regulatory Authority: Railroad Commission of Texas.

Gas Utilities

Investor-Owned:
Atmos Energy Corporation
Entex, Inc.
Lone Star Gas Company, a division of ENSERCH Corp.
Southern Union Company

The governing body of each Texas municipality exercises exclusive original ratemaking jurisdiction over gas utility rates, operations, and services provided by a gas utility within its city or town limits subject to appellate review by the Railroad Commission of Texas. These municipal authorities would be State agencies as defined by PURPA and thus have responsibilities under PURPA identical to those of a State regulatory authority.

The following covered utilities within the State of Texas are not regulated by the Railroad Commission of Texas. (The Railroad Commission's appellate authority does not extend to municipally owned gas utilities.)

Gas Utilities

Public-Owned:
City Public Service Board (San Antonio)

State: Utah

Regulatory Authority: Utah Public Service Commission.

Gas Utilities

Investor-Owned:
Mountain Fuel Supply Company

Electric Utilities

Investor-Owned:
Utah Power and Light Company
Rural Electric Cooperatives:
Atmos Energy Corporation
Moon Lake Electric Association

State: Vermont

Regulatory Authority: Vermont Public Service Board.

Gas Utilities

None.

Electric Utilities

Investor-Owned:
Central Vermont Public Service Corporation
Green Mountain Power Corporation
Public Service Company of New Hampshire.

State: Virginia

Regulatory Authority: Virginia State Corporation Commission.

Gas Utilities

Investor-Owned:
Columbia Gas of Virginia, Inc.
Commonwealth Gas Services, Inc.
Northern Virginia Natural Gas
Virginia Natural Gas

Electric Utilities

Investor-Owned:
Appalachian Power Company
Delmarva Power and Light Company
Old Dominion Power Company
Potomac Edison Company
Virginia Electric and Power Company

Rural Electric Cooperatives

Northern Virginia Electric Cooperative
Rappahannock Electric Cooperative

The following covered utility within the State of Virginia is not regulated by the Virginia State Corporation Commission.

Gas Utilities

Publicly-Owned:
City of Richmond, Virginia, Department of Public Utilities

Electric Utilities

Publicly-Owned:
Danville Water, Gas & Electric

State: Washington

Regulatory Authority: Washington Utilities and Transportation Commission.

Gas Utilities

Investor-Owned:
Cascade Natural Gas Corporation
Northwest Natural Gas Company
Washington Natural Gas Company
Washington Water Power Company

Electric Utilities

Investor-Owned:
Pacific Power and Light Company
Puget Sound Power and Light Company
Washington Water Power Company

The following covered utilities within the State of Washington are not regulated by the Washington Utilities and Transportation Commission.

Electric Utilities

Publicly-Owned:
Port Angeles Light and Water Department
Public Utility District No. 1 of Benton County
Public Utility District No. 1 of Chelan County
Public Utility District No. 1 of Clark County
Public Utility District No. 1 of Cowlitz County
Public Utility District No. 1 of Douglas County
Public Utility District No. 1 of Franklin County
Public Utility District No. 1 of Grant County
Public Utility District No. 1 of Grays County
Public Utility District No. 1 of Lewis County
Public Utility District No. 1 of Snohomish County
Richland Energy Service Department
Seattle City Light Department
Tacoma Public Utility—Light Division

State: West Virginia

Regulatory Authority: West Virginia Public Service Commission.

Gas Utilities

Investor-Owned:
Equitable Gas Company
Hope Gas Incorporated
Mountaineer Gas Company

Electric Utilities

Investor-Owned:
Appalachian Power Company
Monongahela Power Company
Potomac Edison Company
Virginia Electric and Power Company
Wheeling Electric Company

State: Wisconsin

Regulatory Authority: Wisconsin Public Service Commission.

Gas Utilities

Investor-Owned:
Madison Gas and Electric Company
Northern States Power Company
Wisconsin Fuel and Light Company

Wisconsin Gas Company
Wisconsin Natural Gas Company
Wisconsin Power and Light Company
Wisconsin Public Service Corporation

Electric Utilities

Investor-Owned:
Madison Gas and Electric Company
Northern States Power Company
Wisconsin Electric Power Company
Wisconsin Power and Light Company
Wisconsin Public Service Corporation

State: Wyoming

Regulatory Authority: Wyoming Public Service Commission.

Gas Utilities

Investor-Owned:
Cheyenne Light, Fuel and Power Company
Kansas-Nebraska Natural Gas Company
Montana-Dakota Utilities Company
Mountain Fuel Supply Company

Electric Utilities

Investor-Owned:
Black Hills Power and Light Company
Montana-Dakota Utilities Company
Pacific Power and Light Company
Utah Power and Light Company
Rural Electric Cooperative:
Tri-County Electric Association, Inc.

Appendix B

Electric Utilities

All utilities listed below had electric energy sales, for purposes other than resale, in excess of 500 million kilowatt hours in any year from 1976–1988. The utilities listed more than once have sales in more than one State, and those States are indicated by abbreviations in parentheses.

