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January 9, 1990

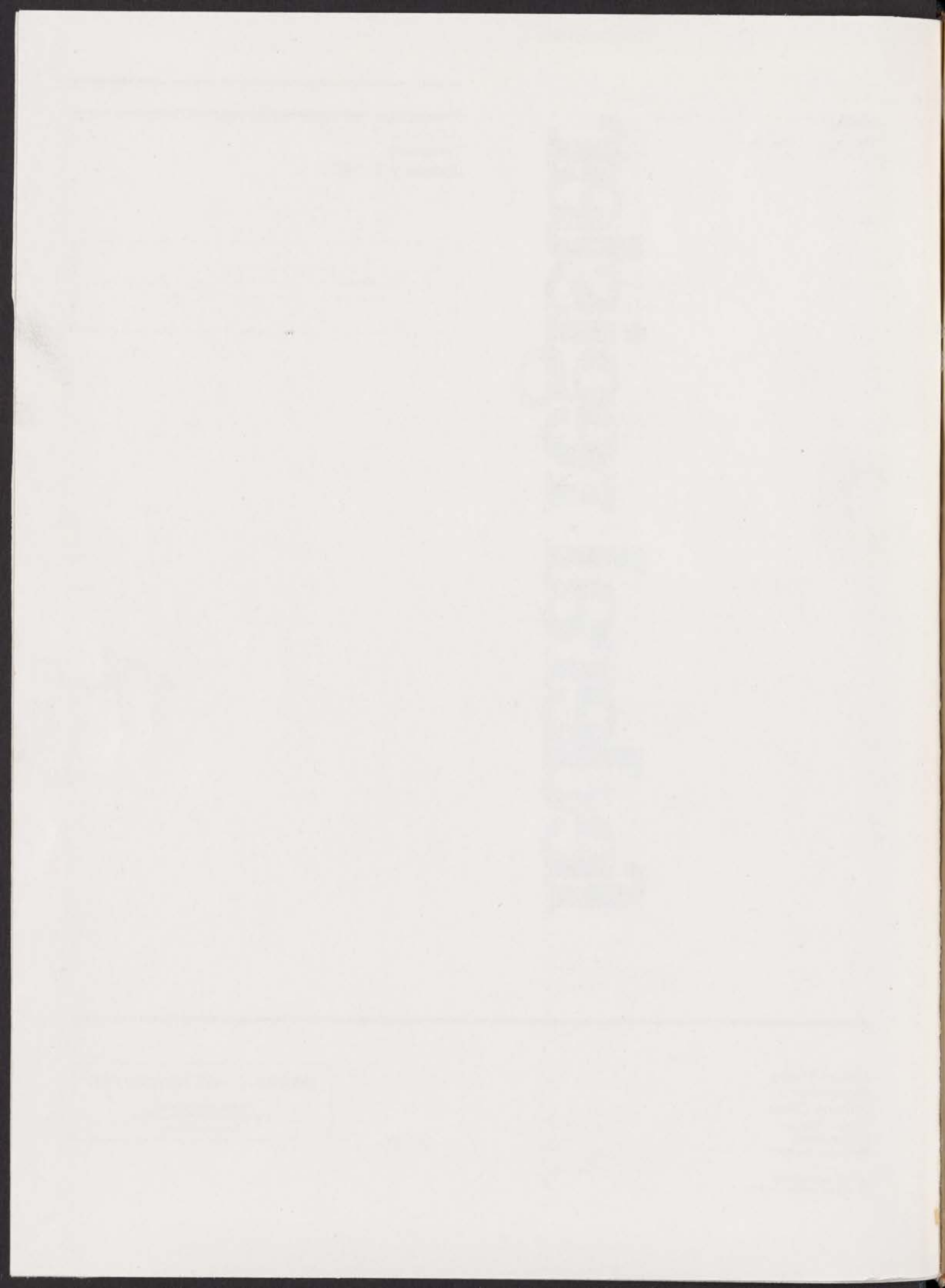
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Tuesday
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Federal Register

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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Proclamation 6087 of January 5, 1990

The President

To Amend the Generalized System of Preferences

By the President of the United States of America

A Proclamation

1. Pursuant to section 502 of the Trade Act of 1974, as amended (the 1974 Act) (19 U.S.C. 2462), and having due regard for the eligibility criteria set forth therein, I have determined that it is appropriate to designate Poland as a beneficiary developing country for purposes of the Generalized System of Preferences (GSP).

2. Section 604 of the 1974 Act (19 U.S.C. 2483) authorizes the President to embody in the Harmonized Tariff Schedule of the United States (the HTS) the substance of the provisions of that Act, and of other Acts affecting import treatment, and actions thereunder.

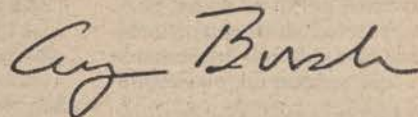
NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the statutes of the United States, including but not limited to sections 502 and 604 of the 1974 Act, do proclaim that:

(1) General note 3(c)(ii)(A) to the HTS, listing those countries whose products are eligible for benefits of the GSP, is modified by inserting in alphabetical order in the list of independent countries "Poland".

(2) Any provisions of previous proclamations and executive orders inconsistent with the provisions of this proclamation are hereby superseded to the extent of such inconsistency.

(3) The amendments made by this proclamation shall be effective with respect to articles both: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after the date of publication of this proclamation in the Federal Register.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of January, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fourteenth.



[FR Doc. 90-662

Filed 1-5-90; 4:52 pm]

Billing code 3195-01-M

Editorial note: For the President's remarks of Jan. 5 on signing Proclamation 6087, see the *Weekly Compilation of Presidential Documents* (vol. 26, no. 1).

Presidential Documents

The President

In Answering the Question of the President

Transmitted with the President's Report

of the President of the United States of America

to the Congress

I have the honor to acknowledge the receipt of your letter of the 10th inst. and in reply to inform you that the same has been forwarded to the proper authorities for their consideration.

I am also in receipt of your letter of the 12th inst. and in reply to inform you that the same has been forwarded to the proper authorities for their consideration.

I am further in receipt of your letter of the 14th inst. and in reply to inform you that the same has been forwarded to the proper authorities for their consideration.

I am also in receipt of your letter of the 16th inst. and in reply to inform you that the same has been forwarded to the proper authorities for their consideration.

I am further in receipt of your letter of the 18th inst. and in reply to inform you that the same has been forwarded to the proper authorities for their consideration.

I am also in receipt of your letter of the 20th inst. and in reply to inform you that the same has been forwarded to the proper authorities for their consideration.

I am further in receipt of your letter of the 22nd inst. and in reply to inform you that the same has been forwarded to the proper authorities for their consideration.

Very Respectfully,
John F. Kennedy

John F. Kennedy
President of the United States

Rules and Regulations

Federal Register

Vol. 55, No. 6

Tuesday, January 9, 1990

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 89-178]

Gypsy Moth Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are affirming, with several changes, an interim rule that amended the Gypsy Moth Quarantine and Regulations by (1) adding North Carolina and Utah to the list of States quarantined because of gypsy moth; (2) removing regulated areas in Oregon from the list of gypsy moth low-risk areas and removing Oregon from quarantined status; (3) designating previously nonregulated areas in North Carolina as gypsy moth low-risk areas; (4) designating previously nonregulated areas in Utah and Virginia as gypsy moth high-risk areas; (5) redesignating portions of regulated areas in Ohio from gypsy moth low-risk areas to gypsy moth high-risk areas. The regulations restrict the interstate movement of certain articles from gypsy moth high-risk and low-risk areas. These restrictions are necessary to prevent the spread of gypsy moth and to remove unnecessary restrictions on the interstate movement of certain articles.

EFFECTIVE DATE: January 9, 1990.

FOR FURTHER INFORMATION CONTACT: Tom G. Flanagan, Operations Officer, Program Support Staff, PPQ, APHIS, USDA, room 646, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8247.

SUPPLEMENTARY INFORMATION:

Background

The Gypsy Moth Quarantine and Regulations (contained in 7 CFR 301.45 *et seq.*, and referred to below as the regulations), quarantine certain States because of the gypsy moth, and restrict the interstate movement from regulated areas of certain articles to prevent the artificial spread of the gypsy moth.

In an interim rule published in the Federal Register and effective on July 26, 1989 (54 FR 31005-31008, Docket 89-054) we amended the Gypsy Moth Quarantine and Regulations by (1) adding North Carolina and Utah to the list of States quarantined because of gypsy moth; (2) removing regulated areas in Oregon from the list of gypsy moth low-risk areas and removing Oregon from quarantined status; (3) designating previously nonregulated areas in North Carolina as gypsy moth low-risk areas; (4) designating previously nonregulated areas in Utah and Virginia as gypsy moth high-risk areas; and (5) redesignating portions of regulated areas in Ohio from gypsy moth low-risk areas to gypsy moth high-risk areas. Comments were required to be received on or before September 25, 1989. We received comments from the State Departments of Agriculture for North Carolina and Virginia.

North Carolina

The interim rule amended § 301.45-2a of the regulations by designating all or portions of Currituck and Dare Counties in North Carolina as gypsy moth low risk areas. In its comment the North Carolina Department of Agriculture suggested that these areas meet the criteria to be considered as gypsy moth high risk areas. We concur. Based on recent surveys, inspectors have determined, with respect to all of the areas added to the list of gypsy moth high-risk areas, that defoliation has occurred in these areas because of the gypsy moth or that there is reason to believe that 50 or more egg masses per acre of the gypsy moth are present in these areas. Also, outdoor household articles and regulated articles exist within or adjacent to these areas. Accordingly, there is a substantial risk of artificially spreading the gypsy moth by unrestricted interstate movement of these articles. Therefore, as an emergency measure, it is necessary to designate these areas as gypsy moth high-risk areas and impose restrictions

on the interstate movement of outdoor household articles and regulated articles from these areas in accordance with the regulations in order to prevent the artificial spread of the gypsy moth.

Virginia

The interim rule amended § 301.45-2a of the regulations by designating previously nonregulated areas in the City of Suffolk, and Charles City, Chesterfield, Essex, Franklin, Isle of Wight, James City, King and Queen, King William, New Kent, Prince George, Surry and Sussex Counties in Virginia as gypsy moth high-risk areas.

Based on a comment from the Virginia Department of Agriculture and Consumer Research, we are revising the list of gypsy moth high risk areas by adding Southampton County and the Cities of Colonial Heights, Hopewell, Petersburg, Richmond, and Williamsburg. These cities are within the areas added as high risk areas, but are separate political jurisdictions. Further, to correct an error, we are removing Franklin County from the list of gypsy moth high risk areas and adding the City of Franklin in its place. All the areas added meet the criteria described above for designation as gypsy moth high-risk areas.

The facts presented in the interim rule and in this document provide a basis for this rulemaking. Therefore, with the changes noted above, we are affirming the provisions of the interim rule.

Effective Date

Pursuant to the provisions of 5 U.S.C. 553, we find good cause for making this rule effective less than 30 days after publication in the Federal Register. This is necessary to prevent the spread of gypsy moth. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than \$100 million; will not cause a major increase in costs or prices for consumers,

individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This action affects the interstate movement of regulated articles from gypsy moth regulated areas in North Carolina, Ohio, Oregon, Utah and Virginia. For areas designated as high-risk areas, individual and commercial movers moving outdoor household articles to areas outside the quarantined area must determine that their articles are free of gypsy moth. Mobile home haulers, loggers, nurseymen, and firewood haulers are required to obtain a certificate or limited permit from an inspector that their articles are free of gypsy moth. For areas designated as low-risk areas, the same conditions apply for movement of regulated articles when it is determined by an inspector that the movement of an article presents a hazard of spreading the gypsy moth. For areas determined to be free of gypsy moth and deregulated, no restrictions are imposed for movement of regulated articles.

All regulated articles are inspected and certified without charge to the business. A business not requesting this service in advance of shipment may be delayed in moving the product until service can be provided. A homeowner moving outdoor household articles from a high-risk area to an uninfested area may pay a qualified certified applicator (QCA) to inspect his goods. These charges average between \$50-100. In some instances the company moving that person reimburses the mover for their expense. Most QCA's are small businesses. By declaring an area as a high-risk area the regulations may increase business for the QCA's located in high-risk areas. These businesses will average \$50 to \$150 per month in additional income per business. Approximately 153 new businesses will be trained to inspect outdoor household articles and will offer this service to the general public. Based on information compiled by the U.S. Department of Agriculture, it has been determined that there are many hundreds of small entities that move regulated articles interstate from gypsy moth regulated areas and many thousands of small

entities that move regulated articles interstate from other states. However, based on such information, it has been determined that approximately 1,677 small entities move regulated articles interstate from the specified areas affected by this action.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372 which requires intergovernmental consultation with state and local officials. (See 7 CFR part 3015, subpart V.)

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant pests, Plants (Agriculture), Quarantine, Transportation, Gypsy Moth.

Accordingly, we are adopting as a final rule, with the changes indicated below, the interim rule that amended 7 CFR part 301 and that was published at 54 FR 31005-31008 on July 26, 1989.

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162 and 164-167; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 301.45-2a is amended by removing "Franklin County. The entire county." for Virginia; by revising the entries for North Carolina and by adding in alphabetical order the following areas for Virginia:

§ 301.45-2a Regulated areas; high-risk and low-risk areas.

* * * * *

North Carolina

(1) High-risk area.

Currituck County. The entire county.

Dare County. The area bounded by a line beginning at the intersection of State Road 1208 and Roanoke Sound; then easterly along this road to its junction with State Road 1206; then southerly along this road to its intersection with U.S. Highway Business

158; then easterly along an imaginary line to its intersection with the Atlantic Ocean; then northwesterly along the coastline to its intersection with the Dare-Currituck County line; then westerly along this county line to its intersection with the Currituck Sound; then southeasterly along this sound to the point of beginning.

(2) Low-risk area. None.

* * * * *

Virginia

(1) High-risk area.

* * * * *

City of Colonial Heights. The entire city.

* * * * *

City of Franklin. The entire city.

* * * * *

City of Hopewell. The entire city.

* * * * *

City of Petersburg. The entire city.

* * * * *

City of Richmond. The entire city.

* * * * *

City of Williamsburg. The entire city.

* * * * *

Southampton County. The entire county.

* * * * *

Done in Washington, DC, this 3rd day of January 1990.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-473 Filed 1-8-90; 8:45 am]

BILLING CODE 3410-34-M

7 CFR Part 301

[Docket No. 89-212]

Mediterranean Fruit Fly; Addition to the Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the Mediterranean fruit fly regulations by adding an area comprised of a portion of Orange County and an additional portion of Los Angeles County, California, to the list of quarantined areas. This action is necessary on an emergency basis to prevent the spread of the Mediterranean fruit fly into noninfested areas of the United States.

DATES: Interim rule effective January 3, 1990. Consideration will be given only to comments received on or before March 12, 1990.

ADDRESSES: To help ensure that your comments are considered, send an

original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 89-212. Comments received may be inspected at USDA, room 1141, South Building, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Milton C. Holmes, Senior Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, room 642, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8247.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables, especially citrus fruits. The Mediterranean fruit fly (Medfly) can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

A document effective August 23, 1989, and published in the *Federal Register* on August 29, 1989 (54 FR 35629-35635, Docket Number 89-146), established the Mediterranean fruit fly regulations and quarantined an area in Los Angeles County, California (7 CFR 301.78 *et seq.*; referred to below as the regulations). In an interim rule effective September 14, 1989, and published in the *Federal Register* on September 20, 1989 (54 FR 38643-38645, Docket Number 89-189), we amended the regulations by adding a portion of Santa Clara County, California, to the list of quarantined areas. Also, in an interim rule effective October 11, 1989, and published in the *Federal Register* on October 17, 1989 (54 FR 42478-42480, Docket Number 89-182), we amended the regulations by adding an additional portion of Los Angeles County and a portion of San Bernardino County in California to the list of quarantined areas. In addition, we further amended the regulations by adding an additional portion of Los Angeles County in California to the list of quarantined areas in an interim rule effective November 17, 1989, and published in the *Federal Register* on November 24, 1989 (54 FR 48571-48572, Docket Number 89-202). We amended the regulations again by revising the quarantined area in Los Angeles

County, California, to expand a previously quarantined area and designate an additional quarantined area in an interim rule effective December 6, 1989 and published in the *Federal Register* on December 13, 1989 (54 FR 51189-51191, Docket Number 89-206). These areas remain infested with Mediterranean fruit fly.

The regulations impose restrictions on the interstate movement of regulated articles from quarantined areas in order to prevent the spread of the Mediterranean fruit fly to noninfested areas.

Recent trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service, a unit within the U.S. Department of Agriculture, reveal that an infestation of Medfly has been discovered in Orange County, California. Specifically, inspectors collected a single mated female Mediterranean fruit fly in Orange County, near Brea, California.

The regulations in § 301.78-3 provide that the Administrator of the Animal and Plant Health Inspection Service shall list as a quarantined area each State, or each portion of a State, in which the Mediterranean fruit fly has been found by an inspector, in which the Administrator has reason to believe the Mediterranean fruit fly is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which the Mediterranean fruit fly has been found.

In accordance with these criteria, we are designating as a quarantined area the following area comprised of a portion of Orange County and an additional portion of Los Angeles, California:

Orange County and Los Angeles County

That portion of Orange County and Los Angeles County in the Brea, Whittier, Baldwin Park, Valinda, and San Gabriel Valley areas beginning at the intersection of the Duarte City Limits and Interstate Highway 210; then easterly along this highway to its intersection with Grand Avenue; then southerly along this avenue to its intersection with Valley Boulevard; then southwesterly along this boulevard to its intersection with Brea Canyon Road; then southerly along this road to its intersection with State Highway 60; then westerly along this highway to its intersection with Nogales Street; then southerly along this street to its intersection with Colima Road; then westerly along this road to its intersection with Fullerton Road; then southerly along this road to its intersection with La Habra Heights City limits; then southeasterly from this intersection along an imaginary line to its intersection with the Los Angeles-Orange

County line and State Highway 57; then southerly along this highway to its intersection with Bastanchury Road; then westerly along this road to its intersection with Euclid Street; then northerly along this street to its intersection with Rosecrans Avenue; then westerly along this avenue to its intersection with Santa Gertrudes Avenue; then northerly along this avenue to its intersection with Imperial Highway; then westerly along this highway to its intersection with Telegraph Road; then northwesterly along this road to its intersection with Leffingwell Road; then southwesterly along this road to its intersection with Carmenita Road; then southerly along this road to its intersection with Artesia Boulevard; then westerly along this boulevard to its intersection with Lakewood Boulevard; then northerly along Lakewood Boulevard to its intersection with Gardendale Street; then northwesterly along this street to its intersection with proposed Interstate Highway 105; then westerly along this proposed highway to its intersection with Alameda Street; then northerly along this street to its intersection with Florence Avenue; then easterly along this avenue to its intersection with Interstate Highway 710; then northerly along this highway to its intersection with Interstate Highway 5; then northwesterly along this highway to its intersection with Soto Street; then northeasterly along this street to its intersection with Huntington Drive; then northeasterly along this drive to its intersection with Monterey Road; then northerly along this road to its intersection with Avenue 60; then northwesterly along this avenue to its intersection with Figueroa Street; then northeasterly along this street to its intersection with York Boulevard; then westerly along this boulevard to its intersection with Eagle Rock Boulevard; then northeasterly along this boulevard to its intersection with Colorado Boulevard; then westerly along this boulevard to its intersection with State Highway 2; then northerly along this highway to its intersection with Chevy Chase Drive; then northeasterly along this drive to its intersection with Highland Drive; then easterly along Highland Drive to its intersection with Woodbury Road; then easterly along this road to its intersection with Lake Avenue; then northerly along this avenue to its intersection with New York Drive; then easterly and southeasterly along this drive to its intersection with Sierra Madre Villa Avenue; then southerly along this avenue to its intersection with Sierra Madre Boulevard; then easterly along this boulevard to its intersection with the Sierra Madre City Limits; then northerly and easterly along the city limits to its intersection with the Arcadia City Limits; then easterly along the Arcadia City Limits to its intersection with the Monrovia City Limits; then northerly and easterly along the Monrovia City Limits to its intersection with the Duarte City Limits; then easterly, southerly, and southwesterly along the Duarte City Limits to the point of beginning.

There does not appear to be any reason to designate additional

quarantined areas in California other than the areas specified above. California has adopted and is enforcing regulations imposing restrictions on the intrastate movement of the regulated articles that are equivalent to those imposed on the interstate movement of regulated articles under this subpart.

Emergency Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that an emergency situation exists, which warrants publication of this interim rule without prior opportunity for public comment. Because the Mediterranean fruit fly could be spread to noninfested areas of the United States, it is necessary to act immediately to prevent its spread.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments received within 60 days of publication of this interim rule in the *Federal Register*. After the comment period closes, we will publish another document in the *Federal Register*, including a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than \$100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This regulation affects the interstate movement of regulated articles from an area comprised of a portion of Orange County and an additional portion of Los Angeles County, California. Within the regulated area approximately 279 entities will be affected by this rule. All

would be considered small entities. They include 210 fruit/produce markets, 19 nurseries, 5 fruit vendors, and 45 homeowners, each with approximately 1 acre of citrus and/or avocado trees remaining from previous commercial groves that were subdivided. These entities comprise less than 1 percent of the total of similar enterprises operating in the State of California. Most of the sales for these entities are local intrastate and would not be affected by this regulation. Further, the conditions in the Mediterranean fruit fly regulations and treatments in the Plant Protection and Quarantine Treatment Manual, incorporated by reference in the regulations, allow interstate movement of most articles without significant added costs.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The regulations in this subpart contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation, Mediterranean fruit fly, Incorporation by reference.

Accordingly, 7 CFR part 301 is amended to read as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for 7 CFR part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164-167; 7 CFR 2.17, 2.51, and 371.2(c).

3. In § 301.78-3 paragraph (c), the designation of the quarantined area is amended by adding the following immediately before the description for San Bernardino County:

§ 301.78-3 Quarantined areas.

* * * * *

(c) * * *

California

Orange County and Los Angeles County

That portion of Orange County and Los Angeles County in the Brea, Whittier, Baldwin Park, Valinda, and San Gabriel Valley areas beginning at the intersection of the Duarte City Limits and Interstate Highway 210; then easterly along this highway to its intersection with Grand Avenue; then southerly along this avenue to its intersection with Valley Boulevard; then southwesterly along this boulevard to its intersection with Brea Canyon Road; then southerly along this road to its intersection with State Highway 60; then westerly along this highway to its intersection with Nogales Street; then southerly along this street to its intersection with Colima Road; then westerly along this road to its intersection with Fullerton Road; then southerly along this road to its intersection with La Habra Heights City limits; then southeasterly from this intersection along an imaginary line to its intersection with the Los Angeles-Orange County line and State Highway 57; then southerly along this highway to its intersection with Bastanchury Road; then westerly along this road to its intersection with Euclid Street; then northerly along this street to its intersection with Rosecrans Avenue; then westerly along this avenue to its intersection with Santa Gertrudes Avenue; then northerly along this avenue to its intersection with Imperial Highway; then westerly along this highway to its intersection with Telegraph Road; then northwesterly along this road to its intersection with Leffingwell Road; then southwesterly along this road to its intersection with Carmenita Road; then southerly along this road to its intersection with Artesia Boulevard; then westerly along this boulevard to its intersection with Lakewood Boulevard; then northerly along Lakewood Boulevard to its intersection with Gardendale Street; then northwesterly along this street to its intersection with proposed Interstate Highway 105; then westerly along this proposed highway to its intersection with Alameda Street; then northerly along this street to its intersection with Florence Avenue; then easterly along this avenue to its intersection with Interstate Highway 710; then northerly along this highway to its intersection with Interstate Highway 5; then northwesterly along this highway to its intersection with Soto Street; then northeasterly along this street to its intersection with Huntington Drive; then northeasterly along this drive to its intersection with Monterey Road; then northerly along this road to its intersection with Avenue 60; then northwesterly along this avenue to its intersection with Figueroa Street; then northeasterly along this street to its intersection with York Boulevard; then westerly along this boulevard to its intersection with Eagle Rock Boulevard; then northeasterly along this boulevard to its intersection with Colorado Boulevard; then westerly along this boulevard to its intersection with State Highway 2; then northerly along this highway to its

intersection with Chevy Chase Drive; then northeasterly along this drive to its intersection with Highland Drive; then easterly along Highland Drive to its intersection with Woodbury Road; then easterly along this road to its intersection with Lake Avenue; then northerly along this avenue to its intersection with New York Drive; then easterly and southeasterly along this drive to its intersection with Sierra Madre Villa Avenue; then southerly along this avenue to its intersection with Sierra Madre Boulevard; then easterly along this boulevard to its intersection with the Sierra Madre City Limits; then northerly and easterly along the city limits to its intersection with the Arcadia City Limits; then easterly along the Arcadia City Limits to its intersection with the Monrovia City Limits; then northerly and easterly along the Monrovia City Limits to its intersection with the Duarte City Limits; then easterly, southerly, and southwesterly along the Duarte City Limits to the point of beginning.

Done in Washington, DC, this 3rd day of January 1990.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-474 Filed 1-8-90; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Marketing Service

7 CFR Part 955

[Docket No. FV-AO-88-3; FV-88-108]

RIN 0581-AA29

Vidalia Onions Grown in Georgia; Issuance of Order

AGENCY: Agricultural Marketing Service (AMS), USDA.

ACTION: Final rule.

SUMMARY: This rule establishes a Federal marketing agreement and order for Vidalia onions grown in a designated part of Georgia. A marketing agreement and order are currently in effect on an interim basis. The order will be administered locally by a nine member committee consisting of eight growers, of whom at least four must also be handlers, and a public member. The order authorizes production and marketing research and promotion projects, including paid advertising, for Vidalia onions. The program will be financed by assessments levied on Vidalia onion handlers. A primary objective of the program is to improve grower returns by strengthening consumer demand through various promotion activities and by reducing costs through production and marketing research. Vidalia onion producers approved the marketing order in a referendum held September 13-15, 1989.

EFFECTIVE DATE: February 8, 1990.

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

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing—Issued August 19, 1988, and published in the *Federal Register* on August 23, 1988 (53 FR 32054); Tentative Decision and Referendum Order and Opportunity to File Written Exceptions—Issued February 21, 1989, and published in the *Federal Register* on February 24, 1989 (54 FR 8160); Interim Order—Issued March 10, 1989, and published in the *Federal Register* on March 16, 1989 (54 FR 10972); Final Decision and Referendum Order—Issued August 24, 1989, and published in the *Federal Register* on August 29, 1989 (54 FR 35656).

Preliminary Statement

This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code, and therefore is excluded from the requirements of Executive Order 12291.

This order is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act, and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

The marketing agreement and order were formulated on the record of a public hearing held at the Toombs County Courthouse in Lyons, Georgia on September 20-21, 1988. Notice of the hearing was published in the August 23, 1988, issue of the *Federal Register*. The notice set forth a proposed order submitted by a group of Vidalia onion producers and handlers known as FAVOR (Farmers Allied for the Vidalia Onion Referendum). The principal feature of the order is the authority to collect assessments from handlers of Vidalia onions grown in a designated part of Georgia to fund research and promotion activities.

Upon the basis of evidence introduced at the hearing and the record thereof, the Deputy Assistant Secretary for Marketing and Inspection Services on February 21, 1989, filed with the Hearing Clerk, U.S. Department of Agriculture, a Tentative Decision and Referendum Order, directing that a referendum be conducted during the period March 1-3, 1989, among producers of Vidalia onions to determine whether they favored issuance of the proposed marketing

order on an interim basis for the 1989 season. In the referendum, the marketing order was favored by more than two-thirds of the producers voting in the referendum and also by producers of more than two-thirds of the production represented in the referendum. The tentative marketing agreement was signed by handlers who, during the representative period, handled more than 50 percent of the volume of Vidalia onions handled during the representative period. The tentative marketing agreement and interim marketing order were issued on March 10, 1989, and became effective upon publication in the *Federal Register* on March 16, 1989 (54 FR 10972).

The Tentative Decision and Referendum Order also provided interested persons the opportunity to file written exceptions thereto by June 30, 1989. Four exceptions were received and were discussed and ruled upon in the Final Decision. The Final Decision and Referendum Order was issued August 24, 1989, and a referendum was conducted September 13-15, 1989. In the referendum, the marketing order was favored by more than two-thirds of the producers voting in the referendum who also represented more than two-thirds of the production represented in the referendum. The marketing agreement was signed by handlers, who, during the representative period handled more than 50 percent of the volume of Vidalia onions handled during the representative period.

Small Business Considerations

In accordance with the provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of the Agricultural Marketing Service (AMS) has determined that this action will not have a significant economic impact on a substantial number of small entities. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.2) as those having average annual gross revenues for the last three years of less than \$500,000. Small agricultural service firms, which would include handlers under this order, are defined as those with gross annual revenues of less than \$3.5 million.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. The Act requires the application of uniform rules to regulated handlers. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are normally brought about through

group action of essentially small entities acting on their own behalf. Thus, both the RFA and the Act have small entity orientation and compatibility.

There are approximately 160 handlers of Vidalia onions. During the 1987 season, commercial shipments totalled about 738,400 50-pound bags at an average f.o.b. price of \$16.75 for a total value of about \$21.4 million. An underdetermined volume was also sold locally at roadside stands and through mail order operations. While there is a great variance in the size of individual handler operations, almost all of the handlers that would be regulated under this order would qualify as small firms under SBA's definition.

There are about 260 Vidalia onion growers in Georgia. The average acreage of onions grown is 27 acres, with the smallest farm being one-tenth of an acre and the largest farm having 600 acres of Vidalia onions. About 5 percent of the growers farm in excess of 100 acres, and almost 30 percent have less than 5 acres. The majority of these growers would be classified as small businesses.

Because most of the growers and handlers of Vidalia onions are small in size, they have been unable to individually finance the types of research and promotion efforts needed by the industry. The marketing order program will provide a means for these small entities to pool their resources and work together to solve their common problems. Such action is necessary for this relatively small industry to remain profitable in the face of intense competition from larger industries.

The marketing order authorizes the collection of assessments from handlers of Vidalia onions grown in a designated part of Georgia. Assessment funds may be used to finance production research projects that could reduce costs by improving post-harvest handling techniques and reducing the occurrence of onion diseases. Assessment funds may also be used to strengthen demand and expand markets for Vidalia onions through marketing research and product promotion programs, including paid advertising. The order will be administered by a committee composed of Vidalia onion producers and a public member nominated by growers and selected by the Secretary. Daily administration of the order will be carried out by a staff hired by the Vidalia Onion Committee (committee). The order will not regulate the production of Vidalia onions and will place no restrictions on the quality or quantity of Vidalia onions that may be handled.

The principal requirement of the order which will affect handlers is the requirement that they pay assessments on fresh market shipments of Vidalia onions to fund any research and promotion programs. Any assessment rate that may be established would be recommended by the committee to the Secretary for approval.

Acreage and supplies of Vidalia onions have risen dramatically in recent years, and the marketing order will provide a means of halting the drop in grower returns experienced in past seasons. This should be achieved by strengthening demand and developing new markets for these increasing supplies through promotion of the Vidalia onion. Also, costs could be reduced through research. Thus, the marketing order is expected to have a positive impact on grower returns.

The order will also impose some reporting and recordkeeping requirements on handlers. The burden that is likely to be imposed with respect to these requirements is negligible. Most of the information that would be reported to the committee is already compiled by handlers for other uses and is readily available.

In compliance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection and recordkeeping requirements that are contained in the order have been submitted to the Office of Management and Budget (OMB) and have been approved under OMB No. 0581-0160. The currently approved requirements impose an estimated annual reporting burden of approximately one hour on each of the 160 handlers covered by the order and an estimated recordkeeping burden of about 15 minutes. Any additional reporting requirements that may be imposed under the order would not become effective prior to OMB review. Such requirements would be evaluated against the potential benefits to be derived to ensure that any added burden resulting from increased reporting would not be significant when compared to those anticipated benefits.

In determining that the order will not have a significant economic impact on a substantial number of small entities, all of the issues discussed above were considered. The marketing order provisions have been carefully reviewed and every effort has been made to eliminate any unnecessary costs or requirements. Although the order may impose some additional costs and requirements on handlers, it is anticipated that the order will help to strengthen demand for Vidalia onions grown in Georgia. Therefore, any

additional costs should be offset by the benefits derived from expanded markets and sales benefiting handlers and producers alike. Accordingly, it is determined that the marketing order will not have a significant impact on small handlers or producers.

In accordance with Executive Order 12612, consideration has been given as to whether the marketing order would have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. To this end, notice of the hearing conducted to consider the establishment of a Federal marketing order program for Vidalia onions grown in Georgia was provided to the Governor of Georgia as well as to the State's Commissioner of Agriculture. One State official provided testimony at the hearing that concluded that the proposed Federal program would not conflict with any State statute, would not interfere with any State function, and would impose no burden on the State of Georgia, either financial or otherwise. It is therefore determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Findings and Determinations

(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 *et seq.*), and the applicable rules of practice and procedure effective thereunder (7 CFR Part 900), a public hearing was held upon a proposed marketing agreement and order regulating the handling of Vidalia onions grown in Georgia.

Upon the basis of the evidence introduced at the hearing and the record thereof, it is found that:

(1) The marketing agreement and order, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The marketing agreement and order regulate the handling of Vidalia onions grown in the production area in the same manner as, and are applicable only to persons in the respective classes of commercial and industrial activity specified in, the marketing agreement and order upon which a hearing has been held;

(3) The marketing agreement and order are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the

Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) There are no differences in the production and marketing of Vidalia onions produced in the production area which make necessary different terms and provisions applicable to different parts of such area; and

(5) All handling of Vidalia onions grown in the production area is in the current of interstate commerce or directly burdens, obstructs, or affects such commerce.

(b) *Determinations.* It is hereby determined that:

(1) The "Marketing Agreement Regulating the Handling of Vidalia Onions Grown in Georgia," upon which the aforesaid public hearing was held, has been signed by handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping Vidalia onions covered by the order) who during the period July 31, 1988, through August 31, 1989, handled not less than 50 percent of the volume of Vidalia onions covered by this order; and

(2) The issuance of this order is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of its approval and who, during the period July 31, 1988, through August 31, 1989 (which has been deemed to be a representative period), have been engaged within the designated area in Georgia in the production of Vidalia onions for market, such producers having also produced for market at least two-thirds of the volume of such commodity represented in the referendum.

List of Subjects in 7 CFR Part 955

Georgia, marketing agreements and orders, Vidalia onions.

Order Relative To Handling of Vidalia Onions Produced in Georgia

It is therefore ordered. That on and after the effective date hereof, all handling of Vidalia onions grown in the production area shall be in conformity to, and in compliance with, the terms and conditions of the said order, as follows:

The provisions of the marketing agreement and order are set forth in full herein. Sections 955.90, 955.91 and 955.92 apply only to the marketing agreement and not to the marketing order.

List of Subjects in 7 CFR Part 955

Marketing agreements and orders, Vidalia onions, Georgia.

Therefore, title 7, chapter IX is

amended by adopting as final and revising part 955 to read as follows:

Note: This part will appear in the annual Code of Federal Regulations.

PART 955—VIDALIA ONIONS GROWN IN GEORGIA

Definitions

Sec.	
955.1	Secretary.
955.2	Act.
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955.4	Production area.
955.5	Vidalia onion.
955.6	Handler.
955.7	Handle.
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955.10	Producer-handler.
955.12	Committee.
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Committee

955.20	Establishment and membership.
955.21	Term of office.
955.22	Nominations.
955.23	Selection.
955.24	Acceptance.
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Expenses and Assessments

955.40	Expenses.
955.41	Budget.
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955.50	Research and development.
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Reports and Recordkeeping

955.60	Reports and recordkeeping.
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Marketing Agreement

955.90	Counterparts.
955.91	Additional parties.
955.92	Order with marketing agreement.

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

Definitions

§ 955.1 Secretary.

"Secretary" means the Secretary of

Agriculture of the United States, or any officer or employee of the Department of Agriculture who has been delegated, or who may hereafter be delegated, the authority to act for the Secretary.

§ 955.2 Act.

"Act" means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (Sec. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601 *et seq.*).

§ 955.3 Person.

"Person" means an individual, partnership, corporation, association, or any other business unit.

§ 955.4 Production area.

"Production area" means that part of the State of Georgia enclosed by the following boundaries: Beginning at a point in Laurens County where U.S. Highway 441 intersects Highway 18; thence continue southerly along U.S. Highway 441 to a point where it intersects the southern boundary of Laurens County; thence southwesterly along the border of Laurens County to a point where it intersects the county road known as Jay Bird Springs Road; thence southeasterly along Jay Bird Springs Road to a point where it intersects U.S. Highway 23; thence easterly to a point where U.S. Highway 23 intersects the western border of Telfair County; thence southwesterly following the western and southern border of Telfair County to a point where it intersects with Jeff Davis County; thence following the southern border of Jeff Davis County to a point where it intersects with the western border of Bacon County; thence southerly and easterly along the border of Bacon County to a point where it intersects Georgia State Road 32; thence easterly along Georgia State Road 32 to Seaboard Coastline Railroad; thence northeasterly along the tracks of Seaboard Coastline Railroad to a point where they intersect Long County and Liberty County; thence northwesterly and northerly along the southwestern border of Liberty County to a point where the border of Liberty County intersects the southern border of Evans County; thence northeasterly along the eastern border of Evans County to the intersection of the Bulloch County border; thence northeasterly along the Bulloch County border to a point where it intersects with the Ogeechee River; thence northerly along the main channel of the Ogeechee River to a point where it intersects with the southeastern border of Screven County; thence northeasterly along the southeasterly border of Screven County to the main channel of the Savannah River; thence

northerly along the main channel of the Savannah River to a point where the northwestern boundary of Hampton County, South Carolina intersects the Savannah River; thence due west to a point where State Road 24 intersects Brannen Bridge Road; thence westerly along Brannen Bridge Road to a point where it intersects with State Road 21; thence westerly along State Road 21 to the intersection of State Road 17; thence westerly along State Road 17 to the intersection of State Road 58 and southerly to the northern border of Emanuel County; thence westerly and southerly along the border of Emanuel County to a point where it intersects the Treutlen County border; thence southerly to a point where the Truetlen County border intersects Interstate Highway 16; thence westerly to the point of beginning in Laurens County.

§ 955.5 Vidalia onion.

"Vidalia onion" means all varieties of *Allium cepa* of the hybrid yellow granex, granex parentage or any other similar variety recommended by the committee and approved by the Secretary, that are grown in the production area.

§ 955.6 Handler.

"Handler" is synonymous with "shipper" and means any person (except a common or contract carrier of Vidalia onions owned by another person) who handles Vidalia onions, or causes Vidalia onions to be handled.

§ 955.7 Handle.

"Handle" or "ship" means to package, load, sell, transport, or in any other way to place Vidalia onions, or cause Vidalia onions to be placed, in the current of commerce within the production area or between the production area and any point outside thereof. Such term shall not include the transportation, sale, or delivery of field-run Vidalia onions to a person within the production area for the purpose of having such Vidalia onions prepared for market.

§ 955.9 Producer.

"Producer" is synonymous with "grower" and means any person engaged in a proprietary capacity in the production of Vidalia onions for market.

§ 955.10 Producer-handler.

"Producer-Handler" means a producer who handles Vidalia onions.

§ 955.12 Committee.

"Committee" means the Vidalia Onion Committee, established pursuant to § 955.20.

§ 955.13 Fiscal period.

"Fiscal period" means the 12-month period beginning on September 16 and

ending on September 15 of the next year or such other period that may be recommended by the committee and approved by the Secretary.

Committee

§ 955.20 Establishment and membership.

(a) There is hereby established a Vidalia Onion Committee, consisting of nine members, to administer the terms and provisions of this part. Eight members shall be producers, and one shall be a public member. At least four of the producer members shall be producer-handlers. Each member shall have an alternate who shall have the same qualifications as the member.

(b) Each member, other than the public member, shall be an individual who is, prior to selection and during such member's term of office, a resident of the production area and a grower or an officer or employee of a grower.

(c) The public member shall be a resident of the production area and shall have no direct financial interest in the commercial production, financing, buying, packing or marketing of Vidalia onions, except as a consumer, nor shall such person be a director, officer or employee of any firm so engaged.

§ 955.21 Term of office.

(a) Except as otherwise provided in paragraph (b) of this section, the term of office of committee members and their respective alternates shall be for two years and shall begin as of September 16 or for such other period as the committee may recommend and the Secretary approve. The terms shall be determined so that approximately one-half of the total committee membership shall terminate each year. Members and alternates shall serve in such capacity during the term of office or portion thereof for which they are selected and until their respective successors are selected.

(b) The term of office of the initial members and alternates shall begin as soon as possible after effective date of this part. As determined by lot drawn at the initial nomination meeting, one-fourth of the initial grower members and alternates shall serve for a one-year term, one-fourth shall serve for a two-year term, one-fourth shall serve for a three-year term, and one-fourth shall serve for a four-year term. The term of office for the initial public member and alternate shall be for two years.

(c) The consecutive terms of office of members shall be limited to three 2-year terms.

§ 955.22 Nominations.

(a) Initial members. For nominations to the initial committee, a meeting of producers shall be held by the Secretary.

(b) Successor members. (1) The committee shall hold or cause to be held not later than August 1 of each year, or such other date as may be specified by the Secretary, a meeting or meetings of growers for the purpose of designating one nominee for each position as member and for each position as alternate member of the committee which is vacant, or which is about to become vacant.

(2) Nominations for members and alternates shall be supplied to the Secretary in such manner and form as the Secretary may prescribe, not later than August 15 of each year, or by such other date as may be specified by the Secretary.

(3) The Secretary may, upon recommendation of the committee, divide the production area into districts for the purpose of nominating committee members and their alternates.

(c) Only producers may participate in designating nominees to serve as committee members. Each producer is entitled to cast only one vote on behalf of such producer and such producer's agents, subsidiaries, affiliates, and representatives in designating nominees for committee members and alternates. An eligible voter's privilege of casting only one vote shall be construed to permit a voter to cast one vote for each position to be filled.

(d) The producer members shall nominate the public member and alternate member at the first meeting following the selection of members for a new term of office. Nominations for the public member and alternate member shall be supplied to the Secretary in such manner and form as the Secretary may prescribe, not later than November 1, or such other date as may be specified by the Secretary.

§ 955.23 Selection.

From the nominations made pursuant to § 955.22 or from other qualified persons, the Secretary shall select members and alternate members of the committee.

§ 955.24 Acceptance.

Any person nominated to serve as a member or alternate member of the committee shall, prior to selection by the Secretary, qualify by filing a written acceptance indicating such person's willingness to serve in the position for which nominated.

§ 955.25 Alternates.

An alternate member of the committee shall act in the place and stead of the member for whom such person is an alternate during such member's absence or when designated to do so by such member. In the event both a member of

the committee and that member's alternate are unable to attend a committee meeting, the member, the alternate, or the committee, in that order, may designate another alternate from the same district (if applicable) and the same group (producer or producer-handler) to serve in such member's stead. Only the public member's alternate is authorized to serve in the place and stead of the public member. In the event of the death, removal, resignation or disqualification of a member, that member's alternate shall serve until a successor to such member is selected.

§ 955.26 Vacancies.

To fill any vacancy occasioned by the failure of any person nominated as a member or as an alternate to qualify, or in the event of the death, removal, resignation, or disqualification of a member or alternate, a successor for the unexpired term may be selected by the Secretary from nominations made pursuant to § 955.22, or from other eligible persons.

§ 955.27 Failure to nominate.

If nominations are not made within the time and manner prescribed in § 955.22, the Secretary may, without regard to nominations, select members and alternates on the basis of the representation provided for in § 955.20.

§ 955.28 Procedure.

(a) Five members of the committee shall constitute a quorum, and five concurring votes shall be required to pass any motion or approve any committee action.

(b) The committee may provide for meetings by telephone, telegraph, or other means of communication, and any vote cast orally at such meetings shall be confirmed promptly in writing: *Provided*, That if an assembled meeting is held, all votes shall be cast in person.

§ 955.29 Expenses.

Members and alternates shall serve without compensation but shall be reimbursed for such expenses authorized by the committee and necessarily incurred by them in attending committee meetings and in the performance of their duties under this part.

§ 955.30 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To make rules and regulations to effectuate the terms and provisions of this part;

(c) To receive, investigate, and report to the Secretary complaints of violation of the provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 955.31 Duties.

The committee shall have, among others, the following duties:

(a) As soon as practicable after the beginning of each term of office, to meet and organize, to select a chairman and such other officers as may be necessary, to select subcommittees of committee members or alternates, and to adopt such rules and regulations for the conduct of its business as it deems necessary;

(b) To act as intermediary between the Secretary and any producer or handler;

(c) To furnish to the Secretary such available information as may be requested;

(d) To appoint such employees, agents, and representatives as it may deem necessary, to determine the compensation and define the duties of each such person, and to protect the handling of committee funds;

(e) To investigate from time to time and to assemble data on the growing, harvesting, shipping, and marketing conditions with respect to Vidalia onions;

(f) To keep minutes, books, and records which clearly reflect all of the acts and transactions of the committee. Such minutes, books, and records shall be subject to examination at any time by the Secretary or the Secretary's authorized agent or representative. Minutes of each committee meeting shall be furnished promptly to the Secretary;

(g) Prior to the beginning of each fiscal period, to prepare and submit to the Secretary a budget of its projected income and expenses for such fiscal period, together with a report thereon and a recommendation as to the rate of assessment for such period;

(h) To cause its books to be audited by a Certified Public Accountant at least once each fiscal period, and at such other time as the committee may deem necessary or as the Secretary may request. The report of such audit shall show the receipt and expenditure of funds collected pursuant to this part. A copy of each report shall be furnished to the Secretary. A copy shall also be made available at the principal office of the committee for inspection by producers and handlers provided that confidential information shall be removed;

(i) To give the Secretary the same notice of meetings of the committee and

its subcommittees as is given to its members.

Expenses and Assessments

§ 955.40 Expenses.

The committee is authorized to incur such expenses as the Secretary may find are reasonable and likely to be incurred by the committee for its maintenance and functioning, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this part. The funds to cover such expenses shall be acquired in the manner prescribed in § 955.42 and § 955.45.

§ 955.41 Budget.

At least 60 days prior to each fiscal period, or such other date as may be specified by the Secretary, and as may be necessary thereafter, the committee shall prepare an estimated budget of income and expenditures necessary for the administration of this part. The committee may recommend a rate of assessment calculated to provide adequate funds to defray its proposed expenditures. The committee shall present such budget to the Secretary with an accompanying report showing the basis for its calculations.

§ 955.42 Assessments.

(a) The funds to cover the committee's expenses shall be acquired by the levying of assessments upon handlers as provided in this subpart. Each person who first handles Vidalia onions shall pay assessments to the committee upon demand, which assessments shall be in payment of such handler's pro rata share of the committee's expenses.

(b) Assessments shall be levied upon handlers at rates established by the Secretary. Such rates may be established upon the basis of the committee's recommendations or other available information.

(c) At any time during, or subsequent to, a given fiscal period the committee may recommend the approval of an amended budget and an increase in the rate of assessment. Upon the basis of such recommendations, or other available information, the Secretary may approve an amended budget and increase the assessment rate. Such increase shall be applicable to all Vidalia onions which were handled during such fiscal period.

(d) The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect irrespective of whether particular provisions of this part are suspended or become inoperative.

(e) To provide funds for the administration of the provisions of this part during the initial fiscal period or the first part of a fiscal period when neither sufficient operating reserve funds nor sufficient revenue from assessments on the current seasons's shipments are available, the committee may accept payment of assessments in advance or may borrow money for such purposes.

(f) The committee may impose a late payment charge or an interest charge or both, on any handler who fails to pay any assessment in a timely manner. Such time and the rates shall be recommended by the committee and approved by the Secretary.

§ 955.43 Accounting.

(a) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purposes specified in this part.

(b) The Secretary may at any time require the committee, its members and alternates, employees, agents and all other persons to account for all receipts and disbursements, funds, property, or records for which they are responsible. Whenever any person ceases to be a member or alternate of the committee, such person shall account for all receipts and disbursements and deliver all property and funds in such member's possession to the committee, pertaining to the committee's activities for which such person was responsible, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in the committee full title to all of the property, funds, and claims vested in such person.

(c) The committee may make recommendations to the Secretary for one or more of the members thereof, or any other person, to act as a trustee for holding records, funds, or any other committee property during periods of suspension of this part, or during any period or periods when regulations are not in effect and, upon determining such action is appropriate, the Secretary may direct that such person or persons shall act as trustee or trustees for the committee.

§ 955.44 Excess funds.

If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, such excess shall be accounted for as follows:

(a) The committee, with the approval of the Secretary, may establish an operating reserve and may carry over to subsequent fiscal periods excess funds in a reserve so established, except funds in the reserve shall not exceed the equivalent of approximately three fiscal

periods' budgeted expenses. Such reserve funds may be used:

(1) To defray any expenses authorized under this part;

(2) To defray expenses during any fiscal period prior to the time assessment income is sufficient to cover such expenses;

(3) To cover deficits incurred during any fiscal period when assessment income is less than expenses;

(4) To defray expenses incurred during any period when any or all provisions of this part are suspended or are inoperative; and

(5) To cover necessary expenses of liquidation in the event of termination of this part.

Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate except that to the extent practicable, such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) If such excess is not retained in a reserve as provided in paragraph (a) of this section, each handler entitled to a proportionate refund of the excess assessments collected shall be credited at the end of a fiscal period with such refund against the operations of the following fiscal period unless such handler demands payment thereof, in which event such proportionate refund shall be paid.

§ 955.45 Contributions.

The committee may accept voluntary contributions but these shall only be used to pay expenses incurred pursuant to § 955.50. Such contributions shall be free from any encumbrances by the donor, and the committee shall retain complete control of their use.

Research and Development

§ 955.50 Research and development.

(a) The committee, with the approval of the Secretary, may establish or provide for the establishment of production research, marketing research and development and marketing promotion projects, including paid advertising, designed to assist, improve, or promote the marketing, distribution, consumption, or efficient production of Vidalia onions. Any such project for the promotion and advertising of Vidalia onions may utilize an identifying mark which shall be made available for use by all handlers in accordance with such terms and conditions as the committee, with the approval of the Secretary, may prescribe. The expense of such projects

shall be paid from funds collected pursuant to § 955.42 or § 955.45.

(b) In recommending projects pursuant to this section, the committee shall give consideration to the following:

(1) The expected supply of Vidalia onions in relation to market requirements;

(2) The supply situation among competing areas and commodities;

(3) The anticipated benefits from such projects in relation to their costs;

(4) The need for marketing research with respect to any market development activity; and

(5) Other relevant factors.

(c) If the committee should conclude that a program of research and development should be undertaken, or continued, in any fiscal period, it shall submit the following for the approval of the Secretary:

(1) Its recommendations as to the funds to be obtained pursuant to § 955.42 or § 955.45;

(2) Its recommendation as to any research projects; and

(3) Its recommendations as to promotion activity and paid advertising.

(d) Upon conclusion of each activity, but at least annually, the committee shall summarize and report the results of such activity to the Secretary.

(e) All marketing promotion activity engaged in by the committee, including paid advertising, shall be subject to the following terms and conditions:

(1) No marketing promotion, including paid advertising, shall refer to any private brand, private trademark or private trade name;

(2) No promotion or advertising shall disparage the quality, use, value or sale of like or any other agricultural commodity or product, and no false or unwarranted claims shall be made in connection with the product; and

(3) No promotion or advertising shall be undertaken without reason to believe that returns to producers will be improved by such activity.

Reports and Recordkeeping

§ 955.60 Reports and recordkeeping.

Upon request of the committee, made with the approval of the Secretary, each handler shall furnish to the committee, in such manner and at such time as it may prescribe, such reports and other information as may be necessary for the committee to perform its duties under this part.

(a) Such reports may include, but are not limited to, the following:

(1) The quantities of Vidalia onions received by a handler;

(2) The quantities disposed of by the handler;

(3) The date of each such disposition; and

(4) The identification of the carrier transporting such Vidalia onions.

(b) All such reports shall be held under appropriate protective classification and custody by duly appointed employees of the committee, so that the information contained therein which may adversely affect the competitive position of any handler in relation to other handlers will not be disclosed. Compilations of general reports from data submitted by handlers is authorized, subject to the prohibition of disclosure of an individual handler's identity or operations.

(c) Each handler shall maintain for at least two succeeding years such records of the Vidalia onions received and disposed of by such handler as may be necessary to verify reports submitted to the committee pursuant to this section.

Miscellaneous Provisions

§ 955.71 Termination or suspension.

(a) The Secretary may at any time terminate the provisions of this part by giving at least one day's notice by means of a press release or in any other manner which the Secretary may determine.

(b) The Secretary shall terminate or suspend the operations of any or all of the provisions of this part whenever it is found that such provisions do not tend to effectuate the declared policy of the Act.

(c) The Secretary shall terminate the provisions of this part at the end of any fiscal period whenever it is found that such termination is favored by a majority of producers who, during a representative period, have been engaged in the production of Vidalia onions:

Provided, That such majority has, during such representative period, produced for market more than fifty percent of the volume of such Vidalia onions produced for market, but such termination shall be effective only if announced on or before June 15 of the then current fiscal period.

(d) Within six years of the effective date of this part, the Secretary shall conduct a continuance referendum to ascertain whether continuance of this part is favored by producers. Subsequent referenda to ascertain continuance shall be conducted every six years thereafter.

(e) The provisions of this part shall, in any event, terminate whenever the provisions of the Act authorizing them cease to be in effect.

§ 955.72 Proceedings after termination.

(a) Upon the termination of the provisions of this subpart, the then functioning members of the committee shall continue as joint trustees, for the purpose of liquidating the affairs of the committee, of all funds and property then in the possession, or under control, of the committee, including claims for any funds unpaid or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

(b) The said trustees shall continue in such capacity until discharged by the Secretary; shall, from time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of said committee and of the trustees, to such person as the Secretary may direct; and shall upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in said committee or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered by the committee or its members pursuant to this section shall be subject to the same obligations imposed upon the members of the committee and upon the said trustees.

§ 955.73 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendments to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued under this subpart;

(b) Release or extinguish any violation of this subpart or of any regulations issued under this subpart; or

(c) Affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violations.

§ 955.80 Compliance.

No handler shall handle Vidalia onions except in conformity with the provisions of this part.

§ 955.81 Right of the Secretary.

The members of the committee (including successors and alternates)

and any agent or employee appointed or employed by the committee shall be subject to removal or suspension by the Secretary at any time. Each and every order, regulation, decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the committee shall be deemed null and void except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 955.82 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon the termination of this part, except with respect to acts done under and during the existence of this part.

§ 955.83 Agents.

The Secretary may, by designation in writing, name any person, including any officer or employee of the Government, or name any agency in the United States Department of Agriculture, to act as the Secretary's agent or representative in connection with any of the provisions of this part.

§ 955.84 Derogation.

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the Act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 955.85 Personal liability.

No member or alternate of the committee or any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler or to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, employee, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

§ 955.86 Separability.

If any provision of this part is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part, or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ 955.87 Amendments.

Amendments to this part may be proposed, from time to time, by the committee or by the Secretary.

Marketing Agreement**§ 955.90 Counterparts.**

This agreement may be executed in multiple counterparts and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.

§ 955.91 Additional parties.

After the effective date thereof, any handler may become a party to this agreement if a counterpart is executed by such handler and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary, and the benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting party.

§ 955.92 Order with marketing agreement.

Each signatory hereby requests the Secretary to issue, pursuant to the Act, an order providing for regulating the handling of Vidalia onions in the same manner as is provided for in this agreement.

Signed at Washington, DC, on January 3, 1990 to become effective February 8, 1990.

Jo Ann R. Smith,

Assistant Secretary for Marketing and Inspection Services

Marketing Agreement Regulating the Handling of Vidalia Onions Grown in Georgia

OMB Approval No: 0581-0160.

Expiration Date: 2/29/92.

The parties hereto, in order to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937, as amended (Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674), and in accordance with the applicable rules of practice and procedure effective thereunder (7 CFR part 900) desire to enter into this agreement regulating the handling of Vidalia onions grown in Georgia; and each party hereto agrees that such handling shall, from the effective date of this marketing agreement, be in conformity to, and in compliance with, the provisions of said marketing agreement as hereby enacted.

The provisions of §§ 955.1-955.92, inclusive, of the order annexed to and made a part of the decision of the Secretary of Agriculture with respect to a proposed marketing agreement and order regulating the handling of Vidalia onions grown in Georgia, plus the following additional provisions shall be, and the same hereby are, the terms and conditions hereof; and the specified provisions of said annexed order are hereby incorporated into this marketing agreement as if set forth in full herein:

§ 955.90 Counterparts.

This agreement may be executed in

multiple counterparts and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.

§ 955.91 Additional parties.

After the effective date hereof, any handler may become a party to this agreement if a counterpart is executed by such handler and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary, and the benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting party.

§ 955.92 Order with marketing agreement.

Each signatory handler requests the Secretary to issue, pursuant to the Act, an order providing for regulating the handling of Vidalia onions in the same manner as is provided for in this agreement.

The undersigned hereby authorizes the Director, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, to correct any typographical errors which may have been made in this marketing agreement.

In witness whereof, the contracting parties, acting under the provisions of the Act, for the purpose and subject to the limitations therein contained, and not otherwise, have hereto set their respective signatures and seals.

(Firm Name)

By: (Signature) ¹

(Mailing Address)

(Title)

(Date of Execution)

(Corporate Seal; if none, so state)

(For use by incorporated handlers)

OMB Approval No: 0581-0160

Expiration Date: 2/29/92

Certificate of Resolution

(Corporation only)

At a duly convened meeting of the Board of Directors of

held at

on the _____ day of _____ 1989,

RESOLVED, That

¹ If one of the contracting parties to this agreement is a corporation, my signature constitutes certification that I have the power granted to me by the Board of Directors to bind this corporation to the marketing agreement.

Public reporting burden for this collection of information is estimated to average five 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

shall become a party to the marketing agreement regulating the handling of Vidalia onions grown in Georgia, which was annexed to and made part of the decision of the Secretary of Agriculture, and it is further, RESOLVED, That

(Name) (Title)
and

(Name) (Title)
be, and

the same hereby are, authorized and directed severally or jointly to sign, execute, and deliver counterparts of the said agreement to the Secretary of Agriculture.

I,
Secretary of

do hereby certify this is a true and correct copy of a resolution adopted at the above named meeting as said resolution appears in the minutes thereof.

(Signature)

(Address of Firm)

(Corporate Seal; if none, so state)

The Administrator, Agricultural Marketing Service, United States Department of Agriculture, acting pursuant to the provisions of the Act and the regulations issued thereunder, and having reason to believe that the execution of an agreement and the issuance of an order regulating the handling of Vidalia onions grown in the production area would tend to effectuate the declared policy of the Act, caused a notice of public hearing thereon to be issued on August 19, 1988 (53 FR 32054), and pursuant thereto a public hearing was held beginning at 9 a.m., on September 20 and 21, 1988, at Lyons, Georgia, where all interested persons in attendance were afforded due opportunity to be heard.

Upon the basis of the record it is found that:

(1) This marketing agreement regulates the handling of Vidalia onions grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial or industrial activity specified in, the marketing agreement and order upon which hearings have been held;

(2) This marketing agreement regulates the handling of Vidalia onions grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial or industrial activity

information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, DC 20503.

This information is required to determine voter eligibility and vote of Vidalia onion handlers. Falsification of information on this government document may result in a fine of not more than \$10,000 or imprisonment for not more than five years or both (18 U.S.C. 1001).

specified in, the marketing agreement and order upon which hearings have been held;

(3) This marketing agreement is limited in its application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several marketing agreements applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) This marketing agreement prescribes, so far as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of Vidalia onions grown in the production area; and

(5) All handling of Vidalia onions grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

It is hereby further found and determined that this marketing agreement regulating the handling of Vidalia onions grown in the production area, upon which the aforesaid public hearing was held, has been executed by handlers (excluding cooperative associations of producers who were not engaged in processing, distributing, or shipping the Vidalia onions covered by this agreement) who, during the determined representative period, handled not less than 50 percent of the volume of said Vidalia onions.

Therefore, this marketing agreement is entered into at Washington, DC, to become effective:

Witness my hand and the official seal of the United States Department of Agriculture.

[FR Doc. 90-457 Filed 1-8-90; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 979

[Docket No. FV-90-110]

South Texas Melons; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order 979 for the 1989-90 fiscal period. Authorization of this budget will allow the South Texas Melon Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: October 1, 1989, through September 30, 1990.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456, telephone 202-447-2431.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 156 and Marketing Order No. 979 (7 CFR part 979), regulating the handling of

melons grown in South Texas. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

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

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

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

There are approximately 35 handlers and 70 producers of South Texas melons covered under this marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. The majority of the handlers and producers of Texas melons may be classified as small entities.

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

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

The committee met on November 7, 1989, and unanimously recommended a 1989-90 budget of \$327,244. This total

exceeds last year's budget of \$308,438 by \$18,806. Administrative expenses, including salaries, travel and office expenses, have been increased \$12,860. In addition, the amount budgeted for production research has been increased \$10,000 to \$114,398, and promotion expenses have been reduced \$4,054 to \$115,946.

The committee also unanimously recommended an assessment rate of 4 cents per carton, the same rate as last year. The recommended assessment rate, when applied to anticipated shipments of 7,650,000 cartons, will yield \$306,000 in assessment revenue. This amount, when added to \$21,244 from the reserve, will be adequate to cover budgeted expenses. Additional reserve funds could be used to meet any deficit in assessment income.

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

A proposed rule was published in the *Federal Register* on December 11, 1989 (54 FR 50767). That document contained a proposal to add § 979.212 to authorize expenses and establish an assessment rate for the committee. That rule provided that interested persons could file comments through December 21, 1989. No comments were received.

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

This action should be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1989-90 fiscal period began in October, and the marketing order requires that the rate of assessment apply to all assessable melons handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committee at a public meeting. Therefore, it is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the *Federal Register* (5 U.S.C. 553).

List of Subjects in 7 CFR Part 979

Marketing agreements and orders, melons, South Texas.

For the reasons set forth in the preamble, 7 CFR part 979 is amended as follows:

PART 979—MELONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 979 continues to read as follows:

Authority: Secs. 1-9, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. A new § 979.212 is added to read as follows:

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

§ 979.212 Expenses and assessment rate.

Expenses of \$327,244 by the South Texas Melon Committee are authorized and an assessment rate of \$0.04 per carton of melons is established for the fiscal period ending September 30, 1990. Unexpended funds may be carried over as a reserve.