Investor-Owned:
Alabama Power Company
Appalachian Power Company (VA)
Appalachian Power Company (WV)
Arizona Public Service Company
Arkansas Power & Light Company (AR)
Arkansas Power & Light Company (LA)
Atlantic City Electric Company
Baltimore Gas & Electric Company
Bangor Hydro-Electric Company
Black Hills Power & Light Company (MT)
Black Hills Power & Light Company (SD)
Black Hills Power & Light Company (WY)
Blackstone Valley Electric Company
Boston Edison Company
Cambridge Electric Light Company
Carolina Power & Light Company (NC)
Carolina Power & Light Company (SC)
Central Hudson Gas & Electric Corporation
Central Illinois Light Company
Central Illinois Public Service Company
Central Louisiana Electric Company
Central Maine Power Company
Central Power & Light Company
Central Vermont Public Service Corporation
Cincinnati Gas & Electric Company
Cleveland Electric Illuminating Company
Columbus and Southern Ohio Electric Company
Commonwealth Edison Company
Commonwealth Electric Company
Connecticut Light & Power Company
Conowingo Power Company
Consolidated Edison Company of New York
Consumer Power Company
Dayton Power & Light Company
Delmarva Power & Light Company (DE)
Delmarva Power & Light Company (VA)
Delmarva Power & Light Company of Maryland
Detroit Edison Company
Duke Power Company (NC)
Duke Power Company (SC)
Duquesne Light Company
Eastern Edison Company
El Paso Electric Company (NM)
El Paso Electric Company (TX)
Empire District Electric Company (AR)
Empire District Electric Company (KS)
Empire District Electric Company (MO)
Empire District Electric Company (OK)
Florida Power Corporation
Florida Power & Light Company
Georgia Power Company
Green Mountain Power Corporation
Gulf Power Company
Gulf States Utilities Company (LA)
Gulf States Utilities Company (TX)
Hawaiian Electric Company Inc.
Houston Lighting and Power Company
Idaho Power Company (ID)
Idaho Power Company (NV)
Idaho Power Company (OR)
Illinois Power Company
Indiana & Michigan Power Company (IN)
Indiana & Michigan Power Company (MI)
Indianapolis Power & Light Company
Interstate Power Company (IA)
Interstate Power Company (IL)
Interstate Power Company (MN)
Iowa Electric Light & Power Company
Iowa-Illinois Gas & Electric Company (IA)
Iowa-Illinois Gas & Electric Company (IL)
Iowa Power & Light Company
Iowa Public Service Company (LA)
Iowa Public Service Company (SD)
Iowa Southern Utilities Company
Jersey Central Power & Light Company
Kansas City Power & Light Company (KS)
Kansas City Power & Light Company (MO)
Kansas Gas & Electric Company
Kansas Power & Light Company
Kentucky Power Company
Kentucky Utilities Company
Kingsport Power Company
Lake Superior District Power Company (MI)
Long Island Lighting Company
Louisiana Power & Light Company
Louisville Gas & Electic Company
Madison Gas & Electric Company
Massachusetts Electric Company
Metropolitan Edison Company
Michigan Power Company
Minnesota Power & Light Company
Mississippi Power Company
Mississippi Power & Light Company
Missouri Public Service Company
Monongahela Power Company (OH)
Monongahela Power Company (WV)
Montana-Dakota Utilities Company (MT)
Montana-Dakota Utilities Company (ND)
Montana-Dakota Utilities Company (SD)
Montana-Dakota Utilities Company (WY)
Montana-Dakota Power Company
Nantahala Power & Light Company
Narragansett Electric Company
Nevada Power Company
New Orleans Public Service Inc.
New York State Electric & Gas Corporation
Niagara Mohawk Power Company
Northern Indiana Public Service Company
Northern States Power Company (MN)
Northern States Power Company (ND)
Northern States Power Company (SD)
Northern States Power Company (WI)
Northwestern Public Service Company
Ohio Edison Company
Ohio Power Company
Oklahoma Gas & Electric Company (AR)
Oklahoma Gas & Electric Company (OK)
Old Dominion Power Company
Orange & Rockland Utilities
Otter Tail Power Company (MN)
Otter Tail Power Company (ND)
Otter Tail Power Company (SD)
Pacific Gas & Electric Company

Pacific Power Light Company (CA)
Pacific Power Light Company (ID)
Pacific Power Light Company (MT)
Pacific Power Light Company (OR)
Pacific Power Light Company (WA)
Pacific Power Light Company (WY)
Pennsylvania Electric Company
Pennsylvania Power & Light Company
Pennsylvania Power Company
Philadelphia Electric Company
Portland General Electric Company
Potomac Edison Company (MD)
Potomac Edison Company (VA)
Potomac Edison Company (WV)
Potomac Electric Power Company (DC)
Potomac Electric Power Company (MD)
Public Service Company of Colorado
Public Service Company of Indiana
Public Service Company of New Hampshire (NH)
Public Service Company of New Hampshire (VT)
Public Service Company of New Mexico
Public Service Company of Oklahoma
Public Service Electric and Gas Company
Puget Sound Power & Light Company
Rochester Gas & Electric Corporation
Rockland Electric Company
St. Joseph Light & Power Company
San Diego Gas & Electric Company
Savannah Electric & Power Company
Sierra Pacific Power Company (CA)
Sierra Pacific Power Company (NV)
South Carolina Electric & Gas Company
Southern California Edison Company
Southern Colorado Power Division of Centel (CO)
Southern Indiana Gas & Electric Company
Southwestern Electric Power Company (AR)
Southwestern Electric Power Company (LA)
Southwestern Electric Power Company (TX)
Southwestern Electric Service Company
Southwestern Public Service Company (KS)
Southwestern Public Service Company (NM)
Southwestern Public Service Company (OK)
Southwestern Public Service Company (TX)
Tampa Electric Company
Texas-New Mexico Power Company
Texas Utilities Electric Company
Toledo Edison Company
Tucson Electric Power Company
UGI-Luzerne Electric Division
Union Electric Company (LA)
Union Electric Company (IL)
Union Electric Company (MO)
Union Light, Heat & Power Company
United Illuminating Company
Upper Peninsula Power Company
Utah Power & Light Company (ID)
Utah Power & Light Company (UT)
Utah Power & Light Company (WY)
Virginia Electric & Power Company (NC)
Virginia Electric & Power Company (VA)
Virginia Electric & Power Company (WV)
Washington Water Power Company (ID)
Washington Water Power Company (MT)
Washington Water Power Company (WA)
West Penn Power Company
West Texas Utilities Company
Western Massachusetts Electric Company
Western Power Division of Centel (KS)
Wheeling Electric Company
Wisconsin Electric Power Company (MI)
Wisconsin Electric Power Company (WT)
Wisconsin Power & Light Company
Wisconsin Public Service Corporation (MI)
Wisconsin Public Service Corporation (WI)

Publicly-Owned:

Albany Water Gas & Light Commission (GA)
Anaheim Public Utilities Department (CA)
Anchorage Municipal Light & Power Department (AK)
Austin Electric Department (TX)
Bowling Green Municipal Utilities (KY)
Bristol Tennessee Electric System (TN)
Brownsville Public Utility Board (TX)
Burbank Public Service Department (CA)
Central Lincoln People's Utility District (OR)
Chattanooga Electric Power Board (TN)
Clarksville Department of Electricity (TN)
Clatskanie People's Utility District (OR)
Cleveland Division of Light & Power (OH)
Cleveland Utilities (TN)
Colorado Springs Department of Utilities (CO)
Dalton Water Light & Sink (GA)
Danville Water Gas & Electric (VA)
Decatur Electric Department (AL)
Dothan Electric Department (AL)
Eugene Water & Electric Board (OR)
Fayetteville Public Works Commission (NC)
Florence Electric Department (AL)
Gainesville Regional Utilities (FL)
Garland Electric Department (TX)
Glendale Public Service Department (CA)
Greeneville Light & Power System (TN)
Greenville Utilities Commission (NC)
Groton Public Utilities (CT)
High Point Electric Utility Dept. (NC)
Huntsville Utilities (AL)
Imperial Irrigation District (CA)
Independence Power & Light Department (MO)
Jackson Utility Division—Electric Department (TN)
Jacksonville Electric Authority (FL)
Johnson City Power Board (TN)
Kansas City Board of Public Utilities (KS)
Knoxville Utilities Board (TN)
Lafayette Utilities System (LA)
Lakeland Department of Electric and Water (FL)
Lansing Board of Water & Light (MI)
Lenoir City Utilities Board (TN)
Lincoln Electric System (NE)
Los Angeles Department of Water and Power (CA)
Lower Colorado River Authority (TX)
Lubbock Power & Light (TX)
Memphis Light, Gas & Water Division (TN)
Modesto Irrigation District (CA)
Murfreesboro Electric Dept. (TN)
Muscatine Power & Water (IA)
Nashville Electric Service (TN)
Nebraska Public Power District (NE)
Nebraska Public Power District (SD)
North Little Rock Electric Department (AR)
Ocala Electric Authority (FL)
Omaha Public Power District (IA)
Omaha Public Power District (NE)
Orlando Utilities Commission (FL)
Owensboro Municipal Utilities (KY)
Palo Alto Electric Utility (CA)
Pasadena Water & Power Department (CA)
Power Authority of New York (NY)
Port Angeles Light & Water Department (WA)
Public Utility District No. 1 of Benton County (WA)
Public Utility District No. 1 of Chelan County (WA)
Public Utility District No. 1 of Clark County (WA)
Public Utility District No. 1 of Cowlitz County (WA)
Public Utility Discrict No. 1 of Douglas County (WA)
Public Utility District No. 1 of Franklin County (WA)
Public Utility District No. 1 of Grant County (WA)
Public Utility District No. 1 of Grays Harbor County (WA)

Public Utility District No. 1 of Lewis County (WA)
Public Utility District No. 1 of Snohomish County (WA)
Puerto Rico Electric Power Authority
Richland Energy Services Department (WA)
Richmond Power & Light (IN)
Riverside Public Utilities (CA)
Rochester Department of Public Utilities (MN)
Rocky Mount Public Utilities (NC)
Sacramento Municipal Utility District (CA)
Salt River Project Agricultural Improvement and Power District (AZ)
San Antonio City Public Service Board (TX)
Santa Clara Electric Department (CA)
Seattle City Light Department (WA)
Sevier County Electric System (TN)
South Carolina Public Service Authority
Springfield City Utilities (MO)
Springfield Utility Board (OR)
Springfield Water, Lights & Power Department (IL)
Tacoma Public Utilities—Light Division (WA)
Trico Electric Cooperative, Inc. (AZ)
Tallahassee, City of (FL)
Turlock Irrigation District (CA)
Vernon Municipal Light Department (CA)
Wilson Utilities Department (NC)