Dated: January 4, 1990.

Charles R. Brader,
Director, Fruit and Vegetable Division.
[FR Doc. 90-454 Filed 1-6-90; 8:45 am]
BILLING CODE 3410-02-M

7 CFR Part 982

[FV-90-105IFR]

Filberts/Hazelnuts Grown in Oregon and Washington; Establishment of Final Free and Restricted Percentages for the 1989-90 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule.

SUMMARY: This interim final rule establishes final free and restricted percentages for domestic inshell filberts/hazelnuts for the 1989-90 marketing year under the Federal marketing order for filberts/hazelnuts grown in Oregon and Washington. The percentages indicate the amounts of domestically produced filberts/hazelnuts which may be marketed in domestic, export and other outlets. The percentages are intended to stabilize the supply of domestic inshell filberts/hazelnuts in order to meet the limited domestic demand for such filberts/hazelnuts and provide reasonable returns to producers. This action was recommended by the Filbert/Hazelnut Marketing Board (Board), which is the agency responsible for local administration of the order.

DATES: This interim final rule is effective on January 9, 1990. Comments which are received by February 8, 1990, will be

considered prior to any finalization of this interim final rule.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456. Comments should reference the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT:

Patricia A. Petrella, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2522-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 475-3920.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 982 (7 CFR part 982), as amended, regulating the handling of filberts/hazelnuts grown in Oregon and Washington. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

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

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

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

There are approximately 26 handlers of filberts/hazelnuts subject to regulation under the filbert/hazelnut marketing order and approximately 1,000 producers in the Oregon and Washington production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than \$500,000, and small agricultural service firms and defined as those whose annual receipts are less than \$3,500,000.

The majority of handlers and producers of filberts/hazelnuts may be classified as small entities.

The Board is required to meet prior to September 20 of each marketing year to compute an inshell trade demand and preliminary free and restricted percentages, if the use of volume regulation is recommended during the season. The order prescribes formulas for computing the inshell trade demand, as well as preliminary, interim final, and final percentages. The inshell trade demand established the amount of inshell filberts/hazelnuts the market can utilize throughout the season, and the percentages release the inshell trade demand. The preliminary percentages release 80 percent of the inshell trade demand in order to protect against underestimates of the crop. On or before November 15, the Board must meet to recommend to the Secretary final percentages which release 100 percent of the inshell trade demand and 15 percent of the three-year-average trade acquisitions. The additional 15 percent above the 100 percent of the inshell trade demand is released to provide for an adequate carryover into the following season. The Board's recommendation and this interim final rule are based on requirements specified in the order.

This interim final rule will restrict the amount of inshell filberts/hazelnuts that can be marketed in domestic markets. The domestic outlets for this commodity are characterized by limited demand, and the establishment of free and restricted percentages will benefit the industry by promoting stronger marketing conditions and stabilizing prices and supplies, thus improving grower returns.

As provided in section 982.40 of the order, the Board meets prior to September 20 of each marketing year for the purpose of formulating its marketing policy for that year and submitting its recommendations for regulation. If the Board recommends volume regulation, it must compute and announce an inshell trade demand for that year prior to September 20. The inshell trade demand, rounded to the nearest whole number, equals the average of the preceding three "normal" years' trade acquisitions of inshell filberts/hazelnuts, with the provision that the Board may increase such estimate by no more than 25 percent, if market conditions warrant such an increase.

The preliminary free and restricted percentages make available portions of the filbert/hazelnut crop which may be marketed in domestic inshell markets (free) and exported or shelled (restricted) early in the 1989-90 season.

The preliminary free percentage is 80 percent of the established inshell trade demand, expressed as a percentage of the total supply subject to regulation, and is based on preliminary crop estimates. The Board computed and announced at its August 30, 1989, meeting preliminary free and restricted percentages of 26 and 74 percent, respectively, to release 80 percent of the inshell trade demand. The purpose of releasing only 80 percent of the inshell trade demand under the preliminary percentage is to guard against underestimates of the crop. The preliminary restricted percentage is 100 percent minus the free percentage.

The Board is required to meet prior to November 15 to formally review and approve its marketing policy and recommend to the Secretary for approval, the establishment of interim final and final free and restricted percentages. The Board uses current crop estimates to calculate the interim final and final percentages. The interim percentages are calculated in the same way as the preliminary percentages and release 100 percent of the inshell trade demand previously computed by the Board for the marketing year. Final free and restricted percentages release an additional 15 percent of the average of the preceding three years' trade acquisitions to ensure an adequate carryover into the following season. The final free and restricted percentages must be effective at least 30 days prior to the end of the marketing year (July 1 through June 30), or earlier, if recommended by the Board and approved by the Secretary. In addition, revisions in the marketing policy can be made until February 15 of each marketing year. However, the inshell trade demand can only be revised upward.

The Board met on November 7, 1989, reviewed and approved an amended marketing policy and recommended the establishment of final free and restricted percentages. The Board decided that market conditions were such that immediate release of the additional free tonnage would not adversely affect the 1989-90 domestic inshell market. Accordingly, no interim final free and restricted percentages were recommended. The marketing percentages are based on the industry's final production estimates and release 4,807 tons to the domestic inshell market. The Oregon Agricultural Statistics Service provided an early estimate of 13,500 tons total production for the Oregon and Washington area. However, a handler survey conducted by the Board provided a more current

estimate of 12,041 tons total production for the area. Therefore, the Board voted to unanimously accept the more current estimate of 12,041 tons.

In addition to complying with the provisions of the marketing order, the Board also considers the U.S. Department of Agriculture's 1982 "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" (Guidelines) when making its computations in the marketing policy. This volume control regulation provides a method to collectively limit the supply of inshell filberts/hazelnuts available for sale in domestic markets. The Guidelines require this primary market to have available a quantity equal to 110 percent of recent years' sales in those outlets before secondary market allocations are approved. This is to provide for plentiful supplies for consumers and for market expansion while retaining the mechanism for dealing with oversupply situations. In order to meet expected needs of the trade and to comply with the Guidelines, an increase of 10 percent (430 tons) has been included in the calculations used in determining the inshell trade demand. The final percentages, which would release 100 percent of the inshell trade demand and 15 percent of the three year average trade acquisitions, will make available 125 percent of prior years' sales, thus exceeding the requirements of the Guidelines.

The final marketing percentages are based on the Board's production estimates and the following supply and demand information for the 1989-90 marketing year:

Inshell supply	Tons
(1) Total production (Filbert/Hazelnut Marketing Board Handler survey estimate)	12,041
(2) Less substandard, farm use (disappearance)	725
(3) Merchantable production (the Board's adjusted crop estimate)	11,316
(4) Plus undeclared carryin as of July 1, 1989, subject to regulation	268
(5) Supply subject to regulation (Item 3 plus Item 4)	11,584
(6) Average trade acquisition based on three prior years' domestic sales	4,303
(7) Increase to encourage increased sales (10 percent)	430
(8) Less declared carryin as of July 1, 1989, not subject to regulation	571
(9) Inshell Trade Demand	4,162
(10) 15 percent of the average trade acquisitions based on three years domestic sales	645

<i>Inshell supply</i>	<i>Tons</i>
(11) Inshell Trade Demand plus 15 percent (Item 9 plus Item 10)	4,807
<i>Percentages</i>	<i>Free</i> <i>Restricted</i>
(12) Final percentages (Item 11 divided by Item 5) $\times 100$	41 59

Based on available information, the Administrator of the AMS has determined that the issuance of this rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all available information, it is found that the establishment of final free and restricted percentages, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that upon good cause it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the *Federal Register* because: (1) The 1989-90 marketing year began July 1, 1989, and the percentage established herein apply to all merchantable filbert/hazelnut handled from the beginning of the crop year; (2) handlers are aware of this action, which was recommended at an open Board meeting, and need no additional time to comply with these percentages which release more filbert/hazelnuts than the preliminary percentage; and (3) interested persons are provided a 30-day comment period in which to respond. All comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 982

Filberts/hazelnuts, Marketing agreements and orders, Oregon, and Washington.

For the reasons set forth in the preamble, 7 CFR part 982 is amended as follows:

1. The authority citation for 7 CFR part 982 continues to read as follows:

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

PART 982—FILBERT/HAZELNUTS GROWN IN OREGON AND WASHINGTON

Subpart—Grade and Size Regulation

2. Section 982.239 is added to read as follows:

§ 982.239 Final free and restricted percentages—1989-90 marketing year.

The final free and restricted percentages for merchantable filberts/hazelnuts for the 1989-90 marketing year shall be 41 and 59 percent, respectively.

Dated: January 4, 1990.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 90-455 Filed 1-8-90; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 907**[Navel Orange Regulation 701]****Navel Oranges Grown in Arizona and Designated Part of California**

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of California-Arizona navel oranges that may be shipped to domestic markets during the period from January 5 through January 11, 1990. Consistent with program objectives, such action is needed to balance the supplies of fresh navel oranges with the demand for such oranges during the period specified. This action was recommended by the Navel Orange Administrative Committee (Committee), which is responsible for local administration of the navel orange marketing order.

DATES: Regulation 701 (7 CFR part 907) is effective for the period from January 5 through January 11, 1990.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 2523-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 382-1754.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order 907 (7 CFR part 907), as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

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

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

use of volume regulations on small entities as well as larger ones.

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

There are approximately 123 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order and approximately 4,065 navel orange producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

The California-Arizona navel orange industry is characterized by a large number of growers located over a wide area. The production area is divided into four districts which span Arizona and part of California. The largest proportion of navel orange production is located in District 1, Central California, which represented 85 percent of the total production in 1988-89. District 2 is located in the southern coastal area of California and represented 13 percent of 1988-89 production; District 3 is the desert area of California and Arizona, and it represented approximately 1 percent; and District 4, which represented approximately 1 percent, is northern California. The Committee's estimate of 1989-90 production of 79,800 cars (one car equals 1,000 cartons at 37.5 pounds net weight each) was revised to 83,000 cars, as compared with 70,633 cars during the 1988-89 season.

The three basic outlets for California-Arizona navel oranges are the domestic fresh, export, and processing markets. The domestic (regulated) fresh market is a preferred market for California-Arizona navel oranges. Based on the 79,800 car figure, the Committee estimated that about 62 percent of the 1989-90 crop of 79,800 cars will be utilized in fresh domestic channels (49,500 cars), with the remainder being exported fresh (9 percent) or processed (29 percent). This compares with the 1988-89 total of 45,581 cars shipped to fresh domestic markets, about 64 percent of the crop. Based on the revised

crop estimate, the Committee is expected to revise its utilization schedule at its next meeting.

Volume regulations issued under the authority of the Act and Marketing Order No. 907 are intended to provide benefits to growers. Growers benefit from increased returns and improved market conditions. Reduced fluctuations in supplies and prices result from regulating shipping levels and contribute to a more stable market. The intent of regulation is to achieve a more even distribution of oranges in the market throughout the marketing season.

Based on the Committee's marketing policy, the crop and market information provided by the Committee, and other information available to the Department, the costs of implementing the regulations are expected to be more than offset by the potential benefits of regulation.

Reporting and recordkeeping requirements under the navel orange marketing order are required by the Committee from handlers of navel oranges. However, handlers in turn may require individual growers to utilize certain reporting and recordkeeping practices to enable handlers to carry out their functions. Costs incurred by handlers in connection with recordkeeping and reporting requirements may be passed on to growers.

Major reasons for the use of volume regulations under this marketing order are to foster market stability and enhance grower revenue. Prices for navel oranges tend to be relatively inelastic at the grower level. Thus, even a small variation in shipments can have a great impact on prices and grower revenue. Under these circumstances, strong arguments can be advanced as to the benefits of regulation to growers, particularly smaller growers.

At the beginning of each marketing year, the Committee submits a marketing policy to the U.S. Department of Agriculture (Department) which discusses, among other things, the potential use of volume and size regulations for the ensuing season. The Committee, in its 1989-90 season marketing policy, considered the use of volume regulation for the season. This marketing policy is available from the Committee or Ms. Pello. The Department reviewed that policy with respect to administrative requirements and regulatory alternatives in order to determine if the use of volume regulations would be appropriate. A "Notice of Marketing Policy" (notice), which summarized the Committee's marketing policy, was prepared by the

Department and published in the October 19, 1989, issue of the *Federal Register* (54 FR 42966). The purpose of the notice was to allow public comment on the Committee's marketing policy and the impact of any regulations on small business activities.

The notice provided a 30-day period for the receipt of comments from interested persons. That comment period ended on November 20, 1989. Three comments were received. The Department is continuing its analysis of the comments received, and the analysis will be made available to interested persons. That analysis is assisting the Department in evaluating recommendations for the issuance of weekly volume regulations.

The Committee met publicly on January 3, 1990, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, with seven members voting in favor, three opposing, and one abstaining, that 1,800,000 cartons is the quantity of navel oranges deemed advisable to be shipped to fresh domestic markets during the specified week. The marketing information and data provided to the Committee and used in its deliberations was compiled by the Committee's staff or presented by Committee members at the meeting. This information included, but was not limited to, price data for the previous week from Department market news reports and other sources, preceding week's shipments and shipments to date, crop conditions, weather and transportation conditions, and a reevaluation of the prior week's recommendation in view of the above.

The Department reviewed the Committee's recommendation in light of the Committee's projections as set forth in its 1989-90 marketing policy. This recommended amount is 100,000 cartons more than estimated in the tentative shipping schedule adopted by the Committee on November 14, 1989. Of the 1,800,000 cartons, 1,476,000 are allotted for District 1, 234,000 are allotted for District 2, and 90,000 are allotted for District 4. District 3 is not regulated since approximately 65 percent of its crop to date has been picked. Therefore, if the District were regulated, most handlers would be unable to ship up to their allotment levels.

During the week ending on December 28, 1989, shipments of navel oranges to fresh domestic markets, including Canada, totaled 806,000 cartons compared with 831,000 cartons shipped during the week ending on December 29, 1988. Export shipments totaled 297,000 cartons compared with 172,000 cartons shipped during the week ending on

December 29, 1988. Processing and other uses accounted for 256,000 cartons compared with 199,000 cartons shipped during the week ending on December 29, 1988.

Fresh domestic shipments to date this season total 13,723,000 cartons compared with 10,407,000 cartons shipped by this time last season. Export shipments total 2,052,000 cartons compared with 1,095,000 cartons shipped by this time last season. Processing and other use shipments total 3,423,000 cartons compared with 2,545,000 cartons shipped by this time last season.

For the week ending on December 28, 1989, regulated shipments of navel oranges to the fresh domestic market were 695,000 cartons on an adjusted allotment of 628,000 cartons which resulted in net overshipments of 67,000 cartons. Regulated shipments for the current week (December 28, 1989, through January 4, 1990) are estimated at 1,650,000 cartons on an adjusted allotment of 1,491,000 cartons. Thus, overshipments of 159,000 cartons could be carried over into the week ending on January 11, 1990.

The average f.o.b. shipping point price for the week ending on December 28, 1989, was \$7.44 per carton based on a reported sales volume of 714,000 cartons compared with last week's average of \$7.56 per carton on a reported sales volume of 1,564,000 cartons. The season average f.o.b. shipping point price to date is \$7.98 per carton. The average f.o.b. shipping point price for the week ending on December 29, 1988, was \$8.00 per carton; the season average f.o.b. shipping point price at this time last season was \$8.90 per carton.

Over the weekend of December 22-23, Florida, Texas, Georgia, and Louisiana experienced a major freeze in produce-growing areas. In Florida, some sources estimate citrus losses of between 10 and 30 percent of the crop, while the extent of possible tree damage cannot yet be estimated. Freeze-damaged oranges can be harvested and used for processing, if harvested before warming temperatures cause rot in the fruit. Freeze-damaged oranges are, however, unsuitable for fresh market sale. Growers are busy salvaging as much of the crop as possible. In Texas, citrus crops were hit even harder by the cold weather. Texas citrus grown in the Rio Grande Valley experienced at least 16 hours of temperatures below 26 degrees on December 22-23. The volume of Texas citrus fruit suitable for fresh sale is uncertain, except what is currently in storage, and the extent of possible damage to citrus trees in Texas will not be known for at least 30 days. In addition, some trees in the small citrus-

producing region in Louisiana are believed to have been killed by the freeze. In all of these States, it is too early to accurately assess the total extent of the freeze damage. More accurate information is expected to be available in a crop report which will be issued on January 11.

The Committee reports that overall demand for navel oranges is good, and the market is fairly steady. The Committee discussed the recent Florida and Texas freezes and will continue to monitor the effects of those freezes on the California-Arizona navel orange industry.

The 1988-89 season average fresh equivalent on-tree price for California-Arizona navel oranges was \$3.86 per carton, 65 percent of the season average parity equivalent price of \$5.98 per carton.

Based upon fresh utilization levels indicated by the Committee and an econometric model developed by the Department, the point estimate of the 1989-90 season average fresh on-tree price would be \$4.33 per carton. This is equivalent to 66 percent of the projected season average fresh on-tree parity equivalent price of \$6.54 per carton. It is currently estimated that there is less than a one percent probability that the 1989-90 season average fresh on-tree price will exceed the projected season average fresh on-tree parity equivalent price.

Limiting the quantity of navel oranges that may be shipped during the period from January 5, 1990 through January 11, 1990, would be consistent with the provisions of the marketing order by tending to establish and maintain, in the interest of producers and consumers, an orderly flow of navel oranges to market.

Based on considerations of supply and market conditions, and the evaluation of alternatives to the implementation of this volume regulation, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities and that this action will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is further found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the *Federal Register*. This is because there is insufficient time between the date when information became available upon which this regulation is

based and the effective date necessary to effectuate the declared policy of the Act.

In addition, market information needed for the formulation of the basis for this action was not available until January 3, 1990, and this action needs to be effective for the regulatory week which begins on January 5, 1990. Further, interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and handlers were apprised of its provisions and effective time. It is necessary, therefore, in order to effectuate the declared purposes of the Act, to make this regulatory provision effective as specified.

List of Subjects in 7 CFR Part 907

Arizona, California, Marketing agreements, Navel, Oranges.

For the reasons set forth in the preamble, 7 CFR part 907 is amended as follows:

PART 907—[AMENDED]

1. The authority citation for 7 CFR part 907 continues to read as follows:

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

2. Section 907.1001 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 907.1001 Navel Orange Regulation 701.

The quantity of navel oranges grown in California and Arizona which may be handled during the period from January 5 through January 11, 1990, is established as follows:

- (a) District 1: 1,476,000 cartons;
- (b) District 2: 234,000 cartons;
- (c) District 3: unlimited cartons;
- (d) District 4: 90,000 cartons.

Dated: January 4, 1990.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 90-582 Filed 1-5-90; 11:45 am]

BILLING CODE 3410-02-M

7 CFR Part 910

[Lemon Regulation 699]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 699 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 291,039 cartons during the period from

January 7, 1990 through January 13, 1990. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 699 (7 CFR part 910) is effective for the period from January 7, 1990 through January 13, 1990.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 475-3861.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

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

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2,500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

This regulation is issued under marketing Order No. 910, as amended (7 CFR part 910), regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act"), 7 U.S.C. 601-674, as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other

available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the California-Arizona lemon marketing policy for 1989-90. The Committee met publicly on January 3, 1990, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that overall demand for lemons is good.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Arizona, California, Lemons, Marketing agreements.

For the reasons set forth in the preamble, 7 CFR part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR part 910 continues to read as follows:

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

2. Section 910.999 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.999 Lemon Regulation 699.

The quantity of lemons grown in California and Arizona which may be handled during the period from January 7, 1990 through January 13, 1990, is established at 291,039 cartons.

Dated: January 4, 1990.
 Charles R. Brader,
 Director, Fruit and Vegetable Division.
 [FR Doc. 90-581 Filed 1-5-90; 11:45 am]
 BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 286

[INS No. 1256-89]

Immigration User Fee

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule sets forth changes to existing regulations by addressing the implementation of a lockbox for Immigration User Fee (IUF) remittances. The rule will have no impact on the public, but will result in better cash management for the U.S. Government.

DATES: This rule is effective February 8, 1990. Comments must also be received by this date.

ADDRESSES: Please submit written comments, in triplicate, to Director, Policy Directives and Instructions, Immigration and Naturalization Service, Room 2011, 425 I Street, NW., Washington, DC 20536.

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

SUPPLEMENTARY INFORMATION: The Immigration and Naturalization Service (Service) published a proposed rule on August 12, 1987, at 52 FR 29863, and a final rule on February 26, 1988, at 53 FR 5756, addressing the collection, remittance and statement procedures of the Immigration User Fee (IUF) provisions as contained in section 101(b) subsection 205 of the Department of Justice Appropriation Act 1987 (Pub. L. 99-591).

8 CFR 286.5 is amended to eliminate the option of remitting the IUF to the Service via the Treasury Financial Communication System or mailing to the Comptroller, INS, and requiring that IUF remittances be mailed to: Immigration and Naturalization Service, Post Office Box No. 93963, Chicago, Illinois 60673-3963.

The reason for this procedure is to promptly make a change while allowing time for the Service to consider

suggested changes and public comment. In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule will not have a significant economic impact on a substantial number of small entities.

This rule would not be a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

List of Subjects in 8 CFR Part 286

Aircraft, Immigration, Reporting and recordkeeping requirements, Vessels.

Accordingly, chapter I, part 286 of title 8 of the Code of Federal Regulations is amended as follows:

PART 286—IMMIGRATION USER FEE

1. The authority citation for part 286 continues to read as follows:

Authority: 8 U.S.C. 1103, 1356.

2. Section 286.5 is amended by revising (b), (c), and (d) as follows:

§ 286.5 Remittance and statement procedures.

(b) Fee remittances shall be sent to the Immigration and Naturalization Service, Post Office Box No. 93963, Chicago, Illinois 60673-3963, for receipt no later than 31 days after the close of the calendar quarter in which the fees are collected. Late payments will be subject to interest, penalty, and handling charges as provided in the Debt Collection Act of 1982 (31 U.S.C. 3717). Refunds by a remitter of fees collected in conjunction with unused tickets or documents for transportation should be netted against the next subsequent remittance.

(c) Along with the remittance, as set forth in paragraph (b) of this section, each remitter making such remittance shall attach a statement which sets forth the following:

- (1) Name and address;
- (2) Taxpayer identification number;
- (3) Calendar quarter covered by the payment; and
- (4) Amount collected and remitted.

(d) Remittances must be made by check or money order, payable in U.S. dollars, through a U.S. bank, to "Comptroller, INS".

Dated: December 20, 1989.

Gene McNary,
 Commissioner.

[FR Doc. 90-408 Filed 1-8-90; 8:45 am]
 BILLING CODE 4410-10-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8281]

RIN 1545-AN99

Price Level Adjusted Mortgages

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations concerning the treatment of price level adjusted mortgages under the original issue discount and qualified residence interest provisions of the Internal Revenue Code of 1986. This document also contains a temporary regulation concerning the treatment of payments received under a price level adjusted mortgage for purposes of the information reporting of mortgage interest received from an individual. The regulations are needed to provide guidance to borrowers and lenders concerning the tax treatment of this new financial product. The text of the temporary regulations set forth in this document also serves as the text of the cross-reference notice of proposed rulemaking published in the proposed rules section of this issue of the Federal Register.

EFFECTIVE DATES: Section 1.163-11T is effective for tax years beginning after December 31, 1987. Sections 1.1275-6T and 1.6050H-2T are effective for price level adjusted mortgages issued after January 9, 1990.

FOR FURTHER INFORMATION CONTACT: William E. Blanchard, concerning the original issue discount portion of these regulations, 202-566-3142 (not a toll-free number) and Sharon L. Hall, concerning the qualified residence interest portion of these regulations, 202-566-4430 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary Income Tax Regulations (26 CFR part 1) under section 163(h), section 1275(d), and section 6050H of the Internal Revenue code of 1986. Section 163(h) was enacted by Public Law 99-514 (100 Stat. 2246) and amended by Public Law 100-647 (102 Stat. 3390). Section 1275(d) was enacted by Public Law 98-369 (98 Stat. 543). Section 6050H was enacted by Public Law 98-369 (98 Stat. 684).

Need for Temporary Regulations

Immediate guidance is needed to clarify the tax treatment of price level adjusted mortgages. Therefore, good cause is found to dispense with the notice and public procedure requirements of 5 U.S.C. 553(b) and the delayed effective date requirement 5 U.S.C. 553(d).

Explanation of HUD Program

In 1983, congress authorized the Department of Housing and Urban Development ("HUD") to institute a demonstration program for insurance on mortgages that do not provide for fixed interest rates and level payments, including indexed mortgages. The purpose of this program was to develop different types of mortgages that would encourage home ownership by individuals. Under this program, HUD developed a mortgage with a principal balance indexed to inflation, the price level adjusted mortgage ("PLAM"). In general, a PLAM is a mortgage with payments that are designed to be constant in purchasing power instead of dollars. As such the payments reflect the original amount borrowed, a stated real rate of interest, and inflation over the term of the mortgage.

Under the terms of a PLAM, the outstanding balance is adjusted at monthly intervals for changes in the value of a general price level index, such as the Consumer Price Index, U.S. City Average, All Items, for All Urban Consumers, seasonally unadjusted ("CPI-U"). The monthly payments are also adjusted such that the adjusted payments will amortize the outstanding balance, adjusted for inflation, at the stated rate of interest over the remaining term of the PLAM. Although the outstanding balance is adjusted monthly, the monthly payments on a PLAM may be adjusted at fixed intervals of one month, six months, or one year.

The adjustment to the outstanding balance of a PLAM is determined by multiplying the current outstanding balance by an inflation adjustment, which is the percentage change in the value of the index for a one-month period. Because of the delay in publishing the CPI-U, the one-month period used for this purpose may precede the adjustment by a fixed period of time of up to 4 months.

Because the payments on a PLAM are, in effect, indexed for inflation, the payments will change over the term of the PLAM based on the changes in the value of the inflation index. The payments are approximately constant, however, in terms of purchasing power

over the life of the PLAM. In addition, because the interest rate used to amortize a PLAM is a "real" rate of interest, i.e., a rate of interest (typically 3% to 5%) net of anticipated inflation, the initial payments under a PLAM are lower than the initial payments under other types of mortgages, including fixed rate mortgages and adjustable rate mortgages.

HUD has requested guidance from the Department of the Treasury concerning the tax treatment of PLAMs. This document provides such guidance by adding temporary Income Tax Regulations under section 163(h), section 1275(d), and 6050H of the Code.

Explanation of Provisions

Original Issue Discount

In general, original issue discount arises when the payment of interest that accrues on a debt instrument is deferred beyond the time of accrual. Section 1275(d) grants the Secretary the authority to prescribe regulations that deal with the tax treatment of certain types of debt instruments, including variable rate and contingent payment obligations, under the original issue discount provisions of the Code. Proposed regulations under section 1275(d) were issued on April 8, 1986 (51 FR 12022). Section 1.1275-4 of the proposed regulations prescribes rules for the treatment of debt instruments with contingent payments and § 1.1275-5 of the proposed regulations prescribes rules for debt instruments with variable rates of interest.

In form, a PLAM is a debt instrument with a fixed rate of interest and a principal balance that is adjusted monthly for the percentage change in an inflation index. However, a PLAM is also economically equivalent to a debt instrument with a fixed principal balance and a variable rate of interest that changes monthly. In general, the variable rate of interest for any month is equal to the sum of (a) the percentage change in the inflation index ("inflation rate"), (b) the monthly fixed rate of interest stated in the mortgage documents, and (c) the product of the inflation rate and the monthly fixed rate. Because the Service believes that a PLAM should be taxed according to its economic substance, the temporary regulations contained in this document treat a PLAM as a debt instrument with a variable rate of interest for tax purposes. Moreover, because a portion of the amount of interest that accrues on a PLAM is not paid when it accrues, but is added to the outstanding balance, the original issue discount provisions of the Code apply to a PLAM.

The temporary regulations only apply to a debt instrument that is described in § 1.1275-6T(b)(1). Under this section of the regulations, a PLAM is defined as a debt instrument that (A) has a fixed term and a stated fixed rate of interest, (B) is issued by an individual in exchange for money, (C) is secured within the meaning of section 163(h)(3) by either (1) a mortgage, deed of trust, or other security instrument on 1- to 4-family owner-occupied residential property, or a 1-family owner-occupied condominium unit, or (2) stock held by the borrower as a tenant-stockholder in a cooperative housing corporation (as defined in section 216), (D) requires periodic payments at intervals of 1 month, (E) provides for monthly adjustments of the outstanding balance of the instrument by an inflation adjustment, and (F) provides for changes in the amount of the periodic payments at intervals of 1 year or less such that the adjusted periodic payments will fully amortize the adjusted outstanding balance of the instrument (as of the beginning of the interval) at the stated fixed rate of interest over the remaining term of the instrument. The temporary regulations also provide that the Commissioner may, by revenue ruling, revenue procedure, or other administrative pronouncement, expand the definition of a PLAM to include other similar debt instruments.

If a debt instrument is a PLAM, as described in § 1.1275-6T(b), the instrument is treated as bearing interest at a variable rate that changes monthly. The variable rate of interest for any month is determined under § 1.1275-6T(c)(2). Because not all of the interest that accrues on a PLAM is paid currently, a PLAM has original issue discount. Section 1.1275-6T(d)(1) treats the excess of the amount of interest that accrues during a monthly accrual period over any qualified periodic interest payment as original issue discount for the period.

Under § 1.1275-6T(d)(2), the amount of interest that accrues during an accrual period is determined by multiplying the outstanding balance of a PLAM at the beginning of an accrual period by the variable interest rate for the accrual period. Any qualified periodic interest payment made during the accrual period, as determined under § 1.1275-6T(d)(4), is then subtracted from this product to determine the amount of original issue discount for the accrual period.

The amount of original issue discount determined under § 1.1275-6T(d)(2) is taken into account by the borrower and the lender (or subsequent holder of the

PLAM) under the income inclusion rules under section 1272 and the interest deduction rules under section 163(e). However, in the case of a PLAM incurred in connection with the acquisition or carrying of personal use property, such as a residence, the interest deduction for accrued original issue discount is deferred under section 1275(b)(2) until the original issue discount is paid. Section 1.1275-6T(e)(2) provides rules to determine when original issue discount is considered paid. These rules provide a pro-taxpayer "stacking rule," under which payments are treated first as payments of accrued interest (including original issue discount) and then as payments of principal. Thus, the rules generally will have the effect of allowing a borrower to deduct the full amount of the payments in the early years of the mortgage.

Qualified Residence Interest

Under section 163(h) of the Code, no deduction is allowed for personal interest paid or accrued during the taxable year. Personal interest does not include qualified residence interest. Qualified residence interest is defined as interest that is paid or accrued on acquisition indebtedness with respect to any qualified residence of the taxpayer, or home equity indebtedness with respect to any qualified residence of the taxpayer. Under section 163(h)(3)(B), the term "acquisition indebtedness" generally means any indebtedness that is incurred in acquiring, constructing, or substantially improving any qualified residence of the taxpayer and is secured by such residence. Under section 163(h)(3)(C), the term "home equity indebtedness" generally means any indebtedness (other than acquisition indebtedness) secured by a qualified residence. In general, acquisition indebtedness may not exceed \$1,000,000, and home equity indebtedness may not exceed \$100,000.

The regulations contained in this document provide that, for purposes of section 163(h)(3) of the Code, accrued interest is treated as indebtedness until it is paid. In addition, any interest that accrues on acquisition indebtedness is treated as acquisition indebtedness. Therefore, any accrued interest on acquisition indebtedness is subject to the limits on acquisition indebtedness, rather than the limits on home equity indebtedness.

Information Reporting

The regulations contained in this document also clarify the treatment of payments received pursuant to a PLAM for purposes of section 6050H,

concerning the information reporting of mortgage interest.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations and, therefore, a final Regulatory Flexibility Analysis is not required.

Drafting Information

The principal authors of these temporary regulations are William E. Blanchard of the Office of Assistant Chief Counsel (Financial Institutions and Products) and Sharon L. Hall of the Office of Assistant Chief Counsel (Income Tax and Accounting). However, other personnel from the Service and Treasury Department participated in their development.

List of Subjects

26 CFR 1.61-1 through 1.281-4

Deductions, Exemptions, Income tax, Taxable income.

26 CFR 1.1271-1 through 1.1297-3

Income taxes, Capital gain and losses, Original issue discount, Applicable Federal rate, Market discount, Short-term obligations, Stripped bonds and stripped coupons, Tax-exempt obligations.

26 CFR 1.6001-1 through 1.6109-2

Administration and procedure, Filing requirements, Income taxes.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—[AMENDED]

Paragraph 1. The authority for part 1 is amended by adding the following citations:

Authorities: 26 U.S.C. 7805 * * * Section 1.163-11T is also issued under 26 U.S.C. 163(h) * * * Section 1.1275-6T is also issued under 26 U.S.C. 1275(d) * * * Section 1.6050H-2T is also issued under 26 U.S.C. 6050H.

Par. 2. A new § 1.163-11T is added to read as follows:

§ 1.163-11T Treatment of accrued interest (temporary).

(a) *In general.* For purposes of section 163(h)(3), accrued interest is treated as

indebtedness until it is paid. For this purpose, interest is treated as accruing at the interval provided in the debt instrument at which such interest compounds, if unpaid.

(b) *Character of interest that accrues on indebtedness incurred to acquire, construct, or substantially improve a residence.* Interest that accrues on indebtedness that is incurred to acquire, construct, or substantially improve a residence of the taxpayer is also treated, until it is paid, as indebtedness incurred to acquire, construct, or substantially improve a residence. Although the amount that may be treated as indebtedness incurred to acquire, construct, or substantially improve a residence is limited to the cost of the residence, accrued interest is not included in the application of this limitation. However, the amount of accrued interest is included in the application of the limitation provided in section 163(h)(3)(B)(ii).

(c) *Refinancing of accrued interest.* Any indebtedness incurred to pay interest that has accrued on indebtedness incurred to acquire, construct, or substantially improve a residence is not treated as indebtedness incurred to acquire, construct, or substantially improve a residence. However, such indebtedness may qualify as home equity indebtedness, subject to the limitations provided in section 163(h)(3)(C).

(d) *Application of this section to price level adjusted mortgages.*—(1) *Examples.* The following examples illustrate the application of section 163(h) and this section to price level adjusted mortgages ("PLAMs") described in § 1.1275-6T(b)(1).

Example (1): (i) On January 1, 1990, SW, an unmarried, individual, purchases her principal residence for \$125,000 with a cash down payment of \$25,000 and the proceeds of a debt in the amount of \$100,000, which is secured by such residence. The debt is a PLAM described in § 1.1275-6T(b)(1). Under section 163(h)(3)(B), the amount of acquisition indebtedness with respect to the residence is \$100,000 as of January 1, 1990.

(ii) On December 31, 1994, the outstanding balance of the debt is \$130,000, of which \$30,000 is accrued interest. Under paragraph (b) of this section, as of December 31, 1994, the amount of acquisition indebtedness with respect to the residence is \$130,000, notwithstanding that the cost of the residence is only \$125,000.

Example (2): (i) On January 1, 1990, DT, an unmarried individual, purchases his principal residence for \$950,000, with a cash down payment of \$200,000 and the proceeds of a debt in the amount of \$750,000, which is secured by such residence. The debt is a PLAM described in § 1.1275-6T(b)(1). Under section 163(h)(3)(B), the amount of acquisition

indebtedness with respect to the residence is \$750,000 as of January 1, 1990.

(ii) On December 31, 1999, the outstanding balance of the debt is \$1,150,000, of which \$400,000 is accrued interest. Under section 163(h)(3)(B)(ii) and paragraph (b) of this section, the amount of acquisition indebtedness with respect to the residence is limited to \$1,000,000. The remainder of the indebtedness may qualify as home equity indebtedness, subject to the limitations contained in section 163(b)(3)(C).

(2) *Cross-reference.* See § 1.1275-6T for the rules concerning the amount of interest that accrues on a PLAM and the time when such accrued interest is treated as paid.

(e) *Effective date.* This section is effective for tax years beginning after December 31, 1987.

Par. 3. A new § 1.1275-6T is added to read as follows:

§ 1.1275-6T Treatment of price level adjusted mortgages (temporary).

(a) *In general.* This section provides general rules for the income tax treatment of a price level adjusted mortgage ("PLAM") that is described in paragraph (b) of this section.

(b) *Description of a PLAM to which this section applies—(1) Debt instruments treated as PLAMs—(i) In general.* A debt instrument is a PLAM described in this paragraph (b) if it—

(A) Has a fixed term and a stated fixed rate of interest,

(B) Is issued by an individual in exchange for money,

(C) Is secured within the meaning of section 163(h)(3) by a mortgage, deed of trust, or other security instrument on either—

(1) 1- to 4-family owner-occupied residential property, or a 1-family owner-occupied condominium unit, or

(2) stock held by the issuer as a tenant-stockholder in a cooperative housing corporation (as defined in section 216),

(D) Requires periodic payments at intervals of 1 month,

(E) Provides for monthly adjustments of the outstanding balance of the debt instrument by an inflation adjustment, and

(F) Provides for changes in the amount of the periodic payments at intervals of 1 year or less such that the adjusted periodic payments will fully amortize the adjusted outstanding balance of the debt instrument (as of the beginning of the interval) at the stated fixed rate of interest over the remaining term of the debt instrument.

The outstanding balance and periodic payments may be adjusted in a reasonable manner to take into account partial prepayments, advance payments, missed payments, or late payments.

(ii) *Other debt instruments.* Any other debt instrument that is similar to a PLAM described in paragraph (b)(1)(i) of this section will be treated as a PLAM for purposes of this section to the extent provided by the Commissioner in a revenue ruling, revenue procedure, or other administrative pronouncement.

(2) *Inflation adjustment.* For purposes of paragraph (b)(1)(i)(E) of this section, the inflation adjustment for a particular month is the ratio of—

(i) The value of a general price level index for the current month, to

(ii) The value of the same general price level index for the month preceding the current month.

The term "current month" means a month that precedes the beginning of the month for which the inflation adjustment is determined by a fixed period of time that is specified in the instrument and that does not exceed 4 months.

(3) *General price level index.* For purposes of paragraph (b)(2) of this section, the term "general price level index" includes only—

(i) The Consumer Price Index, U.S. City Average, All Items, for all Urban Consumers, seasonally unadjusted ("CPI-U"), which is published by the Bureau of Labor Statistics of the U.S. Labor Department, and

(ii) Any other similar index designated by the Commissioner in a revenue ruling, revenue procedure, or other administrative pronouncement.

(4) *Example.* The provisions of this paragraph (b) may be illustrated by the following example of a PLAM:

Example. (i) On July 1, 1990, A borrowed \$100,000 to acquire his principal residence. A's obligation is evidenced by a debt instrument and is secured by a mortgage on the residence. The debt instrument has a term of thirty years, has a stated interest rate of 4 percent, requires monthly payments that are due on the first day of every month, provides for monthly adjustments to the outstanding balance for changes in the value of the CPI-U, and provides for adjustment of the amount of the payments on a monthly basis. The inflation adjustment for each month is determined by using a four-month time lag. For example, the inflation adjustment for July 1990 is the ratio of the value of the CPI-U for March 1990 to the value of the CPI-U for February 1990.

(ii) The first payment on the debt instrument is due on August 1, 1990. The amount of this payment is determined by using the inflation adjustment for July 1990. If there were no change in the CPI-U from February 1990 to March 1990, then the amount of the first payment would be \$477.42, which is the monthly payment needed to amortize \$100,000 at 4 percent over 360 months. However, if the value of the CPI-U increased during this period, then the first payment would be greater than \$477.42

because of the inflation adjustment required under the terms of the debt instrument.

(iii) Assume that the value of the CPI-U for February 1990 is 116.0 and the value of the CPI-U for March 1990 is 116.5. Because the value of the CPI-U increased, the outstanding balance of the debt instrument is increased by the inflation adjustment of 1.0043, which is the ratio of 116.5 to 116.0. As a result, the payment due on August 1, 1990, must be adjusted.

(iv) The first step in calculating the payment due on August 1, 1990, is to multiply the outstanding balance at the beginning of the month (\$100,000) by the inflation adjustment of 1.0043. This computation results in an inflation-adjusted balance of \$100,430. The second step is to determine the level payment required to amortize this inflation-adjusted balance at the stated interest rate over the remaining term of the debt instrument. Thus, the payment due on August 1, 1990, is \$479.47, which is the payment required to amortize \$100,430 at 4 percent over 360 months. The outstanding balance of the debt instrument immediately after the first payment is \$100,285.26, which is the inflation adjusted balance of \$100,430, multiplied by 1.003333 (the sum of 1 plus one twelfth of the fixed interest rate of 4 percent), less the current monthly payment of \$479.47.

(v) Assume that the value of the CPI-U for April 1990 is 117.1. The ratio of 117.1 to 116.5 is 1.0052. Thus, 1.0052 is the inflation adjustment for August 1990, which must be applied to the outstanding balance to determine the payment due on September 1, 1990. The adjusted payment is calculated by multiplying the outstanding balance at the beginning of the month (\$100,285.26) by 1.0052. This computation results in an inflation-adjusted balance of \$100,806.74. Thus, the payment due on September 1, 1990, is \$481.96, which is the payment required to amortize \$100,806.74 at 4 percent over 359 months. The outstanding balance of the debt instrument immediately after the second payment is \$100,660.77, which is the inflation adjusted balance of \$100,806.74, multiplied by 1.003333, less the current monthly payment of \$481.96.

(vi) Assume that the value of the CPI-U for May 1990 is 118.0. The inflation adjustment is 1.0077. Thus, using the steps described above, the payment due on October 1, 1990, is \$485.67, which is the payment required to amortize the inflation-adjusted balance of \$101,435.85 at 4 percent over 358 months. The outstanding balance of the debt instrument immediately after the third payment is \$101,288.28.

(vii) The payments due for succeeding months are calculated in the same manner.

(viii) In general, because the payments are adjusted monthly, the same monthly payments determined above could have been calculated simply by multiplying the inflation adjustment by the payment due for the preceding month. For example, to determine the payment due on October 1, 1990, multiply the payment due on September 1, 1990 (\$481.96) by the inflation adjustment for September 1990 (1.0077). This calculation results in a payment due of \$485.67.

(c) Treatment of a PLAM as a variable rate debt instrument—(1)

Treatment. For purposes of a subtitle A of the Internal Revenue Code, a PLAM, as described in paragraph (b) of this section, is treated as a debt instrument bearing interest at a variable rate that changes monthly. The variable interest rate of a PLAM is determined under paragraph (c)(2) of this section.

(2) Variable interest rate. The variable interest rate on a PLAM for any month is equal to the sum of the percentage change in the general price level index ("inflation rate"), (which is the inflation adjustment defined in paragraph (b)(2) of this section, minus 1), the monthly fixed rate of interest as stated in the mortgage documents, and the product of the inflation rate and the monthly fixed rate. Thus the variable interest rate on a PLAM for any month may be expressed as follows:

$$INF + R + (INF \times R)$$

where INF is the inflation rate, as defined in the preceding sentence, and R is the PLAM's fixed rate of interest per annum divided by twelve.

(3) Example. The provisions of this paragraph (c) may be illustrated by the following example:

Example. The facts are the same as in the example in paragraph (b)(4) of this section. Using the formula described in paragraph (c)(2) of this section, the PLAM bears interest at the following variable rates:

Monthly accrual period ending	Monthly variable rate (percent)
8/01/90	.76473
9/01/90	.85503
10/01/90	1.10587

Monthly accrual period ending	Monthly variable rate (percent)
10/01/90	1.10587

(d) Treatment of accrued interest as original issue discount—(1) Original issue discount. For purposes of subtitle A of the Internal Revenue Code, the excess of the amount of interest that accrues on a PLAM over any qualified periodic interest payment as defined in paragraph (d)(4) of this section is original issue discount for the accrual period.

(2) Amount of accrual. For purposes of paragraph (d)(1) of this section, the amount of interest that accrues on a PLAM during an accrual period is determined by multiplying the PLAM's outstanding balance at the beginning of the accrual period by the variable interest rate, as determined under paragraph (c)(2) of this section, for the accrual period. Appropriate adjustments are made in the case of short first or final accrual periods.

(3) Accrual period. For purposes of paragraph (d) of this section, the accrual period of a PLAM is a month.

(4) Qualified periodic interest payment. For purposes of paragraph (d)(1) of this section, the term "qualified periodic interest payment" generally means the portion of each payment that equals the product of the outstanding balance of the PLAM at the beginning of an accrual period and the fixed rate of interest stated in the mortgage documents, provided that the payment is actually and unconditionally payable or

is constructively received under section 451 and the regulations thereunder.

However, a qualified periodic interest payment cannot exceed the amount of interest that accrues during the accrual period. If payments on a PLAM are not adjusted monthly, the outstanding balance that is used for purposes of determining the qualified periodic interest payment is the outstanding balance at the beginning of the accrual period that coincides with the beginning of the payment adjustment interval.

(5) Outstanding balance. For purposes of paragraph (d)(2) and paragraph (d)(4) of this section, the outstanding balance of a PLAM at the beginning of an accrual period is the outstanding balance of the PLAM at the beginning of the prior accrual period, increased by the amount of original issue discount allocable to the prior accrual period and reduced by any payment made during or at the end of the prior accrual period other than a qualified periodic interest payment.

(6) Determination of daily portion. For purposes of sections 163(e) and 1272, the daily portion of original issue discount on a PLAM is an amount equal to the total amount of original issue discount for an accrual period divided by the number of days in the accrual period.

(7) Example. The provisions of this paragraph (d) may be illustrated by the following example:

Example. Based on the facts described in the example in paragraph (b)(4) of this section, the original issue discount taken into account by a taxpayer for each monthly accrual period is determined by the calculations shown in the following table:

Monthly accrual period ending	(1)	(2)	(3)	(4)	(5)
	Monthly variable rates	Prior month's outstanding balance	Variable interest rate accruals	Qualified periodic interest payments	Original issue discount accruals
	from (c)(3) percent	(10)	(1) × (2)	(2) × 4% / 12	(3) - (4)
8/01/90	.76473	\$100,000.00	\$764.73	\$333.33	\$431.40
9/01/90	.85503	100,285.26	857.47	334.28	523.19
10/01/90	1.10587	100,660.77	1,113.18	335.54	777.64
Totals			2,735.38	1,003.15	1,732.23

Monthly accrual period ending	(6)	(7)	(8)	(9)	(10)
	Outstanding balance before payment	Current debt service payment	Qualified periodic interest payments	Original issue discount payment	Current period outstanding balance
	(2) + (3)	from (b)(4)	(4)	(7) - (8)	(6) - (7)
8/01/90	\$100,764.73	\$479.47	\$333.33	\$146.14	\$100,285.26
9/01/90	101,142.73	481.96	334.28	147.68	100,660.77
10/01/90	101,773.95	485.67	335.54	150.13	101,288.28
Totals		1,447.10	1,003.15	443.95	

On the basis of the preceding calculations, the amount includible in the income of the

holder of the PLAM for the three-month period ending October 1, 1990, is \$2,735.38.

(e) Amount deductible by borrower—(1) In general. If section 1275(b)(2)

applies to a PLAM, then the original issue discount on the PLAM is not deductible prior to the time when the original issue discount is paid.

(2) *Time when original issue discount treated as paid.* For purposes of paragraph (e)(1) of this section, each payment other than a qualified periodic interest payment as defined in paragraph (d)(4) of this section shall be treated first as a payment of original issue discount to the extent the original issue discount has accrued as of the date of the payment and has not been treated as paid previously, and second as a payment of principal.

(3) *Example.* The provisions of this paragraph (e) may be illustrated by the following example:

Example. The facts are the same as the example in paragraph (d)(7) of this section. In addition, A is an individual who uses the cash receipts and disbursements method of accounting. Thus, under section 1275(b)(2) and paragraph (e)(1) of this section, A's interest deduction under section 163 for accrued original issue discount is limited to the lesser of the accrued original issue discount or the amount paid. Thus, for the three-month period ending October 1, 1990, A's deduction under section 163 is limited to \$1,447.10 (\$479.47 + 481.96 + 485.67), which represents \$1,003.15 of qualified periodic interest and \$443.95 of accrued original issue discount. A's interest deduction may also be limited by some other provision of the Code or regulations. For example, see section 163(h) and the regulations thereunder.

(f) *Legend.* Under section 1275(c)(1), no information concerning original issue discount is required to be set forth on a PLAM.

(g) *Effective date.* This section is effective for price level adjusted mortgages issued after January 9, 1990.

Par. 4. A new § 1.6050H-2T is added to read as follows:

§ 1.6050H-2T Payments of accrued original issue discount (temporary).

(a) *Definition of interest.* For purposes of § 1.6050H-1 and § 1.6060H-2, in the case of a price level adjusted mortgage ("PLAM") described in § 1.1275-6T(b)(1), the term "interest" includes payments of accrued original issue discount. The portion of each payment that is treated as a payment of original issue discount is determined under § 1.1275-6T.

(b) *Effective date.* This section is effective for price level adjusted mortgages issued after January 9, 1990.

Fred T. Goldberg, Jr.,
Commissioner of Internal Revenue.

Approved: December 22, 1989.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 90-484 Filed 1-9-90; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Duluth, MN Regulation 89-03]

Safety Zone Regulations; Lake Superior—Keweenaw Point, MI

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a 100 yard safety zone around the grounded Coast Guard Cutter *Mesquite* (WLB 305). The zone is needed to protect the vessel from unauthorized access until weather conditions allow completion of salvage operations.

Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATE: This regulation becomes effective at 0001 on December 23, 1989. It terminates at midnight on June 22, 1990, unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: Lt. J.C. Hillerns, MSO Duluth, (218) 720-5286.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication.

Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent injury to persons in the area, possible damage to the vessel, or interference with salvage operations.

Drafting Information

The drafter of this regulation is Lt. J.C. Hillerns, Project Officer for the Captain of the Port.

Discussion of Regulation

The U.S. Coast Guard Cutter *Mesquite* (WLB-305), a 180-foot buoy tender, ran aground on December 4, 1989, near Keweenaw Point, MI, in Lake Superior. Heavy weather and strong seas precluded the completion of salvage operations. Long range forecasts and historically bad winter conditions in this area resulted in a decision to postpone further salvage efforts until spring 1990. Until that time, the Coast Guard will continue to monitor the condition of the vessel and safeguard the equipment still on board.

This safety zone is necessary to prevent injury to unauthorized persons who may try to board the vessel and to

protect the vessel itself. Warning signs will be clearly posted.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for title 33, Code of Federal Regulations, part 165. It supercedes COTP Security Zone #165T0908.

Federalism

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

List of Subjects in 33 CFR Part 165

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

Regulation

In consideration of the foregoing, subpart F of part 165 of title 33, Code of Federal Regulations, is amended as follows:

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

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, and 160.5.

2. A new § 165.T0909 is added to read as follows:

§ 165.T0909 Safety Zone: Lake Superior—Keweenaw Point, MI.

(a) *Location.* The following area is a Safety Zone: In the vicinity of Keweenaw Point, MI, area, a circular zone with a radius of 100 yards around the grounded Coast Guard Cutter *Mesquite* will be kept clear. The vessel's approximate position is 047-23.9N, 087-42.8W.

(b) *Effective Dates:* This regulation becomes effective at 0001 hours on December 23, 1989. It terminates on June 22, 1990, unless sooner terminated by the Captain of the Port.

(c) *Regulations:* (1) This regulation supercedes COTP Duluth, MN Security Zone Regulation #165T0908 dated December 4, 1989.

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

(3) Persons desiring to enter the safety zone may do so only with prior approval of the Captain of the Port, Duluth, MN.

Dated: December 14, 1989.

T.M. Curelli,
Lieutenant Commander, Acting Captain of the
Port, U.S. Coast Guard, Duluth, MN.
[FR Doc. 90-398 Filed 1-8-90; 8:45 am]
BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3703-4]

Approval and Promulgation of Implementation Plans; State of Missouri—Permit Fees

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Final rule.

SUMMARY: This rulemaking takes final action to approve a revision to the Missouri State Implementation Plan (SIP) which: (1) Gives the Missouri Air Conservation Commission (MACC) the legal authority to establish rules to increase the filing fee and to require a processing fee for construction permits; and (2) amends the Missouri Department of Natural Resources (MDNR) Rule 10 CSR 10-6.060, Permits Required, fee system for air permits. This action is in response to section 110(a)(2)(K) of the Clean Air Act (Act) which requires states to include a permit fee system in their SIPs.

Missouri initially submitted the SIP revision to EPA on January 24, 1989. Review of the revision indicates that Missouri has met the requirements of section 110(a)(2)(K) of the Act.

DATES: This action will become effective on March 12, 1990 unless notice is received by February 8, 1990 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during business hours at:

Environmental Protection Agency,
Region VII, Air Branch, 726 Minnesota
Avenue, Kansas City, Kansas 66101
Missouri Department of Natural
Resources, Air Pollution Control
Program, Jefferson State Office
Building, 205 Jefferson Street,
Jefferson City, Missouri 65101
Public Information Reference Unit,
Environmental Protection Agency, 401
M Street SW., Washington, DC 20460

FOR FURTHER INFORMATION CONTACT:
Michael T. Marshall at (913) 236-2893
(FTS 757-2893).

SUPPLEMENTARY INFORMATION:

Background

Section 110(a)(2)(K) of the Act requires states to include a permit fee system in their SIPs. The states are required to collect fees from owners or operators of major stationary sources for permits issued pursuant to the Act. The fees should be sufficient to cover the reasonable costs of reviewing and acting upon any application for such a permit and the cost of implementing and enforcing the terms and conditions of such permit (excluding court costs and other costs associated with any enforcement action).

In 1981, EPA developed a "Permit Fee Guideline" (EPA-450/2-81-003) to assist states with the preparation of revisions to their SIPs which address the permit fee requirement. The guideline includes a review of the Act requirements for permit fees: Legislative history and relevant court cases; costs to be considered; basic program implementation considerations; and examples of fee systems in effect around the country. According to the guideline document, the states are given considerable flexibility in selecting the types of fees they could use to recover permit-related expenses. The guideline states that "(at) a minimum, fees should be collected, for permits required under the Act, from major stationary sources as defined in section 302(j) of the Act, and as further defined under section 169(l) for prevention of significant deterioration, and section 169A(g)(7) for visibility protection."

The original MACC Law, passed in 1967, gave the MACC the authority to adopt regulations to require permits prior to the construction or modification of an air contaminant source. MACC adopted a construction permit regulation for the four regulated areas of the state (St. Louis in 1968, Kansas City in 1969, Springfield-Greene County in 1969, and the remainder of the state in 1970). These were included in the original SIP.

The Missouri General Assembly changed the state legal authority in 1972 to require a fee be paid when submitting a request for a construction permit. The legal authority and the changed regulations requiring a \$25 filing fee for construction permits were made part of the Missouri SIP (40 CFR 52.1320 (5) and (6)). In 1976 Missouri recodified all state rules into a "Code of State Regulations" (CSR), and in 1979 the MACC withdrew the previous four area rules and consolidated them into one construction permit rule (10 CSR 10-6.060, Permits Required). 10 CSR 10-6.060 was made part of the Missouri SIP in 1980 (40 CFR 52.1320(c)(18)).

Missouri Submittal

In 1988, the Missouri 84th General Assembly passed legal authority (HB-1187) requiring the MACC to establish a permit fee regulation to require a permit applicant to reimburse the state for "all reasonable costs incurred" in processing a permit. HB-1187 increased the filing fee to \$100 and added an hourly rate with an upper limit of \$100 per hour.

The proposed changes to 10 CSR 10-6.060, Permits Required, were published in Volume 13, Number 18, September 19, 1989, of the Missouri Register. MACC held a public hearing, after a 30-day public notice period, on October 19, 1988. MACC adopted the changes to the rule. The "Order of Rulemaking" was published in the Volume 13, Number 24, December 19, 1988, Missouri Register. The rule became effective January 1, 1989.

Review of the Missouri Submittal

The Missouri submittal has been reviewed to determine if it meets the requirements of the Act and applicable EPA policies. 10 CSR 10-6.060, Permits Required, as amended, fulfills the requirements of HB-1187 by providing a fee system for MDNR to recover all reasonable costs associated with the processing of construction permit applications. The increased filing fee of \$100 per application and an hourly rate of \$50 should be sufficient to recover all costs incurred by MDNR to process a construction permit. The funds collected are deposited directly into a special fund, "Natural Resources Protection Fund—Air Pollution Permit Fee Subaccount."

The state of Missouri held a public hearing as described above on the various portions of the Missouri SIP. The state submitted the amendments to 10 CSR 10-6.060 on January 24, 1989, to Region VII EPA as a revision to the Missouri SIP. The legal authority for the increased filing fee and the permit processing fee was submitted to Region VII on September 27, 1989, as an addendum to the January 24, 1989, request for SIP revision.

The comments on the proposed amendments to 10 CSR 10-6.060 are summarized and the state responses provided in the Missouri Register of December 19, 1989, where the final amendments are printed. Certifications that the hearings took place were submitted with the SIP revision request. Region VII EPA has reviewed the SIP revision and found it, along with the existing Missouri SIP, to satisfy the requirements of section 110(a)(2)(K) of the Act.

By this notice EPA is approving those sections Chapter 643, Revised Statutes of Missouri, which were amended by the passage of HB-1187 in 1988, and revisions to 10 CSR 6.060, Permits Required, relating to the permit fee requirements, as meeting the requirements of section 110(a)(2)(K) of the Act.

EPA has reviewed this revision to the Missouri SIP and is approving it as submitted. EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective March 12, 1990 unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective March 12, 1990.

Nothing in this action should be construed as permitting, allowing, or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental

factors, and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget waived Tables 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years.

Under 5 U.S.C. Section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Under Section 307(b)(1) of the Act, as amended, petitions for judicial review of this action must be filed in the U.S. Court of Appeals for the appropriate circuit by March 12, 1990. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, and Sulfur oxides.

Note: Incorporation by reference of the State Implementation Plan for the state of Missouri was approved by the Director of the Federal Register on July 1, 1982.

Dated: December 7, 1989.

Morris Kay,

Regional Administrator.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

Subpart AA—Missouri

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.1320 is amended by adding paragraph (c)(69) to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

(69) A plan revision to change the construction permit fees was submitted by the Department of Natural Resources on January 24, 1989, and September 27, 1989.

(i) Incorporation by reference

(A) Revision to 10 CSR 10-6.060, Permits Required, amended December 19, 1988, effective January 1, 1989.

(ii) Additional material

(A) Chapter 643 RSMo (House Bill Number 1187) passed by the General Assembly of the state of Missouri in 1988.

* * * * *

[FR Doc. 90-458 Filed 1-8-90; 8:45 am]

BILLING CODE 6560-50-M

Proposed Rules

Federal Register

Vol. 55, No. 6

Tuesday, January 9, 1990

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 932

[Docket No. FV-90-121]

Proposed Expenses and Assessment Rate for Marketing Order Covering Olives Grown in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order 932 for the 1990 fiscal year (January through December) established for that order. The proposal is needed for the California Olive Committee (committee) to incur operating expenses during the 1990 fiscal year and to collect funds during that year to pay those expenses. This would facilitate program operations. Funds to administer this program are derived from assessments on handlers.

DATE: Comments must be received by January 19, 1990.

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

FOR FURTHER INFORMATION CONTACT: Patrick Packnett, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O.

Box 96456, room 2530-S, Washington, DC 20090-6456, telephone (202) 475-3862.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order No. 932 (7 CFR 932) regulating the handling of olives grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

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

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

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

There are approximately seven handlers of California olives regulated under this marketing order each season, and approximately 1,390 olive producers in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. Most, but not all, of the olive producers and none of the olive handlers may be classified as small entities.

The California olive marketing order, administered by the Department of Agriculture (Department), requires that the assessment rate for a particular fiscal year shall apply to all assessable olives received by regulated handlers from the beginning of such year. An annual budget of expenses is prepared by the committee and submitted to the Department for approval. The members of the committee are olive producers

and handlers. They are familiar with the committee's needs and with the costs for goods, services and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by expected olive receipts (in tons). Because that rate is applied to actual receipts, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses.

The committee met on December 12, 1989, and unanimously recommended 1990 fiscal year expenditures of \$2,067,940 and an assessment rate of \$20.68 per ton of assessable olives received by handlers under M.O. 932. In comparison, 1989 fiscal year budgeted expenditures were \$1,902,322 and the assessment rate was \$25.39 per ton. Last year's assessment income was approximately \$1,900,000 based on receipts of 73,000 assessable tons.

Major expenditure items budgeted for the 1990 fiscal year compared with those budgeted in 1989 (in parentheses) are \$337,540 (\$469,540) for program administration, \$8,650 (\$0) for capital equipment purchases, \$94,500 (\$79,032) for production research, \$790,000 (\$760,000) for consumer advertising, \$667,000 (\$398,500) for food service advertising, \$152,250 (\$195,250) for public relations and \$18,000 (\$0) for miscellaneous promotional expenditures. The committee has reallocated expenditures which can be directly attributed to marketing from its administrative budget to its marketing budget. This accounts for the substantial difference between 1989 and 1990 fiscal year budgeted expenditures in the program administration and food service advertising budget categories. The \$165,618 increase in budgeted expenditures from 1989 is mainly attributed to the increased emphasis to be placed on food service industry promotional programs with the food service industry.

Estimated assessment income of \$2,068,000 for the 1990 fiscal period based on handler receipts of 100,000

tons of assessable olives will be utilized to cover the proposed expenses. Last year's assessment income was approximately \$1,900,000 based on the receipts of 73,000 assessable tons. The committee also unanimously recommended that excess income from the 1989 fiscal year (\$22,807) be placed in its reserve, resulting in a reserve well within the maximum amount authorized under the order.

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

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approvals for the olive program need to be expedited. The committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 932

California, Marketing agreements, Olives.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 932 be amended as follows:

PART 932—OLIVES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 932 continues to read as follows:

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

2. New § 932.224, is added to read as follows:

§ 932.224 Expenses and assessment rate.

Expenses of \$2,067,940 by the California Olive Committee are authorized, and an assessment rate of \$20.68 per ton of assessable olives is established, for the fiscal year ending on December 31, 1990. Unexpended funds from the 1989 fiscal year may be carried over as a reserve.

Dated: January 4, 1990.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 90-456 Filed 1-8-90; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 12

Proposed Customs Regulations Amendments Concerning the Importation of Chemicals Subject to the Toxic Substances Control Act (TSCA)

AGENCY: Customs Service, Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations regarding the submission of an importer's certification for Toxic Substances Control Act (TSCA) purposes. It provides when the certification must be submitted, its form, and provides for blanket certifications covering multiple shipments of chemicals subject to TSCA.

These changes are being made pursuant to the request of the Environmental Protection Agency (EPA) which has noted the existence of problems in verifying compliance with TSCA.

DATE: Comments must be received on or before March 12, 1990.

ADDRESS: Written comments (preferably in triplicate) may be addressed to and inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., room 2119, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT:

Carole Klein, Other Agency

Enforcement Branch (202) 566-7877.

William Nolle, Office of ACS

Operations (202) 566-7907

SUPPLEMENTARY INFORMATION:

Background

The Toxic Substances Control Act (TSCA) (15 U.S.C. 2612) was enacted by Congress to regulate commerce and protect human health and the environment by requiring testing and necessary use restrictions on certain chemical substances, and for other purposes. Section 13, TSCA, directs the Secretary of the Treasury, after consultation with the Administrator, Environmental Protection Agency (EPA), to refuse entry into the Customs territory of the United States of any chemical substance or mixture that: 1. Fails to comply with any rule in effect under TSCA, or 2. Is offered for entry in violation of sections 5 or 6, TSCA, a rule or order issued under sections 5 or 6, or an order issued in a civil action brought under sections 5 or 7, TSCA.

Section 13 further provides that if a chemical substance, mixture or article is

refused entry, the Secretary shall notify the consignee of the entry refusal, not release the shipment, except under bond and cause its disposal or storage under such rules as the Secretary may prescribe if the shipment has not been exported by the consignee within 90 days from the date of receipt of the notice of entry refusal.

Section 13 was implemented by Treasury Decision (T.D.) 83-158, published in the Federal Register on August 1, 1983 (48 FR 34734), which added §§ 12.118-12.127 to the Customs Regulations (19 CFR 12.118-12.127). Included therein, as § 12.121, Customs Regulations (19 CFR 12.121), was a reporting requirement calling for the importer of a chemical substance to certify to the district director of Customs that the chemical shipment is subject to TSCA and complies with all applicable rules thereunder, or is not subject to TSCA. Certification statements are delineated in paragraph (a) of the above regulatory section.

EPA officials have advised us that their investigations have identified problems in the verification of compliance with TSCA requirements on imported chemicals. Such officials have noted that, although the above certification is required to be present at the time of entry, audits conducted subsequent to the entry and release of merchandise requiring a certification have failed to confirm the submission thereof at the time of entry or later.

Customs, at the request of EPA, in order to correct this situation and to better enforce the provisions of TSCA, is herein proposing to amend the Customs Regulations to provide that the TSCA certification must be submitted with the entry and that it must appear on the invoice used in connection with the entry and entry summary procedures for these shipments or, for those entries or entry summaries processed electronically, a certification code transmitted as part of the electronics transmission process. The proposed regulations in this document also provide for the use of blanket certifications by importers who regularly import chemicals, whether or not they are subject to the TSCA.

Comments

Before adopting this proposal, consideration will be given to any written comments (preferably in triplicate) timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) § 1.4, Treasury Department Regulations (31 CFR 1.4), and

§ 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, Customs Service Headquarters, room 2119, 1301 Constitution Avenue, NW., Washington, DC 20229.

Regulatory Flexibility Act

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

Executive Order 12291

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

Drafting Information

The principal author of this document was Arnold L. Sarasky, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 12

Customs duties and inspection, Imports, Hazardous materials, Explosives, and Freight.

Proposed Amendments

It is proposed to amend part 12, Customs Regulations (19 CFR part 12), as set forth below:

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The authority citation for part 12 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1551, 1552, 1553 and 1624.

Sections 12.118 through 12.127 also issued under 15 U.S.C. 2601 *et seq.*

2. It is proposed to amend § 12.121 by revising paragraph (a), redesignating paragraphs (b) and (c) as (c) and (d), respectively, revising the redesignated paragraph (c) and adding a new paragraph (b) thereto. The revised § 12.121 would read as follows:

§ 12.121 Reporting requirements.

(a) *All chemical substances in bulk or mixtures.* The importer of a chemical substance, imported in bulk or as part of a mixture, shall certify to the district

director at the port of entry that the chemical shipment is subject to TSCA and complies with all applicable rules and orders thereunder, or is not subject to TSCA. The importer, or his authorized agent, shall sign one of the following statements:

I certify that all chemical substances in this shipment comply with all applicable rules or orders under TSCA and that I am not offering a chemical substance for entry in violation of TSCA or any applicable rule or order thereunder.

I certify that all chemicals in this shipment are not subject to TSCA.

The certification, which shall be filed with the district director at the port of entry before release of the shipment, shall appear as a typed or stamped statement on the invoice used in connection with the entry and entry summary procedures. For those entries or entry summaries processed electronically this statement will be in the form of a Certification Code transmitted as part of the Automated Broker Interface (ABI) transmission. The entry filer will be obligated by this Certification Code to the same extent as if these statements were submitted on entry or entry summary documents.

(b) *Blanket certifications.* (1) District directors of Customs may, in their discretion, accept "blanket" certifications from importers. In accepting any such certifications, the district director should consider the reliability of the importer and Customs broker.

(2) All "blanket" certifications shall be made on the letterhead of the certifying firm, list the products covered by name and Harmonized System Item Number, identify the foreign suppliers by name and address, and be signed by an authorized person.

(3) Once accepted, a "blanket" certification shall remain valid for one year from the date of acceptance unless sooner revoked for cause by the district director. Separate "blanket" certifications will be required for chemicals subject to TSCA and those not subject to TSCA.

(4) Importers authorized to use "blanket" certifications shall also include a statement on the invoice used in connection with the entry and entry summary procedures for each shipment referring to the "blanket" certification and incorporating it by reference. Such statements need not be signed.

(5) For those entries or entry summaries processed electronically for which a "blanket" certification is on file, this electronic Certification Code will certify that a "blanket" certification is on file.

(c) *Chemical substance or mixture as part of article.* Each importer of a chemical substance or mixture as part of an article shall meet the reporting requirements set forth in paragraph (a) or paragraph (b) of this section only if required by a rule or order under TSCA.

(d) *Facsimile signatures.* The certification statements in paragraph (a) of this section may be signed by means of an authorized facsimile signature.

William von Raab,

Commissioner of Customs.

Approved: January 2, 1990.

Salvatore R. Martocchio,

Assistant Secretary of the Treasury.

[FR Doc. 90-448 Filed 1-8-90; 8:45 am]

BILLING CODE 4820-02-M

Internal Revenue Service

26 CFR Part 1

[FI-64-89]

RIN 1545-A003

Price Level Adjusted Mortgages

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the rules and regulations section of this issue of the *Federal Register*, the Internal Revenue Service is issuing temporary regulations that provide rules for the treatment of price level adjusted mortgages ("PLAMs") under the original issue discount and qualified residence interest provisions of the Internal Revenue Code of 1986. In addition, the temporary regulations provide rules for the treatment of payments received pursuant to a PLAM for purposes of the information reporting of home mortgage interest. The text of the temporary regulations also serves as the comment document for this notice of proposed rulemaking.

EFFECTIVE DATES: Section 1.163-11T is proposed to be effective for tax years beginning after December 31, 1987. Sections 1.1275-6T and 1.6050H-2T are proposed to be effective for price level adjusted mortgages issued after January 9, 1990. Written comments and requests for a public hearing must be delivered or mailed by April 9, 1990.

ADDRESS: Send comments and requests for a public hearing to: Internal Revenue Service, Attn: CC:CORP:T:R (FI-64-89), room 4429, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: William E. Blanchard, concerning the

original issue discount portion of these regulations, 202-566-3142 (not a toll-free number) and Sharon L. Hall, concerning the qualified residence interest portion of these regulations, 202-566-4436 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations in the rules and regulations section of this issue of the Federal Register add new temporary regulation § 1.163-11T, new temporary regulation § 1.1275-6T, and new temporary regulation § 1.6050H-2T to part 1 of title 26 of the CFR. The temporary regulations provide rules for the tax treatment of a PLAM under section 163(h), which deals with the disallowance of deductions for personal interest (§ 1.163-11T), and the original issue discount provisions of the Code (§ 1.1275-6T). The temporary regulations also provide rules for the treatment of payments received pursuant to a PLAM under section 6050H, which deals with information reporting of mortgage interest (§ 1.6050H-2T). For the text of the new temporary regulations, see T.D. 8281, published in the rules and regulations portion of this issue of the Federal Register. The preamble to the temporary regulations explains the regulations.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are submitted (preferably a signed original and seven copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Internal Revenue Service by any person who also submits written comments. If a

public hearing is held, notice of the time and place will be published in the Federal Register.

Drafting Information

The principal authors of these proposed regulations are William E. Blanchard of the Office of Assistant Chief Counsel (Financial Institutions and Products) and Sharon L. Hall of the Office of Assistant Chief Counsel (Income Tax and Accounting). However, other personnel from the Service and Treasury Department participated in their development.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 90-485 Filed 1-8-90; 8:45 am]

BILLING CODE 4830-01-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Parts 1220, 1222, and 1224

RIN 3095-AA45

Creation and Maintenance of Records; Adequate and Proper Documentation

AGENCY: National Archives and Records Administration.

ACTION: Proposed rule.

SUMMARY: NARA is proposing to revise its regulations to provide more extensive guidance to Federal agencies about the creation and maintenance of adequate and proper documentation of Government policies and activities. The revision updates regulations on the creation of records currently found in part 1222 of this chapter and records maintenance regulations currently found in part 1224 under the title of Files Management. The revision also adds two new definitions to part 1220 and proposes new regulations regarding the identification of Federal records and the handling of contractor records.

DATES: Comments must be received by February 8, 1990.

ADDRESSES: Comments should be sent to Director, Policy and Program Analysis Division, National Archives and Records Administration (NAA), Washington, DC 20408.

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

SUPPLEMENTARY INFORMATION: This revision incorporates the substance of guidance published recently by NARA in two bulletins: NARA Bulletin 88-5, "Data created or maintained for the Government by contractors" and NARA Bulletin 89-2, "Disposition of Federal

records and personal papers." The revision emphasizes agency responsibilities to establish clear recordkeeping requirements for all Government activities. It provides detailed guidance about identifying Federal records and distinguishing them from nonrecord materials and personal papers. Also included in this revision are regulations regarding the handling of contractor records.

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

List of Subjects in 36 CFR Parts 1220 and 1222

Archives and records.

For the reasons set forth in the preamble, NARA proposes to amend chapter XII of title 36 of the Code of Federal Regulations as follows:

PART 1220—FEDERAL RECORDS; GENERAL

Part 1220 is amended as follows:

1. The authority citation for part 1220 continues to read as follows:

Authority: 44 U.S.C. 2104(a) and chapter 29.

2. Section 1220.14 is amended by adding the following definitions in alphabetical order:

§ 1220.14 General definitions.

"Adequate and proper documentation" means a record of the conduct of Government business that is complete and accurate to the extent required to document the organization, functions, policies, decisions, procedures, and essential transactions of the agency and that is designed to furnish the information necessary to protect the legal and financial rights of the Government and of persons directly affected by the agency's activities.

"Recordkeeping requirements" means all statements, in statutes, regulations, and agency directives or authoritative issuances, providing general and specific guidance for Federal agency personnel on particular records to be created and maintained by the agency.

3. Part 1222 is revised to read as follows:

PART 1222—CREATION AND MAINTENANCE OF RECORDS; ADEQUATE AND PROPER DOCUMENTATION

Sec.

Subpart A—General

- 1222.10 Authority.
- 1222.12 Defining Federal records.

Subpart B—Program Requirements

- 1222.20 Agency responsibilities.

Subpart C—Standards for Agency Recordkeeping Requirements

- 1222.30 Purpose.
- 1222.32 General requirements.
- 1222.34 Identifying Federal records.
- 1222.36 Identifying personal papers.
- 1222.38 Categories of documentary materials to be covered by recordkeeping requirements.
- 1222.40 Removal of records.
- 1222.42 Directives documenting agency programs, policies, and procedures.
- 1222.44 Recordkeeping requirements of other agencies.
- 1222.46 Data created or received and maintained for the Government by contractors.
- 1222.48 Records maintenance.

Authority: 44 U.S.C. 2904, 3101, and 3102.

Subpart A—General

§ 1222.10 Authority.

(a) 44 U.S.C. 2904, vests in the Archivist of the United States responsibility for providing guidance and assistance to Federal agencies with respect to ensuring adequate and proper documentation of the policies and transactions of the Federal Government, including developing and issuing standards to improve the management of records.

(b) 44 U.S.C. 3101, requires that the head of each Federal agency "shall make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency and designed to furnish the information necessary to protect the legal and financial rights of the Government and of persons directly affected by the agency's activities."

(c) 44 U.S.C. 3102, requires that the head of each Federal agency "shall establish and maintain an active, continuing program for the economical and efficient management of the records of the agency. The program, among other things, shall provide for (1) effective controls over the creation, and over the maintenance and use of records in the conduct of current business; (2) cooperation with the Administrator of General Services and the Archivist in applying standards, procedures, and techniques designed to improve the

management of records, promote the maintenance and security of records deemed appropriate for preservation, and facilitate the segregation and disposal of records of temporary value * * *"

§ 1222.12 Defining Federal records.

(a) The statutory definition of Federal records is contained in 44 U.S.C. 3301.

(b) Several key terms, phrases, and concepts in the statutory definition of records are defined as follows:

(1) "*Documentary materials*" is a collective term for records, nonrecord materials, and personal papers that refers to all media containing recorded information, regardless of the nature of the media or the method(s) or circumstance(s) of recording.

(2) "*Regardless of physical form or characteristics*" means that the medium may be paper, film, disk, or other physical type or form; and that the method of recording may be manual, mechanical, photographic, electronic, or any other combination of these or other technologies.

(3) "*Made*" means the act of creating and recording information by agency personnel in the course of their official duties, regardless of the method(s) or the medium involved. The act of recording is generally identifiable by the circulation of the information to others or by placing it in files accessible to others.

(4) "*Received*" means the acceptance or collection of documentary materials by agency personnel in the course of their official duties regardless of their origin (for example, other units of their agency, private citizens, public officials, other agencies, contractors, Government grantees) and regardless of how transmitted (in person or by messenger, mail, electronic means, or by any other method). In this context, the term does not refer to misdirected materials. It may or may not refer to loaned or seized materials depending on the conditions under which such materials came into agency custody or were used by the agency. Advice of legal counsel should be sought regarding the "record" status of loaned or seized materials.

(5) "*Preserved*" means the filing, storing, or any other method of systematically maintaining documentary materials by the agency. This term covers materials not only actually filed or otherwise systematically maintained but also those temporarily removed from existing filing systems.

(6) "*Appropriate for preservation*" means documentary materials made or received that should be filed, stored, or otherwise systematically maintained by an agency because of the evidence of agency activities or information they

contain, even though the materials may not be covered by its current filing or maintenance procedures.

Subpart B—Program Requirements

§ 1222.20 Agency responsibilities.

(a) The head of each Federal agency, in meeting the requirements of 44 U.S.C. 2904, 3101, and 3102, shall observe the responsibilities and standards set forth in this part and regulations issued by the General Services Administration (GSA) in 41 CFR chapter 201.

(b) Each Federal agency shall:

(1) Assign to one or more offices of the agency the responsibility for the development and implementation of agencywide programs to identify, develop, issue, and periodically review recordkeeping requirements for all agency activities at all levels and locations and for all media, including paper, audiovisual, cartographic, and electronic records; and notify the National Archives and Records Administration (NARA), Office of Records Administration (NI), Washington, DC 20408 of the assignment;

(2) Integrate programs for the identification, development, issuance, and periodic review or recordkeeping requirements with other records and information resources management programs of the agency, including the requirement of close coordination between the office designated in 36 CFR 1222.20(b)(1) and the office assigned overall records management responsibility in accordance with 36 CFR 1220.40, if the two are different;

(3) Issue a directive(s) establishing program objectives, responsibilities, and authorities for agency recordkeeping requirements. Copies of the directive(s) (including subsequent amendments or supplements) shall be disseminated throughout the agency, as appropriate, and a copy shall be sent to NARA (NI);

(4) Establish procedures for the participation of records management officials in developing new or revised agency programs, processes, systems, and procedures in order to ensure that adequate recordkeeping requirements are established and implemented;

(5) Ensure that adequate training is provided to agency personnel at all levels on policies, responsibilities, and techniques for the implementation of recordkeeping requirements;

(6) Develop and implement records schedules for all records created and received by the agency and obtain NARA approval of the schedules in accordance with 36 CFR part 1228;

(7) Ensure compliance with applicable Governmentwide policies, procedures, and standards relating to recordkeeping requirements as may be issued by the Office of Management and Budget, the General Services Administration, the National Archives and Records Administration, the National Institute of Standards and Technology, or other agencies, as appropriate;

(8) Review recordkeeping requirements, as part of the periodic information resources management reviews required by 44 U.S.C. 3506, or the periodic records management evaluations required by 36 CFR 1220.54, in order to validate their currency and to ensure that recordkeeping requirements are being implemented.

(9) Remind all employees annually of the agency's recordkeeping policies and of the sanctions provided for the unlawful removal or destruction of Federal records (18 U.S.C. 2071).

Subpart C—Standards for Agency Recordkeeping Requirements

§ 1222.30 Purpose.

(a) The clear articulation of recordkeeping requirements by Federal agencies is essential if agencies are to meet the requirements of 44 U.S.C. 3101 and 3102 with respect to creating, receiving, maintaining, and preserving adequate and proper documentation, and with respect to maintaining an active, continuing program for the economical and efficient management of agency records.

(b) Although many agencies regularly issue recordkeeping requirements for routine operations, many do not adequately specify such requirements for documenting policies and decisions, nor do they provide sufficient guidance so that agency personnel can distinguish between records and nonrecord materials.

(c) Since agency functions, activities, and administrative practices vary so widely, NARA cannot issue a comprehensive list of all categories of documentary materials appropriate for preservation by an agency as evidence of its activities or because of the information they contain. In all cases, the agency must consider the intent or circumstances of creation or receipt of the materials to determine whether their systematic maintenance shall be required.

§ 1222.32 General requirements.

Agencies shall identify, develop, issue, and periodically review their recordkeeping requirements for all their activities at all levels and locations and

for all media. Recordkeeping requirements shall:

(a) Identify and prescribe specific categories of documentary materials to be systematically created or received and maintained by agency personnel in the course of their official duties;

(b) Prescribe the manner in which these materials shall be maintained wherever held; and

(c) Distinguish records from nonrecord materials and, with the approval of the Archivist of the United States, prescribe action for the final disposition of agency records when they are no longer needed for current business.

§ 1222.34 Identifying Federal records.

(a) *General.* To ensure that complete and accurate records are made and retained in the Federal Government, it is essential that agencies distinguish between records and nonrecord materials by the appropriate application of the definition of records (see 44 U.S.C. 3301 and 36 CFR 1220.14) to agency documentary materials. Applying the definition of records to most documentary materials created or received by agencies presents few problems when agencies have established and periodically updated recordkeeping requirements covering all media and all agency activities at all levels and locations.

(b) *Record status.* Documentary materials are records when they meet both of the following conditions:

(1) They are made or received by an agency of the United States Government under Federal law or in connection with the transaction of agency business; and

(2) They are preserved or are appropriate for preservation as evidence of agency organization and activities or because of the value of the information they contain.

(c) *Working papers and similar materials.* Working papers, such as preliminary drafts and rough notes, and other similar materials shall be maintained for purposes of adequate and proper documentation if:

(1) They were circulated or made available to employees, other than the creator, for official purposes such as approval, comment, action, recommendation, follow-up, or to communicate with agency staff about agency businesses; and

(2) They contain unique information, such as substantive annotations or comments included therein, that adds to a proper understanding of the agency's formulation and execution of basic policies, decisions, actions, or responsibilities.

(d) *Nonrecord materials.* Nonrecord materials are Government-owned documentary materials that do not meet the conditions of record status (see § 1222.34(b)) or that are specifically excluded from status as records by statute (see 44 U.S.C. 3301):

(1) Library and museum material (but only if such material is made or acquired and preserved solely for reference or exhibition purposes);

(2) Extra copies of documents (but only if the sole reason such copies are preserved is for convenience of reference); and

(3) Stocks of publications and of processed documents. (Each agency shall create and maintain serial or record sets of its publications and processed documents, as evidence of agency activities and for the information they contain, including annual reports, brochures, pamphlets, books, handbooks, posters and maps.)

§ 1222.36 Identifying personal papers.

(a) Personal papers are documentary materials, or any reasonably segregable portion thereof, of a private or nonpublic character that do not relate to or have an effect upon the conduct of agency business. Personal papers are excluded from the definition of Federal records and are not owned by the Government. Examples of personal papers include:

(1) Materials accumulated by an official before joining Government service that are not used subsequently in the transaction of Government business;

(2) Materials relating solely to an individual's private affairs, such as outside business pursuits, professional affiliations, or private political associations that do not relate to agency business; and

(3) Diaries, journals, personal correspondence, or other personal notes that are not prepared or used for, or circulated or communicated in the course of, transacting Government business.

(b) Materials designated "personal," "confidential," "private," or similarly designated, and used in the transaction of public business, are Federal records subject to the provisions of pertinent laws and regulations.

(c) Personal papers shall be clearly designated as such and shall at all times be maintained separately from the office's records.

(d) If information about private matters and agency business appears in the same document, the document shall be copied at the time of receipt, with the personal information deleted, and treated as a Federal record.

§ 1222.33 Categories of documentary materials to be covered by recordkeeping requirements.

Materials prescribed for systematic maintenance shall include all those that are created or received by the agency under Federal law or in connection with the transaction of agency business, and that

(a) Contain information about the persons, places, things, or matters dealt with by the agency, or that

(b) Meet any of the following criteria for documenting agency organization and activities:

(1) They facilitate action by agency officials and their successors in office.

(2) They make possible a proper scrutiny by Congress or duly authorized agencies of the Government.

(3) They protect the financial, legal, and other rights of the Government and of persons directly affected by the Government's actions.

(4) They document the formulation and execution of policies and decisions and the taking of necessary actions, including all significant decisions and commitments reached orally (person to person, by telecommunications, or in conference).

(5) They document important board, committee, or staff meetings, or they were considered at or resulted from such meetings.

§ 1222.40 Removal of records.

Agencies shall develop procedures to ensure that departing officials do not remove Federal records from agency custody.

§ 1222.42 Directives documenting agency programs, policies, and procedures.

Agency recordkeeping requirements shall prescribe that the programs, policies, and procedures of the agency shall be adequately documented in appropriate directives. A record copy of each such directive (including those superseded) shall be maintained by the appropriate agency directives management officer(s) as part of the official files.

§ 1222.44 Recordkeeping requirements of other agencies.

When statutes, regulations, directives or authoritative issuances of other agencies prescribe an agency's recordkeeping requirements, the agency so affected shall include these in appropriate directives or other authoritative issuances prescribing its organization, functions, or activities.

§ 1222.46 Data created or received and maintained for the Government by contractors.

(a) Contractors performing Congressionally-mandated program functions are likely to create or receive data necessary to provide adequate and proper documentation of these programs and to manage them effectively.

Agencies shall specify the delivery to the Government of all data needed for the adequate and proper documentation of contractor-operated programs in accordance with recordkeeping requirements of this part and with requirements of the Federal Acquisition Regulation (FAR) and, where applicable, the Defense Federal Acquisition Regulation Supplement (DFARS).

(b) When contracts involve the creation of data for the Government's use, in addition to specifying a final product, agency officials may need to specify the delivery of background data that may have reuse value to the Government. Before specifying the background data that contractors must deliver to the agency, program and contracting officials shall consult with agency records and information managers and historians and, when appropriate, with other Government agencies to ensure that all agency and Government needs are met, especially when the data deliverables support a new agency mission or a new Government program.

(c) Deferred ordering and delivery-of-data clauses and rights-in-data clauses shall be included in contracts whenever necessary to ensure adequate and proper documentation or because the data have reuse value to the Government.

(d) When data deliverables include electronic records, the agency shall require the contractor to deliver sufficient technical documentation to permit the agency or other Government agencies to use the data.

(e) All data created for Government use and delivered to, or falling under the legal control of, the Government are Federal records and shall be managed in accordance with records management legislation as codified at 44 U.S.C. chapters 21, 29, 31, and 33, the Freedom of Information Act (5 U.S.C. 552), and the Privacy Act (5 U.S.C. 552a), and shall be scheduled for disposition in accordance with 36 CFR part 1228.

§ 1222.48 Records maintenance.

(a) Agency recordkeeping requirements shall prescribe an appropriate records maintenance program so that complete records are filed, records can be found when needed, the identification and retention

of permanent records are facilitated, and permanent and temporary records are segregated.

(b) Each Federal agency, in providing for effective controls over the maintenance of records, shall:

(1) Establish and implement standards and procedures for classifying, indexing, and filing records as set forth in GSA and NARA handbooks;

(2) Formally specify official file locations and prohibit the maintenance of records at unauthorized locations;

(3) Standardize reference service procedures to facilitate the finding, charging out, and refiling of its records;

(4) Make available to all agency employees published standards, guides, and instructions designed for easy reference and revision;

(5) Review its records maintenance program periodically to determine its adequacy; audit a representative sample of its files for duplication, misclassification, or misfiles;

(6) Maintain microform, audiovisual, and electronic records in accordance with 36 CFR parts 1230, 1232, and 1234, respectively;

(7) Establish and implement procedures for maintaining all nonrecord materials separately from the office's records; and

(8) Establish and implement procedures for the separate maintenance of any personal papers in accordance with § 1222.36.

PART 1224—[REMOVED]

4. Part 1224 is removed.

Dated: December 5, 1989.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 90-435 Filed 1-8-90; 8:45 am]

BILLING CODE 7515-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Federal Insurance Administration

44 CFR Part 67

[Docket No. FEMA-6968]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule; deletion.

SUMMARY: This document deletes a Notice of Proposed Determinations of base (100-year) flood elevations previously published at 54 FR 38879 on September 21, 1989. This notice serves to

delete the representation of the Flood Insurance Study and Flood Insurance Rate Map for the City of Red Bank, Hamilton County, Tennessee.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice to delete the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the City of Red Bank, Hamilton County, Tennessee, previously published at 54 FR 38879 on September 21, 1989, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR part 67.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding	Location	#Depth in feet above ground. Elevation in feet (NGVD)
Stringers Branch.	Just downstream of Signal Mountain Road.	*654
	Just upstream of Signal Mountain Road.	*660
	Just downstream of State Route 29 Spur.	*660
	Just upstream of State Route 29 Spur.	*667
	About 300 feet upstream of Leagwood Avenue.	*738

Issued: December 29, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 90-481 Filed 1-8-90; 8:45am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 90

[PR Docket No. 89-553]

Provision for Use of 200 Channels Outside the Designated Filing Areas in 896-901/935-940 MHz Bands Allotted to Specialized Mobile Radio Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rules.

SUMMARY: This action proposes amendments to parts 2 and 90 of the Commission's Rules. The proposed rule changes are being made to consolidate further assignment of the 900 MHz SMR channels to include areas outside the initially designated 50 urban centers and to promote the growth of SMR systems outside the major metropolitan areas. The changes proposed would establish national licenses in the 900 MHz SMR band, would permit both fixed and mobile operation on a primary basis in the 900 MHz SMR band, and would permit construction of multiple primary site systems in the 800 MHz and 900 MHz SMR bands.

DATES: Comments must be submitted on or before February 28, 1990. Reply comments must be submitted on or before March 28, 1990.

ADDRESS: Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Terry Romine, Land Mobile and Microwave Division, Private Radio Bureau (202) 632-6497.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's notice of proposed rulemaking in PR Docket 89-553, FCC 89-328, Adopted November 28, 1989, and released December 18, 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, Northwest, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, Northwest, Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rule Making

1. The Commission is proposing amendments to parts 2 and 90 of the Commission's rules, 47 CFR parts 2 and 90, to facilitate more flexible use of the

200 channels allotted the Specialized Mobile Radio (SMR) pool in the 896-901/935-940 MHz (900 MHz) bands.

2. First, the Commission proposed to set aside 60 of the 200 900 MHz SMR channels for national licenses with each national licensee being granted ten channels. All base stations and mobile units within the nationwide system would be required to be compatible. The license term and construction period for the national license is proposed to be ten years. National licensees would be required to meet periodic construction benchmarks at two, four, six and ten years in order to retain its national authorization. Entry criteria, including financial requirements and communications experience, are proposed for national licenses.

3. Second, the Commission proposes to permit all 900 MHz SMR stations located outside a 100-mile radius of the 46 DFAs to use mobile and fixed operations on a primary basis. Fixed operations on a primary basis on non-national SMR systems, however, would not be permitted for 36 months from the time the first non-nationwide license is granted for any area outside a DFA. The technical standards and interference criteria currently set forth in Part 90 of the Commission's Rules would apply.

4. Finally, the Commission proposes, for non-nationwide SMR systems, to allow construction of multiple primary site systems in rural areas in both the 800 MHz and 900 MHz bands. SMR rural operators would be allowed to construct multiple primary site systems and to split authorized channels among the sites. No one site would be required to have all authorized channels constructed at it. The license term for these systems remains five years and no slow growth implementation schedule is proposed.

5. The Commission seeks comments on its proposals and will consider alternatives that are consistent with its goals of providing for more effective use of the spectrum and satisfying the expanding communications needs of end users.

6. This is a non-restricted notice and comment rule making proceeding. See § 1.1206 of the Commission's Rules, 47 CFR 1.1206, for rules governing permissible *ex parte* contacts.

Initial Regulatory Flexibility Act Analysis

7. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, this proceeding will have a positive impact on small entities because additional communications options will be available to them. Public comment is

requested on the initial regulatory flexibility analysis set out in full in the Commission's complete decision.

Paperwork Reduction Act Statement

8. The proposals contained in the Notice have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

Comment Instructions

9. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.416, interested parties may file

comments on or before February 28, 1990, and reply comments on or before March 28, 1990. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

List of Subjects

47 CFR Part 2

Frequency allocation, Radio.

47 CFR Part 90

Administrative practice and procedure, Radio.

Rule Changes

Parts 2 and 90 of title 47 of the Code of Federal Regulations are proposed to be amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation in part 2 continues to read as follows:

Authority: Secs. 4, 302, 303, 307, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 302, 303, 307, unless otherwise noted.

2. Section 2.106, the Table of Frequency Allocations, is amended by revising column 5 in the table for the 896-901 MHz bands and column 5 in the table for the 935-940 MHz bands as follows:

§ 2.106 Table of Frequency Allocations.

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International table	United States table		FCC use designators	
	Government	Non-Government	Rule part(s)	Special use frequencies
• • •				
• • •		896-901 LAND MOBILE FIXED.	PRIVATE LAND MOBILE (90).	
		US116 US268.		
• • •				
		935-940 LAND MOBILE FIXED.	PRIVATE LAND MOBILE (90).	
		US116 US268		

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

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

Authority: 47 U.S.C. 154, 303.

2. 47 CFR 90.149 is amended by revising paragraph (a) and adding new paragraph (c) to read as follows:

§ 90.149 License term.

(a) Except as indicated in paragraph (c) of this section, licenses for stations authorized under this part will be issued for a term not to exceed five years from the date of the original issuance, modification or renewal.

(c) Nationwide authorizations under subpart S will be issued for a term not to exceed ten years from the date of the original issuance, modification or renewal. See §§ 90.607(b) and 617(e).

3. 47 CFR 90.155 is amended by revising paragraph (a) to read as follows:

§ 90.155 Time in which station must be placed in operation.

(a) All stations authorized under this part, except as provided in paragraph (b) of this section and in §§ 90.629 and 90.631 (e), (f) and (g), must be placed in operation within 8 months from the date of grant or the authorization cancels automatically and must be returned to the Commission.

4. 47 CFR 90.607 is amended by revising the introductory text of paragraph (c), redesignating existing paragraphs (d) and (e) as new paragraphs (e) and (f), respectively, and adding a new paragraph (d) to read as follows:

§ 90.607 Supplemental information to be furnished by applicants for facilities under this subpart.

(c) Applicants for non-nationwide trunked systems must:

(d) Applicants for nationwide systems must:

(1) Furnish a list of all radio systems licensed to them or managed by them.

(2) Furnish a description of the proposed nationwide system, including the locations of all base stations of which at least one base station must be located in at least 50 of the urban centers set forth in appendix B to the Report and Order in PR Docket No. _____, 199, together with technical details including antenna height (AAT), effective radiated power (ERP), the proposed area of coverage, the signaling methods to be employed, and the proposed protocols and parameters to standardize the system's base station/mobile unit interface.

(3) Certify that they will meet the construction benchmarks set forth in § 90.631(g) and submit a ten-year schedule detailing plans for construction of the proposed system;

(4) Demonstrate that they have communications experience indicative of the capability to construct the proposed system; and

(5) Demonstrate that they have sufficient financial resources to construct the proposed system, i.e., assets in excess of 50 million dollars or a firm financial commitment to support construction and operation of the

system for the duration of the initial term of license. The firm financial commitment shall be obtained from a state or federally chartered bank or savings and loan institution, other recognized financial institution, or the financial arm of a capital equipment supplier and shall contain a statement that the lender:

(i) Has examined the financial constitution of the applicant including where applicable, audited financial statements, and has determined that the applicant is creditworthy;

(ii) Has examined the financial viability of the proposed system for which the applicant intends to use the commitment; and

(iii) Is willing to provide a sum to the applicant sufficient to cover the realistic and prudent estimated costs of construction and operation of the system for the initial term of license; and

(iv) Is willing to enter into a commitment solely on the basis of the lender's relationship with the applicant.

5. 47 CFR 90.609 is amended by revising paragraphs (a) introductory text, (b) introductory text, and (c) and by adding paragraph (d) to read as follows:

§ 90.609 Special limitations on amendment of applications for assignment or transfer of authorizations for radio systems used to provide service to persons other than the licensee.

(a) No application for a non-nationwide conventional or trunked radio system may be amended so as to substitute a new entity except in the following circumstances:

(b) A license to operate a non-nationwide conventional or trunked radio system may not be assigned or transferred prior to the completion of construction of the facility. However, the Commission may give its consent to the assignment or transfer of control of such a license prior to the completion of construction where:

(c) Licensees of non-nationwide, constructed trunked radio systems are permitted to make partial assignments of an authorized grant to an applicant proposing to create a new system or to an existing licensee that has 70 mobiles per constructed channel for each additional channel to be assigned and is expanding that system. An applicant authorized to expand an existing system or to create a new system with channels it obtains through partial assignment will receive the assignor's existing license expiration date and loading

deadline. A licensee that makes a partial assignment will not be authorized to obtain additional channels for that same system for a period of one year from the date of the partial assignment.

(d) A national licensee may assign or transfer constructed stations licensed as part of its nationwide authorization four years from the date of its initial license grant and upon demonstrating that it has constructed at least 40% of its proposed system pursuant to the provisions of § 90.631(g). Constructed stations assigned or transferred must retain the standardized protocol and parameters of the nationwide system. The assignee or transferee is not subject to the financial requirements described in § 90.607(d)(3).

6. 47 CFR 90.611 is amended by revising the first sentence of paragraph (d), by redesignating existing paragraphs (e) and (f) as new paragraphs (f) and (g), respectively, and by adding a new paragraph (e) to read as follows:

§ 90.611 Processing of applications.

(d) Applications for channels in the SMR category that cannot be granted, except as provided for by paragraph (e), due to a lack of available channels in a particular area will be placed on a waiting list for that area. ***

(e) Applications for nationwide frequencies that cannot be granted due to a lack of available channels will be placed on a waiting list according to filing date, with the earliest date receiving highest ranking. When channels become available the highest ranking application(s) will be granted.

7. 47 CFR 90.617 is amended by adding paragraph (e) to read as follows:

§ 90.617 Frequencies in the 809.750-816/854.750-861 MHz, 821-824/866-869 MHz, and 896-901/935-940 MHz bands available for trunked or conventional system use in non-border areas.

(e) Channels _____, _____, _____, _____, _____, _____, _____, _____, _____, and _____, listed in Table 4B, are the ten-channel blocks available to eligible applicants for nationwide compatible SMR systems. The availability of these channels in border areas is subject to the provisions of § 90.619.

8. 47 CFR 90.621 is amended by revising paragraph (a) to read as follows:

§ 90.621 Selection and assignment of frequencies.

(a) Applications in the Public Safety/
Special Emergency, Industrial/Land

Transportation, and Business categories and for frequencies in the conventional category must specify the frequencies on which the proposed system will operate pursuant to a recommendation by the applicable frequency coordinator. Applicants for nationwide SMRS frequencies in the 896-901/935-940 MHz bands may not request specific frequencies. The Commission will select the specific ten channel block of frequency pairs for the nationwide system. Applicants for non-nationwide SMRS frequencies in the 896-901/935-940 MHz bands must request specific frequencies, including in their applications justification for the frequencies requested. Applicants for SMRS frequencies in the 806-821/821-866 MHz bands may either request specific frequencies by including in their applications justification for the frequencies requested or may request the Commission to select frequencies for the system.

9. 47 CFR 90.627 is amended by revising the introductory text of paragraph (b) and adding new paragraphs (b)(4) and (c) to read as follows:

§ 90.627 Limitation on the number of frequency pairs that may be assignable for trunked systems and on the number of trunked systems

(b) No licensee will be authorized an additional trunked system within 40 miles of an existing trunked system, except as provided in paragraph (c) of this section and paragraph (b)(1), (b)(2), (b)(3), and (b)(4) of this section:

(4) The licensee holds a nationwide authorization for the frequencies to be constructed at sites within 40 miles of each other.

(c) A non-nationwide trunked system outside urbanized or wait list areas as defined in § 90.631(d) may be authorized multiple sites and be permitted to split authorized channels among the authorized sites. The applicant must designate one of the multiple sites requested as its primary site. All additional sites associated with the designated primary site must be within a 40-mile radius of the designated primary site. No more than ten channels will be authorized a licensee within a 40-mile radius of its primary site, except as permitted by § 90.631(c) and (d). No more than ten channels may be constructed within an area in which an overlap of 40-mile radii occur between two or more system's primary sites licensed to the same entity, except as

permitted under the provisions of § 90.631(c) and (d). No licensee will be authorized a primary site of a non-nationwide trunked system within 40 miles of an existing primary site unless the existing system is loaded to at least 70 mobiles per channel.

10. 47 CFR 90.631 is amended by revising the first sentence of paragraphs (a) and (b), revising paragraphs (d), (e), and (f), redesignating existing paragraphs (g) and (h) as new paragraphs (h) and (i), respectively, and adding new paragraph (g) to read as follows:

§ 90.631 Trunked system loading, construction and authorization requirements.

(a) Trunked systems, excluding nationwide SMR systems, will be authorized on the basis of a loading criterion of 100 mobile stations per channel. * * *

(b) Each applicant for a trunked system, excluding nationwide SMR systems, shall certify that a minimum of 70 mobiles for each channel authorized will be placed in operation within five years of the initial license grant. * * *

(d) In rural areas, a licensee of a trunked system, excluding nationwide SMR systems, may request to increase its system capacity by five more channels than it has constructed without meeting the loading requirements specified in paragraphs (b) and (c) of this section, except that the existing system subject to the expansion request must have a loading level of 70 mobiles per channel for five channels if authorized more than five but less than eleven channels, or a loading level of 70 mobiles per channels for ten channels if authorized more than ten but less than sixteen channels, or a loading level of 70 mobiles per channel if authorized more than fifteen but less than twenty-one channels. An existing system with twenty or more authorized channels must meet the loading requirements specified in paragraph (c) of this section to increase its system capacity by applying for additional channels. The loading level of a rural multiple site system is determined by dividing the total number of mobiles licensed to the system by the number of authorized channels.

(e) Except as provided in paragraph (g) of this section and § 90.629, licensees of trunked facilities must complete construction of all authorized base stations at the authorized sites within one year of the initial license grant or within one year of the modification approval if the approval was received after one year of the initial license grant.

If the facilities are not constructed, the license cancels automatically and must be returned to the Commission.

(f) If a station is not placed in permanent operation according to the technical parameters authorized by the license within one year, except as provided in paragraph (g) of this section and § 90.629, its license cancels automatically and must be returned to the Commission. Permanent operation is defined for purposes of this section to be continuous operation with no period of inoperation exceeding thirty (30) days.

(g) Licensees granted nationwide authorizations will be required to construct base stations in the markets designated in the application as follows:

(1) In at least 10% of the markets designated within two years of licensing, in at least 40% of the markets designated within four years, in at least 70% of the markets designated within six years, and in all designated markets within ten years of licensing.

(2) Licensees not meeting the criteria set forth in paragraph (1) of this section shall lose the entire authorization, but will be permitted to convert the constructed base stations to non-nationwide channels, if such channels are available. The constructed base stations are not authorized to operate on the nationwide frequencies upon cancellations of the license and pending relicensing.

(3) Progress reports will be filed within 30 days of the conclusion of each of the periods set forth in paragraph (1) of this section to inform the Commission of the status of the system.

11. 47 CFR 90.637 is amended by revising paragraphs (a) and the first sentence of paragraph (c) and adding new paragraph (d) to read as follows:

§ 90.637 Restrictions on operational fixed stations.

(a) Except for control stations, operational fixed operations will not be authorized in the 806-824 MHz and 851-869 MHz bands and on the non-SMNRS frequencies in the 896-901 MHz and 935-940 MHz bands. In these bands, this does not preclude secondary fixed tone signaling and alarm operations authorized in § 90.235 or in paragraph (c) of this section. Operational fixed operations are authorized on SMRS frequencies in the 896-901 MHz and 935-940 MHz bands, except in areas within a 100-mile radius of the urban centers listed in § 90.631(d) and subject to the technical parameters and interference criteria in §§ 90.235 and

90.621(b) and paragraph (c) of this section.

(c) Trunked SMR licensees and licensed end users in the 806-824 MHz and 851-869 MHz bands may use the system for fixed ancillary signaling and data transmissions. * * *

(d) Trunked SMR licensees and licensed end users in the 896-901 MHz and 935-940 MHz bands may use the system for fixed signaling and data transmissions. All such fixed use is subject to the following requirements.

(1) The output power shall not exceed 30 watts at the remote site.

(2) Any fixed transmitters will not count toward meeting the mobile loading requirements nor be considered in whole or in part as a justification for authorizing additional frequencies in the licensee's mobile system.

(3) Automatic means shall be provided to deactivate the remote transmitter in the event the carrier remains on for a period in excess of three minutes.

(4) Operational fixed stations authorized pursuant to the provisions of this paragraph are exempt from the requirements of §§ 90.425 and 90.429.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-400 Filed 1-8-90; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 567, 571 and 585

[Docket No. 74-14; Notice 62]

RIN 2127-AD10

Federal Motor Vehicle Safety Standard; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to extend the requirements for automatic crash protection, currently applicable to front outboard seats in passenger cars only, to front outboard seats in three additional types of light-duty vehicles. Automatic crash protection means that a vehicle is equipped with occupant restraints that require no action by vehicle occupants. The performance of automatic restraints is dynamically tested, that is, the restraints are required to comply with specified injury criteria.

as measured on a test dummy, in a 30 miles per hour barrier crash test. The vehicle types to which the requirements for automatic crash protection would be extended, if this proposal were adopted as a final rule, are trucks, multipurpose passenger vehicles (such as passenger vans and four wheel drive vehicles), and buses with a gross vehicle weight rating of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less. These vehicles are collectively termed "light trucks" throughout the rest of this preamble. NHTSA believes that extending the requirements for automatic crash protection to light trucks could save as many as 2,000 lives each year.

This notice proposes to implement automatic restraint requirements for light trucks in a manner that closely parallels the implementation of automatic crash protection requirements for passenger cars. As was the case with passenger cars, the automatic crash protection requirements would be phased in for light trucks over a period of several years. This notice proposes that each manufacturer (and each importer) install automatic protection on 20 percent of its light trucks manufactured from September 1, 1993 to August 31, 1994, inclusive, 50 percent of its light trucks manufactured from September 1, 1994 to August 31, 1995, inclusive, and all light trucks manufactured on or after September 1, 1995.

Further, in implementing the automatic restraint requirements for passenger cars, the agency sought to encourage installation of non-belt automatic crash protection (e.g., air bags) by providing a "one-car credit" for cars equipped with a driver non-belt automatic crash protection system. Such cars were treated as complying with the requirement for front seat automatic protection. For the same reasons, this notice proposes to establish a "one-truck credit" for light trucks, that would be available during the phase-in period and for two years thereafter.

In addition, the agency is proposing that all light trucks and passenger cars that have only two seating positions be equipped so that a child safety seat can be secured in the passenger's seating position.

DATES: Comment Closing Date: Comments on this notice must be received by NHTSA not later than March 12, 1990.

Proposed Effective Dates: If adopted as a final rule, these requirements would apply to 20 percent of the light trucks manufactured from September 1, 1993 to August 31, 1994, inclusive, 50 percent of

the light trucks manufactured from September 1, 1994 to August 31, 1995, inclusive, and 100 percent of light trucks manufactured on or after September 1, 1995.

ADDRESS: Comments should refer to the docket number and notice number shown above for this proposal, and be submitted to: NHTSA Docket Section, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are 9:30 am to 4:00 pm Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Strombotne, Chief, Crashworthiness Division, NRM-12, Room 5320, NHTSA, 400 Seventh Street, SW., Washington, DC (202-366-2264).

SUPPLEMENTARY INFORMATION:

Background

Standard No. 208, *Occupant Crash Protection* (49 CFR 571.208) is intended to reduce the likelihood of occupant deaths and the likelihood and severity of occupant injuries in crashes. The standard incorporates two primary means of achieving this goal. First, the standard specifies vehicle crashworthiness requirements in terms of injury criteria, i.e., limitations on the forces and accelerations which can be experienced by human surrogates, i.e., test dummies, in barrier crashes at speeds up to 30 miles per hour (mph). Second, the standard includes requirements that the vehicle be equipped with manual and/or automatic restraint systems, and that those restraint systems satisfy certain performance requirements to encourage their use and ensure their effectiveness.

Standard No. 208 has long required the installation of safety belts in passenger cars. Since September 1, 1989, Standard No. 208 has required each new passenger car to be equipped with automatic crash protection for outboard front-seat occupants. "Automatic crash protection" means that a vehicle is equipped with occupant restraints that require no action by vehicle occupants. The performance of automatic crash protection systems is dynamically tested, that is, the automatic systems are required to comply with certain injury reduction criteria in a barrier crash test at speeds up to 30 mph. The two types of automatic crash protection currently offered on new passenger cars are automatic safety belts (which help to assure belt use) and air bags (which supplement safety belts and offer some protection even when safety belts are not used). Automatic crash protection in cars will save thousands of lives and prevent tens of thousands of serious injuries each year.

Standard No. 208 also addresses occupant protection in vehicles other than passenger cars, by requiring the installation of safety belts at all designated seating positions. As of September 1, 1991, most new light trucks will further be required to comply with the injury reduction criteria in a 30 mph barrier crash with manual lap/shoulder belts at the front outboard seats fastened around the test dummy, or, at the manufacturer's option, with automatic crash protection for the test dummy. Specifically, trucks and multipurpose passenger vehicles (MPVs; this class includes vehicles such as passenger vans and off-road utility vehicles) with a gross vehicle weight rating of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less will be subject to this dynamic testing requirement. The dynamic testing requirement ensures that occupants of these vehicles who fasten their manual safety belts will receive protection at least equivalent to the level required for vehicles equipped with automatic crash protection.

Against this background, the agency has considered the question of whether light trucks should also be required to offer automatic crash protection in front outboard seating positions. This examination led NHTSA to this proposal to require automatic crash protection in light trucks. The factors considered by the agency can be summarized as follows.

Safety Need

The numbers of occupant injuries and fatalities in light trucks have increased during the mid and late 1980's, primarily due to the greatly increased sales of light trucks. For instance, almost 6,500 fatalities occurred in light trucks in 1984, while more than 8,300 fatalities occurred in light trucks in 1988. NHTSA's review and analyses of light truck safety indicates that the fatality rate for light truck occupants is roughly equal to that for passenger car occupants. However, with record-breaking sales years in 1985, 1986, 1987, and 1988, (roughly 5 million light trucks sold per year, as compared with the roughly 10 million passenger cars sold per year) and projected high levels of sales into the future, the trend toward increased absolute numbers of occupant injuries and fatalities in light trucks is expected to continue.

Additionally, the composition of the light truck fleet has changed substantially. In 1977, for instance, only 10.2 percent of light truck sales were compact vehicles. By 1985, 52.8 percent of light truck sales were compact vehicles. Occupants of these downsized

light trucks will experience crash forces in impacts with other vehicles that are comparable to the crash forces experienced in passenger cars. Based on these trends, NHTSA projects that occupant fatalities in light trucks will be 10,430 in 1994, and occupant injuries will total approximately 997,500. The agency has investigated reasonable means of ensuring that actual 1994 and later years light truck occupant fatalities and injuries are lower than these projections.

One proven means for reducing occupant deaths and injuries in these light trucks (as for passenger cars) is for occupants to fasten their safety belts each and every time they ride in the vehicle. In fact, a recent NHTSA study (Partyka, "Belt Effectiveness in Pickup Trucks and Passenger Cars by Crash Direction and Accident Year," May, 1988) found that the effectiveness of manual lap/shoulder belts in reducing fatalities was significantly higher in pickup trucks than in passenger cars. This higher overall effectiveness is due in part to a very high effectiveness for reducing fatalities in rollovers and the high fraction of rollover fatalities vs. all fatalities among pickup truck occupants. Unfortunately, observational surveys indicate that persons riding in light trucks fasten their safety belts less frequently than persons riding in passenger cars. The lower rate of manual safety belt use by light truck occupants, considered together with the greater effectiveness of occupant protection in light trucks, suggests that automatic crash protection offers the potential to increase safety benefits to a relatively greater degree in light trucks than in passenger cars. NHTSA will also continue its efforts to promote safety belt use by light truck occupants.

Practicability

NHTSA believes that the need for structural changes to accommodate the installation of automatic crash protection in light trucks beginning in late 1993 would be minimal because of the changes already necessary to comply with the dynamic testing requirements in Standard No. 208 applicable to light trucks manufactured on or after September 1, 1991. The agency stated the following in the preamble to the final rule establishing the dynamic testing requirements:

As discussed previously, the agency's test data show that while it is practicable for light trucks and multipurpose passenger vehicles to meet a dynamic test requirement, even in 35 mph barrier impacts, there are a large number of vehicles that must be modified to meet the requirement. Some vehicles, in particular van-type vehicles, may need more

extensive structural modifications to meet the dynamic test requirement. To address the redesign and manpower issues Ford raised, the agency has decided to adopt a September 1, 1991 effective date. 52 FR 44898, at 44905; November 23, 1987.

Hence, the light trucks subject to the dynamic testing requirements will already incorporate whatever changes to the interior and exterior structures are necessary to comply with the occupant protection requirements in a 30 mph barrier crash test. Since the vehicle speed and procedures for the barrier crash test are the same for dynamically testing automatic crash protection and manual safety belts, the agency believes that the structural modifications necessary for most, if not all, light trucks to meet the barrier crash requirements will already have been made.

The practicability of providing automatic crash protection in passenger cars has already been demonstrated. NHTSA believes that many of the design features of automatic belts and air bags used in passenger cars could be readily transferred to provide automatic crash protection in light trucks.

Automatic belts and driver-side air bags provide perhaps the greatest potential for technology transfer because the interior configuration in many current light truck designs (with the exception of the instrument panel and dashboard) closely resembles the interior configuration in passenger car designs. Further, automatic safety belts are similar in many respects to manual safety belts. However, automatic safety belts do differ from manual safety belts in that the upper outboard anchorage for an automatic belt is located on the vehicle door (for a non-motorized automatic belt system) or on a track on the roof above the door frame (for a motorized automatic belt system).

A somewhat different picture emerges for air bags in light trucks. With respect to the driver's seating position, manufacturers could, with the appropriate minor modifications, use their existing passenger car air bag designs in many light trucks. This expectation reflects the facts that the driver-side air bag would be located in the steering assembly, regardless of whether the air bag is installed in a car or light truck, and that minimal hardware modifications would permit many light truck designs to accommodate a driver-side air bag. On the passenger's side, it might be more difficult to transfer passenger car air bag technology for use in light trucks. This is because the designs for light truck instrument panel structures and related hardware (such as brackets, air conditioning ducts, etc.) are now and are

expected to remain somewhat dissimilar to passenger car designs. Given sufficient leadtime and resources, however, the difficulties associated with passenger side air bags in light trucks do not appear insuperable.

On balance, then, NHTSA does not believe that any serious practicability issues would be associated with a new requirement for automatic crash protection for light truck occupants. The vehicles generally will not need major structural modifications, and the technology for providing automatic crash protection in these vehicles can generally be transferred from passenger car designs, albeit with some minor modifications. Absent any serious practicability issues, the magnitude of the potential benefits that would result from automatic crash protection in light trucks is a compelling reason for the agency to propose to require automatic crash protection in those vehicles.

Specific Details of This Proposal

1. Vehicles Covered by Proposal

This notice proposes to extend the requirements for automatic crash protection, currently applicable to front outboard seats in passenger cars only, to front outboard seats in other types of vehicles. The vehicle types to which the requirements for automatic crash protection would be extended, if this proposal were adopted as a final rule, are trucks, MPVs, and buses with a gross vehicle weight rating of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less.

These weight limits are the same ones that have been specified to identify which trucks and MPVs are subject to the dynamic testing requirements for manual safety belts. NHTSA selected these limits because it determined that the burden on second stage manufacturers and alterers, many of which are small businesses, imposed by the dynamic testing requirements would be significantly reduced with these limits. See 52 FR 44898, at 44901; November 23, 1987. NHTSA is proposing to adopt the same weight limits in this automatic crash protection rule, for the same reasons.

Under the current provisions of Standard No. 208, trucks and MPVs at or below these weight limits will be subject to the dynamic testing requirements for manual safety belts as of September 1, 1991. As explained above, no serious technical problems should be associated with an additional requirement for automatic crash protection in these vehicles, since no significant structural modifications would be needed and

most automatic crash protection technology could be transferred from its application in passenger cars.

Buses at or below these weight limits are also included in this proposal, even though they are not subject to the dynamic testing requirements for manual belts in 1991. This proposed requirement for automatic crash protection could necessitate structural modifications to these buses that would not otherwise have been necessary under Standard No. 208. Nevertheless, the agency has tentatively determined it would be reasonable and practicable to require these small buses to comply with the requirement for automatic crash protection.

First, many van-type buses are based on a platform and drivetrain that are the same as or similar to the platform and drivetrain used in van-type MPVs that are subject to the dynamic testing requirements. (Under the agency's regulations, there is no vehicle classification called a "van." Vehicles commonly referred to as "vans" are classified by NHTSA as "trucks," "MPVs," or "buses" for purposes of the safety standards. A cargo van is classified as a truck, because it is designed primarily for the transportation of property. A passenger van would be classified either as an MPV or a bus, depending on the number of seating positions. If the van has 10 or fewer seating positions and is "built on a truck chassis" or has features for occasional off-road use, the vehicle is an MPV. If the van has more than 10 seating positions, the vehicle is a bus.) Common sense suggests that a person driving or riding in the right-front outboard seating position of a passenger van with more than 10 seating positions (classified as a bus) should be afforded the same level of protection as would be afforded when riding in a van of the same size and weight with 10 or fewer seating positions (classified as an MPV).

Second, even if a small bus is not a van-type vehicle, the safety need for automatic crash protection for the driver and any other front outboard occupants does not appear to be any different than it is for occupants of MPVs and trucks of similar size and weight. Hence, the benefits of automatic crash protection for small buses would be similar on a per vehicle basis to the benefits for light trucks and MPVs.

Accordingly, the agency is proposing to include small buses in the vehicles to which the automatic crash protection requirements would be extended. Public comment is specifically invited on this tentative agency conclusion.

NHTSA also seeks public comment on its tentative decision not to exclude

certain light trucks from the automatic crash protection requirements, even though those vehicles were specifically exempted from the dynamic testing requirement for manual safety belts. These vehicles are motor homes, convertibles, open-body type vehicles, walk-in van type trucks, vehicles designed exclusively to be sold to the U.S. Postal Service, and vehicles carrying chassis-mount campers. These light trucks were excluded from the dynamic testing requirements because the vehicles are unique in design, often have unique restraint systems, and are intended to accommodate a narrowly defined end use. Limited numbers of these vehicles are produced annually, so the overall impact of these vehicles on light truck safety is proportionally small.

Notwithstanding these facts, the agency is proposing that these vehicles not be excluded from the requirements for automatic crash protection. Even though these vehicles are few in number and unique in design and use, the agency is unaware of any data showing a differing safety need for front-seat occupants of these vehicles than for front-seat occupants of light trucks of comparable size and weight. NHTSA acknowledges that the designs for automatic crash protection may be more complex and the costs for automatic crash protection may well be higher for these particular vehicle types than for other light trucks. However, increased complexity and higher costs do not appear sufficient to warrant allowing these vehicles to provide a lesser level of occupant safety than other vehicles of comparable size and weight. Public comment is specifically requested on the type of manufacturer of each of these vehicle types (original equipment vehicle manufacturer or small final-stage manufacturers), the number of each of these vehicle types produced annually, and any unique technical or engineering problems that would be presented by a requirement for these particular vehicle types to provide automatic crash protection.

2. Crash Test Procedural and Performance Requirements

This notice proposes that the testing for compliance with the automatic crash protection requirements in light trucks be conducted according to the same test procedures that are currently specified for automatic crash protection in passenger cars. These procedures are similar to the procedures used for dynamic testing of manual belt systems in light trucks—with one critical difference. Manual belt systems are fastened and adjusted for dynamic testing in accordance with S10.5.1 of

Standard No. 208, in the case of the test dummy specified in subpart B of part 572, or S11.9, in the case of the test dummy specified in subpart E of part 572. When dynamically testing automatic crash protection, no safety belts are fastened manually and the only adjustment is to ensure that the shoulder belt of any automatic belt lies flat on the test dummy's shoulder. Essentially, the procedure for testing automatic crash protection simply involves opening the vehicle door, positioning the test dummy in accordance with the applicable positioning procedures, closing the vehicle door, and conducting the crash test.

This notice also proposes to use the same injury reduction criteria that are currently specified for dynamic testing of manual belts in light trucks and for testing automatic crash protection in passenger cars. The agency is unaware of any biomechanical or other data that would suggest that different injury criteria should be established for occupants of light trucks than are established for occupants of passenger cars.

This notice also proposes to establish the same due care defense for the automatic crash protection requirement in light trucks that is currently in place for passenger cars. NHTSA notes that it received two timely petitions for reconsideration of the rule that established the due care provision. Readers should understand that the inclusion of the due care defense in the proposed automatic crash protection requirements for light trucks is not an indication of the agency's planned response to the pending petitions for reconsideration of the due care defense for passenger cars, but simply a means of assuring that the performance requirements for automatic crash protection in light trucks and passenger cars are identical. Since the due care defense raises the same issues, regardless of the vehicles for which the due care defense is asserted, the agency's position on the due care defense for noncompliance with the automatic crash protection requirements in light trucks should be the same as the agency's position on the due care defense for noncompliance with the automatic crash protection requirements in passenger cars. Therefore, NHTSA intends to address the question of the due care defense in a single rulemaking action (the response to the petitions for reconsideration), instead of in a piecemeal manner in several different rulemaking actions.

3. Phased in Implementation of the Automatic Crash Protection Requirements

a. *The Phase-In.* This notice proposes to "phase in" the automatic crash protection requirements for light trucks in much the same manner as the automatic crash protection requirements were phased in for passenger cars. The Department explained the reasons for phasing in the requirement for automatic crash protection for cars in detail in the July 17, 1984 final rule establishing the requirement for automatic crash protection in those vehicles (49 FR 28962, at 28999-29000). In that notice, the Department identified the following reasons for phasing in a requirement:

1. Some systems of automatic crash protection will be available earlier than they would be if the rule became effective only when automatic crash protection could be made available in all vehicles;

2. A phase-in makes it easier for manufacturers to use more complex means of providing automatic crash protection, such as air bags; and

3. A phase-in permits consumers and the Department to develop more information about the benefits of the various means of automatic crash protection prior to full implementation, thus enhancing the opportunity to overcome any public resistance to automatic crash protection.

NHTSA has tentatively determined that these reasons are also applicable to the extension of the automatic crash protection requirements to light trucks. Hence, this notice proposes a phase-in for the automatic crash protection requirements for light trucks.

Aside from the question of whether to phase in the requirements, there is the separate question of how much leadtime would be necessary before the start of the phase-in for automatic crash protection in light trucks. In addition to the examination of the technological difficulties described above, the agency also examined the timing of other new frontal crash protection requirements that will affect the leadtime necessary for manufacturers to comply with this proposed requirement. As noted above, current provisions of Standard No. 208 will require dynamic testing of manual belt systems in light trucks and MPVs as of September 1, 1991. Manufacturers may need to make structural modifications to some of their current vehicle designs, especially those for van-type vehicles, to comply with this 1991 dynamic testing requirement. NHTSA does not believe it would be appropriate to begin a phase-in of the additional automatic crash protection

requirements too quickly after implementation of dynamic testing requirements for these vehicles. This is because the manufacturers will need some leadtime after making those structural modifications to permit them to complete the engineering steps and certification testing that must be done before automatic crash protection can be installed in light trucks. Accordingly, this notice proposes to give the manufacturers two years of leadtime after the dynamic testing requirements take effect before starting the phase-in of automatic crash protection for those vehicles. Hence, the phase-in of automatic crash protection for light trucks would begin for light trucks manufactured on or after September 1, 1993.

There is also the further question of the percentage of each manufacturer's light trucks that should be required to be equipped with automatic crash protection in each year of the phase-in, and the length of the phase-in before all subject light trucks should be required to be equipped with automatic crash protection. The agency began tentatively answering this question by examining the phase-in that was established for the automatic crash protection requirements in passenger cars. In that case, a three year period was chosen for the phase-in, with at least 10 percent of each manufacturer's cars required to be equipped with automatic crash protection in the first year of the phase-in, 25 percent in the second year of the phase in, 40 percent in the third year of the phase-in, and all cars manufactured after the third year of the phase-in required to be equipped with automatic crash protection.

NHTSA has tentatively determined that a three-year phase-in period would be unnecessarily long for light trucks. This is because the necessary structural modifications for most of these light trucks would have been completed by September 1, 1991 (two years before the start of this phase-in) and the technology used to provide automatic crash protection should be somewhat transferable from the manufacturer's passenger cars, which will have been equipped with some form of automatic crash protection for at least four years prior to the start of this phase-in. Accordingly, the agency is proposing a two-year phase-in period before all light trucks will be required to provide automatic crash protection.