Rural Electric Cooperatives

Alcorn County Electric Power Association (MS)
Anoka Electric Cooperative (MN)
Appalachian Electric Cooperative (TN)
Berkeley Electric Cooperative (SC)
Bluebonnet Electric Cooperative, Inc., (TX)
Blue Ridge Electric Membership Corporation (NC)
Chugach Electric Cooperative (AK)
Clay Electric Cooperative (FL)
Coast Electric Power Association (MS)
Cobb Electric Membership Corporation (GA)
Cotton Electric Cooperative (OK)
Cumberland Electric Membership Corporation (TN)
Dakota Electric Association (MN)
Douglas County Electric Membership Corporation (GA)
Dixie Electric Membership Corporation (LA)
Duck River Electric Membership Corporation (TN)
Duncan Valley Electric Cooperative, Inc. (AZ, NM)
First Electric Cooperative Corporation (AR)
Flint Electric Membership Corporation (GA)
4–County Electric Power Association (MS)
Gibson County Electric Membership Corporation (TN)
Green River Electric Corporation (KY)
Guadalupe Valley Electric Cooperative, Inc. (TX)
Henderson-Union Rural Electric Cooperative Corporation (KY)
Intermountain Rural Electric (CO)
Jackson Electric Membership Corporation (GA)
Joe Wheeler Electric Membership Corporation (AL)
Lea County Electric Cooperative, Inc. (NM)
Lee County Electric Cooperative (FL)
Meriwether Lewis Electric Cooperative (TN)
Middle Tennessee Electric Membership Corporation (TN)
Midwest Energy Incorporated (KS)
Moon Lake Electric Association (CO)
New Hampshire Electric Cooperative, Inc. (NH)
Northern Virginia Electric Cooperative (VA)
North Georgia Electric Membership Corporation (GA)
Palmetto Electric Cooperative, Inc. (SC)
Pedernales Electric Cooperative Corporation, Inc. (TX)
Pennyrile Rural Electric Cooperative Corporation (KY)
Rappahannock Electric Cooperative (VA)
Rural Electric System (AL)
Rutherford Electric Membership Corporation (NC)
Sam Houston Electric Cooperative, Inc. (TX)
Sawnee Electric Membership Corporation (GA)
Singing River Electric Power Association (MS)
South Central Power Company (OH)
Southern Maryland Electric Cooperative, Inc. (MD)
Southern Pine Electric Power Association (MS)
Southwest Louisiana Electric Membership Corporation (LA)
Southwest Tennessee Electric Membership Corporation (TN)
Sumter Electric Cooperative (FL)
Tombigbee Electric Power Association (MS)
Tri-County Electric Association Inc. (WY)
Tri-County Electric Membership Corporation (TN)
Umatilla Electric Cooperative Association (OR)
Upper Cumberland Electric Membership Corporation (TN)
Volunteer Electric Cooperative (TN)
Walton Electric Membership Corporation (GA)
Warren Rural Electric Cooperative Corporation (KY)
West Kentucky Rural Electric Cooperative Corporation (KY)
Withlacoochee River Electric Cooperative (FL)

Federal Agencies

Bonneville Power Administration (OR)
Tennessee Valley Authority (TN)
Western Area Power Administration (CO)

Gas Utilities

All gas utilities listed below had natural gas sales, for purposes other than resale, in excess of 10 billion cubic feet in any year from 1976–1988. The utilities listed more than once have sales in more than one State and those States are indicated by abbreviations in parentheses.

Investor-Owned:
Alabama Gas Corporation
Alabama-Tennessee Natural Gas Company
Anadarko Production Company
Arkansas-Louisiana Gas Company (AR)
Arkansas-Louisiana Gas Company (KS)
Arkansas-Louisiana Gas Company (LA)
Arkansas-Louisiana Gas Company (OK)
Arkansas-Oklahoma Gas Corporation (AR)
Arkansas-Oklahoma Gas Corporation (OK)
Arkansas Western Gas Company
Associated Natural Gas Company (AR)
Associated Natural Gas Company (MO)
Atlanta Gas Light Company
Atmos Energy Corporation
Baltimore Gas & Electric Company
Battle Creek Gas Company
Bay State Gas Company
Boston Gas Company
Brooklyn Union Gas Company
Carnegie Natural Gas Company
Carolina Pipeline Company
Cascade Natural Gas Corporation (OR)
Cascade Natural Gas Corporation (WA)
Central Illinois Light Company
Central Illinois Public Service Company
Chattanooga Gas Company (TN)
Cheyenne Light, Fuel and Power Company
Cincinnati Gas and Electric Company
Cities Services Gas Company (covered by NECPA only)