The agency also is proposing a more rapid introduction of automatic crash protection in light trucks than was required for passenger cars. The gradual introduction of automatic crash protection in passenger cars reflected

the need for the public to gain experience and familiarity with automatic crash protection, and for the manufacturers to design and incorporate automatic crash protection in their vehicles for the first time, and to establish a supplier base for automatic crash protection systems. None of these considerations applies to automatic crash protection in light trucks. Both the vehicle manufacturers and the public will have had more than four years of experience with new passenger cars equipped with automatic crash protection by September 1993. Additionally, the supplier base for automatic crash protection in passenger cars should be capable of meeting the demand for automatic crash protection systems for light trucks. Hence, the agency is proposing a less gradual phase-in for light trucks. This notice proposes to require automatic crash protection in 20 percent of each manufacturer's light trucks produced between September 1, 1993 and August 31, 1994, in 50 percent of each manufacturer's light trucks produced between September 1, 1994 and August 31, 1995, and in all light trucks manufactured on or after September 1, 1995.

NHTSA believes that the manufacturing burdens associated with the phase-in schedule for passenger cars and this proposed phase-in schedule for light trucks are similar. The agency recognizes that more structural modifications of small buses may be needed to provide automatic crash protection than will be the case for other light trucks. Consequently, the leadtime requirements for small buses may be greater than for other light trucks. One possible response by manufacturers would be to install automatic crash protection in sufficient numbers of their other light trucks during the phase-in period so that none of their small buses would be required to offer automatic crash protection until the end of the phase-in period (September 1, 1995). However, the agency is interested in comments and supporting information on this issue. NHTSA also requests comments and supporting information on whether small buses should be required to be equipped with automatic crash protection at the end of the phase-in (September 1, 1995), but be exempted from the automatic crash protection requirements during the phase-in period. This latter approach for small buses would be similar to the approach used for convertible passenger cars during the phase in of the automatic crash protection requirements for passenger cars.

b. Calculation of Compliance with Phase-In. NHTSA has previously specified how it determined whether each passenger car manufacturer complied with the passenger car phase-in requirements. Interested persons can review NHTSA's explanations of these specifications in the notice of proposed rulemaking (50 FR 14589, at 14595-14597; April 12, 1985) and the final rule for passenger cars (51 FR 9800, at 9808-9809; March 21, 1986). This notice proposes to carry over most of those procedures for use in calculating compliance by light truck manufacturers with the phase in of automatic crash protection for those vehicles.

For passenger cars, NHTSA acknowledged that vehicles may have more than one "manufacturer," as that term is defined in the National Traffic and Motor Vehicle Safety Act (the Safety Act). Section 102(5) of the Safety Act defines "manufacturer" as "any person engaged in the manufacturing or assembling of motor vehicles * * *, including any person importing motor vehicles * * * for resale." The agency stated that there are two situations in which a passenger car may have more than one manufacturer: (1) The car may be manufactured or assembled by two or more companies, and (2) The car may be manufactured or assembled outside the United States by one or more companies and then imported by another company. NHTSA then clarified which of the two companies that could be considered a car's "manufacturer" would be considered the manufacturer of the car for the purposes of the phase-in requirements.

In these circumstances, any of the companies satisfies the statutory definition of manufacturer, so NHTSA has no statutory or policy interest in establishing some hard and fast rule for selecting one of the several manufacturers as the manufacturer for the purposes of the phase-in. Accordingly, when a vehicle has more than one "manufacturer" within the meaning of the Safety Act, the manufacturers are permitted to determine by contract which of them will count the vehicle as its alone for the purposes of the phase-in. The manufacturers are then required to report to NHTSA the existence and terms of any such contracts.

If the manufacturers do not or cannot reach agreement by contract, there must be some clearly established rules for attributing responsibility for a car with more than one statutory "manufacturer" to one of the several companies for the purposes of the phase-in. Accordingly, the agency specified that:

1. When a vehicle with more than one statutory "manufacturer" is produced outside of the United States and imported for resale, the entity that imports the car for purposes of resale is the manufacturer for purposes of the phase-in. This attribution applies to both importers authorized by the vehicle's original manufacturer(s), as well as direct importers. Direct importers are parties that import cars that are originally manufactured for sale outside the United States into the United States without the authorization of the original manufacturer(s).

2. When a vehicle with more than one statutory "manufacturer" is produced within the United States, the entity that is one of the statutory "manufacturers" of the vehicle that also markets the vehicle in the United States is the manufacturer for the purposes of the phase-in.

NHTSA proposes to apply these same attribution rules to determine which of several statutory "manufacturers" of a light truck is the manufacturer of the light truck for the purposes of the phase-in. If any commenter believes it is inappropriate to apply the same attribution rules to light trucks that applied to passenger cars, that commenter is requested to explain in detail the reasons for such belief.

This notice also proposes to adopt the same approach used in the passenger car phase-in with respect to treating the sponsor of a vehicle as its manufacturer. In the preamble to the notice proposing the passenger car phase-in rules, the agency explained that approach as follows:

Since the [Safety Act] places the responsibility of compliance with safety standards on manufacturers, the agency does not have authority to attribute a vehicle to a party other than one of the vehicle's manufacturers. However the agency considers the language in section 102(5) of the [Safety Act] that a manufacturer is "any person engaged in the manufacturing or assembling of motor vehicles . . ." to be sufficiently broad to include sponsors, depending on the circumstances. For example, if a sponsor contracts for another manufacturer to produce a design exclusively for the sponsor, the sponsor may be considered the manufacturer. This follows from application of basic principles of agency law. In this case, the sponsor is the principal. On the other hand, the mere purchase of vehicles for resale by a company which also is a manufacturer of motor vehicles does not make the purchaser the manufacturer of those vehicles. 50 FR 14596; April 12, 1985.

In addition to assigning responsibility for vehicles with more than one statutory "manufacturer," this notice must also propose how the agency will calculate a manufacturer's percentage of

automatic restraint vehicles during the phase-in. Again, the agency is proposing to use the same procedures that were previously specified for passenger cars. A manufacturer's annual production would be measured from September 1 of a given year to August 31 of the following year. A manufacturer may calculate the number of its light trucks that must be equipped with automatic restraints according to two different procedures. These are:

1. The manufacturer could make the calculation based on its actual production during the annual production period in question. Thus, a manufacturer that produces 30,000 light trucks during the first year of the phase-in would have to equip at least 6,000 of those vehicles (20 percent of its annual production) with automatic crash protection.

2. The manufacturer could average its annual production for the three annual production periods preceding the annual production period in question. If, for example, a manufacturer produced 20,000, 20,000, and 50,000 light trucks in the three production periods preceding the annual production period in question, its average annual production would be 30,000 light trucks. During the first year of the phase-in, this manufacturer would have to equip at least 6,000 of its light trucks (20 percent of 30,000) with automatic crash protection.

A manufacturer that had produced some light trucks in each of the three model years preceding the model year in question could select either of these approaches, at its option, to determine how many of its vehicles had to incorporate automatic crash protection. A new manufacturer, or any other manufacturer that did not manufacture some light trucks during each of the three model years preceding the annual production period in question, would have to make its calculation based on its actual production, just as was true for passenger car manufacturers.

c. Phase-In Exclusion for Vehicles Manufactured in Two or More Stages and for Altered Vehicles. If automatic crash protection were required in all new light trucks produced on or after a particular date, NHTSA believes that few final-stage manufacturers and alterers would have the technical and financial capabilities to design, install, and certify their own system of automatic crash protection in their vehicles. However, the final-stage manufacturers and alterers would be able to certify compliance with the automatic crash protection requirement if they leave in place the automatic crash protection system installed by the

original manufacturer and complete the vehicle within the limits established by the original manufacturer. Doing so would allow the final stage manufacturer or alterer to base its certification of compliance on the equipment and statements furnished by the original manufacturer. As noted above, these are the same procedures that most final-stage manufacturers and alterers must follow at present to certify compliance with Standards No. 212, 219, and 301, compliance with which is determined in a 30 mph barrier crash test.

However, during the proposed phase-in period for automatic crash protection in light trucks, final-stage manufacturers and alterers could face serious problems. These problems would arise because not all types, makes and models of either the incomplete light trucks used in the manufacture of multi-stage vehicles or the completed light trucks purchased by alterers for alteration and sale would be equipped with automatic crash protection by the original manufacturer during the phase-in. The availability of automatic restraints on only a limited number of the various types, makes and models of incomplete light trucks and completed light trucks during the phase-in would pose problems for final-stage manufacturers and alterers since those parties often use only particular types, makes and models of vehicles in their work. If automatic restraints were not available during the phase-in on the particular types, makes and models used by one of the parties, it would not likely be able to comply with the automatic crash protection requirement. For instance, some alterers specialize in converting particular makes of completed cargo vans into passenger vans. It is possible that the original manufacturers of those particular makes of vans would choose to comply with the phase-in requirement by installing automatic crash protection in only their pickup trucks and/or utility vehicles or their other models of vans. Addition to these vehicles of automatic restraints by final-stage manufacturers and alterers, many of whom are small businesses, would not be practicable. They would generally have to rely on the original manufacturer's equipment and instructions for completing the vehicle in order to comply with the automatic protection requirement. When the original manufacturer does not provide the equipment and instructions needed to complete the vehicle in compliance with the automatic crash protection requirement, a final-stage manufacturer or alterer would face serious difficulties

in completing its vehicles so that they complied with the automatic restraint requirements. Thus, there would not appear to be any practicable means for the vast majority of final-stage manufacturers and alterers to comply with the phase-in requirement for automatic crash protection.

In addition to considering the burden imposed on final-stage manufacturers and alterers if they were required to comply with the phase-in requirements, the agency has also considered the safety consequences of excluding these small businesses from those requirements. Even if they were excluded from the phase-in requirements, all light trucks manufactured in two or more stages or altered during the phase-in period would still be required by the Safety Act to be certified as complying with all other requirements of Standard No. 208. Final-stage manufacturers and alterers would still be required to certify that each and every truck and MPV manufactured during the phase-in period within the weight limits specified in this proposal complied with the dynamic testing requirements if manual safety belts were installed at the front outboard seating positions (as currently specified in S4.2.2 of Standard No. 208) or that the vehicle complied with the requirement for automatic crash protection (as also currently specified in S4.2.2 of Standard No. 208). Most final-stage manufacturers and alterers can make such a certification only by leaving in place the occupant protection system installed by the original manufacturer and completing the vehicle within the limits specified by the original manufacturer. Thus, persons that purchase a light truck produced by a final-stage manufacturer or alterer during the phase-in can be assured that they will receive the same level of occupant protection required of automatic crash protection systems, if those persons use the manual safety belts provided with the vehicle.

Given the serious difficulties that would be imposed on final-stage manufacturers and alterers if they were required to comply with the phase-in percentage requirements, and the absence of any significant safety consequences, this notice proposes to exclude vehicles from the phase-in percentage requirements for automatic crash protection if those light trucks are manufactured in two or more stages or if the light truck is altered. Such light trucks would be excluded from compliance with the phase-in requirements that 20 percent and 50 percent of each manufacturer's light trucks be equipped with automatic crash

protection in two successive model years. This limited exclusion would not relieve final-stage manufacturers and alterers from the requirement to certify that each of their vehicles complies with all other provisions of Standard No. 208.

Once the phase-in has ended and all light trucks are required to be equipped with automatic crash protection, final-stage manufacturers and alterers will be able to comply with the requirement for automatic crash protection by leaving the original manufacturer's automatic crash protection system in place and completing the vehicle in accordance with the limits established by the original manufacturer. Thus, there would be no continuing need for an exclusion for vehicles produced by final-stage manufacturers and alterers, so this notice does not propose any different treatment for light trucks produced by final-stage manufacturers and alterers after automatic crash protection would be required for all light trucks.

d. Phase-In Reporting Requirements. This notice proposes to adopt substantially the same reporting requirements for light truck manufacturers during the phase-in of automatic crash protection as were previously specified for passenger car manufacturers by part 585. The agency would accomplish this by amending part 585 to replace all references to "passenger cars" with references to "light trucks." Persons interested in learning more details about the agency's reasons for adopting those requirements may wish to consult the proposal (50 FR 14589, at 14597; April 12, 1985) and final rule (51 FR 9800, at 9808-9809; March 21, 1986) relating to the reporting requirements for passenger cars during the phase-in.

This notice proposes to exclude information about vehicles produced in two or more stages and vehicles that were altered from these phase-in reporting requirements. This proposal reflects the agency's previous proposal to exclude such from the phase-in percentage requirements. Hence, a party that manufactured exclusively vehicles produced in two or more stages or that altered previously certified vehicles would not be subject to these proposed reporting requirements, since information on each of its vehicles could be excluded from the reporting requirements. This proposed exemption reflects the fact that the purpose of the phase-in reporting requirements is to assist NHTSA in determining whether a light truck manufacturer has complied with the phase-in percentage requirements for its vehicles. Since vehicles produced in two or more stages

and altered vehicles would not be subject to the phase-in percentage requirements, no apparent purpose would be served by requiring manufacturers to include information on such vehicles in their phase-in reports.

e. Phase-In Certification

Requirements. During the phase-in of the automatic crash protection requirements for passenger cars, several practical difficulties became apparent in the enforcement of the standard during the phase-in. For instance, in the case of a manufacturer that did not produce the requisite percentage of cars with automatic crash protection, it was not possible to identify which particular vehicles were in noncompliance with Standard No. 208, because it was permissible to manufacture both cars equipped with automatic crash protection and cars equipped with manual safety belts.

Additionally, it is difficult for the agency to conduct testing for compliance with the automatic crash protection requirements during the phase-in, because the agency is not informed exactly which vehicles are certified as complying with the automatic crash protection requirements until the phase-in reports are filed at the end of the model year. During the passenger car phase-in, NHTSA, and presumably consumers, had assumed that passenger cars equipped with automatic crash protection (i.e., air bags) were certified as complying with those requirements and counted as part of the necessary percentage for compliance with the phase-in. This assumption proved to be incorrect. During the passenger car phase-in, the agency purchased a car equipped with automatic crash protection, and planned to test the vehicle for compliance with the automatic crash protection requirements. Upon contacting the vehicle's manufacturer to learn some additional information for the compliance test, the agency was informed that the model in question was not certified as complying with the automatic crash protection requirements. Instead, the manufacturer stated that its certification of compliance with Standard No. 208 was based on the manual safety belts in the car, and that the automatic crash protection was a voluntary additional means of occupant protection. This certification is permitted, but the absence of notice to the agency makes it more difficult to efficiently conduct compliance testing. Further, consumers should be able to determine which vehicles are certified for compliance with the automatic crash protection

requirements in making their purchase decisions.

To prevent the recurrence of such practical difficulties, this notice proposes to require additional information to appear on the certification label of each light truck that is certified as complying with the automatic crash protection requirements during the two years of the phase-in. Part 567, *Certification* requires all vehicles to have a label that includes the statement: "This vehicle conforms to all applicable Federal motor vehicle safety standards in effect on the date of manufacture shown above." This notice proposes to add additional language to the certification for those light trucks manufactured between September 1, 1993 and August 31, 1995 (the phase-in period) that are certified as complying with the automatic crash protection requirements. Such light trucks could be labeled in either of the following ways:

1. The existing certification statement required by part 567 and quoted above could be expanded to read: "This vehicle conforms to all applicable Federal motor vehicle safety standards in effect on the date of manufacturer shown above, including S4.1.2.1 of Standard No. 208." This option would allow the manufacturer to modify its existing certification label, and avoid the need for an additional label.

2. Alternatively, the manufacturer could affix an additional label directly below the certification label. This additional label would have to include the statement: "This vehicle conforms to S4.1.2.1 of Standard No. 208." This option would allow the manufacturer to avoid the expense of modifying its existing certification labels for these light trucks.

The agency has tentatively determined that either form of this expanded statement would provide the information needed to avoid any confusion during the phase-in of automatic crash protection for light trucks with minimal additional burdens for the manufacturers. If a commenter believes this proposal would impose more than minimal burdens, the commenter is requested to explain the basis for that belief and to offer an alternative means of avoiding the practical difficulties described above.

f. Retention of VINs. For the phase-in of automatic crash protection for passenger cars, NHTSA determined that it was important for enforcement purposes that manufacturers maintain records of the vehicle identification number (VIN) and the type of automatic crash protection installed on each passenger car produced during the

phase in period that was reported to NHTSA as one of the manufacturer's cars equipped with automatic crash protection. Accordingly, the manufacturers were required to retain this information for slightly more than two years after the end of the phase-in. NHTSA stated that the VIN information may be stored in any manner that is convenient for the manufacturer, as long as that information is retrievable when needed. This notice would establish the same requirements for light trucks during this proposed phase-in, for the same reasons.

4. "One-Truck Credit" Provision

As the requirements for automatic crash protection were being phased-in for passenger cars and for a four-year period after the phase-in was completed, NHTSA adopted a provision designed to give car manufacturers an incentive to use more innovative automatic crash protection systems in their vehicles. Accordingly, Standard No. 208 includes provisions so that each car equipped with a non-belt automatic crash protection system for the driver's position, such as an air bag or passive interior, and a manual safety belt for the right front passenger's position will be counted as a vehicle complying with the automatic crash protection requirements. These provisions are referred to as the "one-car credit." NHTSA repeatedly stated its belief that the "one-car credit" would encourage the introduction of non-belt automatic crash protection systems into passenger cars sooner than would occur if manufacturers were required to install the non-belt automatic crash protection systems in both front seating positions simultaneously. For a more complete discussion of the issues involved in the "one-car credit" rulemaking, interested persons may wish to examine the agency's final rule (52 FR 10096; March 30, 1987) and denial of a petition for reconsideration (52 FR 42440; November 5, 1987) on this subject, as well as the unanimous opinion of the U.S. Court of Appeals for the District of Columbia Circuit upholding the agency's extension of the "one-car credit" (*Public Citizen v. Steed*, 851 F.2d 444 (D.C. Cir. 1988)).

NHTSA has tentatively determined it is equally appropriate to offer an incentive for light truck manufacturers to install more innovative systems of automatic crash protection. This tentative determination reflects the agency's belief that, as in the case of passenger cars, the relative technological feasibility of widespread installation in light trucks of passenger-side air bags is less than that of

passenger-side automatic belts. Absent some measures to equalize this technological disparity, NHTSA believes that light truck manufacturers would opt for the installation of automatic belts at both the driver's and passenger's position, instead of installing an air bag at the driver's position and an automatic belt at the passenger's position. Thus, the agency is proposing to offer the "one truck credit" to allow the passage of sufficient time for the relative technological feasibility of passenger-side air bags and passenger-side automatic belts to become nearly equal.

This incentive for manufacturers to provide a driver-side air bag also reflects the agency's recognition of several other factors. The driver's seat is always occupied and the right front passenger's seat is occupied significantly less frequently. Air bags are essentially always in use, because they are ready to deploy when needed, while the use rate for both manual and automatic safety belts is less than 100 percent. The higher use/availability of air bags offsets their somewhat lower effectiveness over all crash modes when a manual safety belt is not worn by the occupant of a seating position protected by an air bag. The air bag offers a greater degree of risk reduction in severe frontal crashes than either manual or automatic safety belt systems.

The agency then had to make a tentative determination of what period of time would be appropriate to permit this near-equalization of technological feasibility for passenger-side automatic belts and passenger-side automatic crash protection systems that do not use any safety belts. NHTSA tentatively concludes that a four-year period after the start of the phase-in would be sufficient time for the outstanding technical issues to be resolved, the necessary design and production changes to be made for light trucks, and an adequate supplier base to be available. The agency believes that a period much shorter than four years would not provide sufficient time to resolve technical issues associated with passenger-side air bags, and thus would do little to encourage manufacturers to provide driver-side air bags in the interim. On the other hand, NHTSA does not wish to extend this period beyond what is needed to promote the technology and resolve the engineering issues. An excessive period for the "one-truck credit" would delay too long the safety benefits of automatic crash protection for the right-front passenger. The agency tentatively concludes that four years is the minimum time

sufficient for that purpose. Therefore, this notice proposes that the one-truck credit be available for light trucks manufactured from September 1, 1993 through August 31, 1997. Comments are specifically invited on this proposal.

5. Compatibility with Child Safety Seats

Many light trucks, pickups in particular, do not have any rear seating positions, so child safety seats must be installed at front seating positions. Hence, there is a need to ensure that any system of automatic crash protection installed in these light trucks also allows a child safety seat to be properly secured.

At present, Standard No. 210, *Seat Belt Assembly Anchorages* (49 CFR 571.210) sets forth requirements to ensure that child safety seats can be secured at right front seating positions equipped with automatic crash protection systems that cannot be used to secure a child safety seat when adjusted for testing in Standard No. 208. Vehicle manufacturers are given three options to ensure that child safety seats can be secured at those seating positions. First, the manufacturer may provide an automatic crash protection system that can be modified or adjusted by the vehicle user to secure a child safety seat, as long as the manufacturer has installed all the hardware necessary to secure the child safety seat. Alternatively, the manufacturer may install a manual lap or lap/shoulder safety belt together with its automatic crash protection system at that seating position. Finally, the manufacturer may install anchorages with threaded holes that will accept a bolt complying with Standard No. 209, *Seat Belt Assembly Anchorages*, so that a lap belt may be installed. This latter option, together with the requirement in Standard No. 210 that the owner's manual include a step-by-step procedure and a diagram or diagrams for installing the proper lap belt anchorage hardware and a Type 1 lap belt at that seating position, allows any vehicle owners who need a lap belt for securing child safety seats to easily install one.

These requirements in Standard No. 210 currently apply to any vehicle, not just passenger cars, manufactured after September 1, 1987 that has an automatic crash protection system at the right front passenger's position that cannot be used to secure a child safety seat when adjusted for testing. Thus, the public would be ensured of basic safety protection and compatibility between automatic crash protection systems in light trucks and child safety seats use absent any additional regulatory requirements in this area.

However, while developing this proposal, NHTSA reexamined the third option allowed to manufacturers (providing threaded holes at lap belt anchorages) under the existing requirements. This option requires some additional actions by the vehicle owner if a child safety seat is to be secured at the right front seating position. That is, the consumer must go to a store, purchase a lap belt and anchorage hardware, and then take the time to install the lap belt at that seating position or pay to have the work done for them. Until the consumer has taken these actions, the child safety seat cannot be secured at the right front seating position.

However, most vehicles have more seating positions than the driver's position and the right front seating position. Thus, even if the consumer has not taken any additional actions to install a lap belt at the right front seating position and the consumer needs to secure a child safety seat, the child safety seat can be secured at a different seating position. For instance, child safety seats can be secured at front center seating positions and any rear seating positions in the vehicle, even if the child safety seat cannot be secured at the right front outboard seating position.

The agency considered these facts when it established the third option (threaded holes at the lap belt anchorage points) for the right front seating position. In fact, the final rule that permitted manufacturers this option stated that:

The agency agrees that the installation of lap belts in front seating positions not currently having them (vehicles equipped with single, diagonal automatic belts or with nondetachable automatic belts that cannot be used for the attachment of child safety seats) would be the optimum situation insofar as securing child safety seats is concerned. Short of this, requiring complete attachment hardware would make the installation of lap belts somewhat easier than if manufacturers only provide anchorage holes. However, both of these approaches involve costs which the agency believes are not justified because of the limited number of vehicle owners who would actually have need of this equipment. 50 FR 41356, at 41357; October 10, 1985.

NHTSA has reexamined these statements and tentatively reached the same balancing of the costs and safety benefits for right front seating positions in most light trucks equipped with automatic crash protection systems. However, the agency believes that this reasoning may not be valid for those light trucks, such as some compact pickups that have only two designated seating positions. In these trucks, the

user could not use any seating position other than the right front position to secure the child safety seat. If that seating position does not have some original equipment that can be used to secure a child safety seat, it might not be possible to secure a child safety seat in the vehicle until the consumer had taken the additional actions needed to install a manual lap belt in the truck.

NHTSA has tentatively determined that some additional requirements are necessary for two-seater vehicles with automatic crash protection systems, because the agency believes it has an obligation to ensure that these vehicles can secure a child safety seat without any additional actions by consumers. Therefore, this notice proposes that light trucks with only two seating positions that have an automatic crash protection system at the right front passenger's position, must comply with one of two options. Either the automatic crash protection system installed at the right front seating position must provide some means to secure a child restraint system other than an external device that requires manual attachment or activation or the seating position must have an original equipment manual lap or lap/shoulder belt that provides some means to secure a child restraint system other than an external device that requires manual attachment or activation.

The agency has also tentatively concluded that such a requirement is equally necessary for two-seater passenger cars. Parents using those cars to transport their child should also know that the car can secure a child safety seat without any additional actions by the parent. Accordingly, this notice also proposes that the right front passenger's seating position in two-seater passenger cars either be equipped with an

automatic crash protection system that provides some means to secure a child restraint system other than an external device that requires manual attachment or activation, or an original equipment manual lap or lap/shoulder belt that can secure a child restraint system by means other than an external device that requires manual attachment or activation. If adopted as a final rule, this proposed requirement would apply to all passenger cars and light trucks manufactured on or after September 1, 1993. This would ensure that every vehicle equipped with automatic crash protection at the right front outboard seating position could secure a child safety seat at that position without any additional steps by the consumer.

The agency is particularly interested in public comments on this proposed course of action. NHTSA is aware that the approach proposed in this notice would still permit manufacturers to produce vehicles other than two-seaters where the consumer would have to take some additional actions if a child safety seat is to be secured at the right front seating position. As noted above, other seating positions in those vehicles can be used to secure the child safety seat. Commenters are invited to address this situation and to provide information on the extent of or the absence of any problems that have arisen while the public secures child safety seats in cars with automatic crash protection systems. As already noted, the existing regulatory requirements permit vehicle manufacturers to provide threaded holes at lap belt anchorage points at right front seating positions with automatic crash protection systems. NHTSA is interested in data on the number of vehicles on which the manufacturers have chosen to provide those threaded holes, and the estimated cost to the

manufacturers to provide adjustable automatic crash protection or a manual lap or lap/shoulder belt instead of threaded holes in those cars.

Regulatory Impacts

NHTSA has examined the impacts of this proposed rulemaking action and determined that it is both "major" within the meaning of Executive Order 12291 and "significant" within the meaning of the Department of Transportation's regulatory policies and procedures, because of both the costs and the public interest associated with this proposed rulemaking action. Accordingly, a Preliminary Regulatory Impact Analysis (PRIA) has been prepared for this proposal, and a copy of the PRIA has been placed in the public docket for this rulemaking action. A copy of the PRIA may be obtained by writing to: Docket Section, NHTSA, room 5109, 400 Seventh Street, SW., Washington, DC 20590.

Table 1 presents the incremental benefits of automatic restraints assuming all light trucks with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less in 1994 would have automatic belts, or assuming all light trucks would have driver side air bags, or assuming all light trucks would have air bags for the driver and right front seat passenger. These incremental benefits are compared to manual safety belt use rates of 23.3 to 40 percent (23.3 percent was derived from the Fatal Accident Reporting System of belt use in fatal accidents by light truck occupants for 1988, 40 percent is an estimate of potential safety belt use levels in 1994 based on a continuing trend of increased use due to State safety belt use laws, consumer safety awareness and safety belt education programs.)

TABLE 1.—INCREMENTAL BENEFITS FOR AUTOMATIC RESTRAINTS ASSUMING LIGHT TRUCKS WITH A GVWR OF 8,500 POUNDS GVWR OR LESS AND UNLOADED VEHICLE WEIGHT OF 5,500 POUNDS OR LESS WERE EQUIPPED WITH THE RESTRAINT SYSTEM

	Fatalities	AIS 2-5 injuries	AIS 1 injuries
Driver air bags.....	1,352 to 1,669.....	17,438 to 21,670.....	33,725 to 43,436
Driver and right front air bags.....	1,733 to 2,140.....	22,357 to 27,782.....	43,237 to 55,686
Automatic belts usage:			
50 percent.....	345 to 1,335.....	4,372 to 16,238.....	7,454 to 19,904
60 percent.....	889 to 1,878.....	10,932 to 22,797.....	14,910 to 27,359
70 percent.....	1,431 to 2,420.....	17,490 to 29,356.....	22,364 to 34,813
80 percent.....	1,974 to 2,963.....	24,049 to 35,915.....	29,818 to 42,268

The estimated cost of automatic restraints for light trucks are shown in Table 2.

TABLE 2.—ESTIMATED CONSUMER COSTS OF AUTOMATIC RESTRAINTS

Restraint system	Consumer cost (1988 \$)
Driver air bag.....	\$266.86
Driver and RF air bag.....	388.16
Automatic belts Motorized.....	178.31
Automatic belts Non-motorized.....	42.46

The estimated lifetime fuel costs for the added weight of these restraints are shown in Table 3.

TABLE 3.—LIFETIME FUEL COST

[Present Value, 10% Annual Discount Rate]

Restraint system	Incremental weight per vehicle	Total vehicle lifetime fuel cost (1988 \$)
Driver air bag.....	9 lbs.	\$ 10.28
Driver and RF air bag.....	21	23.97
Automatic belts Motorized.....	10	11.42
Automatic belts Non-motorized.....	5	5.71

TABLE 4.—TOTAL VEHICLE COSTS INCLUDING LIFETIME FUEL COST

[Present Value, 10% Annual Discount Rate]

Restraint system	Incremental weight per vehicle	Total per vehicle cost including lifetime fuel cost (1988 \$)
Without Secondary Weight		
Driver air bag.....	9.0 lbs.	\$ 277.14
Driver and RF air bag.....	21.0	412.13
Automatic belts Motorized.....	10.0	190.23
Automatic belts Non-motorized.....	5.0	48.17
With Secondary Weight		
Driver air bag.....	15.3 lbs	288.99
Driver and RF air bag.....	35.7	439.79
Automatic belts Motorized.....	17.0	203.40
Automatic belts Non-motorized.....	8.5	54.76

Additionally, the agency has analyzed the effects of this proposal on small entities, in accordance with the Regulatory Flexibility Act. This analysis appears at Section IV of the PRIA. Based on the available information, the agency does not believe that a substantial number of small entities would be affected if this proposal were adopted as a final rule, and that any effects on small entities would not be

significant economic impacts. Interested persons are invited to examine this section of the PRIA.

The agency has also analyzed this proposal under the National Environmental Policy Act and determined that it would not have a significant effect on the human environment if it were adopted as a final rule.

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

The Office of Management and Budget (OMB) has already approved NHTSA's requirements for certain information to appear on vehicle certification labels (OMB #2127-0510) and for phase-in reporting for automatic crash protection in passenger cars (OMB #2127-0535). However, this proposal would expand the existing requirements during the phase-in of automatic crash protection in light trucks. These expansions are considered to be information collection requirements, as that term is defined by OMB in 5 CFR part 1320. Accordingly, these proposed information collection requirements will be submitted to OMB for its approval, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Comments on these proposed information collection requirements should be submitted to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for NHTSA. It is requested that comments sent to OMB also be sent to the NHTSA rulemaking docket for this proposed action.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential

information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects

49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

49 CFR Part 585

Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, NHTSA proposes to amend chapter V of title 49 of the Code of Federal Regulations as follows:

PART 567—[AMENDED]

1. The authority citation for part 567 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, and 1407; 15 U.S.C. 1912 and 1915; 15 U.S.C. 2021, 2022, and 2026; delegation of authority at 49 CFR 1.50.

2. Section 567.4 would be amended by adding a new paragraph (g)(5)(iii) to read as follows:

§ 567.4 Requirements for manufacturers of motor vehicles.

- * * * * *
- (g) * * *
- (5) * * *
- (iii) In the case of a truck, multipurpose passenger vehicle, or bus

with a GVWR of 8500 pounds or less and an unloaded vehicle weight of 5500 pounds or less that is manufactured on or after September 1, 1993 and before September 1, 1995 and that is certified by the manufacturer as conforming with the automatic crash protection requirements of § 571.208 of this chapter (Standard No. 208), the vehicle shall comply with the requirements of either paragraph (g)(5)(iii)(A) of this section or paragraph (g)(5)(iii)(B) of this section, at the manufacturer's option.

(A) On the label required by paragraph (a) of this section, a comma shall be substituted for the period at the end of the statement specified in paragraph (g)(5) of this section, and the phrase "including S4.1.2.1 of Standard No. 208," shall be added at the end of the statement.

(B) A label in addition to, and not in place of, the label required by paragraph (a) of this section shall be affixed immediately adjacent to the label required by paragraph (a) of this section. This additional label shall comply with the requirements of paragraphs (b) and (f) of this section, and shall consist of the following statement, in the English language, lettered in block capitals and numerals not less than three thirty-seconds of an inch high: "This vehicle conforms to S4.1.2.1 of Standard No. 208."

PART 571—[AMENDED]

3. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.208 [Amended]

4. A new S4.1.6 would be added to Standard No. 208 in § 571.208, to read as follows:

S4. General requirements.

S4.1 Passenger cars.

S4.1.6 *Passenger cars manufactured on or after September 1, 1993.* Passenger cars manufactured on or after September 1, 1993 that do not have any designated seating positions other than those for the driver and a right front passenger shall have at the right front passenger's position either:

- (a) An automatic crash protection system that provides some means to secure a child restraint system other than an external device that requires manual attachment or activation, or
- (b) A manual lap or lap/shoulder belt that can be used to secure a child restraint system without the use of any

external device that requires manual attachment or activation.

5. New S4.2.5 and S4.2.6 would be added to Standard No. 208 in § 571.208, to read as follows:

S4.2 Trucks and multipurpose passenger vehicles with GVWR of 10,000 pounds or less.

S4.2.5 *Trucks, buses, and multipurpose passenger vehicles with a GVWR of 8500 pounds or less and an unloaded vehicle weight of 5500 pounds or less manufactured on or after September 1, 1993, and before September 1, 1995.*

S4.2.5.1 *Trucks, buses, and multipurpose passenger vehicles with a GVWR of 8500 pounds or less and an unloaded vehicle weight of 5500 pounds or less manufactured on or after September 1, 1993 and before September 1, 1994.*

S4.2.5.1.1 Subject to S4.2.5.1.2 and S4.2.5.3, each truck, bus, and multipurpose passenger vehicle with a GVWR of 8500 pounds or less and an unloaded vehicle weight of 5500 pounds or less that is manufactured on or after September 1, 1993 and before September 1, 1994, shall comply with the requirements of S4.1.2.1, S4.1.2.2, or S4.1.2.3 (as specified for passenger cars). A vehicle shall not be deemed to be in noncompliance with this standard if its manufacturer establishes that it did not have reason to know in the exercise of due care that such vehicle is not in conformity with the requirement of this standard.

S4.2.5.1.2 Subject to S4.2.5.3, the amount of trucks, buses, and multipurpose passenger vehicles specified in S4.2.5.1.1 complying with S4.1.2.1 (as specified for passenger cars) shall be not less than 20 percent of:

- (a) The average annual production of trucks, buses, and multipurpose passenger vehicles with a GVWR of 8500 pounds or less and an unloaded vehicle weight of 5500 pounds or less manufactured on or after September 1, 1990, and before September 1, 1993, by each manufacturer that produced such vehicles during each of those annual production periods, or
- (b) The manufacturer's total production of trucks, buses, and multipurpose passenger vehicles with a GVWR of 8500 pounds or less and an unloaded vehicle weight of 5500 pounds or less during the period specified in S4.2.5.1.1.

S4.2.5.1.1.1 *Trucks, buses, and multipurpose passenger vehicles with a GVWR of 8500 pounds or less and an unloaded vehicle weight of 5500 pounds or less during the period specified in S4.2.5.1.1.*

S4.2.5.2 *Trucks, buses, and multipurpose passenger vehicles with a GVWR of 8500 pounds or less and an unloaded vehicle weight of 5500 pounds or less manufactured on or after September 1, 1994 and before September 1, 1995.*

or less manufactured on or after September 1, 1994 and before September 1, 1995.

S4.2.5.2.1 Subject to S4.2.5.2.2 and S4.2.5.3, each truck, bus, and multipurpose passenger vehicle with a GVWR of 8500 pounds or less and an unloaded vehicle weight of 5500 pounds or less that is manufactured on or after September 1, 1994 and before September 1, 1995, shall comply with the requirements of S4.1.2.1, S4.1.2.2, or S4.1.2.3 (as specified for passenger cars). A vehicle shall not be deemed to be in noncompliance with this standard if its manufacturer establishes that it did not have reason to know in the exercise of due care that such vehicle is not in conformity with the requirement of this standard.

S4.2.5.2.2 Subject to S4.2.5.3, the amount of trucks, buses, and multipurpose passenger vehicles specified in S4.2.5.2.1 complying with S4.1.2.1 (as specified for passenger cars) shall be not less than 50 percent of:

- (a) The average annual production of trucks, buses, and multipurpose passenger vehicles with a GVWR of 8500 pounds or less and an unloaded vehicle weight of 5500 pounds or less manufactured on or after September 1, 1991, and before September 1, 1994, by each manufacturer that produced such vehicles during each of those annual production periods, or
- (b) The manufacturer's total production of trucks, buses, and multipurpose passenger vehicles with a GVWR of 8500 pounds or less and an unloaded vehicle weight of 5500 pounds or less during the period specified in S4.2.5.2.1.

S4.2.5.3 *Calculation of complying trucks, buses, and multipurpose passenger vehicles with a GVWR of 8500 pounds or less and an unloaded vehicle weight of 5500 pounds or less.*

(a) For the purposes of the calculations required in S4.2.5.1.2 and S4.2.5.2.2 of the number of trucks, buses, and multipurpose passenger vehicles with a GVWR of 8500 pounds or less and an unloaded vehicle weight of 5500 pounds or less that comply with S4.1.2.1 (as specified for passenger cars):

- (1) Each truck, bus, and multipurpose passenger vehicle with a GVWR of 8500 pounds or less and an unloaded vehicle weight of 5500 pounds or less whose driver's seating position complies with the requirements of S4.1.2.1(a) by means not including any type of seat belt and whose front right seating position complies with the requirements of S4.1.2.1(a) by any means is counted as 1.5 vehicles, and

(2) Each truck, bus, and multipurpose passenger vehicle with a GVWR of 8500 pounds or less and an unloaded vehicle weight of 5500 pounds or less whose driver's seating position complies with the requirements of S4.1.2.1(a) by means not including any type of seat belt and whose front right seating position is equipped with a manual Type 2 seat belt is counted as one vehicle.

(3) Each truck, bus, and multipurpose passenger vehicle with a GVWR of 8500 pounds or less and an unloaded vehicle weight of 5500 pounds or less that is manufactured in two or more stages or that is altered (within the meaning of § 567.7 of this chapter) after having previously been certified in accordance with Part 567 of this chapter is not subject to the requirements of S4.2.5.1.2 and S4.2.5.2.2. Such vehicles may be excluded from all calculations of compliance with S4.2.5.1.2 and S4.2.5.2.2.

(b) For the purposes of complying with S4.2.5.1.2, a truck, bus, or multipurpose passenger vehicle with a GVWR of 8500 pounds or less and an unloaded vehicle weight of 5500 pounds or less may be counted if it:

(1) Is manufactured on or after September 1, 1992, but before September 1, 1993, and

(2) Complies with S4.1.2.1 (as specified for passenger cars).

(c) For the purposes of complying with S4.2.5.2.2, a truck, bus, or multipurpose passenger vehicle with a GVWR of 8500 pounds or less and an unloaded vehicle weight of 5500 pounds or less may be counted if it:

(1) Is manufactured on or after September 1, 1992, but before September 1, 1994,

(2) Complies with S4.1.2.1 (as specified for passenger cars), and

(3) Is not counted towards compliance with S4.2.5.1.2.

S4.2.5.4 Trucks, buses, and multipurpose passenger vehicles with a GVWR of 8500 pounds or less and an unloaded vehicle weight of 5500 pounds or less produced by more than one manufacturer.

S4.2.5.4.1 For the purposes of calculating average annual production for each manufacturer and the amount of vehicles manufactured by each manufacturer under S4.2.5.1.2 or S4.2.5.2.2, a truck, bus, or multipurpose passenger vehicle with a GVWR of 8500 pounds or less and an unloaded vehicle weight of 5500 pounds or less produced by more than one manufacturer shall be attributed to a single manufacturer as follows, subject to S4.2.5.4.2:

(a) A vehicle that is imported shall be attributed to the importer.

(b) A vehicle that is manufactured in the United States by more than one

manufacturer, one of which also markets the vehicle, shall be attributed to the manufacturer that markets the vehicle.

S4.2.5.4.2 A truck, bus, or multipurpose passenger vehicle with a GVWR of 8500 pounds or less and an unloaded vehicle weight of 5500 pounds or less produced by more than one manufacturer shall be attributed to any one of the vehicle's manufacturers specified in an express written contract, reported to the National Highway Traffic Safety Administration under 49 CFR part 585, between the manufacturer so specified and the manufacturer to which the vehicle would otherwise be attributed under S4.2.5.4.1.

S4.2.5.5 Trucks, buses, and multipurpose passenger vehicles with a GVWR of 8500 pounds or less and an unloaded vehicle weight of 5500 pounds or less manufactured on or after September 1, 1993 with no designated seating positions other than the driver's and a right front passenger's seating position. Trucks, buses, and multipurpose passenger vehicles with a GVWR of 8500 pounds or less and an unloaded vehicle weight of 5500 pounds or less manufactured on or after September 1, 1993 that do not have any designated seating positions other than those for the driver and right front passenger shall have at the right front passenger's position either:

(a) An automatic crash protection system that provides some means to secure a child restraint system other than an external device that requires manual attachment or activation, or

(b) A manual lap or lap/shoulder belt that can be used to secure a child restraint system without the use of any external device that requires manual attachment or activation.

S4.2.6 Trucks, buses, and multipurpose passenger vehicles with a GVWR of 8500 pounds or less and an unloaded vehicle weight of 5500 pounds or less manufactured on or after September 1, 1995. Each truck, bus, and multipurpose passenger vehicle with a GVWR of 8500 pounds or less and an unloaded vehicle weight of 5500 pounds or less manufactured on or after September 1, 1995 shall comply with the requirements of S4.1.2.1 (as specified for passenger cars) and S4.2.5.5 (as specified for vehicles manufactured on or after September 1, 1993 and before September 1, 1995) of this standard. Each truck, bus, and multipurpose passenger vehicle with a GVWR of 8500 pounds or less and an unloaded vehicle weight of 5500 pounds or less manufactured on or after September 1, 1995, but before September 1, 1997, whose driver's seating position complies with the requirements of S4.1.2.1(a) of

this standard by means not including any type of seat belt and whose right front passenger's seating position is equipped with a manual Type 2 seat belt that complies with S5.1 of this standard, with the seat belt assembly adjusted in accordance with S7.4.2, shall be counted as a vehicle complying with S4.1.2.1. A vehicle shall not be deemed to be in noncompliance with this standard if its manufacturer establishes that it did not have reason to know in the exercise of due care that such vehicle is not in conformity with the requirement of this standard.

6. A new S4.4.4 would be added to Standard No. 208 in § 571.208 to read as follows:

S4.4 Buses

S4.4.4 Buses with a GVWR of 8500 pounds or less and an unloaded vehicle weight of 5500 pounds or less manufactured on or after September 1, 1993. Each bus with a GVWR of 8500 pounds or less and an unloaded vehicle weight of 5500 pounds or less manufactured on or after September 1, 1993 shall comply with the requirements of S4.2.5 and S4.2.6 of this standard, as applicable.

PART 585—[AMENDED]

7. The authority citation for part 585 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1407; delegation of authority at 49 CFR 1.50.

8. Section 585.1 would be revised to read as follows:

§ 585.1 Scope.

This part establishes requirements for manufacturers of trucks, buses, and multipurpose passenger vehicles with a gross vehicle weight rating (GVWR) of 8500 pounds or less and an unloaded vehicle weight of 5500 pounds or less to submit reports, and to maintain records related to the reports, concerning the number of such vehicles equipped with automatic crash protection in compliance with the requirements of S4.2.5 of Standard No. 208, *Occupant Crash Protection* (49 CFR § 571.208).

9. Section 585.2 would be revised to read as follows:

§ 585.2 Purpose.

The purpose of these reporting requirements is to aid the National Highway Traffic Safety Administration in determining whether a manufacturer of trucks, buses, and multipurpose passenger vehicles with a GVWR of 8500 pounds or less and an unloaded

vehicle weight of 5500 pounds or less has complied with the requirements of Standard No. 208, *Occupant Crash Protection* (49 CFR 571.208) to install automatic crash protection in specified percentages of the manufacturer's annual production of those vehicles.

10. Section 585.3 would be revised to read as follows:

§ 585.3 Applicability.

This part applies to manufacturers of trucks, buses, and multipurpose passenger vehicles with a GVWR of 8500 pounds or less and an unloaded vehicle weight of 5500 pounds or less. However, this part does not apply to any such manufacturers whose production consists exclusively of vehicles manufactured in two or more stages or vehicles that are altered after previously having been certified in accordance with part 567 of this chapter.

11. Section 585.4 would be revised to read as follows:

§ 585.4 Definitions.

(a) All terms defined in section 102 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C 1391) are used in their statutory meaning.

(b) "Bus," "gross vehicle weight rating" or "GVWR," "multipurpose passenger vehicle," "truck," and "unloaded vehicle weight" are used as defined in § 571.3 of this chapter.

(c) "Production year" means the 12-month period between September 1 of one year and August 31 of the following year, inclusive.

12. Section 585.5 would be revised to read as follows:

§ 585.5 Reporting requirements.

(a) *General reporting requirements.*
(1) Within 60 days after the end of the production years ending August 31, 1994 and August 31, 1995, each manufacturer that manufactured any trucks, buses, and multipurpose passenger vehicles with a GVWR of 8500 pounds or less and an unloaded vehicle weight of 5500 pounds or less during the production year shall submit a report to the National Highway Traffic Safety Administration concerning its compliance with the requirements of Standard No. 208 (49 CFR 571.208) for installation of automatic crash protection in such vehicles manufactured during that production year. However, a manufacturer whose production of such vehicles consisted entirely of vehicles manufactured in two or more stages or vehicles that were altered after previously having been certified in accordance with part 567 of this chapter is not required to submit a report in response to this paragraph.

(2) Each report submitted in compliance with paragraph (a)(1) of this section shall:

- (i) Identify the manufacturer;
- (ii) State the full name, title, and address, of the official responsible for preparing the report;
- (iii) Identify the production year for which the report is filed;
- (iv) Contain a statement regarding the extent to which the manufacturer has complied with the requirements of S4.2.5 of Standard No. 208 (§ 571.208 of this chapter);
- (v) Provide the information specified in paragraph (b) of this section;
- (vi) Be written in the English language; and
- (vii) Be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

(b) *Report content*—(1) *Basis for phase-in production goals.* Each manufacturer shall report the number of trucks, buses, and multipurpose passenger vehicles with a GVWR of 8500 pounds or less and an unloaded vehicle weight of 5500 pounds or less that it manufactured for sale in the United States for each of the three preceding production years or, at the manufacturer's option, for the production year for which the report is filed. A manufacturer that did not manufacture some trucks, buses, and multipurpose passenger vehicles with a GVWR of 8500 pounds or less and an unloaded vehicle weight of 5500 pounds or less during each of the three preceding production years must report the number of trucks, buses, and multipurpose passenger vehicles with a GVWR of 8500 pounds or less and an unloaded vehicle weight of 5500 pounds or less manufactured during the production year for which the report is filed. The manufacturer is not required to include information about any vehicles that it manufactured in two or more stages or vehicles it altered after they had previously been certified in accordance with part 567 of this chapter.

(2) *Production.* Each manufacturer shall report for the production year for which the report is filed, and for each preceding production year, to the extent that trucks, buses, and multipurpose passenger vehicles produced during the preceding production years are treated under § 571.208 of this chapter as having been produced during the production period for which the report is filed, the information specified in paragraphs (b)(2)(i) through (b)(2)(iii) of this section, inclusive, with respect to its trucks, buses, and multipurpose passenger vehicles with a GVWR of 8500 pounds or less and an unloaded vehicle weight

of 5500 pounds or less. The manufacturer may exclude information on any such vehicles that were manufactured in two or more stages and on any such vehicles that were altered after having previously been certified in accordance with part 567 of this chapter.

(i) The number of those vehicles equipped with automatic seat belts and the seating positions at which those belts are installed;

(ii) The number of those vehicles equipped with air bags and the seating positions at which they are installed; and

(iii) The number of those vehicles equipped with other forms of automatic crash protection, which shall be described, and the seating positions at which they are installed.

(3) *Vehicles produced by more than one manufacturer.* Each manufacturer whose reporting of information is affected by one or more of the express written contracts permitted by section S4.2.5.4 of § 571.208 of this chapter shall:

(i) Report the existence of each such contract, including the names of all parties to each such contract, and explain how the contract affects the report being filed; and

(ii) Report the actual number of vehicles covered by each such contract.

13. Section 585.6 would be revised to read as follows:

§ 585.6 Records.

Each manufacturer shall maintain records of the vehicle identification number and type of automatic crash protection for each vehicle for which information was reported under § 585.5(b)(2), until December 31, 1997.

Issued on January 3, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90-428 Filed 1-4-90; 12:02 pm]

BILLING CODE 4910-59-M

49 CFR Part 571

[Docket No. 89-27; Notice 1]

Automotive Battery Explosions

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of request for comments.

SUMMARY: This notice solicits comments from the public to obtain additional information related to the subject of motor vehicle battery explosions. Previously, a petition to reopen a rulemaking docket on battery explosions was denied by the agency.

DATE: Comments on this notice must be received by the agency no later than February 8, 1990.

ADDRESS: Comments should refer to the docket number and notice number and be submitted in writing to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-5287. Docket hours are 9:30 a.m. to 4:00 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Cavey, NRM-11, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, room 5307, 400 Seventh Street, SW., Washington DC 20590, Telephone: (202) 366-5271.

SUPPLEMENTARY INFORMATION: On January 21, 1988, a petition was received from Drs. C. J. Abraham and Malcolm Newman to reopen the rulemaking docket on Battery Explosions. This petition was denied in a notice which was published on October 12, 1989 (54 FR 41854). In that notice, the agency's stated reasons for denial were (1) the large majority of injuries related to battery explosions are not severe, (2) the safety problem is much smaller than the petitioner alleges, (3) there has been a significant downward trend in injuries from battery explosions, (4) there have been safety improvements in wet cell battery designs, (5) there are practical shortcomings with the recommended protective shield in real world situations, and (6) there are large costs related to the device.

Subsequent to that denial, on November 13, 1989, the agency received a request from the petitioners to reconsider the denial. That request contained new information on sources of data that could provide insight into the trend in injuries from battery explosions. It also suggested that new designs of batteries may not have a lower propensity for explosions than those that were produced a decade ago. The agency also has received a letter from Representative Thomas A. Luken (December 4, 1989) expressing his concerns on the subject of battery explosions and requesting the agency to allow the public an opportunity to participate in this matter. Copies of these letters have been placed in the public docket.

Since the agency procedures do not provide for the submission of requests for reconsideration of agency denials of petitions for rulemaking, the agency is treating the petitioners' request as a new petition for rulemaking. To aid the agency in assessing the merits of the new petition, the agency is issuing this

notice to obtain public comment on the issues raised by petitioners and Representative Luken. As is customary, the agency did not seek public comment prior to determining whether to grant or deny the initial petition, relying instead on its expertise and information already in its possession or obtained from sources such as other federal agencies. In particular, the agency seeks additional information that would be helpful in establishing the magnitude of the problem related to battery explosions, the causes of such explosions, where such incidents occur, and any information on countermeasures that are available for addressing this problem. After reviewing the responses to this request for comments, the agency will be able to determine whether to commence rulemaking and what appropriate measures, if any, appear needed to address this situation. NHTSA emphasizes that the issuance of this request for comments does not necessarily mean that a notice of proposed rulemaking (NPRM) will follow. In accordance with statutory criteria, NHTSA will determine whether to commence rulemaking and issue an NPRM after it evaluates the comments it receives.

NHTSA solicits public comments on this notice. It is requested, but not required, that commenters provide 10 copies of written comments and two copies of films, tapes and other materials.

All comments must not exceed 15 pages in length. (49 CFR 553.21.) Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for this notice will be considered, and will be available for examination in the docket at the above address both before and

after that date. To the extent possible, comments filed after the closing date will also be considered. Comments on the notice will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

Issue Date: January 4, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90-486 Filed 1-8-90; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB36

Endangered and Threatened Wildlife and Plants; Public Hearing and Reopening of Comment Period on Proposed Endangered Status for *Wilkesia hobbii* (Dwarf Iliu)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing and reopening of comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that a public hearing will be held on the proposed determination of endangered status for *Wilkesia hobbii* (dwarf iliau) and that the comment period on the proposal is reopened. The proposal was published in the *Federal Register* on October 2, 1989 (54 FR 40444).

This species grows on two adjacent, nearly vertical rock outcrops on the Na Pali coast of western Kauai, Hawaiian Islands. The greatest immediate threat to the survival of this species is a rapidly increasing goat population in its habitat. The goats browse on the plant and their activity accelerates erosion of the habitat, and facilitates the invasion of competing, exotic vegetation. This hearing and the reopening of the

comment period will allow comments on this proposal to be submitted from all interested parties.

DATES: The comment period on the proposal is reopened January 9, 1990. The public hearing will be held from 7 to 9 p.m., on Friday, January 26, 1990, in Lihue, Hawaii. The comment period, which originally closed on December 1, 1989, now closes February 5, 1990.

ADDRESSES: The public hearing will be held in the conference room of the Lihue Public Library, 4344 Hardy Street, Lihue, Kauai, Hawaii. Written comments and material should be sent to Ernest F. Kosaka, Field Supervisor, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 6307, P.O. Box 50167, Honolulu, Hawaii 96850. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Derral R. Herbst, at the above address (808/541-2749 or FTS 551-2749).

SUPPLEMENTARY INFORMATION:

Background

Wilkesia hobbdi was discovered by Robert W. Hobdy on Polihale Ridge, Kauai, in 1968. He sent a specimen of the plant to Dr. Harold St. John of the Bishop Museum who described it as a new species and named it in Hobdy's honor. The plant was later found on the adjacent Ka'aweiki Ridge and today is documented only from those two ridges, although there are reports that it may occur on other ridges along the Na Pali Coast. The estimated number of individuals in the documented populations is approximately 350.

Wilkesia is a shrub, about two feet tall, which branches from the base. The tip of each branch bears a tuft of narrow, strap-shaped leaves about three to six inches long. The flower heads are in clusters of about 10 to 18 inches long. Each head is cream-colored and about ¾ inches in diameter.

The comment period on the proposal originally closed on December 1, 1989. In

order to accommodate the hearing, the Service reopens the public comment period. Written comments may now be submitted until February 5, 1990, to the Service office in the **ADDRESSES** section.

Author

The primary author of this notice is Dr. Derral R. Herbst, Fish and Wildlife Enhancement, Pacific Islands Office, U.S. Fish and Wildlife Service, P.O. Box 50167, Honolulu, Hawaii 96850 (808/541-2749 or FTS 551-2749).

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1543; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: January 3, 1990.

David L. McMullen,
Acting Regional Director.

[FR Doc. 90-470 Filed 1-8-90; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register

Vol. 55, No. 6

Tuesday, January 9, 1990

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

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 462]

Resolution and Order Approving the Application of the Toledo-Lucas County Port Authority for Special-Purpose Subzone Status at the Giant Products Company Industrial Pumps Plant in Toledo, 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) has adopted 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 August 28, 1988, requesting special-purpose subzone status for the high- and low-pressure pump manufacturing plant of Giant Products Company (GPC) located in Toledo, Ohio, within the Toledo Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations would be satisfied, and that the proposal would be in the public interest provided GPC is required to elect privileged foreign status on any foreign merchandise subject to an antidumping or countervailing duty order upon its admission to the subzone, approves the application subject to the foregoing condition.

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.

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 Toledo-Lucas County Port Authority, grantee of Foreign-Trade Zone 8, has made application (filed August 29, 1988, FTZ Docket 27-88, 53 FR 34800), in due and proper form to the Board for authority to establish a special-purpose subzone at the high- and low-pressure industrial pump manufacturing plant of Giant Products Company (GPC) located in Toledo, Ohio, within 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 would be satisfied and that the proposal would be in the public interest if approval were given subject to the restriction in the resolution accompanying this action;

Now, therefore, in accordance with the application filed August 29, 1988, the Board hereby authorizes the establishment of a subzone at the GPC plant in Toledo, Ohio, designated on the records of the Board as Foreign-Trade Subzone No. 8E 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, to the restriction in the resolution accompanying this action, 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 any necessary permits shall be obtained 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 responsible parties 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 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 28th day of December, 1989, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Francis J. Sailer,

Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 90-431 Filed 1-8-90; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 461]

Authority for Temporary Time Extension for Subzone 78D, Global Power Co., Phipps Bend, TN

Pursuant to the authority granted in the Foreign-Trade Zones (FTZ) Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), and the Foreign-Trade Zones Board Regulations (15 CFR part 400), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

Whereas, the Metropolitan Nashville Port Authority, grantee of FTZ 78, has applied to the Board for a time extension for Subzone 78D to October 25, 1993, to allow the site operator additional time in which to dispose of certain nuclear power equipment as was contemplated in the original approvals;

Whereas, notice inviting public comment was given in the *Federal Register* on November 3, 1989 (Docket 23-89, 54 FR 46431), and the examiners committee assigned to the case recommends approval; and,

Whereas, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby orders:

That the time limit for Subzone 78D is extended to October 25, 1993, in accordance with the application filed October 23, 1989. The grant does not include authority for manufacturing operations. The authority given in this Order is subject to settlement locally by the District Director of Customs and the District Army Engineer regarding compliance with their respective requirements relating to foreign-trade zones.

Signed at Washington, DC, this 29th day of December, 1989.

Francis J. Sailer,

Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 90-430 Filed 1-8-90; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-122-808]

Preliminary Determination of Sales at Less Than Fair Value: Limousines from Canada

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that limousines from Canada are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to suspend liquidation of all entries of limousines from Canada as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by March 19, 1990.

EFFECTIVE DATE: January 9, 1990.

FOR FURTHER INFORMATION CONTACT: Karmi Leiman or Bradford Ward, Office

of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-8498 or 377-5288, respectively.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that limousines from Canada are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the notice of initiation (54 FR 34804, August 22, 1989), the following events have occurred:

On September 7, 1989, the ITC preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Canada of limousines (54 FR 37838, September 13, 1989).

On August 31, 1989, the Department presented its questionnaire to A.H.A. Manufacturing Limited (AHA). This company accounted for virtually all of the exports of the subject merchandise from Canada to the United States during the period of investigation. We received responses on September 15 and October 6, 1989.

The Department issued a deficiency letter to AHA on October 23, 1989. We received the supplemental response, including a revised computer tape, on November 6, 1989.

The Department's verification of AHA's response took place at AHA's headquarters in Brampton, Ontario, Canada from November 27 through December 1, 1989. We received a revised computer tape on December 11, 1989, correcting certain errors discovered at verification.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the 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 will be classified solely according to the appropriate HTS item numbers. The HTS item numbers are

provided for convenience and Customs purposes. The written description remains dispositive as to the scope of the product coverage.

The products covered by this investigation are limousines, which are defined as extended wheelbase and expanded seating capacity motor vehicles principally designed for the transport of persons, of a cylinder capacity exceeding 1,500 cubic centimeters, and having spark-ignition internal combustion reciprocating piston engines of six or more cylinders (gasoline-engine powered). The vehicles are built on Lincoln Town Car, Mercury Grand Marquis, Cadillac Brougham or any other six or eight cylinder gasoline engine powered chassis. The vehicle is cut in half and the wheelbase is extended, thereby providing additional rear seating capacity, area and comforts. The sheet metal work is formed to complement the original design of the base car. The vehicles are used by private individuals, corporations and limousine services. Limousines are currently provided for under the following HTS subheadings: 8703.23.00.75, 8703.24.00.75 and 9802.00.50.40. Prior to January 1, 1989, limousines were classifiable under items 806.2040, 692.1015 and 692.1030 of the Tariff Schedules of the United States Annotated (TSUSA).

Period of Investigation

The period of investigation is February 1, 1989 through July 31, 1989.

Such or Similar Comparisons

We identified three such or similar categories based on the make of vehicle chassis used in manufacture: Lincoln Town Car, Cadillac Brougham, and Mercury Grand Marquis.

Since there were no identical sales in the home market with which to compare merchandise sold in the United States, sales of the most similar merchandise were compared on the basis of the following criteria, listed in order of importance: floor design (*i.e.*, flat- or hump-floored), console type, model year, extension length. Where possible, we compared sales at the same level of trade (distributor/fleet, dealer, or retail).

Fair Value Comparisons

To determine whether sales of limousines from Canada to the United States were made at less than fair value, we compared the United States price to the foreign market value, as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

Where the merchandise was sold to unrelated purchasers prior to importation into the United States, we based the United States price on purchase price as provided for in section 772(b) of the Act. We calculated purchase price based on CIF prices to unrelated customers in the United States. We made deductions, where appropriate, for discounts, brokerage and handling, duty, inland freight, cargo insurance, and rebates, in accordance with section 772(d)(2) of the Act. Pursuant to section 772(d)(1)(B) of the Act, we added the amount of import duties which have not been collected by reason of exportation of the merchandise to the United States. We did not adjust for interest revenue claimed on U.S. purchase price sales because the reported values could not be verified.

Where the merchandise was sold to unrelated purchasers after importation into the United States, we based the United States price on the exporter's sales price (ESP), as provided for in section 772(c) of the Act. We calculated ESP based on CIF prices to unrelated customers in the United States. We made deductions, where appropriate, for brokerage and handling, duty, inland freight, cargo insurance, rebates, commissions, credit expenses, direct advertising expenses, warranty expenses, and indirect selling expenses including U.S.-specific indirect selling expenses, general indirect selling expenses, indirect advertising expenses, inventory carrying costs, and product liability premiums.

For both purchase price and ESP sales, pursuant to section 772(d)(1)(B) of the Act, we added duty drawback paid by the Canadian government to respondent as a rebate of duties paid on the import of limousine parts. In addition, in accordance with section 772(d)(1)(C) of the Act, we adjusted for Canadian federal sales taxes and Canadian excise taxes which have not been collected by reason of the exportation of the merchandise to the United States.

Foreign Market Value

In accordance with section 773(a)(1)(A) of the Act, we calculated foreign market value based on the delivered or ex-factory prices to unrelated customers in the home market. We made deductions, where appropriate, for Canadian federal sales taxes, Canadian excise taxes, discounts, rebates, inland freight, cargo insurance, commissions, credit expenses, warranty expenses, pre-delivery inspection

expenses, and direct advertising expenses.

When making comparisons involving purchase price sales, we added to the foreign market value the lesser of U.S. indirect selling expenses (including inventory carrying cost, indirect advertising expenses, product liability premiums, and other indirect selling expenses) or home market commissions in accordance with § 353.56(b)(1) of the Department's regulations (19 CFR 353.56 (1989)). In accordance with section 773(a)(4)(B) of the Act, we also accounted for differences in circumstance of sale by adjusting for credit expenses, warranty expenses, third party payments, and direct advertising expenses.

When making comparisons involving ESP sales, we deducted home market indirect selling expenses, including inventory carrying cost, product liability premiums, indirect advertising expenses, and other indirect selling expenses, in accordance with § 353.56(b)(2) of the Department's regulations, up to the amount of the ESP cap. The ESP cap was the sum of U.S. indirect selling expenses and the amount, if any, by which U.S. commissions exceeded average home market commissions.

Where appropriate, we made further adjustments to the home market price to account for differences in the physical characteristics of the merchandise, in accordance with § 353.57 of the Department's regulations.

Certain other deductions for warranty expenses in the home market could not be verified and thus were not allowed.

Currency Conversion

We used certified rates of exchange, furnished by the Federal Reserve Bank of New York, for the period of investigation.

Verification

We verified the information used in making our preliminary determination in this investigation. We used standard verification procedures including examination of relevant accounting records and original source documents provided by the respondent.

Critical Circumstances

Petitioner alleges that "critical circumstances" exist with respect to imports of the subject merchandise from Canada. Section 733(e)(1) of the Act provides that critical circumstances exist if we determine that:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation; or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 733(a)(3)(B), we generally consider the following factors in determining whether imports have been massive over a relatively short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); (3) the share of domestic consumption accounted for by imports.

Because the Department's import data pertaining to the subject merchandise are based on basket TSUSA and HTS categories, we requested specific data on shipments of the subject merchandise as the most appropriate basis for our determinations of critical circumstances.

Based on our analysis of the monthly shipment data submitted by the respondent, we have found that imports of the subject merchandise have not been massive over a relatively short period of time because they did not increase by more than 15 percent in the period following the Department's initiation. Therefore, we preliminarily conclude that critical circumstances do not exist with respect to imports of limousines from Canada.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of limousines, as defined in the "Scope of Investigation" section of this notice, that are entered or withdrawn from warehouse for consumption on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of limousines exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice. The margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
A.H.A. Manufacturing Limited	4.84
All others	4.84

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

The ITC will determine whether these imports are materially injuring, or threaten material injury to, a U.S. industry before the alter of 120 days after the date of this determination, or 45 days after the Department makes its final determination, if affirmative.

Public Comment

In accordance with § 353.38 of the Commerce Department's regulations, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary no later than February 12, 1990, and rebuttal briefs no later than February 19, 1990. 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 or rebuttal briefs. The hearing will be held at 1 p.m. on February 22, 1990, at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Interested parties who wish to participate in the hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B-099 within 10 days of the publication of this notice. 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, oral presentations will be limited to arguments raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Dated: January 2, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90-432 Filed 1-8-90; 8:45 am]

BILLING CODE 3510-DS-M

[C-475-008]

Semifinished Forged Undercarriage Components From Italy; Intent To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration; Commerce.

ACTION: Notice of intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the countervailing duty order on semifinished forged undercarriage components from Italy. Interested parties who object to this revocation must submit their comments in writing not later than January 31, 1990.

EFFECTIVE DATE: January 9, 1990.

FOR FURTHER INFORMATION CONTACT: Gayle Longest 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 January 4, 1984, the Department of Commerce ("the Department") published a countervailing duty order on semifinished forged undercarriage components from Italy (49 FR 489). The Department has not received a request to conduct an administrative review of the countervailing duty order on semifinished forged undercarriage components from Italy for four consecutive annual anniversary months. This is the fifth anniversary.

The Department may revoke an order if the Secretary of Commerce concludes that an order is no longer of interest to interested parties. Accordingly, as required by § 355.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this order.

Opportunity to Object

Not later than January 31, 1990, interested parties, as defined in § 355.2(i) of the Department's regulations, may object to the Department's intent to revoke this countervailing duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review or object to the Department's intent to revoke by January 31, 1990, we shall conclude that

the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 355.25(d).

Dated: January 2, 1990.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 90-434 Filed 1-8-90; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Review and Request for Comments; Certain Steel Plate

AGENCY: Import Administration/International Trade Administration, Commerce.

ACTION: Notice of short-supply review and request for comments: certain steel plate.

Short-Supply Review Number: 1.

SUMMARY: Pursuant to section 4(b)(3)(B) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101-221, 103 Stat. 1886 (1989) ("the Act"), the Secretary of Commerce ("Secretary") hereby announces that a short-supply determination is under review with respect to certain steel plate for use in the manufacture of large diameter pipe (LDP). On December 28, 1989, Berg Steel Pipe Corporation submitted an adequate petition to the Secretary requesting a short-supply allowance for this product. In accordance with section 4(b)(4)(B)(ii) of the Act, the Secretary will determine whether this product is in short supply not later than January 26, 1990. Comments on this review are welcome, and, if received in a timely manner, will be considered in making this determination.

Comments: Interested parties wishing to comment upon this review must send written comments not later than January 16, 1990 to the Central Records Unit, U.S. Department of Commerce, Room B-099, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Interested parties may file replies to any comments submitted. All replies must be filed not later than 5 days after January 16, 1990. All documents submitted to the Secretary shall be accompanied by four copies. Interested parties shall certify that the factual information contained in any submission they make is accurate and complete to the best of their knowledge.

Any person who submits information in connection with a short-supply review may designate that information, or any part thereof, as proprietary, thereby requesting that the Secretary

treat that information as proprietary. Information that the Secretary designates as proprietary will not be disclosed to any person (other than officers or employees of the United States Government who are directly concerned with the short supply determination) without the consent of the submitter unless disclosure is ordered by a court of competent jurisdiction. Each submission of proprietary information shall be accompanied by a full public summary or approximated presentation of all proprietary information which will be placed in the public record. All comments concerning this review must reference the above noted short-supply review number.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230, (202) 377-0159.

SUPPLEMENTARY INFORMATION: Pursuant to section 4(b)(3)(B) of the Act, the Secretary hereby announces that a short-supply determination is under review with respect to certain steel plate. On December 28, 1989, Berg Steel Pipe Corporation submitted an adequate petition requesting a short-supply allowance, under Article 8 of the Arrangement Between the European Coal and Steel Community and the European Economic Community, and the Government of the United States of America Concerning Trade in Certain Steel Products, for 22,134 net tons of American Petroleum Institute grade X-70 steel plate 149.173-149.842 inches in width and 0.488-0.701 inch in thickness, to be delivered during the first half of 1990. Section 4(b)(4)(B)(ii) of the Act requires the Secretary to make a determination with respect to a short-supply petition not later than the 30th day after the petition is filed, if the Secretary finds that the following conditions do not exist: (1) The raw steel making capacity utilization in the United States equals or exceeds 90 percent, (2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the 2 immediately preceding years, or (3) the requested steel product is not produced in the United States. The Secretary finds that these conditions do not exist with respect to the requested product, and, therefore, the Secretary will determine whether this product is in short supply not later than January 26, 1990.

Dated: January 2, 1990.
Eric I. Garfinkel,
Assistant Secretary
[FR Doc. 90-433 Filed 1-8-90; 8:45 am]
BILLING CODE 3510-DS-M

DEPARTMENT OF DEFENSE

Armed Forces Epidemiological Board—Open Meeting

1. In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) announcement is made of the following committee meeting:

Name of Committee: Armed Forces Epidemiological Board, DOD.

Date of Meeting: 22 February 1990.

TIME: 0830-1630.

Place: Walter Reed Army Institute of Research, Washington, DC.

Proposed Agenda: Army Immunization Priorities and Concerns; Army Vaccine Question; Army Serosurvey of Recruit Populations; Navy Immunization Priorities; Navy Question—Varicella Vaccine; Navy Serosurvey of Recruit Populations; Air Force Immunization Priorities; Air Force Serosurveys; Army Malaria Program Update.

2. This meeting will be open to the public but limited by space accommodations. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. Interested persons wishing to participate should advise the Executive Secretary, AFEB, Skyline Six, 5109 Leesburg Pike, room 667, Falls Church, Virginia 22041-3258.

Dated: December 29, 1989.
Robert A. Wells,
Col., USA, MSC, Executive Secretary.
[FR Doc. 90-437 Filed 1-8-90; 8:45 am]
BILLING CODE 3710-08-M

Armed Forces Epidemiological Board; Open Meeting

1. In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-462) announcement is made of the following committee meeting:

Name of Committee: Armed Forces Epidemiological Board, DOD.

Date of Meeting: 23 February 1990.

Time: 0800-1600.

Place: Walter Reed Army Institute of Research, Washington, DC.

Proposed Agenda: Army update on Mefloquine; Armed Forces Blood Program Update; Army Medical Readiness Issues; Report on Air Force Serum Lipid Meeting; Occupational

Health Report; Medical Readiness Report (DEER) update.

2. This meeting will be open to the public but limited by space accommodations. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. Interested persons wishing to participate should advise the Executive Secretary, AFEB, Skyline Six, 5109 Leesburg Pike, room 667, Falls Church, Virginia 22041-3258.

Dated: December 29, 1989.
Robert A. Wells,
Col., USA, MSC, Executive Secretary.
[FR Doc. 90-438 Filed 1-8-90; 8:45 am]
BILLING CODE 3710-08-M

Department of the Army

U.S. Army Medical Research and Development Command; Meeting

AGENCY: U.S. Army Medical Research and Development Command.

ACTION: Notice of closed meeting.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. appendix, sections 1-15), announcement is made of the following Committee meeting.

Name of Committee: United States Army Research and Development Advisory Committee.

Date of Meeting: 5 & 6 February 1990.

Time and Place: 0800-1630 hours, Quality Inn Conference Center, 7400 Quality Court, Frederick, MD 21701.

Proposed Agenda: In accordance with the provisions set forth in section 552b(c)(6), U.S. Code, title 5 and sections 1-15 of Appendix, the meeting will be closed to the public from 1230-1430 hours on 6 February for the review, discussion and evaluation of individual programs and projects conducted by the U.S. Army Medical Research and Development Command, including consideration of personnel qualifications and performance, the competence of individual investigators, medical files of individual research subjects, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Col. Harry G. Dangerfield, U.S. Army Medical Research and Development Command, Fort Detrick, Frederick, Maryland 21701-5012, (301) 663-7377 will furnish summary minutes, roster of

Committee members and substantive program information.

Kenneth L. Denton,
Alternate Army Liaison Officer With the Federal Register.

[FR Doc. 90-436 Filed 1-8-90; 8:45 am]

BILLING CODE 3710-08-M

Certificate of Carrier Responsibility

AGENCY: Military Traffic Management Command, Department of the Army, DOD.

ACTION: Proposed revision of certificate of Carrier Responsibility and request for public comment.

SUMMARY: The Military Traffic Management Command (MTMC) proposes to revise its Certificate of Carrier Responsibility. This action is necessary to update the form concerning the statement of common financial and/or administrative control (CFAC) between carriers. The intent of the revision is to add personnel, and FAX or other communications equipment to the items which, if shared, could be factors indicating CFAC. Since this form is an integral part of the relationship between MTMC and its carriers, MTMC requests public comment on the proposed revision prior to its publication in final form.

DATES: Comments must be submitted on or before February 8, 1990.

ADDRESS: Comments on the proposed revision should be addressed to Directorate of Personal Property, Headquarters, Military Traffic Management Command, 5611 Columbia Pike, room 423, Falls Church, VA 22041-5050.

FOR FURTHER INFORMATION CONTACT: Francis A. Galluzzo (Acting Director, MTPP), (703) 756-1140 or Mary E. Sullivan (Traffic Management Specialist), (703) 756-1784.

SUPPLEMENTARY INFORMATION: MTMC intends to provide the best overall service, at the least overall cost, to DOD members being moved under permanent or temporary change of station orders. In order to do this, we must ensure the absence of any collusion among carriers bidding to move personal property in the same channels (primarily in the international program).

The proposed revision would supersede the second sentence, paragraph 3 of the Certificate of Carrier Responsibility. The revised sentence would read as follows: "If carrier has not declared CFAC, carrier will not share office space, personnel, or communications equipment with any

other carrier engaged in the movement of personal property for the DOD."

Pursuant to requirements codified at 41 U.S.C. 418b, MTMC is providing notice of this proposed revision and offering a 30-day period for receiving and considering the reviews of all interested parties. Timely written comments will be reviewed and considered for incorporation prior to publication of the final form.

Kenneth L. Denton,
Alternate Army Liaison Officer With the Federal Register.

[FR Doc. 90-469 Filed 1-8-90; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

Notice of Intent To Prepare a Draft Environmental Impact Statement (DEIS) on a Proposal To Provide Flood Control Improvements at Vancouver, WA

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: Portland District, U.S. Army Corps of Engineers, is studying the feasibility of providing flood control improvements to protect an area currently proposed for annexation by the city of Vancouver, Washington. The improvements would be in the form of a levee and would protect approximately 400 acres of land which now lies within the 100-year floodplain. The study area is primarily rural with most of the land in the field corps or orchards, although county and city land use plans have designated this area for future "Light Industrial" use. Three preliminary levee alignments, some with variations, have been developed and will be studied in detail in the DEIS. Additional alignments may also be developed during the course of study.

The scoping process will formally commence in January 1990 with the issuance of a scoping letter. Federal, State, and local agencies, Indian tribes, and interested organizations and individuals will be asked to comment on the significant issues relating to the potential effects of the alternative levee alignments. The DEIS is scheduled for publication in April 1991.

ADDRESS: Questions about the proposed action and DEIS can be answered by Judy Linton, (503) 326-6096, U.S. Army Corps of Engineers, Regulatory and Resource Branch, P.O. Box 2946, Portland, Oregon 97208-2946.

Dated: December 22, 1989.

R.R. Goodell,
Lt. Colonel, Corps of Engineers, Acting Commander.

[FR Doc. 90-439 Filed 1-8-90; 8:45 am]

BILLING CODE 3710-AR-M

DEPARTMENT OF EDUCATION

Solicitation of Comments on the Federal Data Elements

AGENCY: Department of Education.

ACTION: Notice of solicitation of comments on the Federal Data Elements.

SUMMARY: The Secretary provides notice that the Department of Education is soliciting comments concerning the implementation of the first sentence of section 483(a) of the Higher Education Act of 1965, as amended (HEA) which provides that the Secretary shall prescribe a common financial reporting form to be used to determine the need and eligibility of a student for financial assistance under the major student financial assistance programs authorized by Title IV of the HEA (Title IV, HEA programs).

DATE: Comments must be received on or before February 23, 1990.

ADDRESSES: All comments concerning this notice should be addressed to Mr. Stephen D. Carter, Chief, Analysis Section, Pell Grant Branch, Division of Policy and Program Development, U.S. Department of Education, 400 Maryland Avenue, SW., (room 4318, ROB-3), Washington, DC 20202-5443.

FOR FURTHER INFORMATION CONTACT: Ms. Julie Laurel, Statistician, Pell Grant Branch, Division of Policy and Program Development, U.S. Department of Education, 400 Maryland Avenue, SW. (room 4318, ROB-3), Washington, DC 20202. Telephone (202) 732-4888.

SUPPLEMENTARY INFORMATION: Section 483(a) of the HEA, 20 U.S.C. 1090(a), requires the Secretary to develop a common financial reporting form to be used in determining the need and eligibility of a student under the major financial assistance programs authorized under the Title IV of the HEA (Title IV, HEA programs). These programs include the Pell Grant, Supplemental Educational Opportunity Grant, Stafford Loan, College Work-Study, Income Contingent Loan, and Perkins Loan programs.

The Secretary is requesting public comment concerning the 1991-92 Federal data elements. Federal data elements are those questions contained

on both the Application for Federal Student Aid (AFSA) and the Federal portion of the Multiple Data Entry applications that can be used to apply for Title IV aid (known as "Federal core"). The Secretary is especially interested in comments concerning the following:

1. All aspects of the design of the Federal core form and instructions, including overall appearance, type sizes, type style, the use of shading, the sequence and arrangement of data elements, and recommendations for additional data elements.

2. The clarity of the Federal core instructions.

3. The burden on the applicant population in completing the form and recommendations for keeping this burden to a minimum.

4. The possibility of fraud and abuse by persons who charge a fee for advising or assisting applicants in completing student financial aid applications ("paid student aid application preparers") and in so doing advise applicants on how to conceal income and asset information.

5. The identification and inclusion of questions on the Federal core that would elicit information on an applicant's recent Stafford Loan activity. The purpose of these questions, in conjunction with information already required on the Federal core, would be to eliminate the need for a separate Stafford Loan application.

Invitation To Comment

Interested persons are invited to submit comments and recommendations on all of the above issues. In addition, comments and recommendations relating to the placement, or "flow", of the Federal core questions in the following financial aid applications is requested:

1. Application for Federal Student Aid (AFSA).

2. Single File Form (United Student Aid Funds).

3. Application for Pennsylvania State Grant and Federal Student Aid (Pennsylvania Higher Education Assistance Agency).

4. Application for Federal and State Student Aid (CSX Commercial Services, Inc.).

5. Family Financial Statement (American College Testing Program).

6. Financial Aid Form (College Scholarship Service).

The above applications (except the Application for Federal Student Aid) are also used to award State, private, and institutional forms of financial aid. Consequently, they include questions specifically for the award of that aid.

Those questions are not required for the Federal programs. Accordingly, persons should limit their comments to those questions contained in the Federal core sections (Sections A through J of the Application for Federal Student Aid) and not comment on the data elements contained in the sections of the above forms reserved for State and institutional aid programs.

All comments submitted to this notice will be available for public inspection, during and after the comment period, in room 4318, ROB-3, 7th and D Streets, SW., Washington, DC 20202, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week, except Federal holidays.

(Catalog of Federal Domestic Assistance Numbers: 84-063 Pell Grant Program; 84.007 Supplemental Educational Opportunity Grant Program; 84.032 Stafford Loan Program; 84.033 College Work-Study Program; 84.228 Income Contingent Loan Program; 84.038 Perkins Loan Program)

Dated: January 2, 1990.

Roberta B. Dunn,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 90-419 Filed 1-8-90; 8:45 am]

BILLING CODE 4000-01-M

Fund for the Improvement and Reform of Schools and Teaching Board; Open Meeting

AGENCY: Fund for the Improvement and Reform of Schools and Teaching Board, Education.

ACTION: Notice of an open meeting.

SUMMARY: This notice sets forth the schedule and agenda of an open meeting of the Fund for the Improvement and Reform of Schools and Teaching Board. This notice also describes the functions of the council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES: January 25, 1990, 9:00 a.m.-5:00 p.m.; January 26, 1990, 9:00 a.m.-12:00 noon.

ADDRESS: U.S. Department of Education, OERI, 555 New Jersey Avenue, NW., Washington, DC 20208-5524.

FOR FURTHER INFORMATION CONTACT: Jennifer Mills, Fund for the Improvement and Reform of Schools and Teaching, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 522, Washington, DC 20208-5524, (202) 357-6496.

SUPPLEMENTARY INFORMATION: The Fund for the Improvement and Reform of Schools and Teaching (FIRST) Board was established under section 3231 of the Hawkins-Stafford Elementary and

Secondary School Improvement Amendments of 1988 (Pub. L. 100-297). The Board was established to advise the Secretary concerning developments in education that merit his attention; identify promising initiatives to be supported under the authorizing legislation; and advise the Secretary and the Director of the Fund on the selection of projects under consideration for support, and on planning documents, guidelines and procedures for grant competitions carried out by the Fund.

On January 25, and again on January 26, 1990, the Board will introduce its new Board members, have a briefing on the Department's standards of conduct and committee management, approve the minutes from the October meeting and discuss the activities of the Family-School Partnership and School Level Project Directors Meeting which were held in December 1989. The Board will also discuss the monitoring process for the projects funded for fiscal year 1990, including their role in the process, as well as the use of the Secretary's Regional Representatives in the process, discuss the conference to be held jointly between the FIRST and Fund for the Improvement of Postsecondary Education (FIPSE) Boards, and determine the agenda and date of the next meeting. In addition, the Board will discuss priorities for the 1991 competitions of the Family-School Partnership Program and the Schools and Teachers Program, review the application process and form for FY 1991, and discuss the report to Congress. Individuals or groups unable to attend the meeting are encouraged to request a summary of activities at the meeting.

The session on Thursday, January 25 from 9:00 am-5:00 pm, and the session on Friday, January 26 from 9:00 am-12:00 noon, will both be held at the U.S. Department of Education, OERI, Room 326, at the above address.

Records are kept of all Board proceedings, and are available for public inspection at the office of the Fund for the Improvement and Reform of Schools and Teaching, U.S. Department of Education, 555 New Jersey Avenue, NW., room 522, Washington, DC 20208-5524, (202) 357-6496 from the hours of 8:30 am-5:00 pm.

Dated: December 21, 1989.

Christopher T. Cross,

Assistant Secretary, Office of Educational Research and Improvement.

[FR Doc. 90-402 Filed 1-8-90; 8:45 am]

BILLING CODE 4000-01-M

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming teleconference meeting of the Reading Committee of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: Friday, January 19, 1990.

Time: 11:00 a.m. (e.s.t.) until adjournment.

Place: National Assessment Governing Board, Suite 7322, 1100 L Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Roy Truby, Executive Director, National Assessment Governing Board, Suite 7322, 1100 L Street, NW., Washington, DC., 20005-4013, Telephone: (202) 357-6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), title III-C of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100-297), (20 USC 1221e-1).

The Board is established to advise the Commissioner of the National Center for Education Statistics on policies and actions needed to improve the form and use of the National Assessment of Educational Progress, and develop specifications for the design, methodology, analysis and reporting of test results. The Board also is responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and establishing standards and procedures for interstate and national comparisons.

The Reading Committee of the National Assessment Governing Board will meet via teleconference on Friday, January 19, 1990 from 11 a.m. until the completion of business. Because this is a teleconference meeting, facilities will be provided so the public will have access to the Committee's deliberations. The purposes of this meeting is to update the

Committee on the Reading Consensus Process.

Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite 7322, 1100 L Street, NW., Washington, DC from 8:30 a.m. to 5 p.m., Monday through Friday.

Christopher T. Cross,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 90-417 Filed 1-8-90; 8:45 am]

BILLING CODE 4000-01-M

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board, Education.

ACTION: Notice of open meeting.

SUMMARY: The National Assessment Governing Board is announcing opportunity for commentary and review of its proposal for setting goals for the National Assessment of Educational Progress. The Board, in accordance with its statutory mandate to identify "appropriate achievement goals for each * * * grade (and) subject area to be tested under the National Assessment" intends to set grade-level goals that represent solid academic performance, not minimum skills, and which reasonably represent the levels of achievement which all students ought to attain. The Board intends to take final action on this or a similar process for setting achievement goals at its meeting in March, 1990 to be used first on the 1990 assessment of mathematics. This document is intended to notify interested individuals and organizations of their opportunity to present oral and/or written views to the Board.

DATE: January 25, 1990.

FOR FURTHER INFORMATION CONTACT: Mary Lyn Bourque, National Assessment Governing Board, 1100 L Street, NW., Suite 7322, Washington, DC, 20005-4013, Telephone: (202) 357-6940.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), title III-C of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100-297); (20 USC 1221e-1).

The Board is established to advise the Commissioner for Education Statistics on policies and actions needed to improve the form and use of the

National Assessment of Educational Progress, and develop specifications for the design, methodology, analysis and reporting of test results. The Board is also responsible for selecting subject areas to be assessed, identifying objectives for each age and grade tested, and establishing standards and procedures for interstate and national comparisons.

The forum for oral commentary on the Board's goal setting proposal will be held on January 25, 1990. The forum will begin at 9:30 a.m. and adjourn at 3 p.m. In addition to the forum the Board is seeking written commentary on the proposal and invites responses from the general public through January 25, 1990. Written statements shall be mailed to: National Assessment Governing Board, 1100 L Street, NW., Suite 7322, Washington, DC 20005-4013, Attention: Goals Forum.

ADDRESSES: The location of the forum is: Sumner School, Seventeenth and M Streets, NW., Washington, DC.

Written Statements: Written statements submitted for the public record should be sent directly to the Board (see address given above) in the following format:

I. Issues and Questions Addressed

Identify the issue(s) and question(s) to which commentary is directed.

II. Summary

Briefly summarize the major points and recommendations.

III. Discussion

The narrative should provide information, points of view, and recommendations that will enable the Board to consider all factors relevant to the issue(s) and question(s).

Public Comment and Review Objectives and Procedures

The full text of the Board's proposal Setting Goals for the National Assessment is presented below. The Board seeks comment and review of this proposal from a wide spectrum of individuals and organizations. The goal is to provide for maximum input and guidance from a diverse public including parents, students, teachers, curriculum specialists, local school administrators and individuals concerned with public education.

Setting Goals for the National Assessment

The Legal Basis

Of the many responsibilities of the National Assessment Governing Board,

one of the most challenging, and potentially the most important, is the Congressional mandate for setting achievement goals.

The statute (Pub. L. 100-297) creating the Board assigns to it certain specific tasks. Among other things, the Board is responsible for:

- Identifying appropriate achievement goals for each age, each grade and for each subject area to be tested under the National Assessment.
- Developing assessment objectives,
- Ensuring that, through a process designed to generate national consensus, each learning area assessment is supported by a series of goal statements.

The Current Environment

Whoever first observed that "timing is everything" must have had the issue of national education goals in mind.

Twenty-five years ago, many state and national leaders, including the Council of Chief State School Officers, fought the passage of the Elementary and Secondary Education Act of 1965 on the grounds that it would lead to federal control of education and to a national curriculum. Today, the receptivity toward the development of national goals is at an all-time high. A couple of sentences from the 1988 SREB report, *Goals for Education*, make the point.

"If excellence means anything at all it is a universal concept, we must be measured against the same criteria of excellence which are applied everywhere." "That bold claim was controversial when made by the Southern Regional Education Board nearly three decades ago * * *. Today, there is wide agreement that SREB states should strive for national standards. And some, particularly governors, assert that international standards are more appropriate now that the marketplace is increasingly global."

Business leaders, governmental leaders, educational leaders and parents are all beginning to advocate, and, in some places, agitate, for national education standards or goals. The most recent Gallup education poll showed that over 70% of those polled believed that the country needs national goals.

The "Case" for Standards

For the past 20 years the National Assessment of Educational Progress, as well as virtually all nationally standardized tests in the United States, has reported its results in terms of average performance. Sometimes it has announced what proportion of students knew a certain fact or could demonstrate a certain skill. But it has

avoided saying whether average performance was good enough or whether the facts and competencies it tested were ones that all¹ students really ought to know.

Of course, the NAEP tests, like others, contain implicit standards. Why measure anything unless somebody thinks it's important? In the case of NAEP, there has long been an elaborate consensus process, involving teachers, scholars, and interest groups, to determine just what knowledge and skills each assessment should examine. But again, the assessments themselves and the committees creating them have only implicitly provided a basis to say how high these scores ought to be.

In 1988, in the legislation creating the National Assessment Governing Board, Congress mandated that NAEP in the future include specific objectives. This legislation shifted the policy-making function for NAEP away from the Education Department and the Assessment Policy Committee of the contractor and entrusted it to the new independent board. It gave NAGB explicit responsibility for "identifying appropriate achievement goals" for each grade and subject tested.

In September, the joint statement of President Bush and the governors, at the end of the Charlottesville education "summit," called for establishing national education goals. Moreover, the performance of students in achieving these goals would be monitored by an annual "Report Card". Since NAEP is virtually the only source of reliable performance data in the cognitive domain, the statements implied that NAEP should be involved in setting substantive achievement standards. At hearings last month, Senator Jeff Bingaman (D-NM), Chairman of the Senate Subcommittee on Government Information and Regulation, pressed the Governing Board to begin setting its standards soon.

Connection to National Goals

It now appears that a policy environment is developing that will lead to some sort of consensus on national education goals. There are two processes underway at the national level. On October 24, 1989, President Bush announced the appointment of the President's Education Policy Advisory Committee. NAGB Chairman Chester E. Finn, Jr. is one member of that panel.

Governor Terry Branstad (R-IA) and the NGA have also decided that it is

appropriate for the Nation's governors to assume a lead role in establishing educational goals for the Nation. It has appointed a panel of governors and assigned it that responsibility. It is not yet clear how the NGA and the President's Educational Policy Advisory Committee will coordinate their efforts.

It is suggested that NAGB work closely with these national efforts. NAGB should work toward an arrangement in which it will undertake to develop graded level achievement goals that are "under the umbrella" of broad national goals—and the NGA and President Bush's Committee will recognize NAGB's Congressional mandate to set these grade level goals. All parties would agree that goals are only valuable when progress toward them is able to be assessed and measured.

Connection to International Goals

By extension, NAEP might set goals that relate the performance of U.S. students to students from other developed nations. At the present time, there are no regularized linkages of U.S. student achievement to their peers in an international context. However, it would be possible to use some sort of "international bridge study" to examine comparative performance in math, science, or foreign language, and perhaps in other subjects as well. A set of items could be administered to an international sample of students representing other developed nations, and achievement levels of the sample compared to our performance standards. A variety of comparisons could be made, including but not limited to, the percentage of their students reaching our grade level standards, as well as more refined comparisons of the top 10%, the top quartile, etc.

Admittedly, there are some problems associated with this, not the least of which would be to attempt to reach an "international consensus" on what constitutes math or science at specific grade levels. However, once that has been determined, an item pool could be developed for just such purposes, and periodic assessments could yield measures of international student achievement. This could be piloted through bridge studies which are already part of the NAEP design.

A separate but related way in which standards for U.S. achievement might be viewed is through the collaborative efforts of the O.E.C.D. nations. At the present time, the U.S. ranks well below the median of the participating nations. An example of one such a goal might be that by 1995, for example, the U.S. could

¹ The term "all" does not include students who are severely handicapped, and those who would ordinarily be excluded from the assessment by reason of the assessment's exclusion policy.

aim to improve its rank in O.E.C.D., so that the U.S. was scoring at or above the median. Or, another measurable standard might be that the top 10% of U.S. students would perform equal to, or better than, their age/grade peers in the top 10% of the participating O.E.C.D. nations.

Where Does the Board Begin?

The Board could begin its goal-setting with the 1990 assessment in math. This is the 1990 test that will get the most attention (because of the state-by-state comparisons). It has been thoroughly revised to include a progression of challenging topics the goes well beyond the level of basic skills where NAEP assessments have usually concentrated in the past. It has won wide endorsement from mathematics educators and state education departments. It involves a field where a substantial curricular consensus already exists, not one (like reading) which is driven by deep-seated disagreements.

What Should the Goals Look Like?

In recent years NAEP assessments have had scales to show different levels of student performance. For the past five years, these have had a uniform mean score of 250, derived from the results for all three grade levels tested—fourth, eighth, and twelfth. Each 50 points up or down the scale represents one standard deviation. The cluster of skills that differentiates each major level is determined by looking at the patterns of right and wrong answers after the results are in. Because the 1990 math assessment was constructed using a new consensus framework, the precise skills that are at level 200 or 250 or 300 will not be known until late 1990 or early 1991, when the new assessment has been scored, scaled, and anchored to the test data.

However, the Board can begin setting "appropriate achievement goals" right now. One method is to set these standards in terms of particular skills by identifying the questions which show that students have mastered such skills. Clusters of questions related to specific performance levels would then define the points on the scale. Results would be reported not only in terms of averages for different groups nationwide or by states, but by reporting what percentage of students in different groups met the standards.

However, one concern must be addressed here. By starting this process in 1990, and by focusing first on the mathematics assessment, one runs the risk of "surprising" the states, which did not bargain for performance standards when they volunteered to participate in

the 1990 state by state assessment. One way in which this might be minimized is by reporting the 1990 results only in terms of the national sample. That is, when reporting the percentage of students who achieve the grade level standard, use only the national sample, and do not report the comparable percentages in any given state. It should be noted, however, that these data for the 1990 assessment could be calculated when the public use data tapes are made available in 1993.

How High Should We Reach?

NAEP's achievement goals should not be the bare minimums for "survival." That was the standard used for minimum competency tests in many states, which for high school graduates usually translated as work commonly done in junior high school. Such standards are better than no standards at all, which is what generally preceded them. They undoubtedly have had the effect of raising performance at the bottom, a not insignificant goal. But NAEP can do more. Its standards should be of higher performance, high enough to reasonably represent where the nation ought to be.

Goal-Setting Process

To advise it on setting goals, the Board should appoint a panel that includes a broad base of individuals having diverse expertise in judging what students need to know at various performance levels across the grades. Thus, there should be some college professors who would be asked to define what students need to know to succeed in college-level math, and employers of high school graduates including the military, who would be asked what math students need to know to succeed in non-college careers. There should also be teachers, curriculum specialists, and scholars. The National Council of Teachers of Mathematics should be represented, for its curriculum is heavily used in the math test.

Before the panel is convened, the Board should adopt a clear policy on the performance levels of interest. It is not looking for broad general goals of education, but for substantive standards of mathematics achievement tied firmly to the 1990 assessment objectives at the several grade levels.

The staff struggled with the number of standards that should be set for each level. The case for a single standard for each grade is based on the conviction that there is a core of learning in each field that every student ought to master. The case for two levels accepts the assertion that there ought to be a common core of learning, but says that

superior performance also ought to be recognized. However, in the final analysis, this paper is premised on a single "universal" grade-level goal for all students in each subject area.

For example, at grades 4 and 8, a single "universal" goal could be set for each grade for all students. Within each subject area, it would be the level of proficiency that must be attained if a student is to have a reasonable chance of succeeding in that same subject during the next phase of his/her formal education. Such a standard would give real meaning to the terms "fourth grade level" and "eighth grade level". For all American fourth graders to strive to reach NAEP's fourth grade goal in math is equivalent to saying that everyone who reaches that goal is authentically ready for middle school math. The same logic applies to eighth grade.

At the twelfth grade level, a single standard would be set for all students, a standard which, when reached, would certify that these individuals are ready to move from the structured environment of the school into adult life situations. Such a standard would prepare students to be successful in the tasks one faces regularly in coping with the modern world. In addition, a second higher standard would be set, designed for high school graduates who are planning to go on to post-secondary education in fields of study requiring higher level math courses. Here the standard would relate to readiness for success in college level math.

The Board's charge to the panel will be to examine the actual questions of the 1990 math assessment and recommend specifically which ones students need to answer correctly in order to reach the different performance levels. This very specific step is necessary in order to provide the information that is needed to calibrate the different points on the NAEP scale at which students will meet each goal.

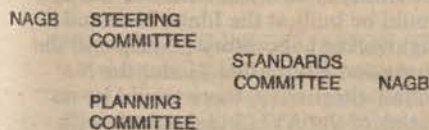
If the Board decides to go ahead with goal-setting as soon as possible, it should be able to receive the new panel's recommendations by October, 1990. It could then take action at its meeting in December, 1990. That would provide enough time for these goals to be used as part of the reporting of the mathematics results, which is now scheduled for June or July of 1991.

The goal-setting process for the other subject areas would follow much the same timeline. A national consensus effort on learning outcomes would be followed by item development and pilot testing. Once the final set of items is selected for assessment, standards could then be set. Because NAEP uses

an item response theory model, new items can be added to the assessment in subsequent years without having to reestablish standards. As long as the content in a given subject area remains stable from year to year, restandardization would not be required. However, should the Board embark on a new national consensus process in a particular subject area which would alter the content of the assessment, then a new standard setting procedure would be necessary.

What does this mean in practical terms? The standard setting procedures would identify the four score points on the math scale which represents the "national standard" for each grade level. The percent of students reaching that standard would be reported for each assessment. The expectation is that the percentage would increase over time, so that more and more students actually attain the standard, but the standard would remain stable until the content of the assessment changed and a new standard was set.

The standard setting process should be viewed as an extension of the national consensus process. In other words, the national consensus would define goals both as content and as standards. It would be advisable to have some overlap among the members of the Planning, Steering, and Standard Setting Committees. The diagram below demonstrates this. It should be noted that the Planning and Steering Committees are already working committees during the national consensus process. What is being suggested here is that process be extended, both chronologically and by task, so that the standards committee could determine the standard appropriate for the specific content under consideration.



Staff Recommendations

Because standard setting is such a complex issue, and because the results of such an activity can have far-reaching consequences, it is important for the Board to address this issue with a reasoned and carefully structured process.

Because of the need to have more Board involvement in the standard setting process, the staff recommends that the Board not take any final action

until its March Board meeting. In the meantime, the Board could:

- Widely circulate Staff paper, inviting public commentary on the process (reprint in *Federal Register*;
- Solicit expert commentary from professionals in the field;
- Consider other possible ways to elicit response from a wider audience;
- Reconsider the proposal at the March Board meeting.

With input from a wide range of groups and individuals, the Board would then be in a position to discuss the proposals and make their final decision in March. This would allow sufficient opportunity to implement the standard setting process to accommodate the timelines of the 1990 assessment in math.

Technical Appendix

Technical Procedures

Introduction

Standard setting technologies have been developing over the past 35 years, and are now considered standard operating procedures for many assessment programs at the state and district level. While there are a number of competing procedures that could be used for setting standards, oftentimes yielding different results, this paper is recommending the Angoff procedure for a number of reasons. First, the advantages and disadvantages of many of the competing procedures are well documented in the literature. There have been any number of research studies completed documenting some of the differences; the Angoff procedure is generally superior. Secondly, it is quite straightforward; both the judging task and its results are intuitively interpretable. Thirdly, it does not require the administration of items to a trial population. This means, of course, that standard setting could begin in the immediate future. For all these reasons, and perhaps others not mentioned here, the Angoff methodology is clearly the methodology of choice.

Goals as Content

A national consensus process is used to arrive at the content goals of each subject assessed. The specific details of the process varies from subject to subject. However, the overall concept involves various publics in advising the Board on the current theoretical, curricula, and instructional status of any given content area. The process includes numerous iterations filtering each perspective through that of competing ones, until a final product is derived which represents the best thinking in the

field and for which there is general agreement.

In the basic areas, such as reading and mathematics, and, indeed, in all the NAEP core areas, there is an underlying assumption of a developmental curriculum. That is, specific objectives span several grades as the students' capacity develops from the lower levels of the content taxonomy in the elementary grades to the highest levels at the upper grades. This approach ultimately forms the conceptual basis of the NAEP scales which cut across grade levels and are behaviorally anchored to real tasks and accomplishments at specific intervals on the scale.

The content objectives are then defined in measurable terms as the consensus process continues to spell out the test and item specifications. In other words, the consensus process moves toward articulating not only content expectations at each grade level, but the parameters within which those objectives will be assessed. Typically, the field testing of an item pool follows and the final selection of appropriate items is made by the Board.

Goals as Standards

In identifying the content specifications for each subject area assessed, there is an underlying assumption that all students in grade 4, for example, should be able to respond to questions about the "volume of rectangular solids." In other words, this objective would not have been assigned to grade 4 if the framework had not placed it there. This is a reflection of the criterion-referenced nature of NAEP. However, since no assessment is perfect, and since students are not perfect, in any given grade level there will be a distribution of performance. So, even though the "ideal" expectation for grade 4 as described by the test objectives might include knowledge of the "volume of rectangular solids," a more accurate expectation for grade 4 can be derived by the careful examination of the items designed to measure the grade 4 goals and objectives.

Achieving consensus on the real expectation for students is the process of setting standards, the yardstick by which success or failure on the goals for each grade will be assessed. The technology for standard setting falls into two broad categories: judgmental and empirical. Judgment methods employ appropriate groups of judges to rate the individual items in an assessment on specific criteria related to the mastery or nonmastery of the examinee population. Empirical methods use data collected

from various examinee populations to make decisions about cutting scores which discriminate between two or more proficiency levels in the population. The Contrasting Groups procedure is an example of this methodology. In this approach, data from two examinee groups who clearly differ in their achievement level on the assessment is used, and the cut score is placed to maximize the discrimination between these two groups.

Judgment methods can be implemented prior to test administration, since only the items are required. Empirical methods, however, require that a trial assessment be administered before the standard setting is done. It would be advisable for NAEP to use both of these procedures: judgment methods to establish standards, and empirical methods as a verification procedure.

The general procedure for moving toward consensus on standards as they relate to the specific objectives of any given assessment is:

1. Review standard setting literature;
2. Develop the NAEP standard setting framework
3. Convene the standard setting panel;
4. Identify those items from the assessment pool which meet specific criteria;
5. Align these items along the performance scale, anchoring at four points, one each for grades four and eight, and two for grade 12;
6. Use the standards on the proficiency scale to evaluate performance.

Standard Setting Framework

Developing the standard setting framework is a critical component of the process, since the criteria for judging each item determines whether or not successful performance on the item is required for a given performance level. It is at this point that the number of performance levels would be determined, i.e., one or more at each grade level. The particular procedures used by the panel would also be determined at this point.

Standard Setting Procedures

Once the panel has been convened and been instructed in its task, each item in the pool would be examined and judged. For purposes of discussion, let's assume that the Angoff procedure is the one selected. This methodology is quite straightforward. Judges examine the content of items and decide whether or not that content is required to meet the criteria. If that were the case, the panel would examine each item in the grade 4 math pool, and decide in effect whether

or not it met the criteria: Does the student need to be successful on this specific item if she/he is to have been successful on this specific item if she/he is to have been successful in elementary math and to have a reasonable chance of succeeding in that same subject in the middle school grades? The product of that effort would look something like the table below.

In the table, items judged necessary for a given performance level are coded "Y" (Yes), and those unnecessary are coded "N" (No). Note that once an item is judged necessary for a lower grade level, if that item is used at higher grade levels in the assessment it must, of necessity, be required for those upper levels. For each item, the panel makes either a consensus decision or each member makes individual decisions. In the case of the latter, rater disagreement can be measured, which will yield a numerical estimate of the degree of consensus surrounding the standard.

Performance level	Item Number									
	1	2	3	4	5	6	7	8	9	N
Grade 4.....	Y	N	Y	N	N	Y	N	Y	Y	N
Grade 8.....	Y	N	Y	Y	N	Y	N	Y	Y	N
Grade 12:										
All students.....	Y	Y	Y	Y	Y	Y	N	Y	Y	Y
College prep.....	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y

The series of "Ys" and "Ns" (numerically coded) are entered into the NAEP scoring program, which will result in a point on the proficiency scale for each level set. Students scoring above the standard will have met the goal. Using the standard, the percentage of students scoring below, at, and above can be estimated.

Dated: December 8, 1989.

Roy Truby,
Executive Director.

The Board plans to analyze all comments received in response to this announcement. A report of the outcomes of the public responses will be available to the public upon request after March 30, 1990. The results of the public comments will be used by the National Assessment Governing Board in conjunction with other input to fulfill its statutory mandate to establish national achievement goals.

Records are kept of all Board proceedings, and are available for public inspection at U.S. Department of Education, National Assessment Governing Board, 1100 L Street, NW., Suite 7322, Washington, DC, 20005-4013,

from 8:30 a.m. to 5 p.m., Monday through Friday.

Christopher T. Cross,
Assistant Secretary for Educational Research and Improvement.

9]FR Doc. 90-418 Filed 1-8-90; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Intent To Prepare an Environmental Impact Statement for Proposed Laser Isotope Separation Experiments With Plutonium in the Engineering Demonstration System at Lawrence Livermore National Laboratory

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for the proposed use of plutonium for laser isotope separation experiments in the Engineering Demonstration System (EDS) within the Plutonium Facility at the Lawrence Livermore National Laboratory (LLNL).

SUMMARY: DOE announces its intent to prepare an EIS in accordance with section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, to evaluate the environmental impacts of the proposed use of plutonium for experiments in the EDS at LLNL. The use of plutonium in EDS is proposed to test prototype Atomic Vapor Laser Isotope Separation (AVLIS) equipment to reduce technical uncertainties and cost and schedule risk for the Special Isotope Separation (SIS) facility to be built in Idaho. The final EIS for the SIS facility was published in November 1988, and the Record of Decision was published in January 1989.

Alternatives include performance of the plutonium experiments (and support activities) in new test facilities which would be built at the Idaho National Engineering Laboratory (INEL), and the No Action alternative. Under the No Action alternative, there would be no testing of the AVLIS technology with plutonium prior to construction and operation of an SIS production plant.

Prior to the issuance of the subject EIS, tests in the EDS with nonhazardous surrogate materials may be resumed. An Environmental Assessment (EA) on the environmental impacts of resuming such tests with surrogate materials is now in preparation.

INVITATION TO COMMENT: To ensure that the full range of significant issues related to this proposed action are addressed in the EIS, comments on the proposed scope and content of the

EIS are invited from all interested parties. Written comments or suggestions to assist DOE in identifying significant environmental issues and the appropriate scope of the EIS should be delivered to DOE by February 23, 1990. Comments received after that date will be considered to the extent practicable. Agencies, organizations, and the general public are also invited to present oral comments or suggestions pertinent to preparation of this EIS at public scoping meetings. Written and oral comments will be given equal weight in the scoping process. The draft EIS is expected to be completed in mid-1990, at which time its availability will be announced in the *Federal Register* and public comments will again be solicited. Comments on the draft EIS will be considered in preparing the final EIS.

ADDRESS: Written comments or suggestions on the scope of the EIS, requests to speak at the scoping meetings, or questions concerning the proposed action should be directed to: Mr. Tommy D. Chang, U.S. Department of Energy, 1333 Broadway, Oakland, CA 94612, 1-800-545-4330.

Those persons who wish to receive a copy of the draft EIS should address their request to Mr. Chang. Envelopes should be marked EDS EIS.

FOR FURTHER INFORMATION CONTACT: For general information on the EIS or the National Environmental Policy Act (NEPA), please contact: Carol M. Borgstrom, Director, Office of NEPA Project Assistance (EH-25), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4600.

DATE: Written comments and suggestions on the proposed scope and content of the EIS should be delivered to DOE by February 23, 1990, to ensure consideration in the preparation of the EIS. Comments received after that date will be considered to the extent practicable.

BACKGROUND INFORMATION: The potential for using the AVLIS process to convert fuel grade plutonium to weapon-grade plutonium (the SIS process) has been under investigation since the mid-1970's. Scientific feasibility was first demonstrated through a series of experiments conducted in LLNL's Plutonium Facility (Building 332) during 1975 and 1976.

Subsequent work in the 1980s concentrated upon engineering improvements to the separator units and as a result the EDS was constructed containing advanced design separator units. The final SIS process demonstration steps are the proposed Plant Performance Verification Series

(PPVS) tests with plutonium in the EDS planned to begin in fiscal year 1991. Tests with plutonium in EDS are proposed to further evaluate isotope separation performance, improve hardware reliability and maintainability, and refine operating procedures beyond that which can be achieved with surrogates in support of the design and operation of the SIS production plant in Idaho.

The EDS contains several interconnected glove boxes designed for plutonium handling. One glove box contains a separator line, which consists of several separator units aligned so that they can share a common laser beam. A separator unit consists of a plutonium feed system, a small crucible in which plutonium is held prior to vaporization, a collector for the plutonium product, and electrostatically-charged extractors for collecting the by-product material. Other glove boxes provide for support activities, such as pretesting, assembling, and disassembling separators. The proposed use of plutonium for experiments in EDS will involve interfaces with other existing LLNL capabilities such as the laser system, and other Plutonium Facility supporting capabilities.

The proposed EDS experiments with plutonium will involve the operation of one or more full-sized separator units in series. Experiments with plutonium in the EDS would be conducted intermittently. Typically, the proposed experiments are expected to be conducted one to two times per month and to have a duration from 10 to 200 hours. All facilities and personnel needed to conduct the experiments with plutonium in EDS already exist at LLNL.

PROPOSED ACTION: The proposed action is to use plutonium for laser isotope separation experiments in the EDS located within the Plutonium Facility at LLNL. This is the preferred alternative.

ALTERNATIVES PROPOSED FOR CONSIDERATION: The reasonable alternatives to the proposed action identified to date are to conduct the described experiments with plutonium in new test facilities which would be built at INEL and the No Action alternative.

IDENTIFICATION OF ENVIRONMENTAL ISSUES: The following issues have been tentatively identified for analysis in the EIS. The EIS will address the environmental impacts of the proposed action and alternatives, including both routine operations with plutonium, and potential accidents during facility operation with plutonium. The following list is representative of the issues to be

addressed in the EIS. It is not all inclusive, nor does it imply any predetermination of potential impacts. Additions or deletions to this list may occur as a result of the scoping process.

1. **Public and Occupational Safety—**The radiological and non-radiological impacts of normal operations and potential accidents, including projected effects on workers and the public.

2. **Air Quality—**The effects of radiological and non-radiological air emissions.

3. **Water Quality—**The potential impacts on water quality.

4. **Waste Management—**The environmental effects of the generation, treatment, shipment, storage, and disposal of radioactive, hazardous, and solid wastes.

5. **Transportation—**Impacts of transporting plutonium and plutonium-contaminated materials and equipment.

6. **Decommissioning and Decontamination—**Impacts that may result from decommissioning and decontaminating test facilities.

For the alternative location, the EIS will also address siting and construction impacts on topography, vegetation, wildlife, cultural resources, and air and water quality, as well as the socioeconomic impacts of building and operating these facilities.

SCOPING MEETING: In addition to receiving written comments, DOE will conduct three public scoping meetings to assist DOE in determining the appropriate scope of the EIS and the significant environmental issues to be addressed. The meetings will be held at the following times and locations:

Location: Holiday Inn—Livermore, 720 Las Flores Road, Livermore, CA 94550, (415) 443-4950.

Dates: February 2 and 3, 1990.
Times: 10:00 AM-5:00 PM and 6:30 PM-10:00 PM.

Location: University Place—Idaho Falls, 1776 Science Center Drive, Idaho Falls, ID 83402, (208) 526-1388.

Date: February 7, 1990.
Times: 10:00 AM-5:00 PM and 6:30 PM-10:00 PM.

The purpose of the scoping meetings is to offer all interested persons the opportunity to comment on the appropriate scope of issues to be addressed in the EIS and the significant issues related to the proposed action. DOE will designate a presiding officer to chair each meeting. The meetings will not be conducted as evidentiary hearings and there will be no questioning or cross-examination of speakers; however, the presiding officer may ask for clarification of statements made to ensure that DOE fully

understands the comments and suggestions. The presiding officer will establish the order of speakers and provide any additional procedures necessary for the conduct of the meeting. To ensure that all persons wishing to make presentations can be heard, a 5 minute limit for each individual speaker or 10 minutes for publicly-elected officials has been established. Speakers who wish to provide further information for the record should submit such information to Mr. Chang at the above address by February 23, 1990. Comments received after that date will be considered to the extent practicable. Individuals who do not make an advance arrangement to speak by calling 1-800-545-4330, may register to speak at the time of the meeting. After all previously scheduled speakers have been given an opportunity to make their presentations, an opportunity will be provided to these registrants to speak.

DOE will prepare transcripts of the scoping meetings. The public may review the transcripts and unclassified background information on this action at the following locations during normal business hours.

1. U.S. Department of Energy, San Francisco Operations Office, 1333 Broadway, Oakland, California 94612, (415) 273-4428.

2. Visitors Center, Lawrence Livermore National Laboratory, Livermore, California 94550, (415) 422-9797.

3. U.S. Department of Energy, Freedom of Information Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, Southwest, Washington, DC 20585, (202) 586-6020.

4. U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, ID 83402, (208) 526-0306.

5. Civic Center Library, Administration Building, San Rafael, CA 94903, (415) 499-6056.

6. Contra Costa County Library, Document Unit, 1750 Oak Park Blvd., Pleasant Hill, CA 94532, (415) 646-6434.

7. Government Documents Department, Shields Library, University of California, Davis, CA 95616, (916) 752-1624.

8. INEL Technical Library, 1770 Science Center Drive, Idaho Falls, ID 83415, (208) 526-1188.

9. Stockton Public Library, 605 North Eldorado Street, Stockton, CA 95202, (209) 944-8322.

10. Oakland Public Library, Government Documents Department, 125 14th Street, Oakland, CA 94612, (415) 273-3134.

11. Jonsson Library of Government Documents, Green Library, Stanford University, Palo Alto, CA 94305-004, (415) 723-2727.

12. Livermore Public Library, 1000 South Livermore Avenue, Livermore, CA 94550, (415) 373-5500.

13. California State Library, Government Publications, 914 Capitol Mall, Sacramento, CA 94237, (916) 440-5296.

14. Government Documents Department, San Francisco Public Library, Civic Center, San Francisco, CA 94102, (415) 558-3191.

RELATED DOCUMENTATION:

Existing documentation known to have information applicable to this EIS includes:

DOE, 1982. Final Environmental Impact Statement, Lawrence Livermore National Laboratory and Sandia National Laboratories—Livermore Sites, Livermore, California, DOE/EIS-0028, U.S. Department of Energy, Washington, DC.

DOE, 1988. Final Environmental Impact Statement, Special Isotope Separation Project, Idaho National Engineering Laboratory, Idaho Falls, Idaho, DOE/EIS-0136, U.S. Department of Energy, Washington, DC.

Signed in Washington, DC, this 27 day of December 1989, for the United States Department of Energy.

Peter N. Brush,

Acting Assistant Secretary, Environment, Safety and Health.

[FR Doc. 90-445 Filed 1-8-90; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. QF90-50-001, QF90-51-001, QF90-52-001, QF90-53-001, QF90-54-001, QF90-55-001]

Luz Development and Finance Corp.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

January 3, 1990.

On December 20, 1989, LUZ Development and Finance Corporation (Applicant), of 924 Westwood Boulevard, Suite 1000, Los Angeles, California 90024 submitted for filing six applications for certification of identical facilities as qualifying small power production facilities 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 facilities will be located approximately 10 to 15 miles south and 5 to 10 miles west of Boulder City, Nevada. The facility will consist of a solar collector field comprised of line focusing parabolic trough solar collectors, a closed heat transfer system to transfer the collected solar energy from the collector field to the steam-turbine cycle, a supplemental natural gas-fired unit, and a steam turbine-generator. The net electric power production capacity of each

facility will be 80 MW. The primary energy source will be solar energy.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 90-410 Filed 1-8-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF90-49-001]

LUZ Solar Partners Ltd., XIII; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

January 3, 1990.

On December 20, 1989, LUZ Solar Partners Ltd. XIII (Applicant), a California Limited Partnership, of 924 Westwood Boulevard, Suite 1000, Los Angeles, California 90024 submitted for filing an application for certification 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 comprised of line focusing parabolic trough solar collectors, a closed heat transfer system to transfer the collected solar energy from the collector field to the steam-turbine cycle, a supplemental natural gas-fired boiler, and a steam turbine-generator. The net electric power production capacity of the facility will be 80 MW. The primary energy source will be solar energy.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-411 Filed 1-8-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-98-010]

Colorado Interstate Gas Co., Request for Waiver

January 3, 1990.

Take notice that on December 20, 1989, Colorado Interstate Gas Company (CIG) filed a "Request for Waiver of Certain Tariff Provisions." Specifically, CIG requests waiver of section 27.5 of the General Terms and Conditions of its FERC Gas Tariff, Original Volume No. 1, which requires that an adjustment filing be made within 20 days following the end of each succeeding recovery period. CIG states that the waiver is requested as a result of a recent decision by the Commission which required CIG to adjust the Base and Deficiency periods utilized in the subject proceedings.

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 January 10, 1990. 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. 90-412 Filed 1-8-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-70-000]

Equitrans, Inc.—Proposed Changes in FERC Gas Tariff

January 3, 1990.

Take notice that Equitrans, Inc. ("Equitrans") on December 29, 1989, tendered for filing as part of its FERC Gas Tariff revised tariff sheets reflecting a rate change from currently effective rates and other changes in its tariff. Equitrans states this filing increases the level of its jurisdictional rates to provide an overall annual increase in jurisdictional cost of service of approximately \$21.8 million, of which \$10.4 million represents the first time inclusion in base rates of transportation costs in Account Nos. 813 and 858 which were previously collected in Equitrans' Purchased Gas Cost Adjustment. Thus, the jurisdictional cost of service increase, net of this inclusion of Account Nos. 813 and 858 costs, is approximately \$11.4 million. The rates reflected in the revised tariff sheets are designed to bring Equitrans' revenues to a level of its jurisdictional cost of service and reflect changes in the areas of weighted average cost of capital, labor costs, and other operating and maintenance expenses.

Equitrans states the filing initiates seasonal sales rates on a modified fixed variable rate design with a one-part demand charge. Equitrans states that within the context of this rate proceeding, the jurisdictional sales customers will be afforded an opportunity to renegotiate their contract entitlements.

Equitrans states this filing reflects the transfer of Jefferson Gas Company, a sale-for-resale customer, to Rate Schedule PLS from Rate Schedule GS-1, and the cancellation of Rate Schedule GS-1, in order to comply with the Commission's requirement that all resale customers be provided service under the same rolled-in rate under Rate Schedule PLS, and that retail sales not be rendered under Rate Schedule GS-1. Based on this change, the penalty provision relating to imbalances in the transportation tariff General Terms and Conditions has been changed to be set at twice the commodity component of the PLS rate schedule rather than the GS-1 rate schedule.

Copies of this filing were served on Equitrans' jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest the filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 10, 1990. 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. 90-413 Filed 1-8-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-67-000]

Natural Gas Pipeline Company of America; Tariff Changes

January 3, 1990.

Take notice that on December 22, 1989, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Volume Nos. 1 and 1A, revised tariff sheets to be effective January 1, 1990.

Natural states that the purpose of the filing is to make changes of an administrative nature which include updating the Table of Contents, cancelling a rate schedule in compliance with a Commission order, changing the pressure base for sales and storage tariffs, updating the notice of information and amending the Form of Service Agreement for Rate Schedules FTS and ITS.

Natural requested waiver of the Regulations to place these administrative changes in effect on January 1, 1990.

A copy of the filing is being mailed to Natural's jurisdictional sales and transportation customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests must be filed on or before Jan. 10, 1990. 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. 90-414 Filed 1-8-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-47-029]

Northwest Pipeline Corp.; Compliance Filing

January 3, 1990.

Take notice that on December 20, 1989, in response to the Letter Order issued December 19, 1989 concerning Northwest Pipeline Corporation's (Northwest) compliance filing in Docket No. RP88-47 submitted November 17, 1989 and amended on December 6, 1989, Northwest submitted the following revised tariff sheets:

Original Volume No. 2

Substitute Fifteenth Revised Sheet No. 2-B

Substitute Sixteenth Revised Sheet No. 2-B

Substitute Seventeenth Revised Sheet No. 2-B

Northwest states that these substitute revised tariff sheets reflect revisions to Section 1, Applicability, to remove any provision that could be construed as allowing Northwest to discount gathering services being performed pursuant to transportation agreements which have been certificated under section 7(c) of the Natural Gas Act.

Northwest states that it believes that the revised tariff sheets tendered herewith fully satisfy the concerns expressed in the Letter Order issued on December 19, 1989. Northwest requests that the Commission grant any waivers it may deem necessary to make the revised tariff sheets effective as of the dates indicated thereon.

Northwest states that a copy of this filing is being served on all parties of record and on all its jurisdictional customers and affected 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 Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such protests should be filed

on or before January 10, 1990. 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. 90-415 Filed 1-8-90; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[PF-527; FRL-3667-7]

Pesticide Tolerance Petitions; Initial Filings, Amendments, and Withdrawals; E.I. Du Pont De Nemours & Co., Inc., et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces initial filings, amendments, and withdrawals of pesticide petitions (PP) proposing the establishment of tolerances and/or regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

ADDRESSES: By mail, submit written comments to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 240, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 240 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (TS-7676C), Attn.: Product Manager (PM) named in

the petition, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, contact the PM named in each petition at the following office location/telephone number:

Product manager	Office location/telephone number	Address
Dennis Edwards (PM 12).	Rm. 202, CM#2, 703-557-2386.	1921 Jefferson Davis Hwy., Arlington, VA.
George LaRocca (PM 15).	Rm. 204, CM#2, 703-557-2400.	Do.
William Miller (PM 16).	Rm. 211, CM#2, 703-557-2600.	Do.
Phil Hutton (PM 17).	Rm. 207, CM#2, 703-557-2690.	Do.
Susan Lewis (PM 21).	Rm. 227, CM#2, 703-557-1900.	Do.
Joanne Miller (PM 23).	Rm. 237, CM#2, 703-557-1830.	Do.
Robert Taylor (PM 25).	Rm. 245, CM#2, 703-557-1800.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment, amendment, and/or withdrawal of tolerances or regulations for residues of certain pesticide chemicals in or on certain agricultural commodities.

Initial Filings

1. **PP8F3679.** Mr. John W. Kennedy, John W. Kennedy Consultants, Inc., Cherry Lane, Laurel, MD 20703-1133, for Mitsubishi Interantional Corp., proposes amending 40 CFR part 180 by establishing an exemption from the requirement of a tolerance for the pesticide Z-(9-dodecenyl acetate) 82% and Z-(11-tetradecenyl acetate) 8% when used in grape vineyards to control grape berry moths. The proposed analytical method for determining residues is gas chromatography. (PM 17)

2. **PP9F3763.** E.I. DuPont De Nemours & Co., Inc. Agricultural Products Dept., Walker's Mill Bldg., Barley Mill Plaza, Wilmington, DE 19880-0038, proposes to amend 40 CFR part 180 by establishing a tolerance for 2-[(4,6-dimethoxypyrimidin-2-yl)aminocarbonyl]aminosulfonyl)-N,N-dimethyl-3-pyridinecarboxamide, monohydrate in or on the raw agricultural commodities field corn; grain, forage, silage, and fodder at 0.1 part per million (ppm). The proposed analytical method for determining

residues is liquid chromatographs with UV detection. (PM 25).