City Gas Company of Florida
Colonial Gas Energy System
Columbia Gas of Kentucky, Inc.
Columbia Gas of New York, Inc.
Columbia Gas of Ohio, Inc.
Columbia Gas of Pennsylvania, Inc.
Columbia Gas of Virginia, Inc.
Commonwealth Gas Company
Commonwealth Gas Service Incorporated
Commonwealth Gas Services, Incorporated
Connecticut Light & Power Company
Connecticut Natural Gas Corporation
Consolidated Edison Company of New York, Inc.
Consumers Power Company
Dayton Power & Light Company
Delmarva Power & Light Company (DE)
East Ohio Gas Company
Elizabethtown Gas Company
Enstar Natural Gas Company
Entex Inc. (LA)
Entex Inc. (MS)
Entex Inc. (TX)
Equitable Gas Company (PA)
Equitable Gas Company (WV)
Gas Company of New Mexico
Gas Service Company (KS)
Gas Service Company (MO)
Gas Service Company (NE)
Gas Service Company (OK)
Greeley Gas Company (CO)
Greeley Gas Company (KS)
Gulf States Utilities Company
Hope Gas, Incorporated
Illinois Power Company
Indiana Gas Company
Intermountain Gas Company
Interstate Power Company (LA)
Interstate Power Company (MN)
Iowa Electric Light & Power Company (CO)
Iowa Electric Light & Power Company (IA)
Iowa Electric Light & Power Company (MN)
Iowa Electric Light & Power Company (NE)
Iowa-Illinois Gas & Electric Company (LA)
Iowa-Illinois Gas & Electric Company (IL)
Iowa Power & Light Company
Iowa Public Service Company (IA)
Iowa Public Service Company (NE)
Iowa Public Service Company (SD)
Iowa Southern Utilities Company
Kansas-Nebraska Natural Gas Company (CO)
Kansas-Nebraska Natural Gas Company (KS)
Kansas-Nebraska Natural Gas Company (WY)
Kansas Power & Light Company
KN Energy, Inc.
Laclede Gas Company Consolidated
Lone Star Gas Company (OK)
Lone Star Gas Company, a division of ENSERCH Corp. (TX)
Long Island Lighting Company
Louisiana Gas Service Company
Louisville Gas & Electric Company
Lowell Gas Company
Madison Gas & Electric Company
Michigan Consolidated Gas Company
Michigan Gas Utilities Company
Michigan Power Company
Minnegasco, Inc. (MN)
Minnegasco, Inc. (NE)
Minnegasco, Inc. (SD)
Mississippi Valley Gas Company
Missouri Public Service Company
Mobile Gas Service Corporation
Montana-Dakota Utilities Company (MN)
Montana-Dakota Utilities Company (MT)
Montana-Dakota Utilities Company (ND)
Montana-Dakota Utilities Company (SD)
Montana-Dakota Utilities Company (WY)
Montana Power Company
Mountaineer Gas Company
Mountain Fuel Supply Company (UT)
Mountain Fuel Supply Company (WY)
Nashville Gas Company
National Fuel Gas Distribution Corporation (NY)
National Fuel Gas Distribution Corporation (PA)
National Gas and Oil Company
New Jersey Natural Gas Company
New Orleans Public Service, Inc.
New York State Electric & Gas Corporation
Niagara Mohawk Power Company
North Carolina Natural Gas Corporation
North Shore Gas Company
Northern Illinois Gas Company
Northern Indiana Public Service Company
Northern Minnesota Utilities—Division of Utilicorp United, Inc.
Northern Natural Gas Company (KS)
Northern Natural Gas Company (NE)
Northern States Power Company (MN)
Northern States Power Company (ND)
Northern States Power Company (WI)
North Penn Gas Company
Northwest Alabama Gas District
Northwest Natural Company (OR)
Northwest Natural Gas Company (WA)
Northwestern Public Service Company (NE)
Northwestern Public Service Company (SD)
Oklahoma Natural Gas Company
Orange & Rockland Utilities
Pacific Gas & Electric Company
Panhandle Eastern Pipeline Company (IL)
Panhandle Eastern Pipeline Company (KS)
Pennsylvania Gas & Water Company
Peoples Gas, Light and Coke Company
Peoples Gas System
Peoples Natural Gas Company
Peoples Natural Gas Company, Division of Internorth, Inc. (IA)
Peoples Natural Gas Company, Division of Internorth, Inc. (IA)
Peoples Natural Gas Company, Division of Internorth, Inc. (KS)
Peoples Natural Gas Company, Division of Internorth, Inc. (MN)
Peoples Natural Gas Company, Division of Internorth, Inc. (MO)
Peoples Natural Gas Company, Division of Internorth, Inc. (NE)
Philadelphia Electric Company
Piedmont Natural Gas Company (NC)
Piedmont Natural Gas Company (SC)
Providence Gas Company
Public Service Company of Colorado
Public Service Company Inc. of North Carolina
Public Service Electric and Gas Company
Rochester Gas & Electric Corporation
San Diego Gas & Electric Company
South Carolina Gas & Electric Company
South Jersey Gas Company
Southeastern Michigan Gas Company
Southern California Gas Company
Southern Connecticut Gas Company
Southern Indiana Gas & Electric Company
Southern Union Company (TX)
Southern Union Gas Company (AZ)
Southern Union Gas Company (OK)
Southwest Gas Corporation (AZ)
Southwest Gas Corporation (CA)
Southwest Gas Corporation (NV)
Terre Haute Gas Corporation
Trans Louisiana Gas Company
T.W. Phillips Gas and Oil Company
UGI Corporation
Union Gas System, Inc. (KS)
Union Gas System, Inc. (OK)
Union Light, Heat & Power Company (KY)
Virginia Natural Gas
Washington Gas Light Company (DC)
Washington Gas Light Company (MD)
Washington Gas Light Company (VA)
Washington Natural Gas Company
Washington Water Power Company (ID)
Washington Water Power Company (WA)
West Ohio Gas Company
Western Kentucky Gas Company
Wisconsin Fuel & Light Company
Wisconsin Gas Company
Wisconsin Natural Gas Company
Wisconsin Power & Light Company
Wisconsin Public Service Corporation (MI)
Wisconsin Public Service Corporation (WI)

Public-Owned:

Citizens Gas & Coke Utility (IN)
City of Richmond, Virginia, Department of Public Utilities (VA)
City Public Services Board (San Antonio) (TX)
Colorado Springs, Department of Utilities (CO)
Long Beach Gas Department (CA)
Memphis Light, Gas & Water Division (TN)
Metropolitan Utilities District of Omaha (NE)
Philadelphia Gas Works (PA)
Springfield City Utilities (MO)

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federal register

Friday
December 29, 1989

Part III

Department of Health and Human Services

Health Care Financing Administration

Medicare Program; Physician Performance Standard Rate of Increase for Federal Fiscal Year 1990; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BPD-663-N]

Medicare Program; Physician Performance Standard Rate of Increase for Federal Fiscal Year 1990

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

ACTION: Announcement of physician performance standard rate of increase.

SUMMARY: This notice announces the Federal fiscal year 1990 performance standard rate of increase for expenditures and volume of physician services under the Medicare Supplementary Medical Insurance (Part B) program as required by section 6102 of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239). The physician performance standard rate of increase for Federal fiscal year 1990 is 9.1 percent.

EFFECTIVE DATE: December 29, 1989.

FOR FURTHER INFORMATION CONTACT: Terrence L. Kay, (301) 966-4494.

SUPPLEMENTARY INFORMATION:

I. Background and Summary of New Legislation

A. Physician Payment Reform

On December 19, 1989, the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239) was enacted. Section 6102 of Pub. L. 101-239 amended Title XVIII of the Social Security Act (the Act) by adding a new section 1848, Payment For Physicians' Services. New section 1848 of the Act provides for a comprehensive package of Medicare physician payment reform that includes the following provisions:

- The current reasonable charge payment mechanism, which uses actual, customary, and prevailing charges, will be replaced by a resource-based relative value fee schedule.
- Performance standard rates of increase for aggregate expenditures of physician services.
- Medicare beneficiaries will be protected from excessive charges for physician services.

Section 1848(f) of the Act requires the Secretary to establish performance standard rates of increase for expenditures and volume of physician services. Congress enacted this new provision to address the problem of unacceptably high annual rates of increase in Medicare expenditures for physician services. Past efforts, such as freezing physician fees, which was in effect from 1984 to 1986, have achieved only limited success in slowing the rate of increase because both the volume and intensity of physician services have increased. The use of performance standard rates of increase is intended to involve physicians in the effort to slow the unacceptably high annual rate of increase in expenditures by having physicians carefully evaluating their services and eliminating those that are inappropriate or ineffective, or both.