3. **PP9F3802.** Gustafson, Inc., P.O. Box 66065, Dallas, TX 75266-0065, proposes to amend 40 CFR 180.450 by establishing a regulation to permit the combined residues of the fungicide triadimenol (beta-(4-chlorophenoxy)-alpha-(1,1-dimethylethyl)-1H-1,2,4-triazole-1-ethanol) and its butanediol metabolite 4-(4-chlorophenoxy)-2,2-dimethyl-4-(1H-1,2,4-triazol-1-yl)-1-butanediol (calculated as triadimenol) in or on cottonseed and cotton forage at 0.02 ppm. The proposed analytical method for determining residues of triadimenol and its metabolite is the GC/FPD method developed by Mobay. (PM 21)

4. **PP9F3803.** Dow Chemical U.S.A., P.O. Box 1706, Midland, MI 48641-1706, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of the insecticide O-(2-(1,1-dimethylethyl)-5-pyrimidinyl) O,O-diethyl phosphorothioate and its metabolite 2-(1,1-dimethyl-ethyl)-5-pyrimidinyl in or on corn, field, grain at 0.05 ppm (of which no more than 0.01 ppm is O-(2-(1,1-dimethylethyl)-5-pyrimidinyl) O,O-diethyl phosphorothioate); corn, field, fodder at 0.05 ppm (of which no more than 0.01 ppm is O-(2-(1,1-dimethyl-ethyl)-5-pyrimidinyl) O,O-diethyl phosphorothioate); and corn, field, forage at 0.1 ppm (of which no more than 0.01 ppm is O-(2-(1,1-dimethylethyl)-5-pyrimidinyl) O,O-diethyl phosphorothioate). The proposed analytical method for determining residues of the parent compound is gas chromatography using flame photometric detection and for the metabolite, high-resolution capillary gas chromatography-mass spectrometry. (PM 12)

5. **PP9F3804.** BASF Corporation, 100 Cherry Hill Rd., Parsippany, NJ 07054, proposes to amend 40 CFR 180.412 by establishing a regulation to permit residues of the herbicide sethoxydim (2-[1-(ethoxymino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one) and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide) in or on stone fruits at 0.2 ppm. The proposed analytical method for determining residues of sethoxydim and its metabolites is gas chromatography. (PM 25)

6. **PP9F3805.** Eastman Kodak Co., 343 State St., Rochester, NY 14650, proposes to amend 40 CFR part 180 by establishing a regulation to exempt from the requirement of a tolerance residues of the fungicide *Trichoderma harzianum*, Rifai Strain KRL-AG2, in or

on meat, dairy products, eggs, berries, canola, corn (field, sweet, and pop), cotton, forage crops, fruits, peanuts, potatoes, safflower, small grains, sorghum, soybeans, sugar beets, sunflower, turf grass, vegetables, and vine crops. (PM 21)

7. **PP9F3806.** BASF Corp., 100 Cherry Hill Rd., Parsippany, NJ 07054, proposes to amend 40 CFR 180.412 by establishing a regulation to permit combined residues of the herbicide sethoxydim (2-[1-(ethoxymino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one) and its metabolite containing 2-cyclohexen-1-one moiety (calculated as the herbicide) in or on field corn grain at 0.1 ppm, sweet corn (kernels plus cob) at 0.2 ppm, and corn forage and fodder at 0.2 ppm. The proposed analytical method for determining residues is gas chromatography using sulfur-specific flame photometric detection. (PM 25)

8. **PP9F3807.** Rhone-Poulenc Ag Co., P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709, proposes to amend 40 CFR 180.415 by establishing tolerances for the residues of the fungicide aluminum tris (O-ethylphosphonate) in or on the following raw agricultural commodities: cucumbers, melons, squash, watermelons, gourds, gherkins, Chinese wax gourds, and balsam pears, all at 15 ppm. The proposed analytical method for determining residues is gas chromatography using a phosphorous flame photometric detector. (PM 21)

9. **PP9F3811.** Rohm and Haas Co., Independence Mall West, Philadelphia, PA 19105, proposes to amend 40 CFR 180.443 by establishing a regulation to permit combined residues of the fungicide myclobutanil [alpha-butyl-alpha-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile] and its metabolite alpha-(3-hydroxybutyl)-alpha-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile (free and bound) in or on stone fruits group (except cherry) at 2.0 ppm and cherry at 5.0 ppm. The analytical method used is Rohm and Haas 34-S-88-10. (PM 21)

10. **PP9F3812.** Rohm and Haas Co., Independence Mall West, Philadelphia, PA 19105, proposes to amend 40 CFR 180.443 by establishing a regulation to permit residues of the fungicide myclobutanil [alpha-butyl-alpha-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile] and its metabolite alpha-(3-hydroxybutyl)-alpha-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile (free and bound) in or on the pome fruits crop group at 0.5 ppm. The analytical method used is Rohm and Haas 34-S-88-10. (PM 21)

11. **PP9F3814.** Biocontrol Limited, 719 Second St., Suite 12, Davis, CA 95616, proposes to amend 40 CFR Part 180 by establishing a regulation to exempt from the requirement of a tolerance residues of the insecticide E,E-8, 10-dodecenyl alcohol, dodecanol, and tetradecanol when used in or on all food and feed crops, when formulated in polyethylene pheromone dispensers. (PM 17)

12. **PP9F3815.** FMC Corp., Agricultural Chemical Group, 2000 Market St., Philadelphia, PA 19103, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of (1)-a-cyano-(3-phenoxyphenyl)methyl(1)cis,trans-3-(2,2-dichloro-ethenyl)-2,2-dimethylcyclopropane carboxylate (cypermethrin) and its metabolites dichlorovinyl acid (DCVA) and m-phenoxybenzoic acid (MPBA) in or on sugarbeet tops at 10 ppm, and sugarbeet roots at 0.2 ppm. The proposed analytical method to be used is Hexane-Acetone Aqueous Organic Partition DPC Cleanup Florisil Capillary GLC-ECD. (PM 15)

13. **PP9F3816.** Rohm and Haas Co., Independence Mall West, Philadelphia, PA 19105, proposes to amend 40 CFR 180.176 by establishing a regulation to permit reduced residues of the fungicide mancozeb (a coordination product of zinc ion and maganese ethylenedisithiocarbamate) in or on certain crops and to delete potatoes from 40 CFR 180.319. The crops involved, along with the current and proposed tolerances are: wheat grain, current 5 ppm, proposed 1 ppm; wheat bran, current 20 ppm, proposed 1 ppm; grapes, current 7 ppm, proposed 3 ppm; peanuts, current 0.5 ppm, proposed 0.1 ppm; potatoes, current 0.5 ppm (40 CFR 180.319), proposed 0.1 ppm; sugarbeets, current 2 ppm, proposed 1 ppm. The analytical method used is gas chromatography. (PM 21)

14. **PP9F3818.** Mobay Corp., P.O. Box 4913, Hawthorn Rd., Kansas City, MO 64120-0013, proposes to amend 40 CFR part 180, by establishing a regulation to permit residues of the fungicide tebuconazole [alpha-(2-(4-chlorophenyl)ethyl)-alpha-(1,1-dimethylethyl)-1H-1,2,4-triazole-1-ethanol] in or on barley, straw/hay at 18 ppm; grass, forage at 0.2 ppm; oat, grain at 0.01 ppm; oat, green forage at 0.01 ppm; oat, straw at 0.01 ppm; oat, hay at 0.05 ppm; peanuts at 0.1 ppm; and wheat, green forage at 5.0 ppm. The analytical method for determining residues is high-performance liquid chromatography. (PM 21)

15. *PPOE3826*. Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419, proposes to amend 40 CFR 180.408 by establishing a regulation to permit combined residues of metalaxyl and its metabolites in or on oat fodder, forage, and straw at 2.0 ppm and oat grain at 0.2 ppm as a result of the application of metalaxyl to growing crops listed in 40 CFR 180.408(a) and other nonfood crops. The proposed analytical method for determining residues is high-performance liquid chromatography. (PM 21)

16. *FAP0H5591*. Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419, proposes to amend 40 CFR 185.4000 and 186.4000 by establishing food/feed additive regulations to permit combined residues of metalaxyl and its metabolites in or on oat milling fractions at 1.0 ppm as a result of the application of metalaxyl to growing crops listed in 40 CFR 180.408(a) and other nonfood crops. The proposed analytical method for determining residues is high-performance liquid gas chromatography. (PM 21)

17. *FAP9H5589*. BASF Corp., 100 Cherry Hill Rd., Parsippany, NJ 07054, proposes to amend 40 CFR 185.2800 by establishing a food additive regulation to permit combined residues of the herbicide sethoxydim (2-[1-(ethoxymino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one) and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide) in or on dried prunes at 0.4 ppm. The proposed analytical method for determining residues of sethoxydim and its metabolites is gas chromatography. (PM 25)

18. *FAP9H5590*. FMC Corp., Agricultural Chemical Group, 2000 Market St., Philadelphia, PA 19103, proposes to amend 40 CFR part 185 by establishing a food additive regulation (FAP) to permit combined residues of (±)-a-cyano-(3-phenoxy-phenyl) methyl (±)cis,trans 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylate (cypermethrin) and its metabolites dichlorovinyl acid (DCVA) and m-phenoxybenzoic acid (MPBA) in white sugar at 0.2 ppm, in molasses at 8 ppm, and in dried sugarbeet pulp at 4 ppm. The analytical method used for determining residues is Hexane-Acetone Aqueous Organic Partition DPC Cleanup Florisil Capillary GLC-ECD. (PM 15)

Amended Petitions

19. *PP9F3706*. Ciba-Geigy Corp., Agricultural Division, P.O. Box 18300, Greensboro, NC 27419, proposes to amend 40 CFR 180.434 by establishing tolerances for the residues of the

fungicide 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1H-1,2,4-triazole and its metabolites determined as 2,4-dichlorobenzoic acid and expressed as parent compound equivalents in or on the following commodities: grass seed screenings at 10.0 ppm, grass hay at 5.0 ppm, grass forage at 0.5 ppm, and kidney and liver of cattle, goats, hogs, horses, and sheep at 2.0 ppm. Previous notices of petitions to amend PP 9F3706 appeared in the *Federal Register* of February 22, 1989 (54 FR 7597) and March 15, 1989 (54 FR 10715). (PM 21)

20. *PP93714*. Hoechst Celanese Corp., P.O. Box 2500, Somerville, NJ 08876-1258, proposes amending 40 CFR 180.430 by establishing tolerances for the combined residues of the herbicide fenoxaprop-ethyl, [(±)-ethyl 2-[4-[(6-chloro-2-benzoxazolyl)oxy]-phenoxy]propanoate and its metabolites, 2-[4-[(6-chloro-benzoxazolyl)oxy]-phenoxy]propanoic acid and 6-chloro-2,3-dihydrobenzoxazol-2-one each calculated as parent, in or on the raw agricultural commodities wheat, grain at 0.05 ppm and wheat, straw at 1.0 ppm. A previous notice regarding PP 9F3714 appeared in the *Federal Register* of February 28, 1989 (54 FR 8393). The proposed analytical method for determining residues is gas chromatography with electron-capture detector. (PM 23)

21. *PP9F3745*. Zoecon Corp., A Sandoz Company, 12005 Ford Rd., Suite 800, LB 44, Dallas, TX 75234-7296, proposes an amendment to the petition, notice of which was published in the *Federal Register* of March 23, 1989 (54 FR 12010), to establish a regulation to permit the residues of the insecticide fluvalinate (RS-α-cyano-3-phenoxybenzyl (R)-2-(chloro-4-(trifluoromethyl)anilino)-3-methylbutanoate) in or on the raw agricultural commodities beeswax and honey at 0.05 ppm. The proposed analytical method for determining residues is gas chromatography. (PM 15)

Withdrawals of Petitions

22. *PPOF2362*. Mobay Chemical Corp., Agricultural Chemicals Division, P.O. Box 4913, Kansas City, MO 64120, proposed in the *Federal Register* of September 2, 1980 (45 FR 58193), that 40 CFR 180.320 be amended by establishing tolerances for the combined residues of the insecticide and bird repellent 3,5-dimethyl-4-(methylthio) phenyl methylcarbamate and its cholinesterase-inhibiting metabolites in or on the following raw agricultural commodities: eggs at 0.02 ppm; lettuce, whole head at 20.0 ppm; poultry (fat, meat, and mbyp) at 0.5 ppm; rice (domestic), whole grain

at 0.3 ppm; rice (domestic) straw at 1.0 ppm; and rice (wild), green grain at 225 ppm with no more than 0.2 in processed grain. Mobay also proposed amending 40 CFR 180.320 by increasing the established tolerance on corn fodder and forage at 0.03 ppm to corn forage and fodder (green) at 9.0 ppm; and corn forage (hay) at 30.0 ppm; and by increasing the established tolerance on sweet corn (K + CWHR) from 0.03 ppm to .05 ppm. The company has withdrawn its petition without prejudice. (PM 16)

23. *FAP0H5264*. Mobay Chemical Corp. proposed in the *Federal Register* of September 2, 1980 (45 FR 58193) to amend 21 CFR part 561 (redesignated as 40 CFR part 186 in the *Federal Register* of June 29, 1988 and bird repellent 3,5-dimethyl-4-(methylthio) phenyl methylcarbamate and its cholinesterase-inhibiting metabolites on cannery waste at 0.5 ppm. The company has withdrawn its petition without prejudice. (PM 16)

Authority: 21 U.S.C. 136a.

Dated: December 21, 1989.

Anne E. Lindsay,
Director, Registration Division, Office of
Pesticide Programs.

[FR Doc. 90-487; Filed 1-8-90; 8:45 am]

BILLING CODE 6560-50-D

[OPTS-140124; FRL-3685-1]

Access to Confidential Business Information by Technical Resources, Incorporated

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized the Technical Resources, Incorporated (TRI) of Rockville, Maryland for access to information which has been submitted to EPA under sections 5 and 6 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATE: Access to the confidential data submitted to EPA will occur no sooner than January 19, 1990.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Environmental Assistance Division (TS-799), Office of Toxic Substances, - Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: 554-0551.

SUPPLEMENTARY INFORMATION: Under contract number 68-D9-0176, Technical Resources, Inc., of 3202 Monroe Street,

Rockville, MD, will assist the Office of Toxic Substances, Economics and Technology Division (ETD) in the assessment of new or existing high priority toxic substances. The assessments include chemistry support, identification of structural analogs, technical analysis of new uses and substitutes, chemical release sources, control technology, and alternate manufacturing process. Some of the information involved may be claimed or determined to be CBI.

-In accordance with 40 CFR 2.306(j), EPA has determined that under contract number 68-D9-0176, TRI will require access to CBI submitted to EPA under sections 5 and 6 of TSCA to perform successfully the duties specified under the contract. EPA is issuing this notice to inform all submitters of information under sections 5 and 6 of TSCA that EPA may provide TRI access to these CBI materials on a need-to-know basis. All access to TSCA CBI under this contract will take place at either EPA Headquarters or TRI's facilities. TRI has been authorized for access to TSCA CBI under the EPA "Contractor Requirements for the Control and Security of TSCA Confidential Business Information" security manual. EPA has approved TRI's security plan and has found the facilities to be in compliance with the manual.

-Clearance for access to TSCA CBI under this contract is scheduled to expire on September 30, 1990.

-TRI personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: December 28, 1989.

Linda A. Travers,
Director, Information Management Division,
Office of Toxic Substances.

[FR Doc. 90-489 Filed 1-8-90; 8:45 am]

BILLING CODE 5560-50-D

[OPTS-140121; FRL-3668-6]

Access to Confidential Business Information by ASCL Corporation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized the ASCL Corporation (ASCL) of McLean, Virginia, for access to information which has been submitted to EPA under sections 4, 5, 6, 8, and 21 of the Toxic Substances Control Act (TSCA). Some of the

information may be claimed or determined to be confidential business information (CBI).

DATE: Access to the confidential data submitted to EPA will occur no sooner than January 19, 1990.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: Under contract number 68D-90-156, contractor ASCL, of 1365 Beverly Road, McLean, VA, will assist the Office of Toxic Substances (OTS), Chemical Control Division (CCD) in preparing and developing summaries of the New Chemical Program Review meetings (Focus, Disposition, Division Directors, and Biotech Meetings) and of the Existing Chemicals Program Review meetings for chlorinated solvents. The contractor will also perform pre-focus duties in support of the OTS premanufacture notice review process.

In accordance with 40 CFR 2.306(j), EPA has determined that under contract number 68D-90-156, ASCL will require access to CBI submitted to EPA under sections 4, 5, 6, 8, and 21 of TSCA to perform successfully the duties specified under the contract. ASCL personnel will be given access to information submitted under sections 4, 5, 6, 8, and 21 of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, 8, and 21 of TSCA that EPA may provide ASCL access to these CBI materials on a need-to-know basis. All access to TSCA CBI under this contract will take place at EPA Headquarters.

Clearance for access to TSCA CBI under this contract is scheduled to expire on September 30, 1992.

ASCL personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: December 28, 1989.

Linda A. Travers,
Director, Information Management Division,
Office of Toxic Substances.

[FR Doc. 90-490 Filed 1-8-90; 8:45 am]

BILLING CODE 5560-50-D

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: The submission is summarized as follows:

Type of Review: New collection.

Title: Certified Statement—Semiannual Assessment Due From Savings Association Insurance Fund Members.

Frequency of Response: Semiannually.
Respondents: Insured depository institutions that are members of the Savings Association Insurance Fund (SAIF).

Number of Respondents: 2,900.

Number of Responses Per Respondent: 2.

Total Annual Responses: 5,800.

Average Number of Hours Per Response: 1.

Total Annual Burden Hours: 5,800.

OMB Reviewer: Gary Waxman, (202) 395-7340, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FDIC Contact: John Keiper, (202) 898-3810, Assistant Executive Secretary, Room 6096, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC, 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before March 12, 1990.

ADDRESS: A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: The FDIC is requesting OMB approval to implement the use of the forms to be filed by insured depository institutions that are members of the Savings Association Insurance Fund (SAIF). The forms will be filed by the institutions when certifying the semiannual assessment due under the provisions of section 7 of the Federal Deposit Insurance Act. The forms used for the certified statement show the deposit liabilities, less authorized deductions, the computation of the assessment base and the amount of the assessment due

for each semiannual assessment period involved.

Dated: December 29, 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,
Executive Secretary.

[FR Doc. 90-422 Filed 1-8-90; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35).

Type: Revision of 3067-0195.

Title: National Flood Insurance
Program Community Rating System.

Abstract: A plan to establish a system that grades a community's floodplain management for use in determining flood insurance rates for the community. Communities exercising floodplain management activities that exceed Federal minimum standards qualify for lower insurance rates.

Type of Respondents: State and local governments.

Estimate of Total Annual Reporting
and Recordkeeping Burden: 2,400.

Number of Respondents: 150.

Estimated Average Burden Hours Per
Response: 16 Hours.

Frequency of Response: Other—Once
per respondent.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to the FEMA Clearance Officer at the above address; and to Gary Waxman, (202) 395-7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Dated: December 21, 1989.

Wesley C. Moore,
Director, Office of Administrative Support.

[FR Doc. 90-460 Filed 1-8-90; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Port of Portland

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.: 224-200128-001

Title: Port of Portland Terminal
Agreement.

Parties:

Port of Portland
Star Shipping Company

Synopsis: The Agreement extends the term of the basic agreement for a one year term ending December 31, 1990.

By Order of the Federal Maritime
Commission.

Dated: January 3, 1990.

Joseph C. Polking,
Secretary.

[FR Doc. 90-403 Filed 1-8-90; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed; Australia-Pacific Coast Rate, et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-010012-018

Title: Australia-Pacific Coast Rate
Agreement.

Parties:

Hamburg-Sudamerikanische,
Dampfschiffahrts-Gesellschaft,
Eggert & Amsinck (Columbus Line)
Associated Container Transportation
(Australia) Limited (Pace Line)

Synopsis: The proposed modification files an Appendix D to the restated Agreement, which sets forth minimum levels of service. Proponents have requested a shortened review period.

Agreement No.: 202-010268-015

Title: Australia/Eastern USA Shipping
Conference.

Parties:

Hamburg-Sudamerikanische,
Dampfschiffahrts-Gesellschaft,
Eggert & Amsinck (Columbus Line)
Associated Container Transportation
(Australia) Limited (Pace Line)

Synopsis: The proposed modification files an Annex B to the restated Agreement, which sets forth minimum levels of service. Proponents have requested a shortened review period.

Agreement No.: 203-010999-005

Title: Ecuador Discussion Agreement.

Parties:

United States Atlantic and Gulf/
Ecuador Freight Association
Empresa Naviera Santa, S.A.
Compania Chilena de Navegacion
Gran Golfo Express

Synopsis: The proposed amendment would add Transportes Navieros Ecuatorianos as a party to the Agreement. The parties have requested a shortened review period.

By Order of the Federal Maritime
Commission.

Dated: January 3, 1990.

Joseph C. Polking,
Secretary.

[FR Doc. 90-404 Filed 1-8-90; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 23, 1990.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Willie E. and Dorothy L. Brewer*, Bowie, Texas; to acquire 100 percent of the voting shares of Ryan Bancshares, Inc., Ryan, Oklahoma, and thereby indirectly acquire First State Bank, Ryan, Oklahoma.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *James Lynn Davis*, Many, Louisiana; to acquire 55 percent of the voting shares of Sabine Bancshares, Inc., Many, Louisiana, and thereby indirectly acquire Sabine State Bank & Trust Company, Many, Louisiana.

Board of Governors of the Federal Reserve System, January 3, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board

[FR Doc. 90-426 Filed 1-8-90; 8:45 am]

BILLING CODE 6210-01-M

New East Bancorp, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute

and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 26, 1990.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *New East Bancorp*, Raleigh, North Carolina; to acquire 100 percent of the voting shares of New East Bank of Elizabeth City, Elizabeth City, North Carolina, a *de novo* bank.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Bobcat Financial Corp.*, New Vienna, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of New Vienna Savings Bank, New Vienna, Iowa.

2. *Community Investment Bancorporation, Inc.*, Lebanon, Wisconsin; to become a bank holding company by acquiring 80 percent of the voting shares of Lebanon State Bank, Lebanon, Wisconsin.

3. *F & M Bancorporation, Inc.*, Kaukauna, Wisconsin; to acquire 100 percent of the voting shares of Bancunion Corp., Lancaster, Wisconsin, and thereby indirectly acquire Union Bank & Trust, Lancaster, Wisconsin.

4. *Yale Bancorporation*, Yale, Iowa; to become a bank holding company by acquiring 96.25 percent of the voting shares of Farmers State Bank, Yale, Iowa.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Pittsburgh Bancshares, Inc.*, Pittsburg, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of City National Bank of Pittsburg, Pittsburg, Kansas.

2. *States National Bancshares, Inc.*, Palco, Kansas; to become a bank holding company by acquiring at least 80.05 percent of the voting shares of First National Bank, Palco, Kansas.

Board of Governors of the Federal Reserve System, January 3, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board

[FR Doc. 90-427 Filed 1-8-90; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Meeting of Pulmonary Diseases Advisory Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Pulmonary Diseases Advisory Committee, National Heart, Lung, and Blood Institute, February 22-23, 1990, at the National Institutes of Health, Building 31, C Wing, Conference Room 8, 9000 Rockville Pike, Bethesda, Maryland 20892.

The entire meeting, from 8:30 a.m. on February 22 to adjournment on February 23, will be open to the public. The Committee will discuss the current status of the Division of Lung Diseases' program and Committee plans for fiscal year 1991. Attendance by the public will be limited to the space available.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A-21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4326, will provide a summary of the meeting and a roster of the Committee members.

Dr. Suzanne S. Hurd, Executive Secretary of the Committee, Westwood Building, room 6A16, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-7208, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.838, Lung Diseases Research, National Institutes of Health)

Dated: January 2, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-480 Filed 1-8-90; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Meeting of the Sickle Cell Disease Advisory Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Sickle Cell Disease Advisory Committee, National Heart, Lung, and Blood Institute, February 16, 1990. The meeting will be held at the National Institutes of Health, Building 31, Conference Room 4, A Wing, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 9 a.m. to 5 p.m. to discuss recommendations on the implementation and evaluation of the Sickle Cell Disease Program.

Attendance by the public will be limited to space available.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, National Institutes of Health, Building 31, room 4A21, Bethesda, Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Clarice D. Reid, Chief, Sickle Cell Disease Branch, Division of Blood Diseases and Resources, NHLBI, Federal Building, room 508, Bethesda, Maryland 20892, (301) 496-6931, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: January 2, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-481 Filed 1-8-90; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Indian Health Service; Medical Reimbursement Rates for Calendar Year 1990; Inpatient and Outpatient Medical Care

Notice is given that the Assistant Secretary for Health, under the authority of sections 321(a) and 322(b) of the Public Health Service Act (42 U.S.C. 248(a) and 249(b)), has approved the following reimbursement rates for inpatient and outpatient medical care in facilities operated by the Indian Health Service for Calendar year 1990: Emergency Non-Beneficiaries, Beneficiaries of Other Federal Agencies, Medicare and Medicaid Beneficiaries.

Inpatient Services Per Day

Hospital — \$400

Physician — \$22

(In Alaska — Hospital \$470

Physician \$24)

Outpatient — \$76 Per Visit

(In Alaska — \$128 Per Visit)

Ambulatory Surgery shall be charged at the current Medicare rates as published in the Federal Register by the Health Care Financing Administration.

Dated: December 27, 1989.

James O. Mason,

Assistant Secretary for Health.

[FR Doc. 90-443 Filed 1-8-90; 8:45 am]

BILLING CODE 4160-16-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-650-4120-2411]

Decertification of the Powder River Coal Production Region

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Public notice.

SUMMARY: During a public meeting on October 31, 1989, the Powder River Regional Coal Team (RCT) developed two recommendations for Departmental consideration. First, the RCT recommended that the Powder River Coal Production Region be decertified subject to the RCT remaining in place and active, the leasing-by-application process be restricted to applications for maintenance tracts only to continue or extend the life of a mine, to consider new lease applications that would involve new starts of new mines or expand existing mine facilities on a case-by-case basis by the RCT, and that a series of operating guidelines being prepared are acceptable to the RCT. Second, the RCT recommended that the Bull Mountains project as it is identified in the Bull Mountains exchange draft Environmental Impact Statement (EIS) be allowed to fall under the lease-by-application procedure similar to the maintenance tracts recommendation if in fact an application is filed. These two recommendations are hereby adopted.

FOR FURTHER INFORMATION CONTACT: Don Brabson, Wyoming State Office (925), Bureau of Land Management, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82003; telephone number (307) 772-2571 or FTS 328-2571.

SUPPLEMENTARY INFORMATION: The Powder River Coal Production Region was established by the BLM on November 9, 1979, together with other coal regions to implement a regional coal leasing activity planning process pursuant to 43 Code of Federal Regulations (CFR) part 3420. The Powder River Coal Production Region is composed of the following counties: Campbell, Converse, Crook, Goshen, Johnson, Natrona, Niobrara, Sheridan and Weston, all in Wyoming; and Big Horn, Garfield, Golden Valley, Musselshell, Powder River, Rosebud, Treasure and Yellowstone, all in Montana.

At its meeting of December 15, 1988, the Powder River RCT recommended that public comments be obtained on whether or not to partially or totally decertify the Powder River Region. By Federal Register notices dated February

9, 1989, and August 30, 1989, public comments on partial or total decertification were requested. As indicated in these notices, decertification of any or all counties would enable Federal coal leasing-by-application to occur in decertified areas pursuant to 43 CFR part 3425. The Bureau received 16 written responses from industry, Federal agencies, and local entities supporting total or partial decertification. No letters of opposition were received. This support was based largely on programmatic efficiencies associated with leasing-by-application, especially in a reduced regional coal market. At the Powder River RCT meeting on October 31, 1989, much of this support for regional decertification was reiterated, but three parties supported retention of the Powder River Region in its existing form. These parties, the Northern Plains Resource Council, the Powder River Basin Resource Council, and the Northern Cheyenne Tribe expressed concern that regional decertification and subsequent leasing-by-application could lead to leasing abuses and restricted public involvement in leasing decisions.

After considering public inputs, reviewing the declining interest in coal leasing since 1982, and reviewing regional coal market conditions (both past and projected), and RCT recommended the Powder River Coal Production Region be totally decertified subject to the following four conditions. First, the RCT would continue to be active and guide subsequent coal leasing-by-application that occurs within the original regional area. Second, the Bureau leasing-by-application process would be restricted to maintenance tracts only that would continue or extend the life of a mine. Third, applications for coal involving a new mine start or to expand existing mine facilities would be considered on a case-by-case basis by the RCT. And fourth, operating guidelines for processing coal leasing-by-applications being prepared would have to be acceptable to the RCT. The RCT recognized that by keeping the RCT active in the coal leasing-by-application process, Federal-State cooperation and public involvement could continue prior to any Federal coal leasing decisions. The RCT also recognized that by limiting coal leasing applications to maintenance tracts, operating mines could expand both geographically and in time within the constraints of existing mine facilities' permitted annual production capacities. Also, most industry interests could be accommodated but widespread leasing

would not be necessary. This RCT recommendation for total decertification of the region is hereby adopted subject to the four above-cited conditions. Federal coal lease applications may now be filed in accordance with 43 CFR 3425; however, the BLM Wyoming and Montana State offices may only process lease applications for maintenance tracts and shall hold any other applications for future RCT review and consideration. The RCT will review all pending lease applications, operating guidelines, and RCT charter amendments at its next public meeting.

The second recommendation that the RCT developed during its meeting on October 31, 1989, is that the Bull Mountains project as it is identified in the Bull Mountains Exchange Draft EIS (BLM, October 1989) be allowed to fall under the lease-by-application procedure similar to maintenance tracts if such an application is filed. (The Bull Mountains project involves a proposed exchange by Meridian Minerals Company of some of its own lands in the Madison River area of Montana for Federal coal in the Bull Mountains near Roundup, Montana.) If such an application is filed, the BLM may consider, the addition to an exchange, Federal leasing of the selected Bull Mountains coal. This recommendation is hereby adopted. A Federal coal lease application for the Bull Mountains coal may be filed with the Montana State Director.

Dated: January 3, 1990.

Cy Jamison,

Director, Bureau of Land Management.

[FR Doc. 90-423 Filed 1-8-90; 8:45 am]

BILLING CODE 4310-84-M

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

On September 25, 1989, a notice was published in the *Federal Register* (Vol. 54, No. 184) that a permit amendment application had been filed with the Fish and Wildlife Service by The Service's Assistant Regional Director for Fish and Wildlife Enhancement, Portland, OR, (PRT 717318) to amend his permit which authorizes the translocation of California sea otters to San Nicholas Island, CA. The permit authorized the use of external radio transmitters, which proved unsatisfactory. The permittee requested authorization to surgically implant the otters with intraperitoneal radio transmitters in order to improve monitoring capabilities.

Notice is hereby given that on December 26, 1989, as authorized by the

Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Endangered Species Act of 1972 (16 USC 1539), the Fish and Wildlife Service issued the requested amendment subject to certain conditions set forth therein.

The permit is available for public inspection during normal business hours at the Office of Management Authority, 4401 N. Fairfax Drive, Room 430, Arlington, VA.

Dated: January 3, 1990.

Karen Wilson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 90-396 Filed 1-8-90; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Martin Luther King, Jr. National Historic Site Advisory Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of Advisory Commission meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Martin Luther King, Jr., National Historic Site Advisory Commission will be held from 8 a.m. until 4:30 p.m. at the following location and date.

DATE: January 27, 1990.

ADDRESS: The Martin Luther King, Jr., Center for Nonviolent Social Change, Inc., Freedom Hall Complex, room 261, 449 Auburn Avenue NE., Atlanta, Georgia 30312.

FOR FURTHER INFORMATION CONTACT:

Mr. Randolph Scott, Superintendent, Martin Luther King, Jr., National Historic Site, 522 Auburn Avenue, NE., Atlanta, Georgia 30312.

SUPPLEMENTARY INFORMATION: The purpose of the Martin Luther King, Jr., National Historic Site Advisory Commission is to advise the Secretary of the Interior or his designee on matters of planning and administration of the Martin Luther King, Jr., National Historic Site and Preservation District. The members of the Advisory Commission are as follows:

Ms. Portia Scott, Chairperson
Mr. William W. Allison
Mr. Arthur J. Clement
Mr. John Cox
Ms. Barbara Faga
Mrs. Christine King Farris
Mrs. Valena Henderson
Mr. C. Randy Humphrey
Dr. Elizabeth A. Lyon
Rev. Joseph L. Roberts
Mrs. Coretta Scott King, Ex-Officio Member

Director, National Park Service, Ex-Officio Member

The purpose of this meeting will be to develop a plan of action and strategy for completing the development of the park.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Written statements may also be submitted to the Superintendent at the address above. Minutes of the meeting will be available at Park Headquarters for public inspection approximately 4 weeks after the meeting.

Dated: December 27, 1989.

Robert M. Baker

Regional Director, Southeast Region.

[FR Doc. 90-452 Filed 1-8-90; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 30, 1989. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by January 24, 1990.

Carol D. Shull,

Chief of Registration, National Register.

ALABAMA

Mobile County

Barr's Subdivision Historic District Roughly along US 45 and Howard St. between LeBaron and State, Citronelle, 89002452

Central Core Historic District, Roughly State and Le Baron Sts. from Mobile to Second Sts., Citronelle, 89002424

Citronelle Railroad Historic District, Roughly Center and Main from Union to Faye, Citronelle, 89002421

Clark, Willis G., House, E of US 45 S of Citronelle, Citronelle vicinity, 89002454

Thompson, M. Q. and Virginia M., House, 105 LeBaron, Citronelle, 89002453

COLORADO

Chaffee County

Poncha Springs Schoolhouse, 330 Burnett St., Poncha Springs, 89002375

Denver County

Avoca Lodge, 2690 S. Wadsworth Blvd., Denver, 89002373

Hamburger, George, Block, 2199 Arapahoe,
Denver, 89002382

Pitkin County

Redstone Coke Oven Historic District
(Redstone MPS), CO 133 and Chair
Mountain Stables Rd., Redstone vicinity,
89002385

Yuma County

Lett Hotel, 204 S. Ash, Yuma, 89002378

FLORIDA

Lee County

Fort Myers Downtown Commercial District,
Roughly bounded by Bay and Lee Sts.,
Anderson Ave. and Monroe St., Fort Myers,
89002325

ILLINOIS

Crawford County

Fife Opera House, 123-125 S. Main St.,
Palestine, 89002348

St. Clair County

Martin, Pierre, House, First St. at Old Rt. 3,
North Dupo, 89002350

MAINE

Aroostook County

Aroostook County Courthouse and Jail, Court
St., Houlton, 89002340

Bridgewater Town Hall and Jail, Rt. 1,
Bridgewater, 89002339

Mansur, Walter P., House, 10 Water St.,
Houlton, 89002342

Michaud, Fortunat O., House, 231 Main St.,
Van Buren, 89002343

Cumberland County

Maine Publicity Bureau Building, 3 St. John
St., Portland, 89002344

Franklin County

Upper Dallas School, Saddleback Rd., Dallas
Plantation, 89002345

Hancock County

Brooklin IOOF Hall, SR 175, Brooklin,
89002341

Oxford County

Broad Street Historic District (Boundary
Increase), Along Church and Park Sts.,
Bethel, 89002346

MASSACHUSETTS

Bristol County

Hotel Waverly, 1162-1166 Acushnet Ave.,
New Bedford, 89002326

Thompson Street School, 58 Crapo St., New
Bedford, 89002329

Middlesex County

Somerville Theatre (Somerville MRA), 55
Davis Sq., Somerville, 89002330

Suffolk County

Nobility Hill Historic District, Roughly
bounded by Chestnut and Maple Sts. and
Cedar Ave., Stoneham, 89002328

Worcester County

Ahern, Catherine, Three-Decker (Worcester
Three-Deckers MRA), 215 Cambridge St.,
Worcester, 89002392

Anderson, Ludwig, Three-Decker (Worcester
Three-Deckers MRA), 4 Fairbanks St.,
Worcester, 89002355

Baker, Peter, Three-Decker (Worcester
Three-Deckers MRA), 90 Vernon St.,
Worcester, 89002445

Battelle, Marion, Three-Decker (Worcester
Three-Deckers MRA), 13 Preston St.,
Worcester, 89002429

Beaver Street Historic District (Worcester
Three-Deckers MRA), 31-39 Beaver St.,
Worcester, 89002377

Blodgett, Lydia, Three-Decker (Worcester
Three-Deckers MRA), 167 Eastern Ave.,
Worcester, 89002417

Bostrom, Eric, Three-Decker (Worcester
Three-Deckers MRA), 152 Eastern Ave.,
Worcester, 89002414

Bousquet, Henry, Three-Decker (Worcester
Three-Deckers MRA), 8/10 Fairmont Ave.,
Worcester, 89002360

Carlson, Eric, Three-Decker (Worcester
Three-Deckers MRA), 154 Eastern Ave.,
Worcester, 89002415

Crabtree, Thomas, Three-Decker (Worcester
Three-Deckers MRA), 22 Haynes St.,
Worcester, 89002383

Crystal Street Historic District (Worcester
Three-Deckers MRA), 30-34 Crystal St.,
Worcester, 89002379

Davis, Rodney, Three-Decker (Worcester
Three-Deckers MRA), 62 Catharine St.,
Worcester, 89002398

Davis, Wesley, Three-Decker (Worcester
Three-Deckers MRA), 7 Albert St.,
Worcester, 89002386

Dean, Mary, Three-Decker (Worcester
Three-Deckers MRA), 130 Belmont St.,
Worcester, 89002390

Delsignore, Louis, Three-Decker (Worcester
Three-Deckers MRA), 12 Imperial Rd.,
Worcester, 89002396

Dodge, Helen, Three-Decker (Worcester
Three-Deckers MRA), 570 Pleasant St.,
Worcester, 89002427

Doran, Thomas F., Three-Decker (Worcester
Three-Deckers MRA), 27 John St.,
Worcester, 89002406

Drew, Elvira, Three-Decker (Worcester
Three-Deckers MRA), 42 Abbott St.,
Worcester, 89002384

Duke, Philip, Three-Decker (Worcester
Three-Deckers MRA), 7 Maxwell St.,
Worcester, 89002425

Dworman, David, Three-Decker (Worcester
Three-Deckers MRA), 159 Providence St.,
Worcester, 89002430

Elm Street Historic District (Worcester
Three-Deckers MRA), 132-148 Elm St.,
Worcester, 89002374

Erikson, Knut, Three-Decker (Worcester
Three-Deckers MRA), 19 Stanton St.,
Worcester, 89002438

Euclid Avenue—Montrose Street Historic
District (Worcester Three-Deckers MRA),
Along Euclid Avenue and Montrose Street,
between Vernon Street and Perry Avenue,
Worcester, 89002357

Fay Street Historic District (Worcester
Three-Deckers MRA), 4-6 Fay St.,
Worcester, 89002372

Flagg, Levi, Three-Decker (Worcester Three-
Deckers MRA), 79 Florence St., Worcester,
89002362

Fontaine, George, Three-Decker (Worcester
Three-Deckers MRA), 141 Vernon St.,
Worcester, 89002447

Friberg, Andrew, Three-Decker (Worcester
Three-Deckers MRA), 26 Ames St.,
Worcester, 89002387

Giguere, Thomas, Three-Decker (Worcester
Three-Deckers MRA), 18 Fairhaven Rd.,
Worcester, 89002356

Gullberg, Evert, Three-Decker (Worcester
Three-Deckers MRA), 18 Ashton St.,
Worcester, 89002388

Hadley, Gilbert, Three-Decker (Worcester
Three-Deckers MRA), 31 Russell St.,
Worcester, 89002433

Hall, Charles A., Three-Decker (Worcester
Three-Deckers MRA), 68 Mason St.,
Worcester, 89002423

Hirst, Samuel, Three-Decker (Worcester
Three-Deckers MRA), 90 Lovell St.,
Worcester, 89002420

Holland—Towne House, SR 32, Petersham,
89002327

Houghton Street Historic District (Worcester
Three-Deckers MRA), Houghton St.
between Palm and Dorchester Sts.,
Worcester, 89002371

Hunt, Daniel, Three-Decker (Worcester
Three-Deckers MRA), 9 Wyman St.,
Worcester, 89002451

Hunt, David, Three-Decker (Worcester
Three-Deckers MRA), 26 Louise St.,
Worcester, 89002412

Ingleside Avenue Historic District
(Worcester Three-Deckers MRA), 218-220
and 226-228 Ingleside Ave., Worcester,
89002369

Ingraham, Harry B., Three-Decker
(Worcester Three-Deckers MRA), 19
Freeland St., Worcester, 89002363

Johnson, Edwin, Three-Decker (Worcester
Three-Deckers MRA), 183 Austin St.,
Worcester, 89002389

Johnson, John and Edward, Three-Decker
(Worcester Three-Deckers MRA), 31
Louise St., Worcester, 89002416

Johnson, John, Three-Decker (Worcester
Three-Deckers MRA), 140 Eastern Ave.,
Worcester, 89002408

Johnson, Paul, Three-Decker (Worcester
Three-Deckers MRA), 7 Stanton St.,
Worcester, 89002437

Kaller, Erick, Three-Decker (Worcester
Three-Deckers MRA), 146 Eastern Ave.,
Worcester, 89002411

Kaller, Erick, Three-Decker (Worcester
Three-Deckers MRA), 148 Eastern Ave.,
Worcester, 89002413

Larson, Swan, Three-Decker (Worcester
Three-Deckers MRA), 12 Summerhill Ave.,
Worcester, 89002443

Levenson, Morris, Three-Decker (Worcester
Three-Deckers MRA), 38 Plantation St.,
Worcester, 89002446

Lumb, Thomas, Three-Decker (Worcester
Three-Deckers MRA), 80 Dewey St.,
Worcester, 89002403

Lumb, Thomas, Three-Decker (Worcester
Three-Deckers MRA), 44 Winfield St.,
Worcester, 89002448

Lundberg, Charles, Three-Decker (Worcester
Three-Deckers MRA), 67 Catharine St.,
Worcester, 89002399

Magnuson, Charles, Three-Decker
(Worcester Three-Deckers MRA), 56/58
Olga Ave., Worcester, 89002434

Mark, John, Three-Decker (Worcester Three-Deckers MRA), 24 Sigel St., Worcester, 89002435

Massad, Anthony, Three-Decker (Worcester Three-Deckers MRA), 14 Harlow St., Worcester, 89002380

McCafferty, Elizabeth, Three-Decker (Worcester Three-Deckers MRA), 45 Canterbury St., Worcester, 89002395

McCarron, Andrew, Three-Decker (Worcester Three-Deckers MRA), 3 Pitt St., Worcester, 89002442

McDermott, John B., Three-Decker (Worcester Three-Deckers MRA), 21 Freeland St., Worcester, 89002366

McGrath, Patrick, Three-Decker (Worcester Three-Deckers MRA), 50 Dorchester St., Worcester, 89002407

McGuinness, Patrick, Three-Decker (Worcester Three-Deckers MRA), 25 Suffield St., Worcester, 89002439

McPartland, Frank, Three-Decker (Worcester Three-Deckers MRA), 61 Paine St., Worcester, 89002436

McPartland, James, Three-Decker (Worcester Three-Deckers MRA), 17 Pond St., Worcester, 89002428

Munroe, Sarah, Three-Decker (Worcester Three-Deckers MRA), 11 Rodney St., Worcester, 89002432

Murphy, Patrick, Three-Decker (Worcester Three-Deckers MRA), 31 Jefferson St., Worcester, 89002404

Melson, Christina, Three-Decker (Worcester Three-Deckers MRA), 45 Butler St., Worcester, 89002391

O'Brien, Richard, Three-Decker (Worcester Three-Deckers MRA), 43 Suffolk St., Worcester, 89002441

O'Connor, James, Three-Decker (Worcester Three-Deckers MRA), 23 Endicott St., Worcester, 89002419

O'Connor, James—John Trybowski, Three-Decker (Worcester Three-Deckers MRA), 21 Canton St., Worcester, 89002393

Perry Avenue Historic District (Worcester Three-Deckers MRA), 49–55 Perry Ave., Worcester, 89002367

Petterson, Lars—Adolph Carlson Three-Decker (Worcester Three-Decker MRA), 76 Fairhaven Rd., Worcester, 89002358

Petterson, Lars—Fred Gurney Three-Decker (Worcester Three-Deckers MRA), 2 Harlow St., Worcester, 89002368

Petterson, Lars—Silas Archer Three-Decker (Worcester Three-Deckers MRA), 80 Fairhaven Rd., Worcester, 89002359

Petterson, Lars—James Reidy Three-Decker (Worcester Three-Deckers MRA), 4 Harlow St., Worcester, 89002376

Providence Street Historic District (Worcester Three-Deckers MRA), 127–145 Providence St., Worcester, 89002381

Provost, Arthur, Three-Decker (Worcester Three-Deckers MRA), 30 Thorne St., Worcester, 89002444

Reed, Frank, Three-Decker (Worcester Three-Deckers MRA), 913/915 Main St., Worcester, 89002422

Ridyard, Albert, Three-Decker (Worcester Three-Deckers MRA), 5 Mount Pleasant St., Worcester, 89002431

Ridyard, B. E., Three-Decker (Worcester Three-Deckers MRA), 29 Dewey St., Worcester, 89002402

Riordan, John, Three-Decker (Worcester Three-Deckers MRA), 8 Dix St., Worcester, 89002405

Roynane, Catharine, Three-Decker (Worcester Three-Deckers MRA), 18 Ingalls St., Worcester, 89002397

Shea, Bridget, Three-Decker (Worcester Three-Deckers MRA), 21 Jefferson St., Worcester, 89002400

Simpson, Clara, Three-Decker (Worcester Three-Deckers MRA), 89 Piedmont St., Worcester, 89002440

Smith, Ellen M., Three-Decker (Worcester Three-Deckers MRA), 22 Kilby St., Worcester, 89002409

Stoliker, Edna, Three-Decker (Worcester Three-Deckers MRA), 41 Plantation St., Worcester, 89002449

Stone, Edward, Three-Decker (Worcester Three-Deckers MRA), 8 Wyman St., Worcester, 89002450

Troupes, John, Three-Decker (Worcester Three-Deckers MRA), 25 Canton St., Worcester, 89002394

Vendone and the St. Ives (Worcester MRA), 17–19 and 21–23 Chandler St., Worcester, 89002331

View Street Historic District (Worcester Three-Deckers MRA), 7–17 and 8–16 View Street, Worcester, 89002361

Wescott, John, Three-Decker (Worcester Three-Deckers MRA), 454 Pleasant St., Worcester, 89002426

Woodford Street Historic District (Worcester Three-Deckers MRA), 35–39 and 38–40 Woodford St., Worcester, 89002365

Zemaitis, Anthony, Three-Decker (Worcester Three-Deckers MRA), 35 Dartmouth St., Worcester, 89002401

MISSISSIPPI

Adams County

Glencannon, Jct. of Providence Rd. and Gov. Fleet Rd., Natchez, 89002322

Noxubee County

Salem School, Old, 3.4 mi. W of Macon on SR 14, Macon vicinity, 89002323

MONTANA

Rosebud County

Cold Springs Ranch House, US 12 W., Forsyth vicinity, 89002347

NEW JERSEY

Hunterdon County

Raritan-Readington South Branch Historic District, Running roughly E of Raritan River from NJ 31 to US 202, Flemington vicinity, 89002410

Morris County

Middle Valley Historic District, Along W. Mill Rd. and Middle Valley Rd. S of Beacon Rd., Long Valley vicinity, 89002353

Salem County

Hare, Joseph, House, 134 Poplar St., Hancock's Bridge vicinity, 89002418

NORTH CAROLINA

Onslow County

Alum Spring (Onslow County MPS), SR 1211 1.6 mi. S of SR 1001, Catherine Lake, 89002349

Wake County

Jones-Johnson-Ballentine Historic District, SR 1301–522 Sunset Rd., Fuquay-Varina vicinity, 89002352

Varina Commercial Historic District, Broad and Fayetteville Sts. between Stewart St. and Ransdell Rd., Fuquay-Varina, 89002351

SOUTH DAKOTA

Brookings County

Sexauer, George P., House, 929 Fourth St., Brookings, 89002333

Woodbine Cottage, 929 Harvey Dunn St., Brookings, 89002332

Brown County

Brown Hall, Main St., Barnard, 89002336

Clark County

Southeast Merton School No. 19, N of Willow Lake, Willow Lake vicinity, 89002338

Codington County

Hanten, John B., House, 518 E. Kemp Ave., Watertown, 89002337

Davison County

Chambers, C. E., House, 322 W. 11th St., Mitchell, 89002334

Lake County

Madison Masonic Temple, 229 N. Egan Ave., Madison, 89002335

TENNESSEE

Bedford County

Shelbyville Hydroelectric Station (Pre-TVA Hydroelectric Development in Tennessee, 1901–1933 MPS), TN 231 at Duck River, Shelbyville, 89002354

Marshall County

Lillard's Mill Hydroelectric Station (Pre-TVA Hydroelectric Development in Tennessee, 1901–1933 MPS), McLean Rd. and Duck River, Milltown, 89002370

Mauzy County

Columbia Hydroelectric Station (Pre-TVA Hydroelectric Development in Tennessee, 1901–1933 MPS), Riverside Park, Riverside Dr. and Duck River, Columbia, 89002364

VERMONT

Bennington County

Manley-Lefevre House, Dorset West Rd., Town Hwy. 1, Dorset, 89002324

WASHINGTON

King County

Kirkland Woman's Club, 407 First St., Kirkland, 89002321

WISCONSIN

Burnett County

Fickle Site (47BT25), Address Restricted, Siren vicinity 89002310

[FR Doc. 90-453 Filed 1-8-90; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Under Comprehensive Environmental Response, Compensation and Liability Act; United States v. American Greetings Corp. et al.

In accordance with Departmental policy, notice is hereby given that on December 18, 1989, a proposed Consent Decree in *United States v. American Greetings Corp. et al.*, Civil Action No. C-1-89-837, was lodged with the United States District Court for the Southern District of Ohio. The proposed Consent Decree relates to the cleanup of a hazardous waste site located at the former site of Pristine, Inc. in Reading, Ohio. The proposed Consent Decree, among other things, requires the Settling Defendants to perform the cleanup of the Pristine, Inc. Site.

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, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States v. American Greetings Corp. et al.*, D.J. reference 90-11-2-279.

The proposed Consent Decree may be examined at the office of the United States Attorney, Southern District of Ohio, 220 U.S.P.O. and Courthouse, 5th & Walnut Streets, Cincinnati, Ohio 45202, at the Region 5 office of the U.S. Environmental Protection Agency, 230 S. Dearborn Street, Chicago, Illinois 60604, and at the Environmental Enforcement Section, Land and Natural Resources Division of the U.S. Department of Justice, room 1515, 9th Street and Constitution 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 of the proposed Consent Decree, please enclose a check in the amount of \$8.30, for reproduction costs, payable to the Treasurer of the United States.

George W. Van Cleve,
Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 90-467 Filed 1-8-90; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, in United States v. General Electric Company

In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), as amended, 42 U.S.C. 9622(i), and Department Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a proposed Consent Decree in *United States v. General Electric Company*, Civil Action No. 89-30250-F, was lodged, together with the complaint, in the United States District Court for the District of Massachusetts on December 18, 1989. The proposed Decree, if entered, will resolve the liability of General Electric Company under Section 106 of the CERCLA, 42 U.S.C. 9606, if General Electric satisfactorily performs the remedial work outlined in the Decree at the F.T. Rose Disposal Pit Site in Lanesborough, Berkshire County, Massachusetts. The Decree will also resolve the liability of General Electric Company for certain costs that have been incurred by EPA in response to the alleged release or threatened release of hazardous substances at the Site and which have been or will be incurred in connection with EPA's oversight of the remedial activities performed by General Electric Company.

The Department of Justice will receive, for a period of thirty (30) days from the date of publication of this notice, written comments relating to the proposed Decrees. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, United States Department of Justice, Washington, DC 20530, and should refer to *United States v. General Electric Company*, Department of Justice No. 90-11-2-339.

The proposed Decree may be examined at the office of the United States Attorney, 1107 John W. McCormack Post Office and Courthouse, Boston, Massachusetts 02109; at the Region I office of the United States Environmental Protection Agency, 22nd Floor, John F. Kennedy Federal Building, Boston, Massachusetts 02203; and at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, room 1647(D), Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, at

the above address. In requesting a copy, please enclose a check in the amount of \$9.30 (10 cents per page reproduction costs), payable to the Treasurer of the United States.

Differences between the remedy to be performed pursuant to the Consent Decree and the remedy selected by the United States Environmental Protection Agency in its Record of Decision for the Site are explained in an Explanation of Significant Differences issued by the Environmental Protection Agency on the date the Consent Decree was lodged. The Explanation of Significant Differences may be examined at or obtained from the Region I office of the Environmental Protection Agency, 22nd Floor, John F. Kennedy Federal Building, Boston, Massachusetts 02203.

Richard B. Stewart,
Assistant Attorney General Land & Natural Resources Division.

[FR Doc. 90-468 Filed 1-8-90; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 89-57]

Edward V. Avakian, Jr., Stockton, CA; Hearing

Notice is hereby given that on June 27, 1989, the Drug Enforcement Administration, Department of Justice, issued to Edward V. Avakian, Jr., Ph.D., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, RAO111435, and deny any pending applications for registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, January 9, 1990, commencing at 9:30 a.m., at the United States Tax Court, Federal Building and Courthouse, 450 Golden Gate Avenue, Courtroom 2041, San Francisco, California.

Dated: January 2, 1990.

John C. Lawn,
Administrator, Drug Enforcement Administration.

[FR Doc. 90-429 Filed 1-8-90; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**[Notice 90-03]****Granting of Federal Information Processing Standards (FIPS) Waiver Request****AGENCY:** National Aeronautics and Space Administration (NASA).**ACTION:** Notice of granting of FIPS waiver request.

SUMMARY: Pursuant to section 3506(b) of title 44 of the U.S. Code, the authority to waive, under conditions specified by the Secretary of Commerce, NASA hereby gives notice of granting a request for waiver of FIPS 60-2, 61-1, and 63-1 for the Director, Lewis Research Center, to acquire a supercomputer for the Computer Services Division of Lewis Research Center.

DATES: The waiver was effective November 14, 1989.**ADDRESSES:** National Aeronautics and Space Administration, Code NT, Washington, DC 20546.**FOR FURTHER INFORMATION CONTACT:** Mr. Wallace O. Keene, Assistant Associate Administrator for Information Resources Management, 202-453-1775.

Dated: January 2, 1990.

C. Howard Robins, Jr.,

Associate Administrator for Management.

[FR Doc. 90-476 Filed 1-8-90; 8:45 am]

BILLING CODE 7510-01-M

[Notice 90-04]**NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC), Solar System Exploration Subcommittee; Meeting****AGENCY:** National Aeronautics and Space Administration.**ACTION:** Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee, Solar System Exploration Subcommittee.

DATES: Monday, January 29, 1990, 9 a.m. to 5 p.m., and Tuesday, January 30, 1990, 9 a.m. to 3:30 p.m.**ADDRESSES:** NASA Headquarters, Room 226A, 600 Independence Avenue SW., Washington, DC 20546.**FOR FURTHER INFORMATION CONTACT:** Dr. Geoffrey A. Briggs, Code EL, National Aeronautics and Space

Administration, Washington, DC 20546 (202/453-1588).

SUPPLEMENTARY INFORMATION: The Space Science and Applications Advisory Committee consults with and advises the NASA Office of Space Science and Applications (OSSA) on long-range plans for, work in progress on, and accomplishments of NASA's Space Science and Applications programs. The Solar System Exploration Subcommittee provides advice to the Solar System Exploration Division concerning long-range planning in solar system exploration. The Subcommittee will meet to discuss international relations, advanced planning issues, and future plans for the subcommittee. The Subcommittee is chaired by Dr. Laurence Soderblom and is composed of 22 members. The meeting will be open to the public up to the seating capacity of the room (approximately 50 people including members of the Subcommittee). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Type of Meeting: Open.*Agenda:*

Monday, January 29

9 a.m.—Introduction and Review of Agenda.

10 a.m.—Status of US-USSR Cooperation.

11 a.m.—Status of Solar System Exploration Division

International Activities.

1 p.m.—Strategic Planning.

2 p.m.—Human Space Initiative.

3 p.m.—Advanced Planning.

5 p.m.—Adjourn.

Tuesday, January 30

9 a.m.—Advanced Planning continued.

11 a.m.—Science Program Issues.

1 p.m.—Discussion on Agenda Items for Future

Meetings.

2 p.m.—Committee Discussion on Plans for 1990.

3 p.m.—Adjourn.

Dated: January 3, 1990.

John W. Gaff,

Advisory Committee Management Officer,
National Aeronautics and Space Administration.

[FR Doc. 90-477 Filed 1-8-90; 8:45 am]

BILLING CODE 7510-01-M

[Notice 90-05]**NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC), Microgravity Science and Applications Advisory Subcommittee; Meeting****AGENCY:** National Aeronautics and Space Administration.**ACTION:** Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee, Microgravity Science and Applications Advisory Subcommittee.

DATES: January 30, 1990, 9 a.m. to 3 p.m.**ADDRESSES:** NASA Headquarters, Room 226A, 600 Independence Avenue SW., Washington, DC 20546.**FOR FURTHER INFORMATION CONTACT:** Dr. Robert S. Sokolowski, Code EN, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1490).

SUPPLEMENTARY INFORMATION: The Space Science and Applications Advisory Committee consults with and advises the NASA Office of Space Science and Applications (OSSA) on long range plans for, and work in progress on, and accomplishments of NASA's Space Science and Applications programs. The Microgravity Science and Applications Advisory Subcommittee provides advice to the Microgravity Science and Applications Division concerning all of its programs in the microgravity sciences. The Subcommittee will meet to review the status of the division and plans for 1990. The Subcommittee is chaired by Dr. Dudley Saville and is composed of 6 members. The meeting will be open to the public up to the capacity of the room (approximately 30 including Subcommittee members). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Type of Meeting: Open.*Agenda:*

Tuesday, January 30

9 a.m.—Introduction and Review of the Current Status of the Microgravity Science and Applications Division.

1 p.m.—Discussion of issues facing the Division, and identification of action items and planning committee for the coming year.

3 p.m.—Adjourn

Dated: January 3, 1990.

John W. Gaff,

Advisory Committee Management Officer,
National Aeronautics and Space
Administration.

[FR Doc. 90-478 Filed 1-8-90; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee on Advanced Pressurized Water Reactors; Revised

The ACRS Subcommittee meeting on Advanced Pressurized Water Reactors scheduled for January 9, 1990 has been changed to January 10, 1990, 8:30 a.m., room P-110, 7920 Norfolk Avenue, Bethesda, MD.

All other items pertaining to this meeting remain the same as previously published in the *Federal Register* on Thursday, December 21, 1989 [54 FR 52475].

Dated: January 3, 1990.

Richard P. Savio,

Assistant Director for Technical Activities.

[FR Doc. 90-465 Filed 1-8-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-423]

Northeast Nuclear Energy Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 43 to Facility Operating License No. NPF-49 issued to Northeast Nuclear Energy Company, et al (the licensee), which revised the Technical Specifications for operation of the Millstone Nuclear Power Station, Unit 3, located at the licensee's site in New London County, Connecticut. The amendment is effective as of the date of issuance.

The amendment provides revised Technical Specifications to decrease the reactor trip set point and allowable value for the reactor coolant pump (RCP) low shaft speed (underspeed trip set point) from 97.8 to 95.8 percent of rated speed and from 94.6 to 92.5 percent rated speed, respectively.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate

findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the *Federal Register* on September 22, 1989 (54 FR 39068). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated August 1, 1988, (2) Amendment No. 43 to License No. NPF-49, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC and at Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland, this 26th day of December 1989.

For the Nuclear Regulatory Commission.

David H. Jaffe,

Project Manager, Project Directorate I-4,
Division of Reactor Projects—I/II, Office of
Nuclear Reactor Regulation.

[FR Doc. 90-463 Filed 1-8-90; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Legal Protection of Computer Programs; Request for Public Comments

AGENCY: Office of the United States Trade Representative.

ACTION: Request for written submissions from the public concerning a proposal for a directive by the Council of the European Economic Community on the legal protection of computer programs

(COM(88) 816 final—SYN 183, 89/C 91/05).

SUMMARY: A principal trade negotiating objective of the United States regarding intellectual property as set out in the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 2901(a)(10)(A)) is to seek enactment and effective enforcement by foreign countries of laws which recognize and adequately protect intellectual property, including copyrights. The European Economic Community is currently considering a proposed directive which would provide copyright protection for computer programs. How this directive is finally drafted could have major implications for U.S. exports of computer programs. The Administration seeks the views of the public with respect to applicable U.S. law, industry practices in this area, and any other policy considerations that may be relevant. Submissions should include views on the content of the proposed directive, any related issues being considered by the European Parliament, and the potential effect on U.S. industry and commerce of adoption of the proposed directive. Submissions should be as detailed and specific as possible.

DATES: Submissions should be received by January 22, 1990. Parties should provide twenty copies of the submission to Emery Simon, room 415, 600 17th Street, NW., Washington, DC 20506. In order to respond to this request in as complete a way as possible, parties may request to supplement these submissions or make additional submissions at a later date.

FOR FURTHER INFORMATION CONTACT: Emery Simon, Director, Intellectual Property Policy, Office of the U.S. Trade Representative, (202) 395-6864.

S. Bruce Wilson,

Assistant United States Trade
Representative.

[FR Doc. 90-450 Filed 1-8-90; 8:45 am]

BILLING CODE 3190-01-M

Subsidies Task Force; Notice of Meeting and Determination of Closing of Meeting

The meeting of the Subsidies Task Force of the Advisory Committee for Trade Policy and Negotiations to be held January 19, 1990 from 9 a.m. to 12 p.m., in Washington, DC, will include the development, review and discussion of current issues which influence the trade policy of the United States. Pursuant to section 2155(f)(2) of title 19

of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions.

Additional information can be obtained by contacting Mollie Van Heuven, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President, Washington, DC 20506.

Carla A. Hills,

United States Trade Representative.

[FR Doc. 90-451 Filed 1-8-90; 8:45 am]

BILLING CODE 3190-01-M

POSTAL SERVICE

International Business Reply Service (IBRS); Applications

AGENCY: Postal Service.

ACTION: Notice.

SUMMARY: On January 1, 1990 the Postal Service began accepting applications from mailers to participate in International Business Reply Service (IBRS), which will be available on an experimental basis nationwide, for a period of approximately two years. Service in particular countries is dependent upon implementation of service agreements with selected foreign postal administrations participating in the IBRS network internationally. It is not known at this time if the other administration will continue to offer the service permanently since IBRS is a relatively new service being offered among participating postal administrations.

The particular countries with whom service agreements are reached will be announced in issues of the Postal Bulletin.

IBRS will be available to customers resident in the United States who distribute IBRS mail internationally, for return to the customer's address in the US. Such mail will be returned in the international airmail service. IBRS mail is only to be distributed to those countries with whom the USPS has negotiated service agreements, since cards and letters distributed to non-participating countries will not be returned by those postal administrations.

IBRS will be provided through the Business Reply Mail Accounting System (BRMAS). Service will include Cards and Letters with separate per piece rates. The cost per item returned will be \$.50 per card and \$.95 per letter.

EFFECTIVE DATE: January 1, 1990.

FOR FURTHER INFORMATION CONTACT: John Manziolillo, (202) 268-2274/Walter Grandjean (202) 268-5180.

COMMENTS: The Postal Service welcomes written comments on this experimental service. Comments should be directed to US Postal Service—HQ, General Manager, Market Development Division, 475 L'Enfant Plaza, Rm 5437, Washington DC 20260-6339.

SUPPLEMENTARY INFORMATION: Following is more detailed information on how to apply to use this experimental service and on applicable mailing requirements.

Who May Distribute IBRS Mail

Any customer participating in the Business Reply Mail Accounting System (BRMAS). Customers must advise, in writing, the Postmaster where their domestic permit is authorized that they intend to distribute IBRS mail and obtain Postnet barcodes.

Size and Weight Requirements

Cards:

Minimum size: $3\frac{1}{2}'' \times 5\frac{1}{2}''$

Maximum size: $4\frac{1}{4}'' \times 6''$

Thickness: Not less than .007", nor more than .0095"

Note: IBRS cards must be printed on paper stock meeting a standard industry basis weight of 75 pounds, with none less than 71.25 pounds, for 500 sheets measuring 25 inches by 38 inches.

The paper must be free from groundwood except when coated with a substance which adds to the paper's ability to resist an applied bending force.)

Envelopes:

Minimum size: $3\frac{1}{2}'' \times 5\frac{1}{2}''$

Maximum size: $4\frac{3}{4}'' \times 9\frac{1}{4}''$

Thickness: Not less than .007", nor more than .2"

Maximum weight: 2 ounces

Format Requirements

FIM—Each International Business Reply Service (IBRS/CCRI) item must contain a Facing Identification Mark (FIM) pattern C, printed at the top right portion of the address side of the item. The top of the FIM C bar pattern must be within $\frac{1}{8}$ inch of the edge of the item and may extend to the edge. The rightmost bar of the pattern must be within 2 inches ($\pm \frac{1}{8}$ inch) of the right edge of the item. The FIM bars must be $\frac{1}{8}$ inch ($\pm \frac{1}{8}$ inch) long. The entire FIM pattern must be completely contained within a rectangular clear zone measuring $1\frac{1}{4}$ inches in length and $\frac{3}{4}$ inch in height; with its top edge formed by the top edge of the item and its right edge beginning $1\frac{1}{4}$ inches from the right edge of the item.

Barcodes—ZIP + 4 Postnet Barcodes preassigned by the U.S. Postal Service must be printed on the address side of each International Business Reply Service (IBRS/CCRI) item within the "barcode read area," which must be free of any printing other than the barcode. The read area extends $\frac{5}{8}$ inch from the bottom and at least $4\frac{1}{2}$ inches from the right edge of the item. The bottom of the bars must be positioned $\frac{1}{4}$ inch ($\pm \frac{1}{16}$ inch) from the bottom edge of the item and the barcode must be completely contained within the read area.

No Postage Necessary Endorsement—The endorsement Ne Pas Affanchir, No Postage Necessary if mailed to the United States must be printed in the upper right-hand corner of the face of the piece with a partial diagonal bar. The endorsement must not extend farther than $1\frac{1}{4}$ inches from the right edge of the mail piece.

Business Reply Legend—The legend International Business Reply Mail/Response Payee must appear above the address in capital letters at least $\frac{3}{16}$ of an inch high. Immediately below the legend the words Permit No. followed by the permit number and the issuing post office (city and state) must be shown in capital letters. This information must appear between two horizontal bars at least $\frac{3}{32}$ inch thick and at least $\frac{1}{2}$ inch apart. The legend "Postage Will Be paid By The Addressee" must appear below the permit number.

Address—The Complete address must be printed, including the name of the permit holder, street address, and/or post office box number, city, state, the unique ZIP + 4 code that is preassigned and the country of destination (United States of America or U.S.A.) with the bottom line of the address no lower than $\frac{5}{8}$ of an inch and the city, state and ZIP + 4 code line not higher than $2\frac{1}{4}$ inches from the bottom edge of the mailpiece. A clear margin void of any extraneous matter (except for the horizontal bars specified below) of at least 1 inch is required between the left and right edges of the mailpiece and the address.

Air Mail endorsement—In addition, the endorsement AIR MAIL/PAR AVION must be shown in the upper left corner in reverse print. Immediately beneath this endorsement must appear the words IBRS/CCRI No. followed by the permit number.

Horizontal Bars—A series of horizontal bars parallel to the length of the mailpiece must be printed immediately below the endorsement "No Postage Necessary if Mailed to the

United States". The bars must be uniform in length, at least 1 inch long and $\frac{1}{16}$ of an inch to $\frac{3}{16}$ of an inch thick and evenly spaced. The vertical column of horizontal bars must not extend below the delivery address line, which is the line above the line containing the ZIP + 4 code. There must be at least $\frac{1}{2}$ inch clearance between the ZIP + 4 code and the bars.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 90-401 Filed 1-8-90; 8:45 am]

BILLING CODE 7710-12-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended December 29, 1989

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 46688.

Date filed: December 26, 1989.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 23, 1990.

Description: Application of World Airways, Inc. pursuant to section 401 of the Act and subpart Q of the Regulations, applies for an amendment of its certificate of public convenience and necessity to engage in scheduled all-cargo foreign air transportation to add the authority to operate between the United States and any point or points in the following additional countries: Afghanistan, Algeria, Australia, Austria, Bahrain, Bermuda, Brunei, Canada, Dakar, Denmark, Fiji, Finland, India, Indonesia, Tel Aviv, Israel, Jamaica, Kenya, Kuwait, Liberia, Morocco, New Zealand, Nigeria, Norway, Oman, Pakistan, Portugal, Romania, Spain, Sri Lanka, Sweden,

Thailand, Tunisia, United Kingdom, Yugoslavia, Zimbabwe.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 90-397 Filed 1-8-90; 8:45 am]

BILLING CODE 4910-62-M

Federal Highway Administration

National Motor Carrier Safety Committee; Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of emergency public meeting.

SUMMARY: The FHWA will hold an emergency meeting of the National Motor Carrier Advisory Committee on January 12, 1990, in Washington, DC, at the U.S. Department of Transportation Headquarters, 400 7th Street SW., Washington, DC. The meeting will begin at 9 a.m. in room 4200 and will be open to the public.

Due to the severe cold weather of the last two months, there has been an increased demand for natural gas and heating oil. To meet the demand, producers have diverted these products from certain users who, in turn, have increased their consumption of diesel fuel. This has resulted in an increase in diesel fuel costs at truck stops, and impacts upon the financial operations of many truckload carriers, including individual owner-operators and small truck.

The purpose of the meeting is to receive information about factors involved in the recent sharp escalation in the price of diesel fuel at truck stops. Presentations are invited from government agencies, industry groups and any other interested parties.

Due to the emergency nature of the situation, we are providing less than fifteen day notice of the meeting as permitted by 41 CFR 101-6.1015(b)(2).

FOR FURTHER INFORMATION CONTACT: Mr. Joseph S. Toole, Executive Director, National Motor Carrier Advisory Committee, Federal Highway Administration, HOA-1, room 4218, 400 Seventh Street SW., Washington, DC 20590, (202) 366-2238. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday.

Issued on: January 5, 1990.

T.D. Larson,

Administrator.

[FR Doc. 90-630 Filed 1-5-90; 2:45 pm]

BILLING CODE 4910-22-M

Federal Railroad Administration

[Docket No. RSSI-89-1, Notice No. 2]

Special Safety Inquiry; Postponement of Hearing Railroad Reporting Requirements

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

ACTION: Notice of postponement of special safety inquiry.

SUMMARY: On November 3, 1989, FRA published in the Federal Register (54 FR 46497) a Notice of Special Safety Inquiry to examine FRA-imposed railroad safety reporting requirements. As stated in that notice, accident reporting requirements will be the subject of a separate rulemaking in the near future. Because this Safety Inquiry and the accident reporting rulemaking are so closely related, FRA has determined that hearings on these subjects should be held consecutively. In addition to enabling the participants to draw on information provided in both hearings, holding the hearings consecutively will prevent unnecessary travel and expense for participants and the public.

FRA is thus postponing the Special Safety Inquiry on Railroad Reporting Requirements originally scheduled for January 16, 1990, until such time as a hearing is also held on proposed changes in FRA's accident reporting requirements. FRA anticipates that a Notice of Proposed Rulemaking on this subject will be issued shortly and hearings held shortly thereafter.

DATES: A public hearing scheduled to be held at 10 a.m. on January 16, 1990, in room 2230 of the Nassif Building, 400 Seventh Street SW., Washington, DC is postponed until a date to be announced in the near future.

Issued in Washington, DC, on January 4, 1990.

Gilbert E. Carmichael,
Administrator.

[FR Doc. 90-631 Filed 1-8-90; 8:45 am]

BILLING CODE 4910-06-M

DEPARTMENT OF THE TREASURY

Customs Service

Announcement of New Importer Identification Numbering System

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of New Importer Identification Numbering System.

SUMMARY: This notice informs all persons in the importing community who transact Customs business that the Customs Service shall use a new Customs assigned importer identification numbering system.

EFFECTIVE DATE: February 8, 1990.

FOR FURTHER INFORMATION CONTACT: Byron Kissane, Import Specialist (202-566-8582).

SUPPLEMENTARY INFORMATION: The Customs Service has undertaken a project to modernize the importer name, address and number file contained in our Automated Commercial System. A major objective of this project is to provide standardized data and uniformity of input into this file. A part of this project is the establishment of a new Customs assigned importer identification numbering system.

The Customs Service will implement a new Customs assigned importer identification numbering system on February 8, 1990. The new Customs assigned number will be automatically generated via the Automated Commercial System within Customs after an individual or business has made application for such a number on a Customs Form 5106.

The new Customs assigned number will only be available to individuals and businesses which do not possess a valid Internal Revenue Service employer identification number or a Social Security number.

Pursuant to § 24.5, Customs Regulations (19 CFR 24.5), an importer is required by Customs to be identified by a specific number. There are three types of numbers currently used by the Customs Service for this purpose. They are either an Internal Revenue Service employer identification number, or a Social Security number, or a Customs assigned number. Section 24.5 states:

If an Internal Revenue Service employer identification number, a Social Security number, or both, are obtained after an importer number has been assigned by Customs, a new Customs Form 5106 shall not be filed unless requested by Customs.

Pursuant to 19 CFR 24.5(c), this public notice is to serve as the request by Customs to furnish either an Internal Revenue Service employer identification number or Social Security number for importers who have received a Customs assigned number. The position of the Customs Service is that each person who enters into a Customs transaction using an existing Customs assigned number shall update that identification number by furnishing the importer's Social Security number or Internal Revenue Service employer identification number within 30 days of receipt of such

a number. The information should be furnished on a Customs Form 5106.

Each person who engages in a Customs transaction using a Customs assigned identification number issued prior to the new numbering system, must update that identification number by furnishing a Social Security number or Employer Identification number if available. If a Social Security number or Employer Identification number is not available, application for a new Customs assigned number must be made on a Customs Form 5106.

Individual letters have been prepared for those importers identified by our Automated Commercial System as having a continuous bond on file with a Customs assigned number. Because the importer identification number cannot be changed using a bond rider, these importers are encouraged to obtain a new Customs assigned number, if needed, prior to the renewal with their sureties of their continuous bonds. Customs expects a 1-year transition phase to accommodate all importers during this transition phase, Customs will allow for dual processing of old and new Customs assigned numbers.

All importers that need to obtain a new Customs assigned number (those that do not have an Internal Revenue Service employer identification number or Social Security number) are expected to obtain a new Customs assigned number and request that all old numbers be deactivated.

The format for the new Customs Assigned number is YYDDPP-NNNNN (where YY is the calendar year of input, DDPP is the district and port code, and NNNNN is a sequentially system assigned number).

A false statement contained in a Form 5106 may subject the filer to prosecution under the provisions of 18 USC 1001 or sanctions or penalties under other applicable laws or regulations.

Dated: January 2, 1990.

Carol Hallett,

Commissioner of Customs.

[FR Doc. 90-449 Filed 1-8-90; 8:45 am]

BILLING CODE 4820-02-M

Office of Thrift Supervision

[No. 89-545]

Savings and Loan Holding Company Reports H-(b)11 and H-(b)12

Date: December 29, 1989.

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice.

SUMMARY: The public is advised that the Office of Thrift Supervision has submitted a request for a new information collection entitled "Savings and Loan Holding Company Reports H-(b)11 and H-(b)12," to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The paperwork burden represented by completion of reports H-(b)11 and H-(b)12 has been included in another information collection entitled, "Savings and Loan Holding Company Reports," OMB No. 1550-0021. The Office of Thrift Supervision is deleting the burden from the existing information collection, revising the H-(b)11 and H-(b)12 forms and submitting them to OMB as a new information collection.

The information collected enables the Office of Thrift Supervision to determine a holding company's adherence to the statutes, regulations and rules governing savings and loan holding companies. We estimate it will take approximately 30 hours per respondent to complete the H-(b)11 information collection and 8 hours per respondent to complete the H-(b)12 information collection.

DATES: Comments on the information collection request are welcome and should be received on or before January 19, 1990.

ADDRESS: Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503; Attention: Desk Officer for the Office of Thrift Supervision.

The Office of Thrift Supervision would appreciate commenters sending copies of their comments to the information contact provided below.

Request for copies of the proposed information collection requests and supporting documentation are obtainable at the Office of Thrift Supervision address given below: Director, Information Services Division, Communications Services, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Phone: 202-416-2751.

FOR FURTHER INFORMATION CONTACT: Donna Miller, Supervision Policy, (202) 785-5426, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

By The Office of Thrift Supervision.
M. Danny Wall,
Director.

[FR Doc. 90-406 Filed 1-8-90; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-19]

**Peerless Federal Savings Bank,
Chicago, IL; Final Action Approval of
Conversion Application**

Date: December 29, 1989.

Notice is hereby given that on
December 29, 1989, the Director
approved the application of Peerless

Federal Savings Bank, Chicago, Illinois
("Peerless"), for permission to convert to
the stock form of organization pursuant
to a voluntary supervisory conversion
and the acquisition of the assets and
liabilities of Peerless by Republic
Capital Group, Inc., Milwaukee,
Wisconsin, through the merger of
Peerless with RCG Interim Federal
Savings and Loan Association, a wholly-

owned subsidiary of Republic Capital
Group, Inc., with Peerless as the
surviving entity.

By The Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 90-407 Filed 1-8-90; 8:45 am]

BILLING CODE 6720-01-M

Sunshine Act Meetings

Federal Register

Vol. 55, No. 6

Tuesday, January 9, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board was held at the offices of the Farm Credit Administration in McLean, Virginia, on January 4, 1990, from 11:00 a.m. until such time as the Board concluded its business.

FOR FURTHER INFORMATION CONTACT: Jeffrey P. Katz, Acting Secretary to the Farm Credit Administration Board, (703) 883-4003, TDD (703) 883-4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: This meeting was closed to the public pursuant to exemptive provisions of the Government in the Sunshine Act. The matter considered at the meeting was:

*Closed Session

- Jackson FLB/FLBA in Receivership.

Dated: January 4, 1990.

Jeffrey P. Katz,

Acting Secretary, Farm Credit Administration Board.

*Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c) (4), (8) and (9).

[FR Doc. 90-579 Filed 1-5-90; 11:03 am]

BILLING CODE 6705-01-M

FEDERAL COMMUNICATIONS COMMISSION

January 4, 1990.
FCC To Hold a Closed Commission Meeting, Thursday, January 11, 1990

The Federal Communications Commission will hold a Closed Meeting on the subjects listed below on Thursday, January 11, 1990, following the Open Meeting, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street NW.

Item No., Bureau, and Subject

- 1—General Counsel—Joint Petition for Approval of Settlement Agreement and Related Relief in the Memphis, Tennessee

Television Comparative Renewal Proceeding (MM Docket Nos. 84-1212 *et al.*)

- 2—General Counsel—Joint Petition for Approval of Settlement Agreement and Related Relief in the Fort Lauderdale, Florida FM Radio Comparative Renewal Proceeding (MM Docket Nos. 84-1112 *et al.*)

These items are closed to the public because they concern Adjudicatory Matters. See 47 CFR 0.603(jj). The following persons are expected to attend:

Commissioners and their Assistants
Managing Director and members of his staff
General Counsel and members of his staff
Director, Office of Public Affairs and members of her staff

Action by the Commission January 3, 1990, Chairman Sikes; Commissioners Quello, Marshall, and Barrett voting to consider these matters in closed session.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Sarah Lawrence, Office of Public Affairs, telephone number (202) 632-5050.

Federal Communications Commission.

Issued: January 4, 1990.

Donna R. Search,

Secretary.

[FR Doc. 90-568 Filed 1-5-90; 10:10 am]

BILLING CODE 6712-01-M

FEDERAL COMMUNICATIONS COMMISSION

January 4, 1990.
FCC To Hold Open Commission Meeting, Thursday, January 11, 1990

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, January 11, 1990, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street NW.

Item No., Bureau, and Subject

- 1—Mass Media—Title: Reexamination of the Effective Competition Standard for the Regulation of Cable Television Basic Service Rates. Summary: The Commission will consider whether to initiate a proceeding to reexamine its effective competition standard for the regulation of cable television basic service rates.
- 2—Private Radio—Title: Distribution of Video Entertainment Material in the Private Operational-Fixed Microwave Service. Summary: The Commission will consider a petition for rule making

regarding the delivery of video entertainment material in the 18 GHz band by Part 94 licensees.

- 3—Common Carrier—Title: Amendment of Part 22 of the Commission's Rules. Summary: The Commission will consider proposed rules for the filing, processing, and selection of applications for unserved areas in the Domestic Public Cellular Radio Telecommunications Service.
- 4—Common Carrier—Title: Application of the Communications Satellite Corporation to participate in a program for the procurement by INTELSAT of up to five high-capacity INTELSAT VII series satellites. Summary: The Commission will consider issues relating to the need for and number of INTELSAT VII series satellites to be procured for use as part of the INTELSAT global system commencing in 1992/93.
- 5—Private Radio Chief Engineer—Title: Amendment of the Frequency Allocation and Aviation Services Rules (Parts 2 and 87) to provide frequencies for use by commercial space launch vehicles. Summary: The FCC will consider whether to adopt a Report and Order to amend Parts 2 and 87 of the Commission's Rules to permit non-Government entities to use frequencies in the 2310-2390 MHz band for telemetry operations with fully operational commercial space launch vehicles.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Sarah Lawrence, Office of Public Affairs, telephone number (202) 632-5050.

Issued: January 4, 1990.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-569 Filed 1-5-90; 10:10 am]

BILLING CODE 6712-01-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-90-01]

TIME AND DATE: Tuesday, January 18, 1990 at 3:00 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.

4. Petitions and Complaints: Certain Athletic Shoes with Viewing Windows (D/N 1542).

5. Inv. No. 22-51 (Cotton Comber Waste)—public briefing, if desired.

6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE

INFORMATION: Kenneth R. Mason, Secretary, (202) 252-1000.

Dated: December 29, 1989.

Kenneth R. Mason,

Secretary

[FR Doc. 90-590 Filed 1-5-90; 12:37 am]

BILLING CODE 7020-02-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-90-02]

TIME AND DATE: Monday, Jan. 22, 1990 at 3:00 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and Complaints.
5. Inv. No. 731-TA-427 (F) (Certain Telephone Systems and Subassemblies Thereof from Korea)—briefing and vote.
6. Inv. No. 731-TA-433 (F) (Certain Residential Door Locks and Parts Thereof from Taiwan)—briefing and vote.
7. Any items left over from previous agenda.

CONTACT PERSON FOR MORE

INFORMATION: Kenneth R. Mason, Secretary, (202) 252-1000.

Dated: December 29, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-591 Filed 1-5-90; 12:37 pm]

BILLING CODE 7020-02-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m. Wednesday, January 17, 1990.

PLACE: Board Room, Eighth Floor, 800 Independence Avenue SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Hazardous Materials Accident Report: Puncture of Cylinder Containing Mixture of Methyl Bromide and

Chloropicrin Following Tractor/Semitrailer Overturn, Collier County, Florida, November 30, 1988.

2. Recommendations to FAA: Student Pilot Identification and Air Traffic Control Assistance to Student Pilots.

News Media Please Contact Betty Scott, (202) 382-6600.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382-6525.

Dated: January 5, 1990.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 90-629 Filed 1-5-90; 1:43 pm]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of January 8, 15, 22, and 29, 1990.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of January 8

Tuesday, January 9

10:00 a.m.

Briefing on Status of Development of Updated Source Term (Public Meeting)

Thursday, January 11

2:00 p.m.

Periodic Briefing by Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)

3:30 p.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of January 15 (Tentative)

Wednesday, January 17

10:00 a.m.

Briefing on Governors' Certification of Low Level Waste Sites (Public Meeting)

Thursday, January 18

9:00 a.m.

Immediate Effectiveness Review Briefing—Seabrook (Public Meeting)

3:30 p.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of January 22 (Tentative)

Thursday, January 25

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of January 29 (Tentative)

Thursday, February 1

10:00 a.m.

Briefing on Status of Proposed Rule on License Renewal (Public Meeting)

2:00 p.m.

Annual Briefing and Medical Use of Byproduct Material (Public Meeting)

3:30 p.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To verify the status of meetings call (Recording)—(301) 492-0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492-1661.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 90-605 Filed 1-5-90; 12:37 p.m.]

BILLING CODE 7590-01-M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to provisions of the "Government in the Sunshine Act" (5 U.S.C. 552B), Notice is hereby given that the Resolution Trust Corporation's Board of Directors will meet in open session at 9:30 a.m. on Friday, January 12, 1990, to consider the following matters:

SUMMARY AGENDA: No Cases.

DISCUSSION AGENDA:

A. *Strategic Plan:* Policies, programs, guidelines, and procedures required by the Oversight Board's Strategic Plan.

B. *1990 Administrative Budget:* The RTC Budget formulates annual administrative expense requirements for support and operations of RTC.

The meeting will be held in the Board Room of the FDIC Building located at 550-17th Street NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. John M. Buckley, Jr., Executive Secretary of the Resolution Trust Corporation, at (202) 898-3604.

Dated: January 4, 1990.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 90-647 Filed 1-5-90; 3:36 pm]

BILLING CODE 6714-01-M

Corrections

Federal Register

Vol. 55, No. 6

Tuesday, January 9, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 524

Animal Drugs, Feeds, and Related Products; Change of Sponsor

Correction

In rule document 89-28959 beginning on page 51020 in the issue of Tuesday, December 12, 1989, make the following correction:

On page 51021, in the first column, in the heading for Part 524, "OPHTHALMIC" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 310 and 333

[Docket No. 80N-0476]

RIN 0905-AA06

Topical Antifungal Drug Products for Over-the-Counter Human Use; Tentative Final Monograph

Correction

In proposed rule document 89-28816 beginning on page 51136 in the issue of Tuesday, December 12, 1989, make the following corrections:

1. On page 51140, in the third column, in the first complete paragraph, in the first line, "of" should read "by".

2. On page 51156, in the 1st column, in the 2d complete paragraph, in the 13th line, "\$ 33.250" should read "\$ 333.250".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 199

[RSPA Docket No. PS 102]

RIN 2137-AB54

Control of Drug Use in Natural Gas, Liquefied Natural Gas, and Hazardous Liquid Pipeline Operations

Correction

In rule document 88-28610, beginning on page 47084 in the issue of Monday, November 21, 1988, make the following correction:

§ 199.17 [Corrected]

On page 47098, in the second column, in paragraph (b) of § 199.17, the second sentence should read "The employee may specify retesting by the original laboratory or by a second laboratory that is certified by the Department of Health and Human Services."

BILLING CODE 1505-01-D

Federal Register

Tuesday
January 9, 1990

Part II

Department of Commerce

National Telecommunications and Information Administration

Comprehensive Study of Domestic Telecommunications Infrastructure; Notice

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 91296-9296]

Comprehensive Study of Domestic Telecommunications Infrastructure

AGENCY: National Telecommunications and Information Administration ("NTIA"), Commerce.

ACTION: Notice of inquiry; request for comments.

SUMMARY: NTIA is initiating a study of the domestic telecommunications infrastructure. The objectives of the study are to (a) Examine the significance of telecommunications as an element of national infrastructure; (b) consider the technological and marketplace trends that are determining the characteristics and capabilities of telecommunications in this country and elsewhere; (c) evaluate the ways in which telecommunications services and capabilities affect both the international competitiveness of U.S. businesses and the quality of life of U.S. citizens; and (d) assess the role of regulatory and other government policies in promoting the development of a telecommunications infrastructure that meets present and future national needs. Public comment is requested on issues raised in this Notice, and any other that are relevant to the inquiry. NTIA intends to issue a report on this matter within the next 12 months.

DATES: Comments should be received no later than March 19, 1990, in order to receive full consideration. Reply comments should be received no later than April 23, 1990.

ADDRESS: An original and seven (7) copies of all comments should be sent to: Office of Policy Analysis and Development, National Telecommunications and Information Administration, U.S. Department of Commerce, 14th St. and Constitution Ave., NW., room 4725, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Alfred Lee or Timothy Sloan, NTIA Office of Policy Analysis and Development, 202-377-1880.

Authority: Executive Order 12046, 3 CFR, 1978 Comp., p. 158; reprinted in 47 U.S.C. 305 note.

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I. Introduction

1. The U.S. economy is becoming increasingly dependent on the provision of services that require efficient distribution and dissemination of information. Over 50 percent of all U.S. workers are currently employed in information-intensive service industries that are heavily reliant on telecommunications (e.g., brokerage, banking, insurance).¹ Even traditional manufacturing firms increasingly depend on the swift movement of information from headquarters to factories to distribution points to customers in order to remain competitive with their domestic and foreign rivals.²

¹ Source: United States Department of Commerce, Bureau of the Census, 1988 Statistical Abstract of the United States.

² NTIA Telecom 2000: Charting a Course for a New Century, NTIA Special Publication 88-21, at 25 (Oct. 1988) [hereinafter cited as *Telecom 2000*].

2. This transformation has heightened the importance of telecommunications to the nation's economic and social welfare. Many now believe that the telecommunications infrastructure will be as important in the future as the transportation infrastructure has been to the industrial economy.³ For example, in a recent survey of U.S. business executives, the vast majority of the respondents stated that the domestic telecommunications infrastructure is "absolutely critical" to the nation's economic prosperity.⁴ It is therefore essential that the U.S. have a telecommunications infrastructure capable of satisfying the information-handling needs of its citizens, now and in the future.

3. Some observers express concern, however, that infrastructure development will not keep pace with user needs or that the U.S. telecommunications system will "fall behind" those of other developed countries.⁵ They contend that regulatory changes or other government action at the state and Federal levels may be necessary to promote development of a "state-of-the-art" telecommunications infrastructure. Others propose government support for particular serving arrangements or technologies, such as Integrated Services Digital Networks ("ISDNs")⁶ or public switched "broadband"⁷ networks based

³ See, e.g., D. Marchand and F. Horton, *InfoTrends: Profiting from Your Information Resources* (1986).

⁴ Kraemer, *The Impact of Competition and the AT&T Divestiture: A Survey of U.S. Business Leaders* 5-6 (Touche Ross 1989).

⁵ See, e.g., Davidson, *Telecommunications Policy in Global Perspective*, Exec. Summary at 1 (Univ. of Southern California, Oct. 1987) [hereinafter cited as Davidson I].

⁶ ISDN is a set of technical recommendations that define a common user interface to a digital telecommunications network. The ultimate objective of ISDN is to combine all communications services (i.e., voice, data, and video) currently offered over separate networks or facilities into a single, all digital network, that a subscriber can access over common facilities through a common plug in the wall. For a detailed description of ISDN, see DataPro, *Reports on Communications Alternatives*, at CA09-010-301 (Feb. 1987).

⁷ The term "broadband" generally refers to the capacity of a particular facility or network, although there is little agreement on the capacity threshold at which a network or facility changes from "narrowband" to "broadband." For one definition of "broadband," see Pepper, *Through the Looking Glass: Integrated Broadband Networks, Regulatory Policies, and Institutional Change*, FCC Office of Plans and Policy Working Paper No. 24, at 5 (Nov. 1988) [hereinafter cited as Pepper].

on fiber optic cable to the home.⁸

Because of the potential risks to users and to our national economy generally if the wrong policy choices are made, decisions as to the future shape of the nation's infrastructure must be made with care. NTIA has therefore decided to commence this comprehensive study on the current state and future evolution of the nation's telecommunications infrastructure. In so doing, we seek to develop a broad, coherent, vision of the role of telecommunications in U.S. economic and social life, and of the ways to best promote its usefulness to the American public.

4. Although this Notice poses questions in a wide variety of areas, we do not presume that these are the only issues that should be encompassed within an infrastructure study. We therefore strongly encourage interested parties to address not only the questions raised in this Notice, but also any other issues they deem relevant.⁹ Commenting parties are requested to support their arguments with facts, statistics, and economic, technical, and public policy analysis.

II. Definition of "Telecommunications Infrastructure"

5. "Infrastructure" has been defined as "the basic facilities, equipment, and installations needed for the functioning of a system or organization."¹⁰ More specifically, it has been defined as "the physical capital investments traditionally supported by the public sector to enhance private sector production."¹¹ Historically, the term infrastructure has included water and sewer systems, electric power systems, and transportation systems, such as roads, railroads, and airports. In an information-based economy, there is little doubt that it should also include telecommunications systems.

6. The heart of the nation's telecommunications infrastructure is the various public switched telephone networks that encompass the ubiquitous long distance and local network facilities offered by telephone common carriers, including interexchange carriers, such as AT&T, MCI, and US

Sprint, and local exchange carriers ("LECs"), such as the Bell Operating Companies ("BOCs") and the many "independent" telephone companies.

7. However, NTIA does not believe that telecommunications infrastructure should be defined so narrowly for purposes of this inquiry. In assessing the domestic infrastructure, we think it proper to consider the wide range of other telecommunications facilities and serving arrangements that can be employed to satisfy users' needs, such as value-added networks, cellular radio systems, paging networks, shared tenant services, metropolitan area networks, teleports, and cable television systems.¹² Although these facilities are not ubiquitous like the public switched network, where they exist, they typically may be used by all who are willing to pay the applicable rate. Furthermore, while these systems often either provide only specialized services or are targeted only to specialized markets, their offerings, by complementing or competing with the services provided over the public switched network, increase the range of telecommunications options available to users. Their value to users is evidenced by their (in some cases, considerable) acceptance in the marketplace. Thus, in our view, these facilities and serving arrangements should be included in an assessment of the nation's telecommunications infrastructure.

8. We also believe that the infrastructure should be defined to include so-called "private" networks—that is, telecommunications facilities devoted to use by a single firm or a closed group of firms. For certain

¹² Value-added network providers ("VANs") generally take public network facilities and add processing equipment to make available an expanded range of services or capabilities. VANs include such public packet switched data providers as Tymnet and Telenet.

In a shared tenant service ("STS") operation, privately-owned switching equipment (generally a PBX) is used to connect customer premises equipment located in a multi-tenant building, building complex, or real estate development. The switching equipment allows the STS customers to call each other without using the local exchange network. It also allows the STS operator to concentrate out-going traffic before it enters the network, thus permitting a substantial reduction in the number of local access lines needed to transmit that traffic.

Metropolitan area networks ("MANs") are privately-constructed network facilities that service a limited geographic area, such as a city or metropolitan area. Such networks have been installed in several major cities, including New York, Chicago, and Washington.

In the narrowest sense, teleports are satellite antenna systems that give customers access to domestic and international satellite facilities. In many cases, however, the satellite facilities are connected to a MAN in order to give customers access to the teleport facilities.

applications, such private networks can promote efficiency by permitting large users to develop customized solutions to their particular telecommunications needs and to employ telecommunications strategically to gain a competitive advantage in the marketplace. Also, private networks historically have provided an important alternative for large users when public network operators were not offering quality services with needed features at reasonable prices.¹³ Accordingly, it seems appropriate to include these significant components of our nation's telecommunications resources from our analysis.

9. At the same time, NTIA is of the view that public networks play a special role in our nation's telecommunications infrastructure. First, as a matter of efficiency, public networks with their ubiquity, interoperability, and network design (based on switches and shared facilities) have certain technical and economic advantages over non-public networks for many applications. Second, as a matter of equity, public networks are available not only to large users, but to small businesses and organizations and residential users. Thus, we are concerned that regulatory and other public policies not result in a public network infrastructure that is so technically unsophisticated and uneconomically priced that it ill serves both large users (who will abandon it for private solutions) and small users (who will have to do without advanced services). Such a result would be neither efficient nor equitable.

10. We request comment on the appropriateness of these views of our nation's telecommunications infrastructure, including whether different policy implications flow from the adoption of a narrow or broad approach to defining infrastructure.

III. Importance of Infrastructure

A. Economic Development

11. One of the more difficult questions in exploring the relationship between telecommunications and economic development is determining a causal connection: While we observe that telecommunications development and general economic development often proceed together, is it telecommunications investment that promotes economic development, or economic development that creates

¹³ In this fashion, private networks have often provided a powerful incentive for public network providers to improve the quality of their services or to price their services in a more economically rational way.

⁸ See, e.g., Hanley, *The Telecommunications Infrastructure Could Speed the Arrival of the Information Age*, Pub. Util. Fortnightly 22, 25-26 (Aug. 17, 1989) [hereinafter cited as Hanley].

⁹ We note, for example, that Hawaii, Alaska, and Puerto Rico pose particular issues for national infrastructure development, and request comments on those issues.

¹⁰ Hanley, *supra* note 8, at 22.

¹¹ Fox, *Public Infrastructure and Economic Development*, in United States Dept. of Agriculture, *Rural Economic Development in the 1980s: Prospects for the Future*, Research Report No. 69, at 282 (Sept. 1988) [hereinafter cited as Fox].

demand for more telecommunications services? Moreover, how should "economic development" be measured for this purpose (e.g., through the use of productivity, job creation, or other economic development indicators)?

12. According to William Fox, infrastructure can be linked causally to economic development in three ways: through the supply side, the demand side, and redistributive effects.¹⁴ Under this theory, supply-side linkages exist when the infrastructure makes other inputs more productive or infrastructure services are direct inputs of production. Demand-side linkages between economic development and infrastructure arise when expenditures are made to construct and operate infrastructure or where higher incomes or expanding production cause more infrastructure to be demanded. Finally, infrastructure may have redistributive effects if firms relocate to take advantage of the infrastructure. We seek comments on Fox's theory, as well as examples of how this theory may relate to telecommunications infrastructure.

13. Andrew Hardy has found both that economic development led to greater investment in telecommunications and that telecommunications investment contributed to economic development as measured by Gross Domestic Product ("GDP").¹⁵ Using Hardy's model, Edwin Parker estimated that the Rural Electrification Administration's ("REA") telephone loan program contributed \$283 million to U.S. GDP in 1980, as well as \$196 million in new tax revenues from REA borrowers and subscribers whose income had increased as a result of having telephone service.¹⁶ We seek comment on these findings, and encourage parties to present other analyses on the relationship between telecommunications and economic development.

1. Telecommunications as a Factor of Production

14. Claims are often made that telecommunications is becoming a

critical factor of production that drives economic development. This, of course, assumes a causal relationship as discussed above. We wish to explore further this contention. Increased international competition has spurred U.S. firms to develop new approaches to improving productivity, product quality, and the rate of innovation. One approach that manufacturers have taken has been to increase the use of communications and information services.¹⁷ Similarly, such services are becoming increasingly important in information-intensive sectors, such as finance, law, insurance, real estate, and other business services. These sectors are among the fastest growing in the U.S., representing nearly 50 percent of U.S. employment.¹⁸

15. Some suggest, however, that given current trends, private networks and alternative local distribution networks (e.g., Teleport, Metropolitan Fiber Systems) will carry an increasing share of traffic relative to public networks, particularly with respect to the industrial and financial sectors.¹⁹ In the past few years, alternative local distribution networks have grown substantially, with current revenues of \$400 million and earnings projected to be some \$2.5 billion by 1995.²⁰

16. There also is a trend, however, towards greater use of the public network. Since 1984, interstate switched access minutes—that is, those minutes transmitted by interexchange carriers that originate or terminate over the switched networks of local exchange carriers—have grown at an annual rate of 13.4 percent.²¹ Moreover, a number of large firms are returning to public network providers for meeting their telecommunications requirements. Recently, for example, MCI was awarded a 5-year, \$150 million contract to provide Merrill Lynch with worldwide voice and data services, as well as a \$50 million contract, in partnership with IBM, to design and operate an advanced network management and control

system.²² In awarding the contract, Merrill Lynch indicated that it sought to relinquish responsibility for managing its telecommunications operations to a public network provider, after years of operating its own private network. Similarly, AT&T recently signed 5-year contracts with Paine Webber and Kemper Financial Services, which together are estimated to be worth \$100 million, to provide them with customized networks offered through the public network.²³ Carriers are increasingly offering major customers such customized solutions through so-called "virtual private" or "software-defined" networks that allow many private network features to be offered over public network facilities. We seek comment on these trends and their implications for the future growth of public and private networks.²⁴

17. We also request comments on how U.S. businesses in different sectors (e.g., manufacturing, financial, other services) use telecommunications as a factor of production. To what extent do businesses in these sectors currently use the U.S. public switched network? What factors (e.g., cost savings,²⁵ network security, more advanced services) encourage U.S. businesses to use private networks and other telecommunications providers?

2. Rural Issues

18. The effect of telecommunications on rural development has been examined for a number of years. Traditionally, studies have focused on the impact of the introduction of telephones in developing countries.²⁶ More recent studies have examined the relationship between telecommunications and rural development in an information economy.

¹⁴ Fox, *supra* note 11, at 286-90.

¹⁵ Hardy, "The Role of the Telephone in Economic Development," *Telecommunications Policy* (Dec. 1980).

Gross Domestic Product is defined as the gross market value of goods and services attributable to labor and property located in the United States. Gross National Product or "GNP" is defined as the gross market value of goods and services attributable to labor and property owned by U.S. interests both within and outside the United States. Bureau of Economic Analysis, U.S. Department of Commerce, *National Income and Product Accounts of the United States, 1929-82: Statistical Tables* (Sept. 1986).

¹⁶ E. Parker, *Economic and Social Benefits of the REA Telephone Loan Program* (1983).

¹⁷ General Motors, for example, has developed a private information network in order to link its suppliers and dealers. Davidson, *Trends in Telecommunications Networks: Regulatory Issues and the Outlook for the U.S. Information Economy*, at 10 (Univ. of Southern California Apr. 1988) [hereinafter cited as Davidson II]. Ford and Chrysler also are substantial users of telecommunications services and operate major corporate networks to enhance their efficiency and competitiveness.

¹⁸ See *supra* note 1.

¹⁹ Davidson II, *supra* note 17, at 18.

²⁰ "How to Bypass Your Friendly Phone Company," *Forbes*, Aug. 21, 1989, at 38.

²¹ Industry Analysis Div., Common Carrier Bureau, Federal Communications Commission, *Trends in Telephone Service* (Aug. 16, 1989) [hereinafter cited as *Telephone Trends*].

²² *Telecommunications Reports*, Sept. 11, 1989, at 12.

²³ *Communications Daily*, Sept. 6, 1989, at 1.

²⁴ The transmission facilities in most private networks are dedicated facilities leased from common carriers (the LECs and interexchange carriers), although alternative sources of transmission capacity are increasingly available. Does it make any difference for an infrastructure analysis whether a private network uses one of these alternative sources for its transmission facilities?

²⁵ Some observers have noted that one form of cost savings businesses enjoy when they use private networks is the avoidance of certain taxes (e.g., excise taxes) levied on calls handled via the public network. See Rockwell, "Toll Taxes Upheld," *Communications Week*, Jan. 16, 1989, at 54.

²⁶ See, e.g., H. Hudson, *When Telephones Reach the Village: The Role of Telecommunications in Rural Development* (1984); R. Saunders, et al., *Telecommunications and Economic Development* (1983).

19. A 1989 Aspen Institute report suggests that telecommunications will be increasingly important to rural development, particularly given the changing nature of the rural economy, in which traditional activities, such as agriculture, manufacturing, and mining, are being superseded by service industries.²⁷ The Aspen report goes on to offer a number of policy recommendations for rural development, including an expanded definition of universal service²⁸ and increased lending authority for REA.²⁹

20. Other studies, however, question the potential benefits to rural development from telecommunications. One study, while agreeing that computers and telecommunications will improve economic efficiency in rural areas and cities, nonetheless concludes that new information technologies will "save much less labor than the tractor does, will raise output far less than fertilizer does, and will have less influence than television or automobiles in reducing the isolation of rural communities."³⁰ Another study suggests that even with new technologies, urban areas will retain some important advantages over rural areas, particularly the proximity offered by central locations.³¹

21. We request comments on the findings and recommendations of these studies, as well as other studies that examine the relationship between advanced telecommunications and information technologies and rural development.

22. We also request parties to describe federal and state initiatives that attempt to harness telecommunications for rural development purposes.³² One of the

most publicized state-based examples is that of Citicorp, which relocated its credit card processing and reporting operations from New York City to Sioux Falls, South Dakota. Citicorp currently employs approximately 2,500 people in data processing and telephone-based jobs at its Sioux Falls operations.³³ We are interested in examples of other initiatives to attract business to rural areas. What is the importance of telecommunications as compared with other factors (e.g., labor and other operating costs, property costs, taxes) in encouraging firms to relocate? What has been the economic impact on these areas (e.g., jobs created, new tax revenues)? To what extent have the economic gains in some rural areas come at the expense of other areas? That is, to what extent do these gains represent a redistribution of economic activity from some areas of the United States to others as opposed to an overall increase in the nation's productivity and economic performance?³⁴ What are the benefits to the national economy from infrastructure investment in rural areas? Finally, are there characteristics unique to rural areas (e.g., remoteness) that may increase the importance of telecommunications to rural economic development?

3. Urban Issues

23. Recent interest in telecommunications and economic development has not been limited to rural areas. On the contrary, there have been a number of studies relating telecommunications to urban development.³⁵ Over the past twenty years, the high cost of doing business in certain urban areas (e.g., through taxes, property costs, wages) and the economic downturn in the Northeast-Midwest region in the 1970s led many businesses, primarily those in manufacturing, to relocate. In their place, financial and business services (e.g., banking, law, insurance, real estate), emerged as the fastest growing sectors of many urban

economies. We ask for comments discussing the importance of telecommunications infrastructure to the growth of these industries.

24. In an effort to continue the growth in service industries in the New York City area, as well as to retain those firms that otherwise would leave due to the high costs of doing business, the Port Authority of New York and New Jersey initiated the Teleport project in 1983 to improve the region's telecommunications infrastructure and provide less expensive telecommunications-linked relocation sites on Staten Island as an alternative to leaving New York.³⁶ Concurrently, Teleport Communications, a joint partnership of Merrill Lynch and Western Union, was established to build the facilities associated with the Teleport project. At the time of its inauguration, Teleport was expected to create more than 5,400 jobs and \$10 million in revenues for the surrounding localities.³⁷ Critics of the Teleport project have suggested, however, that "[t]he popularity of the teleport is not based on any evidence that such a project can stimulate economic development."³⁸

25. We request information as to the success of Teleport and similar projects in achieving these objectives. What were the direct and indirect costs of such projects (e.g., as represented by tax incentives and real estate concessions)? We are particularly interested in examples from other cities that have developed public/private partnerships. In addition to joint partnerships, we also seek information on other initiatives that have been effective in using telecommunications to promote economic development in metropolitan areas.

4. State Activities

26. In addition to industry activities, we also seek information as to state activities relating telecommunications to economic development. A recent study by the University of Texas at Austin profiled policy initiatives in nine states linking telecommunications and economic development. The study found that state development agencies generally have yet to promote actively telecommunications in their economic development efforts. One possible explanation given was the lack of telecommunications expertise in most

²⁷ E. Parker, H. Hudson, D. Dillman, A. Roscoe, *Rural America In The Information Age: Telecommunications Policy for Rural Development* 11-17 (1989) [hereinafter cited as *Aspen Institute Report*]. Similar findings were reported in a 1987 study by Dillman and Beck, *Dillman and Beck, Information Technologies and Rural Development in the 1990s*, 61 J. of State Government 29 (1987).

²⁸ See *infra* section VI, for a detailed discussion of universal service issues.

²⁹ Aspen Institute Report, *supra* note 27, at 94.

³⁰ Tweeten, "No Great Impact on Rural Areas Expected from Computers and Telecommunications," *Rural Development Perspectives*, June 1987, at 7.

³¹ R. Adler, *Telecommunications, Information Technology, and Rural Development* 28 (1988).

³² See, e.g., S. 1036, 101st Cong., 1st Sess. (1989). This legislation, among other things, would increase REA's funding authority to encourage projects designed to enhance delivery of health and education services to rural areas.

³³ *N.Y. Times*, Aug. 11, 1989, at A-12.

³⁴ We do not intend to suggest that economic development programs with a primarily redistributive impact may not serve important public policy goals. The relocation of investment and jobs from prosperous to depressed areas of the country (whether rural or urban) may be fully consistent with national interests. Nevertheless, analytically, we think it is useful to distinguish between the two effects, and we ask parties to attempt to do so in their comments on these issues.

³⁵ See, e.g., Schmandt, et al., *The New Urban Infrastructure: A Study of Large Telecommunications Users* (Interim Report) (June 1989); Shooshan & Jackson, *Telecommunications Infrastructure and Economic Development in the Northeast-Midwest Region* (Apr. 1988); Moss, *Telecommunications, World Cities and Urban Policy*, Urban Studies (1987).

³⁶ Schmandt, et al., *Telecommunications Policy and Economic Development: The New State Role* 123 (1988).

³⁷ *Id.* at 130.

³⁸ *Id.* at 134.

state economic development agencies.³⁹ We seek comment on this conclusion. How does telecommunications expertise in state economic development agencies compare with their expertise with respect to other types of infrastructure? What is the extent of cooperation between state public utility commissions and economic development agencies?

27. To date, state public utility regulators and legislatures generally have been the focus of activities related to telecommunications and economic development. The most common state initiatives have been to provide regulatory flexibility and deregulation for telecommunications service providers.⁴⁰ Three states—Illinois, Virginia, and Nebraska—are cited in the Texas study as using competition in the telecommunications industry as a means to spur economic growth in the state.⁴¹

28. Moreover, a 1986 report by Minnesota's Interagency Task Force on Telecommunications Regulation suggested that the "state's regulatory posture can greatly influence the economic development potential of telecommunications."⁴² Similar findings were reported in a 1987 Coopers & Lybrand study commissioned by the New York State Office of Economic Development.⁴³ An April 1988 study by the Northeast-Midwest Institute on telecommunications and economic development also recommended actions to create a favorable regulatory climate in the northeastern and midwestern states for current and future telecommunications providers.⁴⁴ We request states to describe other initiatives or studies they have undertaken regarding economic development and telecommunications. In those states that have promoted competition in the telecommunications industry, are empirical data available to measure the success of those policies in promoting economic development?

5. Industry Activities

29. We also seek information as to the activities of the telecommunications industry in promoting economic development. Most of the BOCs and many independent LECs have economic development programs. Illinois Bell's strategy for economic development, for example, is to establish regional

organizations to assist communities in attracting and retaining business, apparently reasoning that business development also increases telecommunications usage and revenues. Illinois Bell's economic development activities, however, apparently are not directly linked to its network capabilities.⁴⁵ We seek information as to the economic development strategies of the LECs generally. We also request information as to interexchange carrier's strategies to promote economic development. How do such strategies link the capabilities of the carriers' telecommunications networks to economic development? What are the results of such strategies?

B. U.S. Competitiveness in a Global Economy

30. Worldwide, telecommunications is one of the fastest growing economic sectors in both industrialized and developing countries. In addition, many powerful trading countries now view their telecommunications infrastructure as a critical element in determining their international competitiveness.

31. Some have suggested that the United States is falling behind other countries in making the investments necessary to upgrade its telecommunications infrastructure. Davidson predicts that based upon current trends:

the United States will possess a second-class public telecommunications network relative to its principal competitors by the early 1990s. On some indicators, the U.S. network has already fallen behind its foreign competitors.⁴⁶

32. We note that some sources predict that Signalling System Number 7 ("SS7") should be available in all of Europe's major business centers in the immediate future.⁴⁷ One observer suggests that "[Europe's] extensive deployment of SS7 even puts them ahead of the [BOCs] in some respects."⁴⁸ In the Pacific region, Singapore is promoting itself as the telecommunications hub of the Far East. Its telecommunications infrastructure includes a fiber optic network interconnecting all of its telephone exchanges. In Japan, meanwhile, Nippon Telephone & Telegraph ("NTT") is committed to the digitalization of all intercity circuits in by 1992, and

nationwide by 1993.⁴⁹ In addition, NTT recently announced plans to install fiber to all Japanese homes by 2015 at a cost of approximately \$200 billion.⁵⁰ We request information on current and planned activities in other countries with respect to their telecommunications infrastructures.

33. What network capabilities are available in other countries that are not available to residential and business subscribers in the U.S. either through public or private networks, and how do they affect the competitiveness of those countries? Singapore, for example, boasts the world's first telecommunications system with all touchtone telephones.⁵¹ In addition, its public network offers such capabilities as packet switching, ISDN, international leased circuits, video-conferencing, and interactive videotext systems. The French Minitel electronic gateway system has often been cited as an example of how the U.S. public network is falling behind in providing new and advanced services to all subscribers.

34. Some observers point to the level of capital investment in telecommunications as another indicator that the U.S. is not keeping up with other countries in terms of infrastructure development. According to one estimate, the countries of the European Community are projected to lead the world in new network investment for 1989 for the second consecutive year by spending \$43.9 billion, an increase of 7.8 percent from 1988.⁵² By comparison, new investment by U.S. local exchange and interexchange carriers for network expansion during the same period was substantially lower and virtually flat (\$23.91 billion in 1988, \$24.01 billion in 1989).⁵³ We also note that in 1987,

⁴⁹ "Medium and Long-Term Digitalization Plans Revealed," *NTT America News*, Sept. 27, 1989.

⁵⁰ *Communications Daily*, Nov. 13, 1989, at 10.

⁵¹ It should be noted, however, that telephone density appears to be less in Singapore than in the United States. For example, in Singapore there are only 43 telephones per 100 people, and only 27 access lines per 100 people. By comparison, in the United States, there are approximately 94 telephones (based on current estimates of population and total telephones) and 51 access lines per 100 people.

See, e.g., U.S. Department of Commerce, 1989 *Industrial Outlook*, 29-1; Telecommunications Research Centre, *World Telecom Research*, Vol. 2, No. 27 (Oct. 1989); Williamson, "Singapore and Indonesia: Two Faces of Asian Telecommunications," *Telephony*, July 25, 1988, at 38.

⁵² "Europe Zooms While the World Watches," *Telephony*, Feb. 27, 1989, at 20.

⁵³ United States Telephone Ass'n, *PhoneFacts '89*, at 3.

³⁹ *Id.* at 265.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Report of the Interagency Task Force on Telecommunications Regulation, at 2 (Dec. 1986).

⁴³ Coopers & Lybrand, *State Policy and the Telecommunications Economy in New York* (1987).

⁴⁴ Shooshan & Jackson, *Telecommunications Infrastructure and Economic Development in the Northeast-Midwest Region*, at 22 (Apr. 1988).

⁴⁵ *Id.* at 73.

⁴⁶ Davidson I, *supra* note 5, Exec. Summary at 1.

⁴⁷ "Europe's Intelligent Networks: A Glimmering Start," *Telephony*, Aug. 22, 1988, at 36. SS7 is a packet-switched signalling technology in which signalling information is transmitted over a network separate from that associated with the caller's voice transmission.

⁴⁸ Anthony Maher, Siemens Deputy Director of Public Switching Systems, quoted in *id.* at 36.

capital expenditures per access line averaged \$248 in Singapore, compared with \$168 for the BOCs.⁵⁴

35. Another measure cited to compare investment in the U.S. and in other countries is the level of capital expenditures as a percentage of sales. William Davidson, for example, notes that between 1984-86, capital expenditures by NTT of Japan averaged 33 percent of sales, compared with 22 percent for the BOCs. For Singapore, this percentage averaged 44.5 percent for 1985-86 (1984 data not provided).⁵⁵

36. We seek comment on the usefulness of such investment data as a method of comparing the rate at which telecommunications infrastructure improvements are being made in the U.S. relative to other countries. Are cross-country comparisons appropriate in light of differences in the level of existing infrastructure? For instance, some countries are on the lower portion of the development curve relative to the U.S. with respect to infrastructure development. In these countries, capital investment in infrastructure often is targeted to extending service to unserved customers and improving the quality of basic service. Thus, it is not surprising that the percentage of sales going to capital investment might be higher in these countries than in the United States. Are there, however, countries for which comparisons are appropriate?

37. Moreover, are there other comparative measures of infrastructure investment that would be more useful for a competitive analyses? For example, in the United States, private networks are much more prevalent and extensively used by large businesses than is the case in most other countries. Do comparative investment figures that focus exclusively on public networks underestimate the extent of overall productive investment in telecommunications infrastructure in the U.S., both absolutely and, in particular, relative to other countries? We ask for comment on capital expenditures for private telecommunications networks in the United States and other countries.

C. Delivery of Critical Services

38. Much has been written on the importance of telecommunications to the delivery of critical services. Although we discuss only a few of the issues relating to such services, we encourage interested parties to identify others.

1. Education

39. In recent years, telecommunications has been viewed as potentially playing an important role in improving the quality of education in the United States. In 1987, for example, Congress established the Star Schools program to provide grants for improving instruction in math, science, and foreign languages via telecommunications.⁵⁶ Through the use of satellite networks to distribute and receive course materials, students in schools participating in this program will be able to take courses otherwise unavailable in their areas. In 1988, the program awarded \$19 million in grants to four regional partnerships. The grants were expected to serve students in more than 1000 schools in 39 states.⁵⁷ We request comment on the success of the four regional partnerships. How could other transmission media (e.g., fiber) be employed in such educational networks?

40. Educational networks also are extending to the business community, as companies develop on-site, interactive training centers linked to public and private institutions. One such network is The National Technological University ("NTU"), a satellite-based consortium of 28 engineering universities. NTU awards accredited masters degrees in engineering and material sciences as well as non-credit courses and workshops on advanced technology to 220 corporate and government research sites nationally. NTU is ranked among the top quality post-graduate engineering institutions in the U.S.⁵⁸ Included among its participants are such U.S. corporations as AT&T, Digital Equipment Corporation, General Electric, Hewlett Packard, IBM, Motorola, NCR, and Xerox. We seek information on other approaches to using telecommunications as a tool for expanding education opportunities. We are particularly interested in the possibilities for using telecommunications to provide interactive training and education to the home. What network capabilities are necessary to make such services feasible?⁵⁹ Are there regulatory barriers to the development of such network capabilities?

41. We also seek comment on recent proposals to develop a national high

speed (3 billion bits per second ("Gbps")) data network that would link education and research supercomputing centers around the country.⁶⁰ How would such a network enhance the level of education and research activities throughout the U.S.? What policies would be necessary to ensure that the telecommunications innovations present in such a network become commercially available? Should such capabilities eventually be offered through the public network, or is this an example of a network serving such a specialized set of needs that a private solution is the most efficient approach?

2. Health Care

42. Telecommunications also has become an important component in the provision of health care services, particularly to rural communities. Recent technological advances, for example, now make it possible to transmit patient data (e.g., x-rays, electrocardiograms) electronically from remote locations to health care specialists in urban areas, while some information services permit patients to be monitored at home by their doctors, thereby reducing the number of office visits.⁶¹ At Texas Tech University, a \$4.4 million "medical telecommunity" system is being established to link the school's health science centers with distant West Texas communities.⁶² In Alaska, health aides speak daily with doctors from regional hospitals via satellite.⁶³

43. We ask for additional information on the ways in which telecommunications may be used to improve the delivery of health care services. In particular, what types of advances in the infrastructure would enhance our ability to extend sophisticated diagnostic and other medical services to rural and underserved areas? Are there potential cost savings associated with using telecommunications as a component of home health care and can they be quantified?

⁵⁴ See, e.g., Office of Science and Technology Policy, Executive Office of the President, *The Federal High Performance Computing Program* (1989); See also S. 1067, 101st Cong., 1st Sess. (1989) (introduced by Sen. Gore); H.R. 3131, 101st Cong., 1st Sess. (1989) (introduced by Rep. Walgren).

⁵⁵ Telemed of Ohio recently announced plans to offer such services as touchtone data entry and bedside conferencing to residents of Columbus, Ohio, beginning in March, 1990. *Communications News*, June 1989.

⁵⁶ "Video Network Links Hospital With Rural Texas Communities," *John Naisbitt's Trend Letter*, Sept. 29, 1988, at 5.

⁵⁷ Aspen Institute Report, *supra* note 27, at 46.

⁵⁴ Davidson II, *supra* note 17, at 10. Some of the difference in capital expenditures per access line may be related to density. See *supra* note 51.

⁵⁵ See Davidson II, *supra* note 17, at 10, 21.

⁵⁶ Act of Apr. 28, 1988, section 2302, Public Law No. 100-297, 102 Stat. 130.

⁵⁷ U.S. Department of Education News Release, "Education Department Launches Star Schools Program" (Oct. 1988).

⁵⁸ *Telecom 2000*, *supra* note 2, at 89.

⁵⁹ While not a focus of this study, we recognize that mass media can play an important role as a tool for improving education.

3. Public Safety

44. Public safety agencies are among the largest users of telecommunications today. Moreover, demand for public safety telecommunications is growing. While much of the use of telecommunications by public safety agencies has been through the radio spectrum, the public switched network also has played a critical role in the public safety areas. In most areas of the U.S., for example, 911 emergency service has become integral to public safety services. As successful as 911 service has been to public safety agencies, "enhanced" 911 systems promise even more benefits. When connected to a database, such systems can direct emergency calls and the address of the caller to the correct public safety agency. In addition, these systems can provide the public safety agencies with caller-specific instructions and medical information. What is the level of deployment of enhanced 911 nationwide? Are there regulatory and technological barriers that currently limit the ability of local exchange carriers to offer enhanced 911 through the public network?

45. The private sector also uses telecommunications to provide safety and security services, such as home security systems. We request comments addressing the various ways in which telecommunications services are being used, or could be in the future, in the provision of safety and security services. What technological developments are particularly promising for these applications?

46. While new technology may hold much promise for enhancing the level of public safety services, there is concern that technology also may increase network vulnerability in the event of a disaster.⁶⁴ John Myers, director of the Defense Communications Agency and manager of the National Communications System, recently suggested that network vulnerability will increase as advances in transmission and switching technology allow more traffic to be consolidated and centralized.⁶⁵ Events such as the fire at the Hinsdale, Illinois central office last year might appear to support his contention. In contrast, however, Pacific Bell reported little damage to its network equipment in the wake of the recent Northern California earthquake. Furthermore, technical developments

such as so-called "self-healing" networks, dynamic routing, ring architectures for local networks, and the redundant capacity available both within and among today's modern networks may actually improve the robustness of the telecommunications infrastructure. We seek comment on the issue of network vulnerability in light of new technology. Will technology also allow for faster restoration of service in the event of a disaster?

4. Quality of Life

47. Demographic, social, and economic factors in the coming years are likely to increase the impact of telecommunications on the quality of life for most Americans. One of the most significant changes may be in the way Americans work. Today, a growing number of workers are remaining at home, communicating with their employers through the use of a computer, modem, and telephone line. One estimate is that by 1993 as many as 5 million people could be performing such "telecommuting" in computer-related jobs.⁶⁶ Among the private sector companies and public sector organizations with current or proposed telecommuting programs, are J.C. Penney, Travelers Corporation, Levi Strauss, the U.S. Government's Office of Personnel Management, and the California Public Service Commission.⁶⁷

48. We request information on the social and economic implications of telecommuting. We are interested in details on firms that have implemented telecommuting trials or programs. What factors encouraged such activities? What network capabilities are necessary to make telecommuting possible? What has been the success of telecommuting to date? We are particularly interested in any quantitative data on the benefits and costs associated with telecommuting.

49. Similarly, home use of "videotext gateways" for electronic banking, shopping, information, conversation, and entertainment has increased,⁶⁸ with several BOCs and numerous other firms either conducting trials or offering full-blown services. We request comments on the role that gateways and other information services can have in the public's business and leisure activities. What is the demand for such services?

How could such offerings provide more benefits to users?

50. We are also interested in the ability of an advanced telecommunications infrastructure to meet the communications needs and improve the quality of life of disabled Americans. What telecommunications services are now available to disabled individuals?

51. Currently, hearing and speech-impaired individuals in the United States who are unable to use conventional telephone service communicate with one another on the public network through Telecommunications Devices for the Deaf ("TDDs"). TDDs use a typewriter-style device equipped with a message display (screen and/or printer) to send a coded signal through the telephone network. To communicate with non-TDD users, hearing and speech-impaired individuals rely on a type of relay system, with a third-party operator completing the connection and transmitting messages between the two parties. Relay systems have been adopted or are under consideration in 37 states.⁶⁹ Moreover, the Senate recently passed legislation that would require all common carriers to provide hearing and speech impaired individuals with the capability to communicate with hearing individuals.⁷⁰

52. In the future, additional options will be available to hearing and speech-impaired individuals. Recently, for example, IBM introduced a computer system which translates a deaf person's typewritten words into synthesized speech, while the listener spells out a response on a touchtone keypad. The responses then appear on the deaf person's computer screen.⁷¹ AT&T has announced plans to offer a similar service within its network early in 1990, allowing TDD messages to be converted into synthesized speech.⁷²

53. For those Americans with limited mobility (e.g., the elderly, individuals confined to a wheelchair), the advent of mobile communications (e.g., cordless telephones) may have made it somewhat easier for these individuals to make use of the public network. For example, a telephone set that can stay with the person eliminates the need to move across a room or into other rooms to answer or receive a call.

⁶⁴ "Office at Home," *American Demographics*, Dec. 1988, at 32.

⁶⁷ Kilborn, "Quake Gives An Impetus To Commuting by Phone," *N.Y. Times*, Nov. 15, 1989, at A20.

⁶⁸ It is estimated that 1.6 million customers currently use available information services. "Bells Go On-Line," *Communications Week*, May 8, 1989, at C1.

⁶⁹ The National Center for Law and the Deaf, *Dual Party Relay Services* (July 1989).

⁷⁰ See S. 933: Americans with Disabilities Act of 1989, 101st Cong., 1st Sess.

⁷¹ Sims, "IBM System to Aid Phone Discourse by Deaf," *N.Y. Times*, Dec. 13, 1989, at D7.