Under section 1848 of the Act, the Secretary will recommend to the Congress acceptable performance standard rates of increase for expenditures and volume of physician services each fiscal year. Congress will then establish performance standard rates of increase, or, if Congress does not act after the Secretary's recommendation, the performance rates of increase will be determined through an automatic default mechanism as provided in section 1848(f)(2)(A) of the Act. The performance standard rate of increase for FY 1990 is specified by section 1848(f)(1)(D) of the Act.

The performance standard rates of increase are not limits on expenditures. Payments for services will not be withheld if performance standard rates of increase are exceeded. Rather, the appropriate fee schedule update, as specified in section 1848(d)(3)(A) of the Act, would be adjusted to reflect the success or failure in meeting the performance standard rates of increase. For example, the performance standard rate of increase for FY 1990, as provided in this notice, is 9.1 percent. If in FY 1991, an evaluation of FY 1990 data shows that actual expenditures were to increase by 11.0 percent, this would be 1.9 percentage points more than the announced rate of increase. If the update index increase announced in 1991 for calendar year 1992 is 4.0 percent, then the increase in payment levels in 1992 would be 2.1 percent (4.0 percent minus 1.9 percent). Thus, we would reduce the 1992 update increase by 1.9 percentage points because the actual rate of increase in FY 1990 expenditures compared with FY 1989 expenditures exceeded the performance standard rate of increase by 1.9 percentage points.

Conversely, if the rate of increase in actual expenditures in FY 1990 is 7.5 percent, the update for 1992 would be 5.6 percent; that is, 4.0 percent plus 1.6 percent. Thus, we would increase the update by 1.6 percentage points because the rate of growth in actual expenditures was 1.6 percentage points less than the performance standard rate of increase. Section 1848(d)(3)(B) of the Act limits the amount of downward adjustment in the update to 2.0 percentage points for 1992 and 1993, 2.5 percentage points for 1994 and 1995, and 3.0 percentage points in a subsequent year. There is no limit on increases in the update index amount.

B. Determining the Performance Standard Rate of Increase

Section 1848(f)(1) of the Act sets forth the process for establishing the performance standard rates of increase. As explained above, section 1848(f)(1)(A) of the Act requires that the Secretary recommend to Congress the physician performance standard rates of increase for the following Federal fiscal year by not later than April 15th, beginning with 1990. In making the recommendations, the Secretary is required to confer with organizations that represent physicians and to consider the following factors—

- Inflation;
- Changes in the number and age composition of Medicare enrollees under Part B (excluding risk health maintenance organization (HMO) enrollees);
- Changes in technology,
- Evidence of inappropriate utilization of services;
- Evidence of lack of access to necessary physician services; and
- Other appropriate factors as determined by the Secretary.

Section 1848(f)(1)(B) of the Act requires that the Physician Payment Review Commission (PPRC) review the Secretary's recommendations and make its recommendations to Congress for the physician performance standard rates of increase by May 15th.

Congress expects to set the performance standard rates of increase each year. If Congress does not act, section 1848(f)(2)(A) of the Act specifies a formula for the Secretary to determine the performance standard rates of increase. Section 1848(f)(1)(C) of the Act requires the Secretary to publish in the **Federal Register** on one of the last 15 days of October of each year (beginning with 1990) the performance standard rates of increase for all physician services and for each category of physician services for the Federal fiscal year that began on October 1st of that year. (For example, on one of the last 15 days of October 1990, the physician performance standard rates of increase for FY 1991 must be published.)

Section 1848(f)(1)(C) of the Act also specifies that the physician performance standard rate of increase for FY 1990, as determined under section 1848(f)(1)(D) of the Act, must be published not later than January 1, 1990. Under section 1848(f)(1)(D) of the Act, the physician

performance standard rate of increase for FY 1990 is equal to the sum of the following components minus 0.5 percent:

- The Secretary's estimate of the weighted average percentage increases in reasonable charges for physician services for portions of calendar years 1989 and 1990 contained in FY 1990.
- The Secretary's estimate of the percentage increase or decrease in the average number of Part B enrollees (excluding risk HMO enrollees) from FY 1989 to FY 1990.
- The Secretary's estimate of the average annual percentage growth in volume and intensity of physician services for FY 1985 through FY 1989.
- The Secretary's estimate of the percentage increase or decrease in expenditures for physician services that will result from changes in law or regulations in FY 1990 as compared with expenditures for physician services in FY 1989.

II. Provisions of this Notice

A. Physician Performance Standard Rate of Increase for FY 1990

Under the requirements in section 1848(f)(1)(D) of the Act, we have determined that the performance standard rate of increase for physician services for FY 1990 is 9.1 percent. This determination is based on the sum of the following estimates minus 0.5 percentage points:

- The weighted average percentage increases in reasonable charges for physician services for months of calendar years 1989 and 1990 contained in FY 1990 is 2.3 percent.
- The percentage increase in the average number of Part B enrollees from FY 1989 to FY 1990 (excluding risk HMO enrollees) is 1.7 percent.
- The average annual growth in volume and intensity of physician services for FY 1985 through FY 1989 is 7.3 percent.
- The percentage increase in expenditures for physician services resulting from changes in law or regulations in FY 1990 as compared with FY 1989 is −1.7 percent.

B. Physician Services

Section 1848(f)(5)(A) of the Act defines physician services for purposes of the physician performance standard rates of increase as including other items or services (such as clinical diagnostic laboratory tests and radiology services), as specified by the Secretary, that are commonly performed by a physician or furnished in a physician's office. Section 1861(s) of the Act defines medical and other health services covered under Part B. We are including the following medical and other health services under section 1861(s) of the Act in the physician performance standard rates of increase if processed and paid for by Medicare carriers:

- Physician services.
- Services and supplies furnished incident to physician services.
- Outpatient physical therapy and speech therapy services, and outpatient occupational therapy services.
- Antigens prepared by or under the direct supervision of a physician.
- Services of physician assistants, certified registered nurse anesthetists, certified nurse midwives, psychologists, and social workers.
- Diagnostic x-ray tests, diagnostic laboratory tests, and other diagnostic tests.
- X-ray, radium, and radioactive isotope therapy.
- Surgical dressings, and splints, casts, and other devices used for reduction of fractures and dislocations.

Many diagnostic services, such as diagnostic x-ray and diagnostic laboratory tests, are furnished in outpatient departments of hospitals. Except for medically necessary physician interpretations of the tests, these tests are not paid on a reasonable charge basis or fee schedule basis by carriers, but are paid by intermediaries. Much of the detailed information needed to set performance standard rates of increase is not available for diagnostic services when furnished by a hospital. The data are included in hospital cost reports and are not readily available under current data collection systems. As data systems evolve in response to setting physician performance standard rates of increase, we may consider including diagnostic x-ray, laboratory, and other services furnished in hospital outpatient departments in setting future performance standard rates of increase.

The other items and services for which significant payments are made under Part B are durable medical equipment, ambulance services, and services furnished by ambulatory surgical centers. We did not include these items and services in the performance standard rate of increase because they are not commonly furnished by a physician or performed in a physician's office.

However, we intend in the future to consider more fully whether any of the services furnished under Part B that are not covered in this notice should be included.

C. Surgical Services

We are not publishing a separate performance standard rate of increase for surgical services for FY 1990. For years following FY 1990, sections 1848 (f)(1)(C) and 1848(f)(4) of the Act require that we establish separate performance standard rates for surgical services and other categories of physician services as defined by the Secretary. However, sections 1848 (f)(1)(C) and (f)(1)(D) clearly specify that a single rate is to be computed for FY 1990.

III. Calculation of FY 1990 Physician Performance Standard Rate of Increase

Below is an explanation of how we determined the increases for each of the four factors used in determining the performance standard rate of increase for FY 1990.

Factor 1—Weighted Average Percentage Increase in Reasonable Charges for Physician Services for Months of Calendar Years 1989 and 1990 in FY 1990

This factor was calculated as a weighted average of the fee increases that apply to FY 1990; that is, the fee increases that apply to the last 3 months of calendar year 1989 multiplied by 25 percent plus the fee increases that apply to the first 9 months of calendar year 1990 multiplied by 75 percent. Physician services are updated by increases in the Medicare Economic Index (MEI), and laboratory services are updated by increases in the Consumer Price Index for Urban Consumers (CPI–U).

TABLE 1—MEDICARE PAYMENT UPDATES FOR FY 1989 AND 1990

Service	MEI		CPI–U	
	1989	1990	1989	1990
Physician				
Primary Care [1]	3.0	4.2	.....	.....
Radiology, anesthesiology, and overpriced procedures [2]	1.0	0.0	.....	.....
Other	1.0	2.0	.....	.....
Laboratory	.....	.....	4.0	4.7

[1] Primary care services are defined as office visits, emergency room visits, home visits, and nursing home visits. In addition, radiology and anesthesiology services will receive a zero percent update for 1990.

[2] Overpriced procedures are the approximately 250 procedures described in section 1842(b)(14)(C)(i) of the Act.

Physician services make up 94.4 percent of the total expenditures in the definition of physician services used for purposes of the performance standard rate of increase and laboratories services represent 5.6 percent. Within the 94.4 percent attributed to physician services, 15 percent is for primary care services, 42 percent is for radiology, anesthesiology, and overpriced

procedures, and 43 percent is for other services.

In addition to the annual updates and individual weights of the above services, three other elements have a significant effect on the rate of increase in reasonable charges. First, section 6107 of Public Law 101–239 delayed the effective date of the update in the Medicare Economic Index (MEI) from January 1, 1990 to April 1, 1990. This delay has the overall effect of reducing the rate of increase.

Second, the MEI update only applies to prevailing charge levels. The Medicare reasonable charge is defined as the lowest of the actual, customary, or prevailing charge. The MEI limits the amount that prevailing charges may increase from year to year. The increases in actual and customary charges below the prevailing charge are not constrained by the MEI. Historically, they have increased at a rate faster than the prevailing charge. This means that the overall reasonable charge increases have been greater than the MEI increases.

Third, section 1842(h) of the Act provides for "participating physicians." A participating physician agrees to bill Medicare directly for his or her services, to accept Medicare payment as payment in full, and to bill Medicare beneficiaries only for the 20 percent coinsurance amount and any unmet portion of the $75 annual deductible. Section 1842(b)(4)(A)(iv) of the Act provides that nonparticipating physicians are paid five percent less for their services than participating physicians. Physicians are given an opportunity at the end of each calendar year to enroll as a participating physician for the next calendar year. Participation rates have increased each year, and we assume that this trend will continue. The increase in the number of participating physicians and the fact that they are paid at a rate higher than nonparticipating physicians also add to the rate of increase in reasonable charges.

After taking into account all the elements described above, we estimate that the weighted average increase in reasonable charges for physicians' services will be 2.3 percent.

Factor 2—The Percentage Increase in the Average Number of Part B Enrollees From FY 1989 to FY 1990

Average Medicare Part B enrollment in FY 1990 is estimated to be 32.835 million. Decreasing that figure by the estimated enrollment in risk HMOs of 1.159 million, results in an estimate of 31.676 million non-risk HMO Part B enrollees in FY 1990.

The corresponding figures for fiscal year 1989 are estimated to be 32.223 million total Part B enrollees and 1.062 million risk HMO enrollees, which results in an estimate of 31.161 million non-risk HMO Part B enrollees. We estimate that there will be 515,000 more non-risk HMO Part B enrollees in FY 1990 than in FY 1989, which represents a 1.7 percent increase for Part B non-risk HMO enrollees from FY 1989 to FY 1990.

Factor 3—Average Annual Growth in Volume and Intensity of Physician Services for FY 1985 Through FY 1989

Section 1848(f)(1)(D)(iii) of the Act requires the Secretary to estimate the average annual percentage growth in volume and intensity of physician services for FY 1985 through FY 1989. This estimate is to be based upon information contained in the most recent annual report issued by the Board of Trustees of the Supplementary Medical Insurance Trust Fund (Trustees Report).

The percentage increase data on volume and intensity in the Trustees Report is based on historical trends in increases in reasonable charges. However, the performance standard rate of increase under this notice is to be applied against increases in expenditures; that is, incurred benefits. The $75 Part B deductible has remained the same throughout the 1985 through 1989 period. Although both reasonable charges and expenditures have been increasing over this period, the average rate of increase in expenditures is larger than the average rate of increase in reasonable charges for the 5-year period. The reason for this difference is due to the deductible remaining at $75 throughout the period. Thus, benefits tend to increase faster than charges as long as the deductible remains the same as charges increase.

Although we believe it would be consistent with a literal interpretation of section 1848(f)(D)(iii) of the Act, we believe it would be unfair to physicians to base the volume and intensity component on the 5-year growth in reasonable charges since expenditures have been increasing faster due to the constant $75 deductible amount. Because the effect of the deductible has been declining over the 5-year period, we believe the most equitable approach is to take the average annual increase based on charges, which is 6.6 percent, and to adjust it by a factor that would account for the estimated effect of the deductible on expenditure growth in FY 1990 as compared with FY 1989. This equates to 0.7 percent, which when added to 6.6 percent, yields an increase of 7.3 percent.

Consistent with data contained in the Trustees Report, we estimated this component of the performance standard rate of increase using a definition of physician services that includes certain supplies and nonphysician services (primarily durable medical equipment (DME) and ambulance services). We included data for these services because we were required to base the estimate on data contained in the Trustees Report, and it was not feasible to recompute the data from the five-year period to exclude these supplies and nonphysician services. We believe the inclusion of these nonphysician supplies and services in this component has a minimal effect on the estimate because the component measures rates of charge. Since DME and ambulance services constitute only about 10 percent of the total charges used in the Trustees Report, the rate of change for these nonphysician services and supplies would have to be significantly different from the rate of change for physician services to have any measurable impact on this volume and intensity increase factor. We do not believe that the rate of increase for these nonphysician services and supplies differs substantially from the rate of increase for physician service. The volume increases for services performed in independent laboratories were included in the calculation of the physician increases. (We want to emphasize that Factor 3 is the only component of the performance standard rate of increase that was estimated using data that included nonphysician services and supplies.)

Factor 4—Percentage Increase in Expenditures for Physician Services Resulting From Changes in Law or Regulations in FY 1990 as Compared With FY 1989

Pub. L. 101–239 contains many provisions that considered together are estimated to result in a net decrease in expenditures for physician services of $423 million in FY 1990.

(The effect of section 6107 of Pub. L. 101–239, which provides for a 3-month delay in the MEI and a reduction in the MEI update, was considered in the computation of Factor 1 (the increase in reasonable charges for physician services).)

Except for notices and regulations to be prepared under the provisions in Pub. L. 101–239 cited above, we do not expect that any other regulations or notices to be issued in FY 1990 will have any measurable effect on physician expenditures for FY 1990.

The Factor 4 component increase is estimated to be −1.7 percent.

IV. Regulatory Impact Statement

Executive Order (E.O.) 12291 requires us to prepare and publish a regulatory impact analysis for any notice that meets one of the E.O. 12291 criteria for a "major rule"; that is, that will 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.

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 notice will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, States and individuals are not entities, but we consider all physicians to be small entities.

We have determined that this notice, in itself, will not produce any effects that will meet any of the criteria of E.O. 12291 or of the RFA since the provisions to which this notice pertains merely announce the Medicare physician performance standard rates of increase for FY 1990 as set forth at section 1848(f)(1)(D) of the Act, as added by section 6102(a) of Pub. L. 101–239. Furthermore, any effects that result from this notice are the result of the statutory provisions and not this notice. Therefore, we have determined that a regulatory impact analysis under E.O. 12291 and a regulatory flexibility analysis under the RFA are not required. For the same reasons, we have determined and the Secretary certifies that this notice will not have a significant effect on a substantial number of small entities.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a notice 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 which has fewer than 50 beds and is located outside of a Metropolitan Statistical Area.

We are not preparing a rural impact statement since we have determined, and the Secretary certifies, that this notice will not have a significant economic impact on the operations of a substantial number of small rural hospitals.

V. Other Required Information

A. Waiver of 30-Day Delay in Effective Date

We normally provide a delay of 30 days in the effective date for documents such as this. However, the effective date of the provisions of new section 1848(f) of the Act is for services furnished on or after October 1, 1989. In addition, the provisions of this notice conform to the clear direction provided in new section 1848(f) of the Act. For these reasons, a delayed effective date is impractical and unnecessary. Therefore, we find good cause to waive the usual 30-day delay.

B. Paperwork Reduction Act

This notice does not impose paperwork or information collection requirements. Consequently, it 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. 3501–3511).

(Section 1848(f) of the Social Security Act)
(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare—Supplementary Insurance Program)

Dated: December 26, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

Approved: December 27, 1989.

Louis W. Sullivan,

Secretary.

[FR Doc. 89–30386 Filed 12–28–89; 9:07 am]
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