⁷² *Id.*

⁶⁴ The recent Northern California earthquake and Hurricane Hugo are graphic reminders of the need to maintain dependable communications in the face of natural disasters.

⁶⁵ Roeckl, "Myers: Public Network Not Secure," *Communications Week*, Sept. 18, 1989.

54. What advanced telecommunications services could be made available in the future to disabled Americans? Is the current U.S. infrastructure adequate to allow for the introduction of such services? If not, what infrastructure improvements would be necessary before such services could be introduced?

IV. Current and Projected State of the Domestic Infrastructure

A. Technological Developments

55. The debate about future development of the nation's infrastructure starts with the fact that, over the years, the United States has consistently had the most advanced and reliable telecommunications system in the world. New technologies have been developed and incorporated into the network on a regular basis. For example, AT&T's long distance network has evolved from exclusively copper transmission facilities to include microwave, satellite, and, increasingly, fiber optic facilities, while its switching facilities have moved from manually-operated to electromechanical to electronic. AT&T's long distance competitors have also aggressively adopted advanced technologies, such as US Sprint and its all-fiber network, which in turn has spurred AT&T to upgrade its network. U.S. firms have also consistently modernized their networks to incorporate technological innovations, although this may not have occurred at the optimal rate.⁷³

56. The LECs' public switched networks are also being steadily upgraded. This process has been spurred by the 1982 AT&T Consent Decree, which, among other things, required the BOCs to provide competing long distance carriers the same access to local exchange facilities that the BOCs historically have provided AT&T.⁷⁴ Because electronic switches facilitate provision of such access, conversion to equal access accelerated the LECs' replacement of electromechanical switches with electronic switches (both analog and digital).

57. New installations of analog electronic switches by the LECs apparently peaked in 1986, as the companies began migrating toward

digital electronic switches.⁷⁵ Some estimate that virtually all LEC access lines will be served by digital switches in the year 2000.⁷⁶ With respect to transmission facilities, approximately 84 percent of the LECs' interoffice trunks are currently digital, with the remaining analog trunks projected to be converted to digital facilities by 1995.⁷⁷ The LECs' feeder plant⁷⁸ is projected to be virtually all digital by 2009.⁷⁹

58. Finally, LECs are also moving to install the latest form of digital transmission technology—fiber optic cable—in their local networks. Roughly 23 percent of the LECs' 195,000 miles of interoffice trunks are now fiber optic cables.⁸⁰ Virtually all of the LECs' remaining interoffice facilities are forecast to be fiber by 1999.⁸¹ Although fiber optic cable currently comprises less than 8 percent of the LECs' feeder plant,⁸² those facilities are predicted to move entirely to fiber in twenty years.⁸³ LECs are only now testing the feasibility of installing fiber in their subscriber distribution plant,⁸⁴ but the pace will doubtless increase in the future. One BOC executive has projected that his company's network will be entirely fiber by 2011.⁸⁵ Another group has forecast that all LEC networks will be entirely fiber by the early 2020s.⁸⁶

59. In addition, deployment of cellular telephony has grown dramatically in the 1980s. LECs are currently operating cellular systems (employing the wireline frequency block)⁸⁷ in virtually all of the

305 metropolitan service areas ("MSAs"). Moreover, independent cellular providers and LECs outside their own operating areas are currently using the non-wireline frequency block in approximately 295 of the MSAs. It is estimated that there are currently 2.7 million cellular telephone subscribers in the United States.

60. We request commenters, and particularly LECs and interexchange companies, to provide updated and more complete information on the technological evolution of U.S. public networks. In particular, we would appreciate information on how deployment of the different technologies (such as digital switches and transmission facilities, fiber optics, and cellular) may vary among LECs. For example, how will deployment of such technologies vary between BOCs and the "independent" LECs, between large and small LECs, or between urban and rural LECs? What factors would account for differential rates of technology adoption among LECs? We also request data on the projected costs of such network modernization.

61. NTIA requests similar information from alternative service providers, including teleports, STS providers, VANs, MANs, and private network operators. How does the pace of technological deployment and modernization within such networks compare with that for the public networks? What factors account for any differences?

62. Additionally, Northern Telecom recently introduced "FiberWorld," a family of access, transport, and switching products that, it claims, will provide increased switching and transmission speeds for voice, data, and image communications. Several BOCs and independent LECs have already announced plans to purchase the new equipment.⁸⁸ Also recently, AT&T announced its "2000 Product Family," an array of intelligent optical network transmission and switching products.⁸⁹ According to AT&T, its new offerings will allow LECs to offer their customers many broadband services, such as high speed computer links and video distribution. At the same time, AT&T introduced new software for its 5ESS switch that will speed the introduction and expansion of ISDN services. We request comment on these product announcements, particularly their implications for network development

⁷³ Vanston, Lenz, and Wolff, "How fast is new technology coming?," *Telephony*, Sept. 18, 1989, at 49 [hereinafter cited as Vanston].

⁷⁴ *Id.* As of January 1989, 34 percent of the BOCs' central office switches and 50 percent of the switches owned by the ten largest independent LECs were digital. See Aspen Institute Report, *supra* note 27, at 80, 81 (Tables 9 and 10).

⁷⁵ Vanston, *supra* note 75, at 50.

⁷⁶ The "feeder" plant includes transmission facilities running from a local central switching office to a private customer network or to a neighborhood distribution node. Corning: *Its Role in Optical Communications* at 19 (1989) [hereinafter cited as Corning Report].

⁷⁷ Vanston, *supra* note 75, at 50.

⁷⁸ Corning Report, *supra* note 78, at 22.

⁷⁹ Vanston, *supra* note 75, at 50.

⁸⁰ Corning Report, *supra* note 78, at 22.

⁸¹ Vanston, *supra* note 75, at 50.

⁸² The "distribution" plant consists of the transmission lines from the neighborhood distribution node to the telephone pole outside of the subscriber's home or building. Corning Report, *supra* note 78, at 19.

⁸³ BellSouth Executive Vice President Richard Snelling. See also Vanston, *supra* note 75, at 50.

⁸⁴ Vanston, *supra* note 75, at 50.

⁸⁵ When the FCC authorized the cellular telephone service, it set aside two blocks of frequencies in each market. The so-called "wireline frequency block" could only be awarded to the company or companies providing local telephone service in each market. The "non-wireline frequency block" could only be awarded to a company other than the provider(s) of local telephone service.

⁸⁶ Duffy, "Northern Telecom Adds Fiber," *Computer Systems News*, Oct. 16, 1989, at 3.

⁸⁷ *Telecommunications Reports*, Oct. 30, 1989, at 38-39.

⁷³ See *infra* Section V, for discussion of some reasons why the telecommunications infrastructure may not have been modernized at the optimal rate. We request interested parties to comment, in particular, on whether network modernization by the Bell System over the years was too fast or too slow.

⁷⁴ The FCC subsequently imposed a similar "equal access" obligation upon the other LECs.

and the range of services available to customers.

63. Finally, current research promises to produce new equipment, especially switching equipment, to further improve the performance of telecommunications networks. For example, work is proceeding on development of a photonic switch, which will permit switching of fiber optic transmission in the optical mode, thus eliminating the current need to convert optical signals to electrical signals for switching purposes. Among other things, this should reduce the costs of switched fiber optic networks. Research is also under way on fast packet switching, a technique that will expand the capabilities of packet switched transmission systems. We seek further information on these new technologies. At what stage of development are they? How soon can they be deployed? What implications will they have for network design and service provision. With respect to fast packet switching, to what extent do the continual increases in the capacity of fiber optic facilities reduce the need for this?

64. While network facilities are being upgraded steadily, new technologies are also being introduced to permit more efficient use of such facilities, or to expand the range of services that may be provided over them. For example, LECs are in the process of upgrading their switching systems by deploying SS7. While SS7 will speed call set-up and termination, it will also allow LECs both to offer new services, such as advanced 800 service, and to deploy existing services to be deployed more broadly.⁹⁰

65. We understand that the BOCs will have completed deployment of SS7 by the early to mid-1990s. Precise deployment information is sketchy, however.⁹¹ We request that the BOCs provide more detailed deployment schedules. Specifically, we request data on the percent of central offices and access lines that will be equipped for SS7 each year for the next five years.

⁹⁰ Some advanced services, such as calling number identification, are now available in selected BOC central offices. Deployment of SS7 will permit such services to be made available on an interoffice basis.

⁹¹ The BOCs' amended Open Network Architecture plans provide some preliminary deployment information. The five Ameritech operating companies will have deployed SS7 in eleven access tandems and 97 central offices by the end of 1992. Open Network Architecture Plan of the Ameritech Operating Companies at 132 (Amendment filed May 19, 1989). NYNEX plans to deploy SS7 "at the tandem level," and to trial the technology in central offices located in two LATAs in 1989-1990. Open Network Architecture Plan of the NYNEX Telephone Companies at 21-22 (Amendment filed May 19, 1989).

We also seek information on the rate at which SS7 is being implemented by the independent LECs.⁹² Are there market or regulatory barriers that may be impeding more rapid introduction of SS7?

66. The BOCs are also beginning to implement ISDN. At this time, two standard transmission rates for "narrowband" ISDN have been specified: (a) The "basic" ISDN rate," which provides two digital "B channels" transmitting at 64 kilobits per second ("kbps"), which can be used for voice or data, and one digital "D channel" transmitting at 16 kbps, which is used to carry signalling information for the B channels and can be used, under certain circumstances, for data communications; and (b) the "primary" ISDN rate, which provides 23 B channels and one D channel, all transmitting at 64 kbps.

67. As with SS7, precise ISDN deployment schedules are not readily available, although we understand that concerted implementation by the BOCs will occur in the early 1990s.⁹³ We request further comment on this matter, as well as information on the ISDN deployment plans of the independent LECs. We also seek data on current and projected U.S. demand for ISDN service, as well as the percentage of public network access lines that are capable of supporting a basic ISDN transmission rate. What is the relative distribution of ISDN-capable access lines deployment among LECs (e.g., BOCs v. independents, large v. small, urban v. rural)? How much would it cost to upgrade all local access lines so that each of them could provide at least the basic ISDN rate?

68. Will such capacity be necessary to satisfy small user needs for the foreseeable future? Will it be sufficient to meet such demands? Will anticipated or projected services require greater

⁹² We understand that consortia of independent LECs (Independent Telecommunications Network, Inc. and U.S. Intelco Networks) are developing a shared SS7-based network, Signet 7. We request information on the development of this network and the services it will be used to provide.

⁹³ Pacific Telesis has identified 25 wire centers that would be "excellent" for ISDN deployment. Pacific Bell and Nevada Bell Further Amendments to Plan to Provide Open Network Architecture at 49 (filed May 19, 1989). NYNEX plans to trial ISDN in three cities in 1989-1990. Open Network Architecture Plan of the NYNEX Telephone Companies at 22 (Amendment filed May 19, 1989). Ameritech plans to equip some 35,000 access lines in 65 central offices with ISDN capabilities by the end of 1990. Open Network Architecture Plan of the Ameritech Operating Companies at 141 (Amendment filed May 19, 1989). Bell Atlantic intends to offer ISDN on an individual customer request basis until ISDN equipment is more widely available. Amendments to Bell Atlantic's ONA Plan at 22 (filed May 19, 1989).

transmission capacity than a basic ISDN rate? If so, we request further information on when such services may be adopted and what transmission capacities they may require?

69. Some have argued that a public broadband network could provide advanced video services, such as entertainment video on demand and interactive video. What is the demand for such broadband services? Is a public switched, broadband network necessary to meet that demand? What are projections or estimates of the costs to users of such services? Additionally, sophisticated switched video services could require fairly complex switching and storage facilities. To what degree have such facilities been developed yet? How long will it take to develop them fully? At what cost?

B. Adequacy of Projected Infrastructure Development

70. Given that the public telecommunications network is being upgraded continually, a crucial issue is whether the current pace of infrastructure development is adequate. If not, should Federal or state government attempt to influence that pace?

71. One potential criterion, which is discussed more fully below, is whether the infrastructure will be adequate to meet existing and anticipated user needs. Under this model, to the extent that infrastructure development responds to "demand pull" from users, it is adequate. Some contend, however, that it may be short-sighted to restrict infrastructure development narrowly to facilities and capabilities needed to satisfy current customer demand,⁹⁴ arguing that once a telecommunications facility is in place, its capabilities generate applications and services unknown and unforeseeable when the deployment decision is made. In essence, this argument emphasizes the benefit of "pushing" a technological result, rather than waiting for the technology to be deployed in response to consumer demand. Interested parties are requested to comment on the relative merits of the "demand pull" and "technology push" models of technology and service evolution. In particular, we would appreciate available studies on the competing models, including assessments of the conditions, if any, under which each approach is most beneficial.

72. Another criterion for judging the current pace of infrastructure development could be to consider

⁹⁴ See, e.g., Pepper, *supra* note 7, at 15.

whether such development will be adequate to enable U.S. firms to be competitive in increasingly global markets. Section III.B. above explores the relationship between infrastructure development and U.S. competitiveness. We request comment on whether a "competitiveness" criterion should be of primary importance in considering infrastructure development. To what extent is such a criterion distinguishable from the "demand pull" and "technology push" criteria? For example, if the infrastructure is permitted to evolve in response to customer demand, would not business customers be able to obtain the telecommunications facilities or capabilities they would need to be competitive?

73. If the pace of current infrastructure development should be judged according to its ability to meet customer needs, we request further information on how the infrastructure is performing under such a criterion. In this regard, there appears to be general agreement that larger users will be able to satisfy their communications needs at a price, whether through public network facilities, other telecommunications providers (e.g., MANs or private carriers), or the users' own private networks utilizing sophisticated customer premises equipment ("CPE").⁹⁵ Is this assessment accurate? Even if correct, is this situation desirable as a matter of policy? We recognize that, to the extent that large users substitute private communications solutions for use of the public switched network, rate pressures may increase for the remaining public network users. How serious a problem for the public network is the use of private facilities by large users? What portion of a large user's local and interexchange traffic is carried over private facilities?

74. Most observers agree that, in contrast to large users, residential and small business users have few, if any, alternatives to the public network. As a result, if the public telecommunications infrastructure cannot provide a desired service, and if it is not available through reasonably priced CPE, such users most likely will have to do without. However, some observers argue that the present twisted pair-dominated public distribution network can now carry virtually all existing or proposed services available to the largest users, with the exception of video.⁹⁶ Does the

public network adequately satisfy current small user demand? If so, will this condition continue in the future? What improvements in the telecommunications infrastructure would most benefit small business and residential customers?⁹⁷

V. Government's Role in Infrastructure Development

75. If it appears that there are problems with the current pace or direction of domestic infrastructure development, additional government action may be appropriate to ensure that adequate facilities will be in place in the future to meet the needs of U.S. businesses and citizens. Government action could follow two general courses. First, government could remove regulatory barriers that may be impeding efficient infrastructure development in response to market forces. Second, government could adopt policies to actively promote infrastructure development. We examine these alternatives below.

A. Government Regulation

76. Over the years, through decisions of regulatory agencies, judicial proceedings, and congressional actions, government bodies have had profound effects on the telecommunications industry in ways that affect its growth, evolution, and responsiveness to changes in technology and customer demand. These impacts are both direct, e.g., through regulatory review of the investment decisions of common carriers, and indirect, e.g., through myriad pricing and market rules that influence the incentives of the various participants in telecommunications markets. Thus, it is incumbent upon government to adopt policies that promote efficient investment (and remove policies that induce inefficient investment) in telecommunications facilities.

77. Although the following paragraphs focus on specific policies and regulations, the discussion is not meant to be exhaustive. We strongly encourage commenting parties to raise any other policies that they deem relevant. We

realize, moreover, that a number of the issues discussed have already been examined in some detail by other government bodies. In many cases, however, those deliberations have not considered the link between particular policies and infrastructure development. This Notice seeks to gather information that will enable us to determine if such connections exist and, if so, how decisive they are.

78. At the same time, we understand that resolution of these policy issues need not turn on the potential impact on infrastructure development. For example, some policy choices may be appropriate even if they have no positive impact upon infrastructure development. Conversely, a policy choice may, on balance, be inappropriate even if it stimulates investment in new telecommunications facilities and services. Accordingly, pending completion of this study, NTIA will continue to take policy positions on issues that we are examining in this Notice from an infrastructure perspective.

1. Rate of Return Regulation

79. The FCC and many states currently control LEC prices through a mechanism known as "rate of return" regulation,⁹⁸ which attempts to restrain rates by constraining regulated firm profits. The deficiencies of rate of return regulation, in general, are well-documented.⁹⁹ Its potential impact on infrastructure development is more ambiguous, however. Economists have argued that, under certain conditions, rate of return regulated firms may be able to increase profits by overinvesting in capital equipment, or by "gold-plating" their networks (the so-called "Averch-Johnson," or "A-J" effect). There is, however, considerable dispute among industry analysts about the extent to which this effect occurs in practice. Moreover, even when the A-J effect is influencing the investment decisions of regulated firm,¹⁰⁰ it would

⁹⁵ See *id.* at 2, 14 n.20. As the term suggests, CPE is equipment located on a customer's premises and used to originate, route, or terminate telecommunications traffic.

⁹⁶ See *id.* at 14.

⁹⁷ We recognize that the ability of the public network to satisfy users' needs raises affordability, as well as technical availability, issues. Telephone companies and regulators often price new features in the public network substantially above cost in order to generate subsidies for other basic services. The resulting high rates for new features can effectively make them less available to users, retarding deployment of such features on a ubiquitous basis throughout the network, and discouraging development of new enhanced services that build on advanced network capabilities. These issues are addressed in Sections V and VI below.

⁹⁸ Of the domestic long distance carriers, only AT&T is subject to detailed regulation at the Federal level. The FCC recently replaced rate of return regulation for AT&T with a form of "price cap" regulation. See *Policy and Rules Concerning Rates for Dominant Carriers*, 4 FCC Rcd 2873 (1989), *recon. pending*. While the FCC treats other domestic long distance companies as common carriers, thus bringing them within the purview of Title II of the Communications Act of 1934, it has decided to forbear from applying the tariff and other regulatory strictures of the Act to those carriers. As a result, AT&T's competitors are largely deregulated. Many state agencies have deregulated the intrastate long distance services provided by non-LEC firms, including AT&T.

⁹⁹ See, e.g., *NTIA Regulatory Alternatives Report*, NTIA Report No. 87-222, at 13-31 (July 1987).

¹⁰⁰ See *id.* at 25-26.

seem to promote infrastructure development only if the regulated firms "overinvest" in state of the art technologies. We request comment on this point.

80. On the other hand, rate of return regulation may deter infrastructure development. Because rate of return regulation focuses intently on a firm's costs and profits, regulators inevitably become enmeshed in the firm's investment decisions. Fear of disallowances and "second-guessing" by the regulators may dissuade the firm from pursuing an aggressive investment strategy. Thus, in addition to the business risks involved in deploying new technology, the regulated firm faces regulatory risks that may deter it from making the necessary investments.

81. Furthermore, to the extent that new technologies are "successful" and enable the regulated firm to operate more efficiently and to offer valuable new services, the firm may be prohibited from retaining any resulting increased revenues that are deemed excessive—i.e., that cause it to exceed its authorized rate of return. Accordingly, under this scenario, rate of return regulation may increase the risks and reduce the benefits of investment in new technology. This could lead LECs to adopt a very conservative approach to such investments.¹⁰¹ We seek comment on these issues. On balance, what effect does rate of return regulation have on regulated firms' incentives to modernize their telecommunications networks?

82. Commenters should also address what effects alternative forms of regulation may have on infrastructure development. For example, a well-crafted "price cap" plan should create strong incentives for regulated firms to control costs. Under what circumstances would such firms attempt to control costs by reducing their investments in their networks? More broadly, what sort of price cap plan would create the strongest incentives for network development?

2. Depreciation Practices

83. Over the years, regulators have prescribed long depreciation periods for network investments, primarily as a means of keeping local rates down. By

extending the time it takes for regulated firms to recover the costs of embedded investments, lengthy depreciation periods may reduce those firms' incentives to invest in new or replacement equipment. The adverse effects will likely increase the more the prescribed depreciation period exceeds the economic useful life of a particular investment. The FCC attempted to accelerate depreciation schedules for LECs, but the Supreme Court invalidated that initiative as applied to the intrastate portion of LEC investment (which represents about 80 percent of total LEC investment) as an unlawful intrusion on the authority reserved to state utility commissions under the Communications Act of 1934.¹⁰²

84. We solicit comment on the relationship between prevailing depreciation practices and network investment.¹⁰³ How do current depreciation schedules for specific categories of network equipment compare to the true useful life of that equipment? How do U.S. depreciation policies compare with those of other nations, such as those in the European Community or the Pacific Rim? Currently, depreciation policies for the bulk of the public telecommunications network are established by the different state regulatory agencies. What impact does this have on infrastructure development? What would be the impact on regulated rates, particularly residential rates, if depreciation schedules were revised to reflect the economic life of the pertinent asset? How could such changes be made under existing regulations and court decisions? What impact do specific depreciation practices designed to stimulate investment, such as accelerated depreciation, have on carrier decisions to deploy new technology?

3. AT&T Consent Decree Restrictions

85. The line of business restrictions placed on the BOCs by the AT&T Consent Decree may hamper infrastructure development. NTIA studies have concluded, for example, that the information services restriction has reduced the availability of information services in the United States.¹⁰⁴ Because of the resulting

limited U.S. market for information services, the BOCs may have reduced incentives to invest in the network facilities needed to make such services available.

86. The manufacturing restriction may also limit infrastructure development by reducing the BOCs' incentives and abilities to develop and produce new equipment that could be used to provide new services. The Decree court's expansive interpretation definition of the term "manufacturing" to include product-related research and development and software development¹⁰⁵ may worsen this problem.¹⁰⁶ Interested parties are requested to discuss these assessments, as well as other ways in which the manufacturing restriction may adversely affect infrastructure development.

87. Finally, the Decree court has ruled that the interLATA service restriction bars a BOC from carrying traffic across a LATA boundary to enable customers to access an information service gateway.¹⁰⁷ This decision appears to require a BOC either to place a separate gateway in each of its LATAs or to require its customers to purchase interLATA services from an interexchange carrier in order to reach the BOC gateway. The BOCs assert that both of these alternatives result in increased costs of providing gateway services and thus reduce the BOCs' incentives to invest in such advanced facilities. We request comments on this point, including estimates of the extent to which the costs of deploying or using BOC gateways will increase under the present rule. What effect will this have on subscriber demand for such services? More broadly, to what extent will the court's interpretation of the interLATA service restriction deter the BOCs from deploying other network facilities or capabilities (e.g., SS7).

4. Cable/Telephone Company Infrastructure Development

88. Recently, the policy discussions on telecommunications infrastructure development have increasingly focused on the potential benefits of a public switched network featuring broadband facilities, such as end-to-end fiber optic transmission and broadband switching. Such facilities would enable telephone

¹⁰¹ For example, Alfred Kahn has argued: "[R]ate base/rate of return [regulation] is incompatible with the pressing needs of the telecommunications industry . . . [because of] its inherent and inevitably asymmetrical hostility to very large profit payoffs from successful investment, on the one side, and to passing on to captive ratepayers the possibly high costs of investments that have failed, even though prudently undertaken." National Economic Research Assoc., Inc., *Proceedings of the Third Biennial Telecommunications Conference* 227, 228 (1989).

¹⁰² See *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355 (1986).

¹⁰³ Of course, to the extent a jurisdiction adopts a price cap plan or other forms of incentive regulation, LEC investment decisions should not be affected by regulatory depreciation rules. In this section, we are soliciting comments on the role of depreciation practices on network investment under rate of return regulation.

¹⁰⁴ See, e.g., *Telecom 2000*, supra note 2; NTIA *Information Services Report*, NTIA Report 88-235 (Aug. 1988).

¹⁰⁵ *United States v. Western Elec. Co., Inc.*, 675 F. Supp. 655 (D.D.C. 1987), appeal docketed, No. 88-5050 et al. (D.C. Cir., Feb. 23, 1988).

¹⁰⁶ See NTIA, *The Bell Company Manufacturing Restriction and the Provision of Information Services* (Mar. 1989).

¹⁰⁷ *United States v. Western Elec. Co., Inc.*, 1989-1 Trade Cas. (CCH) para. 68,400 (D.D.C. Jan. 23, 1989).

companies to deliver to their customers video services, including current forms of video programming and new interactive video services, in addition to traditional voice and data services. However, the United States currently has in place well-developed, if heterogeneous, capabilities for delivering video programming to the home.¹⁰⁸ Indeed, more than 80 percent of the nation's households are passed by, and more than 56 percent now subscribe to, a broadband video distribution system—cable television. At the same time, more than 93 percent of U.S. households subscribe to telephone service through the separate public switched network, with its emphasis on the provision of voice and data transmission.

89. Some industry observers argue that the delivery of video services over a broadband switched network could have a number of potential benefits for the public. First, they assert, it would introduce new competition into the video marketplace. In most communities, there is a single provider of multichannel video programming—the cable television company. The availability of an alternative source of programming would help open up what some have described as an increasingly "closed" and less than fully competitive market for the delivery of video services.¹⁰⁹

90. Second, the use of switched transmission facilities offered on a common carrier basis for delivery of video services would alter the relationship between programmers and viewers. Currently, cable systems deliver only a limited number of channels and decide which programming they will carry on those channels. In this fashion, cable systems act as gatekeepers, controlling viewers' access to programming. With a switched broadband system, there would be few capacity limitations on the number of channels that could be delivered. Moreover, assuming the underlying transmission services were offered on a

common carrier basis, any programming service could obtain capacity on the system on a nondiscriminatory basis.

91. Third, a switched broadband system would allow the delivery of advanced video services, such as "video on demand," interactive video services for a wide variety of purposes (including education, medical treatment, and business and community meetings, as well as entertainment), and "video processing" services.¹¹⁰ These types of services are for the most part unavailable on either current cable television or telephone networks.

92. We request parties to comment on these purported benefits of a switched broadband network. To what extent are they valid? Could they be realized by means other means?

93. Some also argue that a switched broadband network would be a more efficient means of delivering all forms of electronic information, since voice, data, and video services could be offered on an integrated basis over the same system. What scope economies could telephone companies realize by such service integration? Parties are requested to submit any credible data or studies on the nature and size of such economies. What other benefits could accrue from such activities by telephone companies? Similarly, we recognize that existing cable facilities could be modified to provide voice and data transmission as well as video programming delivery. We request comment on the technical, economic, and regulatory feasibility of doing so.¹¹¹

a. Telephone Company Provision of Video Programming. 94. At present, the 1984 Cable Act¹¹² and FCC rules¹¹³ generally prohibit LECs from providing video programming within their local service areas. The *NTIA Video Study*¹¹⁴ concluded that the current cable/telephone company crossownership rules should be maintained largely intact. It recommended, however, that those rules be modified in some respects, and that current franchising practices be changed, to encourage LECs to provide distribution facilities on a common

carrier basis to unaffiliated video programmers.

95. We wish to examine the relationship between potential LEC entry into video programming and telecommunications network development.¹¹⁵ Many argue that continuation of the cable/telephone crossownership rules will retard switched public network development, particularly the speed at which LECs make available broadband facilities to residential customers.¹¹⁶ We discuss below two of the more common rationales put forth for allowing LECs to provide video programming.

(1) Risk Minimization. 96. LECs contend that allowing them to provide video programming would reduce their risks in building broadband networks because they would then be assured that there would be at least one supplier of video programming over those networks. Others argue that, even if most video programming will eventually come from outside program suppliers, the LECs must have adequate negotiating flexibility to establish a critical mass of programming. Proponents of this position claim that, since many of the most popular video program services are controlled by cable operators (such as HBO, Showtime), or depend on cable systems for the bulk of their revenues (such as ESPN, USA Network), LECs will face a particularly daunting challenge in obtaining them as customers.¹¹⁷

¹¹⁵ We recognize that the FCC recently compiled an extensive record on the cable/telephone crossownership issue. *Telephone Company-Cable Television Cross-Ownership Rules*, Further Notice of Inquiry and Notice of Proposed Rulemaking, CC Docket No. 87-266, FCC 88-249 (released Sept. 22, 1988). We encourage commenting parties to avoid simply recycling previous pleadings. Thus, the most effective comments will be those that supplement, upgrade, and refine the data and arguments presented to the FCC in 1988.

¹¹⁶ As noted above, LECs are currently deploying broadband facilities, specifically fiber optic cable, within their networks. According to some projections, those networks will be all fiber by the second decade of the next century. See *supra* para. 58. However, the rate of fiber deployment will likely vary substantially depending on whether the LECs' networks are used to transport video. Moreover, although fiber optic cable is theoretically capable of providing broadband capacity, its capacity in practice is limited by the associated electronic equipment that determines data transmission speeds. If the LECs are providing only voice and low speed data services over fiber facilities, they may not install the electronics needed to provide true broadband transmission speeds.

¹¹⁷ See, e.g., Jackson, "LEC Gateways: Provision of Audio, Video and Text Services in the U.S.," in National Economic Assoc., Inc., *Telecommunications in a Competitive Environment: Proceedings of the Third Biennial Telecommunications Conference* 150-51 (1989).

¹⁰⁸ Such capabilities include, in addition to cable television systems, over-the-air broadcast television stations, direct broadcast satellite systems, multichannel multipoint distribution systems, and satellite master antenna television systems.

¹⁰⁹ For example, FCC Chairman Alfred Sikes has recently expressed such concerns about the video services marketplace. See, e.g., Statement of Alfred C. Sikes, at 1-3, *Hearings Before the Subcomm. on Communications of the Senate Comm. on Commerce, Science, and Transportation*, 101st Cong., 1st Sess. (Nov. 17, 1989); "The 'irreversible momentum' of Al Sikes," *Broadcasting*, Oct. 9, 1989, at 36-37. See also, *Competition, Rate Deregulation and the Commission's Policies Relating to the Provision of Cable Television Service*, MM Docket No. 89-600, *Notice of Inquiry*, FCC 89-345 (released Dec. 29, 1989).

¹¹⁰ See *infra* paras. 105-107.

¹¹¹ In England, cable television companies are not restricted from providing voice and data services. To what extent are these companies providing voice and data services in addition to video programming?

¹¹² Cable Communications Policy Act of 1984, Public Law No. 98-549, sec. 613(b), 98 Stat. 2760 (codified at 47 U.S.C. 533(b) (Supp. IV 1986)).

¹¹³ 47 CFR 63.54-63.58 (1988).

¹¹⁴ NTIA, *Video Program Distribution and Cable Television: Current Policy Issues and Recommendations*, NTIA Report 88-233 (June 1988).

97. We seek comment on this argument. To what extent is video programming critical to the development of broadband switched public networks? What risks would LECs face in investing in broadband capacity if they cannot enter into video programming? Why could not other video programmers be relied upon to enter this market and use the LECs' broadband facilities for transmission once such facilities become available?

98. In competitive markets, there are examples of vertical integration that appear to be undertaken, at least in part, to secure a dependable source of supply of a critical component or complementary product for a firm's principal business. Thus, observers attribute IBM's decision to manufacture its own semiconductor chips, not only to a desire to take advantage of whatever scope economies may exist between chip and computer manufacturing, but also to a business strategy of minimizing the risks inherent in relying on outside sources of supply for these components.

99. Moreover, Sony's decision to enter the entertainment software business through its acquisitions of major U.S. producers of recorded music, films, and television programming is generally attributed, not to substantial economies of scope between production of entertainment hardware and software, but to a risk minimization strategy. Thus, Sony is thought to have entered these areas, in part, to ensure that certain of its hardware technologies will not founder because of lack of software (as may have occurred with its Beta format for videocassettes).

100. To what extent do firms in competitive markets undertake investments in related markets for such risk minimization reasons, and how does such a rationale apply to the cable/telco debate? If the delivery of video programming is critical to the financial viability of a broadband network, would it make sense to permit LECs the possibility of investing in the programming market to ensure a supply of video services? Cable companies have been increasing their investments in programming sources, purportedly to insure a supply of quality programming necessary to compete with other sources of entertainment, video and otherwise.¹¹⁸ If cable companies find

that current market conditions require such vertical integration, should LECs be permitted to make similar investments to insure programming supply if they are to compete with incumbent cable operators?

101. How important would it be to infrastructure development to treat underlying broadband transmission as a common carrier service, subject to the regulatory rules on rates and nondiscrimination governing such services? In such a case, to what extent would the Open Network Architecture ("ONA") rules adopted in the FCC's *Computer III* decisions provide an appropriate paradigm to ensure that LECs do not discriminate against unaffiliated program suppliers? In a broadband switched environment, are some or all video services fundamentally different from other forms of information services? If so, what are these differences, and how should they be reflected in the rules or policies governing the delivery of video services over broadband networks?

(2) Revenues from Carriage of Video Programming as a Means of Supporting Network Development. 102. Some contend that even if there were numerous unaffiliated sources of video programming for a public broadband network, LECs would have stronger incentives to develop broadband, switched facilities if they were permitted to offer video programming as well. They assert that LECs could realize revenues in the programming market that would exceed those available from providing carriage of video programming to unaffiliated providers. These additional revenues, it is argued, would provide a source of funds to support investment in a broadband public network.¹¹⁹ We request comment on such contentions.

103. How would the ability to provide programming affect a LEC's incentives to invest in the rapid deployment of broadband facilities? If entry by multiple video programmers were permitted and LECs could offer "common carrier" video transport, how would projected revenues for telephone company provision of video transport be affected? Would such additional revenues be sufficient, by themselves, to

cost justify installation of broadband facilities to the home? If not, would the provision of video programming generate enough additional revenues to justify construction of broadband facilities in the short term?

104. This argument seems to imply that LECs would apply the profits from the provision of programming to cover the costs of fiber installation. How large would such profits have to be to do so? Does this argument assume that LEC provision of programming would produce an extraordinary level of profits (not available from other investment opportunities) that would support network development? If so, on what basis would one expect such profits? For example, it is conceivable that even in a competitive environment, LECs could garner sufficient programming profits to apply to infrastructure development, if they have a cost advantage over their rivals. Such an advantage might arise, for example, if there are economies of scope between the provision of distribution facilities and the provision of video programming. Do such economies exist? If so, how large are they? What other skills might LECs bring to the provision of video programming that would give them a competitive advantage over rival providers?¹²⁰

b. LEC Provision of Video Processing Services. 105. Even if LECs are precluded from directly providing video programming, they nonetheless could conceivably offer a range of "video processing" services or capabilities that would afford viewers greater control over the programming they watch.¹²¹ These video processing services, while not entailing the provision of content *per se*, would involve the LECs in manipulating or repackaging content provided by others. For example, LECs could develop video gateway menus tailored to the viewing preferences of individual customers. Alternatively, customers could program their own viewing preferences, so that programs fitting those profiles would appear first

¹²⁰ Alternatively, if a LEC could charge supracompetitive rates for programming, it conceivably could use the ensuing profits for network development. We recognize that such rates may not be acceptable on policy grounds, and we question whether such rates, even if they occur, would be sustainable. Competition from incumbent systems and potential new entrants should drive rates down, thus sharply reducing profits available for either shareholders or infrastructure development.

¹²¹ The NTIA *Video Study*, *supra* note 114, recommended in 1988 that LECs be permitted to provide services ancillary to the provision of video transport facilities, such as billing, order taking, and maintenance.

¹¹⁸ See, e.g., statement of John Malone, President and Chief Executive Officer of Telecommunications, Inc., at 23-24, *Hearings Before the Subcomm. on Communications of the Senate Comm. on Commerce, Science, and Transportation*, 101st Cong., 1st Sess. (Nov. 16, 1989).

¹¹⁹ One telephone industry executive has estimated, for example, that video transport for cable generates about \$100 per subscriber per year (roughly \$8.50 per month). This amount of additional revenue (i.e., revenue above and beyond monthly subscriber charges for telephone service) would not, he argues, be sufficient to justify ubiquitous deployment of fiber to the home in the short term. See *Communications Daily*, Sept. 21, 1989, at 3 (statement of Gary Handler, Bellcore Vice President of Network Planning).

on menus, or LECs could program their switching computers to "learn" customer preferences on the basis of actual viewing patterns. Moreover, viewers could selectively choose portions of a number of programs to watch, and the gateway could sort through the specified programs and deliver the desired segments to the viewers.¹²²

106. Similarly, such services conceivably could permit customers to control their viewing to, for example, select among different camera angles or different "replay" and slow motion possibilities during sporting events, or different endings for dramatic or comedy programming. Moreover, there are a wide range of nonentertainment interactive services that conceivably could be offered over a broadband switched network.

107. We request comment on these matters. What is the prospective value of these services, and what is their importance to infrastructure development? Would LEC provision of such processing services be permitted under existing laws and crossownership rules? What technical capabilities (in the network, the programming source, the customer's equipment) would be necessary for delivery of these services? To what degree would permitting LECs to provide such services, with appropriate safeguards, raise similar issues as LEC provision of video programming? Are there reasons for allowing LECs to provide video processing services, but not video programming? If the LECs are allowed to provide only content-neutral video processing services, would they have sufficient incentives to develop switched broadband services?

5. Open Network Architecture

108. The FCC's ONA program has the goals of promoting greater competition in enhanced services markets and increased availability of these services to the general public, while preventing discrimination by the BOCs in favor of their own enhanced services operations.¹²³ The FCC's tools for achieving these goals—a requirement that the BOCs unbundle their network services to meet enhanced service provider needs, and detailed nondiscrimination requirements—are extensions of the regulatory approaches the FCC took when introducing

competition into the CPE and interexchange service markets.

109. The ONA requirement that BOCs unbundle their basic services to meet specific customer needs (*i.e.*, the needs of enhanced service providers) would seem to be a relatively direct way of increasing the usefulness of the public network infrastructure to those customers. Furthermore, to the extent ONA permits enhanced service providers to operate efficiently and develop new services, the utility of the telecommunications network to their customers should also be increased. How effective are ONA-type regulations in accomplishing these objectives?

110. Moreover, the FCC has stated that its ONA policies are intended not only to require unbundling of particular sets of services, but also to establish a cooperative planning process that "should play an important role in ensuring that new network technologies are, to the extent feasible, developed and deployed in ways that promote, rather than impede, competition."¹²⁴ How well has ONA achieved this goal in the short-term? What are the prospects for the long-term? What are the costs and benefits to telecommunications infrastructure development of incorporating ONA policies, both substantive and procedural, into the BOCs' network planning processes?

111. We also request comment on how ONA principles can be extended to areas other than enhanced services in order to maximize economic development opportunities for customers.¹²⁵ How could further unbundling of LEC networks advance such goals?¹²⁶ What would be the costs and benefits of such unbundling? What is its feasibility? What would be the potential market demand for such unbundling? What jurisdictional issues would have to be resolved? What impacts, both positive and negative,

would this approach have on local service, and how could any negative impacts be minimized?

6. Other Issues

a. *Pricing Policies.* 112. Economic theory suggests that welfare will be optimized if the prices for goods and services reflect the costs of providing them.¹²⁷ For years, telecommunications rates have diverged substantially from this economic ideal. Thus, the common view of such pricing practices is that long distance rates have subsidized local rates; low-cost areas have subsidized high-cost areas; and business rates have subsidized residential rates. Moreover, regulators have tended to price so-called "vertical services" (such as call waiting or call forwarding) above relevant costs to generate subsidies for residential basic service.

113. Has the prevailing pricing structure had an adverse impact on infrastructure development? Has above-cost pricing of some services deterred firms from investing in new technologies and new services? To what extent would movement towards cost-based pricing promote efficient infrastructure development?

114. We understand concerns that aligning regulated rates more closely with relevant costs may not comport fully with long-held goals of maximizing telephone subscribership—the so-called "universal service" objectives. At the same time, we believe it important to recognize the extent to which efficient pricing may promote universal service goals by fostering the availability and affordability of telecommunications services. For example, the FCC's decision to recover a portion of non-traffic-sensitive access costs through flat-rate subscriber line charges¹²⁸ paved the way for dramatic reductions in interstate toll rates, thus making long distance services more affordable for all subscribers.¹²⁹ Cost-based pricing also creates efficiency gains that can be used to support infrastructure development and promote equity goals. The efficiency gains from the FCC's subscriber line charge program have been used not only to reduce interstate toll rates on a more than dollar-for-dollar pass-through

¹²² *Id.* at 202.

¹²³ Some states appear to have adopted, or are considering, such an approach to ONA. *Proceeding on Motion of Commission to Review Telecommunications Industry Interconnection Arrangements, Open Network Architecture, and Comparably Efficient Interconnection*, Case 88-C-004, Opinion No. 89-28 (N.Y. Pub. Svc. Comm'n 1989); *NOI on ONA*, U-89-2649-SI (Wash. Util. and Transp. Comm'n 1989); *An Investigation into the Statewide Offering of Access to the Local Network for the Purpose of Providing Information Services*, Docket No. 88423-TP (Fla. Pub. Svc. Comm'n 1988); *Provision of Competitive Telecommunications Services (Chapter 280)*, Docket No. 87-31 (Me. Pub. Svc. Comm'n 1987).

¹²⁴ In NTIA's reply comments to the FCC on the BOCs' ONA plan amendments, we advocated that the FCC begin further proceedings to consider the prospects for further unbundling of BOC basic network facilities. See NTIA Reply Comments, CC Docket 88-2, Phase I (filed Aug. 11, 1989).

¹²⁷ See, e.g., 1 A. Kahn, *The Economics of Regulation* Chap. 3 (1988).

¹²⁸ The monthly subscriber line charge is now capped at \$3.50 per line for residential and single-line business subscribers and \$6.00 per line for multi-line business subscribers. See 47 U.S.C. 69.104(d), 69.203(a) (1988).

¹²⁹ Between January 1984 and July 1989, AT&T's rates for directly dialed, domestic, long distance calls declined 40 percent for the average residential subscriber. See *Telephone Trends*, *supra* note 21, at 11.

¹²² For example, a viewer might wish to see all of the coverage of a particular issue (e.g., Eastern Europe) on a number of the national news programs for a designated night.

¹²³ See *Filing and Review of Open Network Architecture Plans*, 4 FCC Rcd 1, 11 (1988), *pets.* for recon. pending.

basis,¹³⁰ but to pay for the implementation of equal access and to fund lifeline subsidies for low-income subscribers.¹³¹ What other opportunities exist for infrastructure development through pricing reform? We discuss possible tensions between efficient pricing and universal service, as well as ways to resolve such tensions, in Section VI, below.

b. *Local Exchange Competition.* 115. The pressures to move closer to cost-based rates are due in part to the growth of competition in telecommunications markets. A major thrust of Federal telecommunications policy for at least the past thirty years has been to promote efficiency through the introduction of competition into telecommunications markets.¹³² Competition appears to be one way to spur infrastructure development. Competitive pressures have generally been very effective in inducing incumbent firms to modernize their networks or to offer new services.¹³³ Permitting competitive entry into local service markets could, in some circumstances, prompt such actions by LECs. Some argue, for example, that it was only when local exchange competitors, such as MANs, began offering high capacity, digital, fiber optic facilities at reasonable costs, that LECs began to do the same. Even such limited competition (compared to overall LEC revenues) appears to have had a salutary effect on LEC incentives to upgrade their networks and to lower their prices for "higher-tech" services.

116. We are aware of the sensitivity of this issue to state regulators, and fully recognize their authority and interest in deciding whether the introduction of such competition is beneficial to their particular jurisdictions. However, we wish to explore this issue to provide a

fuller picture of its problems and opportunities for reasoned policy-making. We welcome comments from state regulators on this important issue.

We ask for views on whether local service competition is feasible in the long run. Some have contended, for example, that provision of local exchange services is a "natural monopoly" most efficiently undertaken by a single firm, particularly for service to residential and small business customers. We request comment on this contention. What local services could be provided on a competitive basis?

117. In this context, we note that several states have been examining the "open network architecture" concept of unbundling network facilities and services in order to provide more capabilities for information service providers and other users.¹³⁴ As noted above, these efforts have somewhat different focuses than the FCC's ONA proceeding, which deals with unbundling of network services of interest to enhanced service providers. We request information from the states on their open network architecture initiatives and the possibilities that these efforts raise for increased local service competition.

118. We also note that competition could erode the subsidy structures that are currently used to maintain below-cost rates for local service.¹³⁵ What would be the potential impact of competition on telephone subscribership and universal service goals? Moreover, given the existing subsidy structure, would it be possible to ensure that competitive entry is economically efficient, rather than simply due to new firms taking advantage of the disparities between regulated rates and economic costs attributable to that subsidy structure? Should competitive entry be delayed until reform of prevailing rate structures? If not, should new entrants be assessed a surcharge or tax to preserve existing subsidies or to reduce the potential for inefficient entry? We note that in the interexchange market, competition has been successfully introduced and significant subsidy flows to LECs have been preserved (and new subsidies to low income subscribers created) by incorporating the subsidy surcharges into access charges paid by all competitors. Could a similar model apply in the local exchange market?

119. We also request information on the present level of local exchange competition. Teleports, MANs, cable

television companies, and other alternative providers offer some competition to the LECs for business customers, as do STS providers and private network arrangements. We request information on the degree of competition that such alternatives provide to the LECs, as well as information on the types of customers such alternatives serve and the presence of such alternatives in areas other than major urban areas.

c. *Federal/State Relations.* 120. The tensions between Federal and state regulators with respect to local exchange competition are in some respects symptomatic of a larger problem. The Communications Act bifurcated telecommunications regulation, giving jurisdiction over interstate communications to the FCC and leaving intrastate communications generally within the purview of the states. A system developed in which "both federal and state agencies regulated the same facilities at the same time,"¹³⁶ and in which cooperation was fostered by a monolithic industry structure—a monopoly provider of end-to-end service on a fully regulated basis—that was consistent with regulatory goals. Cooperation became more difficult, however, when Federal and state policy goals diverged, with the FCC emphasizing competition and economic efficiency, and the states emphasizing equity considerations.¹³⁷

121. The divergence in Federal and state regulatory objectives has made it very difficult to craft a uniform national telecommunications policy. Yet, this has come at a time when the globalization of economies and networks seems to make a national policy essential. We request comment on this point. What effect has the existing Federal/state jurisdictional system structure had on infrastructure development? How could it be improved or modified in light of today's economic and technological environment?

d. *Antitrust Concerns.* 122. Finally, we request comment on the potential interplay between infrastructure development and the antitrust laws. In particular, could greater cooperation between telecommunications companies promote development of new services and facilities in some cases? For example, it might be possible to speed the introduction of innovative information services to rural areas if the telephone companies serving those areas could engage in joint activities

¹³⁰ See, e.g., Office of Plans and Policies, Federal Communications Commission, *The Economic Efficiency Benefits of the Current Subscriber Line Charge* (Jan. 1987).

¹³¹ The interstate shares of both equal access and lifeline costs are included in interstate revenue requirements. Thus, while interstate rates have been sharply reduced, interstate revenues have provided the funding for the equal access and lifeline programs, which have improved the technical capability and the affordability, respectively, of local public telecommunications networks.

¹³² Increasingly, similar steps are being taken at the state level. See, e.g., *Proceeding on Motion of the Commission to Review Regulatory Policies for Segments of the Telecommunications Industry Subject to Competition*, Case 29469, Opinion No. 89-12, at 26-27 (N.Y. Pub. Serv. Comm'n May 16, 1989).

¹³³ As noted above, *supra* para. 55, it appears that one result of federal efforts to foster competitive entry in interstate telecommunications service markets has been an increase in AT&T's incentives to modernize its long distance network in response to competitive challenges from MCI and US Sprint.

¹³⁴ See *supra* note 125.

¹³⁵ The potential impact of competition on telephone subscribership and universal service goals is discussed in Section VI, below.

¹³⁶ Noam, "Network Pluralism and Regulatory Pluralism" in J.P. Newberg (ed.), *New Directions in Telecommunications Policy* 66, 73 (1989).

¹³⁷ *Id.*

with each other or with larger companies in neighboring territories. Furthermore, even among large companies, cooperation in various activities, such as R&D for new services or products, could conceivably enhance productivity. We request comment on the extent to which expanded cooperation between telecommunications companies is needed or desirable to facilitate network and information service development. How can such cooperation best be promoted? What, if any, antitrust laws or regulations inhibit such activities?¹³⁸ Should different considerations apply to joint activities in regulated areas, such as network services, than in unregulated areas, such as information services and equipment?

B. Affirmative Government Action

123. In the past, state and Federal authorities have been major forces behind the construction of other types of infrastructure, such as railroads, highways, and airports. To what extent was government involvement in those areas justified on economic grounds (for example, on concerns that unimpeded market forces would not produce the optimal level of infrastructure development) and to what extent on other grounds (for example, concerns about the importance of infrastructure for the national defense)? Further, while telecommunications has been compared to these forms of transportation infrastructure, is the analogy apt? We seek comment on the similarities and differences among these types of infrastructure, and the government's role in their development. In particular, we ask interested parties to identify and discuss whether government actions similar to those promoting growth of the transportation infrastructure would also be appropriate for telecommunications.

124. If government were affirmatively to promote development of the telecommunications infrastructure, how should it do so? Should government simply establish objectives and allow private firms to determine how best to meet those objectives? Should government instead favor particular services or technologies? In Japan, the Ministry of International Trade and Industry provides low-cost loans and tax incentives to firms in the data communications, value-added network, and information services industry.¹³⁹

Should the Federal government or the states adopt such policies? Are there reasons to believe that government is better able than marketplace forces to determine the services or technologies that telecommunications firms should be targeting for investment?

125. We also request comment on the tools that governments can use to promote infrastructure development. One approach would be to use the tax system to provide incentives for investment. Some have argued, for example, that reinstatement of state and Federal investment tax credits would spur infrastructure investments.¹⁴⁰ We request comment on this matter. Specifically, how much additional investment will occur if tax credits are restored? How much will these credits cost other taxpayers? Would they introduce any inefficiencies or economic distortions in investment decisions?

126. Indirect funding programs may be another alternative. Over the years, REA has furnished low interest loans to telephone companies seeking to provide basic voice service to rural areas. Indications are that REA has largely met that goal. Efforts are underway in Congress to expand REA's mission to include funding for more advanced telecommunications services in rural areas.¹⁴¹ Are such policies effective for infrastructure development?

Should they be extended to other than rural areas? If so, what areas and for what purposes? What would be the costs of any such approach?

127. A third option could be direct funding. For instance, the Federal government has established a trust fund, financed by an excise tax on gasoline, to furnish much of the cost of building and maintaining the interstate highway system. A similar trust fund, financed by a tax on airline tickets, exists to support construction of airports and related facilities. The Federal government currently imposes a 3 percent excise tax on local and long distance service.¹⁴²

¹⁴⁰ See, e.g., Hanley, *supra* note 8, at 25.

¹⁴¹ See, e.g., S. 1038, 101st Cong., 1st Sess. (1989). This legislation, among other things, would increase REA's funding authority to encourage projects designed to enhance delivery of health and education services to rural areas.

¹⁴² See 26 U.S.C. 4251-4254 (1982 and Supp. V 1987). The tax is scheduled to terminate at the end of 1990. *Id.* sec. 4251. However, the tax has been marked for destruction several times in the past, but Congress has generally voted to continue it. A number of states and some municipalities also impose taxes on telecommunications services. See *Goldberg v. Sweet*, 109 S.Ct. 582, 585-86 and n.4 (1989).

This Federal excise tax generates between \$2-3 billion annually, but the funds are used for general revenue purposes. We request comment on whether these funds should be directed to funding telecommunications infrastructure development. What would be the costs and benefits of such a policy? If the revenues generated were devoted to financing infrastructure development, should the tax be increased, extended to other telecommunications services or products, or both? How should any funds generated be allocated among the many telecommunications firms? Also, by increasing the cost of telecommunications services to end users, such a tax presumably reduces both demand for those services and the revenues for service providers. Parties are asked to estimate the size of these impacts and their effect, if any, on infrastructure development.

C. Standards Issues

128. Prior to divestiture, the AT&T-owned Bell System played a dominant role in telecommunications standard-setting bodies domestically, and a major role in developing U.S. positions in international standards bodies. The break-up of the Bell System has complicated the domestic and international standard-setting process, not only by increasing the number of independent participants, but also by replacing a dominant, unified entity (the Bell System) with eight smaller firms with somewhat conflicting strategic and competitive interests.

129. The current U.S. standards-setting process is more open than before divestiture, and provides for a wide range of competitive perspectives from diverse participants. To some degree, this stimulates creativity from the participants and can produce standards that are more closely related to industry needs.

130. However, some industry participants express concern that the current process is cumbersome and results in unnecessary delays in developing standards. Moreover, some contend that coordination could be improved among the numerous private groups that participate in the standards development process. In addition, some participants are concerned that while the U.S. standards process is open to all, U.S. firms lack access to, and information on, the activities of standards bodies in other countries.

131. We request comment on these issues and their effects on U.S. telecommunications development. We understand, for example, that delays in

¹³⁸ In a later section, we request comment on the effect of antitrust laws on cooperative efforts among firms in the standards setting process. See *infra*, section V.C.

¹³⁹ Davidson I, *supra* note 5, at 18.

finalizing U.S. ISDN standards may be impeding deployment of such capabilities. Is this correct? Do the various participants have sufficient incentives to agree upon voluntary standards? Are those incentives stronger with respect to some services than others? ¹⁴³ Should the government become more closely involved in the standards process, either as a standard-setter or as a mediator among the competing interests? To what extent do the antitrust laws, or concerns about potential antitrust liability, ¹⁴⁴ impede the standard-setting process?

132. We also request comment on whether manufacturers are implementing standards in their products in ways that promote infrastructure development. Are some implementations of current standards incompatible with others—e.g., are there instances when one manufacturer's equipment purportedly in conformance with existing ISDN standards, cannot operate or communicate with another manufacturer's equipment made to the same standards? If such incompatibility exists, does it adversely affect infrastructure development? Are such situations a result of imprecise standards, or of competitive or innovative strategies of equipment manufacturers? In a related area, to what extent has the proliferation of private networks and alternative providers with proprietary protocols and equipment designs affected the standards process?

133. To what extent has the breakup of the Bell System adversely affected the standard-setting process internationally? What impact, if any, does the setting of international standards have on the development of the domestic telecommunications infrastructure? What improvements could be made in U.S. activities in the international standards setting process?

VI. Universal Service

134. For more than 50 years, a cornerstone of United States telecommunications policy has been "to make available, so far as possible, to all the people of the United States, a rapid, efficient, nation-wide, and world-wide * * * communication service with adequate facilities at reasonable

charges." ¹⁴⁵ For many years, the process of fulfilling the "universal service" obligation has involved the expansion of telephone service into unserved areas and the maintenance of local rates at affordable levels. Government policies have played an important role in this process both through direct assistance, such as loan programs, and regulatory policies that have provided subsidies for certain services (e.g., residential local exchange), areas of the country (e.g., high cost), and recently, subscribers (e.g., low income).

135. In *Telecom 2000*, NTIA stated that:

In light of the possibilities of new service offerings by the 21st Century, as well as the growing importance of telecommunications and information services to U.S. economic and social development, limiting our concept of universal service to the narrow provision of basic voice telephone service no longer serves the public interest. ¹⁴⁶

136. Others suggest that a failure to expand the concept of universal service could result in society becoming divided between the "information rich"—with access to a wide range of innovative services, and the "information poor"—served only by basic voice service. ¹⁴⁷ The economic and social implications of such a scenario run counter to long-held American policy goals of promoting equal opportunity.

137. In addressing whether "universal service" should be redefined, we must consider two questions: (a) Service definition: Whether the service components to be offered universally should be different from the "basic voice services" now commonly offered and whether these components should be included in the monthly "basic service package" or offered as optional features, and (b) universality: How the service should be made universally available and affordable.

A. "Service Definition" Issues

1. Service Component Issues

138. Perhaps the most difficult question in a possible redefinition of universal service is determining the components of such a service. Although there are various notions of what currently constitutes "basic telephone service" for universal service purposes, one reasonable definition might include

one-party, voice-grade service ¹⁴⁸ with rotary dialing, the ability to receive incoming calls and place outgoing calls, access to local and toll service, and direct dialing of local and domestic toll calls.

139. Recently, a number of parties have recommended that the definition of universal service be expanded. The Intelligent Network Task Force, sponsored by Pacific Bell and comprised of consumer and public interest advocates, recommended that universal service be redefined to include access to the "Intelligent Network and to a specific set of essential applications services." ¹⁴⁹ The "essential" services included touchtone service, access to directory assistance (411), emergency services (911), publicly supported information services, and access for disabled users and those not fluent in English. Pacific Bell, in responding to these recommendations, agreed that touchtone should be included as part of basic service, since that capability was a "prerequisite to many Intelligent Network services such as interactive audiotex and voicemail." ¹⁵⁰ The California Public Service Commission, in its recent order adopting incentive regulation for Pacific Bell, required that the charge for residential touchtone service be eliminated. ¹⁵¹

140. Edwin Parker and others suggest that universal service should include rapid and reliable transmission of facsimile documents and data, equal access to interexchange carriers, 911 service with automatic number identification, cellular service, touchtone

¹⁴⁸ While some rural areas continue to have multi-party service, those exchanges are being converted to single-party service.

¹⁴⁹ Task Force Report, *supra* note 147, at 8. In the Task Force's view, an "intelligent network" means a telecommunications system which offers the following services and capabilities to all customers:

1. A transparent gateway to databases and other information services provided by a variety of sources;
2. Network protocol conversion;
3. Assured privacy for network communications and transactions;
4. Simultaneous voice and data services;
5. Store-and-forward services such as voice mail, some forms of videotex and audiotex, and advanced 976 services;
6. Transmission and routing for home-oriented services such as home security;
7. Provision for network access by disabled persons and non-English speakers; and
8. As technology advances, services such as automatic language translation.

Id. at 6-7.

¹⁵⁰ "Pacific Bell's Response to the Intelligent Network Task Force Report," at 12 (June 1988).

¹⁵¹ *In the Matter of Alternative Regulatory Frameworks for Local Exchange Carriers*, Docket No. L87-11-033, Decision No. 89-10-031, at 376 [Cal. Pub. Util. Comm'n 1989].

¹⁴³ Recent studies indicate that voluntary standards may not always achieve efficient results. See, e.g., Besen and Saloner, "The Economics of Telecommunications Standards," in R.W. Crandall and K. Flamm (eds.), *Changing the Rules* 193-201 (Brookings Inst. 1989).

¹⁴⁴ See, e.g., *Allied Tube & Conduit Corp. v. Indian Head, Inc.*, 108 S.Ct. 1931 (1988); *American Sec'y of Mechanical Engineers, Inc. v. Hydrolevel Corp.*, 456 U.S. 556 (1982).

¹⁴⁵ 47 U.S.C. 151 (1982).

¹⁴⁶ *Telecom 2000*, *supra* note 2, at 79.

¹⁴⁷ *The Intelligent Network Task Force Report* at 21 (Oct. 1987) [hereinafter cited as Task Force Report].

and custom calling (e.g., three-way calling, call forwarding, call waiting) and voice messaging services.¹⁵² We seek comment on such proposals, and request comment on other possible definitions of services or capabilities that should be included in an expanded definition of universal service.

141. Critics of expanding the definition of universal service contend, however, that many residential subscribers do not desire anything more than a technologically simple form of "plain old telephone service" that does not require network upgrades such as advanced forms of switching, transmission, and signalling. Accordingly, they argue, such customers should not have to bear the cost of such upgrades of the public switched network for the benefit of other users. We seek comment on this view of the appropriate service components of universal service.

2. Service Packaging Issues

142. A fundamental issue in redefining universal service involves the scope of the "package" of service components offered for a basic monthly charge. One approach would be to limit the "basic service package" to its current components and allow subscribers to purchase additional, universally available capabilities at an extra charge that is based on the costs of providing such capabilities or perhaps even subsidized.¹⁵³ Another possibility would be to include certain additional features, such as touchtone dialing or access to videotext gateways, in the basic monthly package, on the grounds that the efficiency gains associated with bundling such features outweigh any welfare losses associated with limiting customers' ability to choose their service options.

143. Technological improvements make possible certain new features that can be provided selectively only to subscribers who elect to receive them.¹⁵⁴ For example, features made

possible by SS7 include calling number identification and selective call forwarding. These services can be, and at the present time typically are, provided as optional features at an additional charge. To the extent that provision of a specific service incurs identifiable costs, offering that service on an optional basis may be economically efficient. Moreover, optional service offerings permit customers to express directly their willingness to pay for these features.

144. Conversely, simply because it is feasible to provide and price a new service as an optional feature, it does not necessarily follow that this is the most efficient and equitable course to follow. For example, some have argued that since, with modern electronic switches, touchtone dialing costs no more to provide than rotary dialing, the surcharges typically assessed on the former may be uneconomic and unfair, and artificially retard the market for certain enhanced services that depend on touchtone signals. Parties are asked to comment on how these factors affect the appropriate "packaging" approach for any new universal service features they propose. What other factors should influence the choice among approaches?

B. "Universality" Issues

145. What should be the emphasis of public policy in defining "universality?" The development of telecommunications services in the United States and the relevant roles of competition and government regulation in that development have evolved over time. When telephone service was first introduced and the Bell companies had a monopoly through their patents, residential rates were high and the scope of service limited.¹⁵⁵ Immediately after those patents expired in 1893, rapid entry and vigorous competition by Independents in new telephone markets led to the extension of service to some suburbs and rural areas for the first time, as well as substantial rate reductions.¹⁵⁶ Thus, in the early years

collectively," rather than minimizing the cost of providing each and every service demanded by subscribers. Kahn and Shew, "Current Issues in Telecommunications Regulation-pricing" 4 *Yale J. of Reg.* 191, 231 (1987). We seek comment on how this theory of "collective consumption" applies to network features that are included in the "basic package" of services one receives as a telephone subscriber.

¹⁵⁵ See, e.g., Meyer, *The Economics of Competition in the Telecommunications Industry*, Chap. 2 (Charles River Associates 1980).

¹⁵⁶ *Id.*

of telephone service, it was the introduction of competition into a monopoly environment that spurred both the availability and affordability of service.

146. In subsequent years as regulation replaced competition, the goal of universal service evolved into a public policy. The concept came to encompass both availability, i.e., extending service to unserved areas, and affordability, i.e., ensuring that once service was available in a community, the average consumer could afford to purchase it.

147. Thus, by the 1950s, in furtherance of federal and state universal service policies, an increasing share of local service costs were shifted to business and toll customers, thereby making local rates more affordable for existing residential subscribers. Furthermore, toll rates were geographically averaged, which meant that long distance calls into and out of high cost areas were maintained at an affordable level. In recent years, the focus of "universal service" has been on policies designed to maintain affordable service to existing subscribers, while also attracting new subscribers by providing targeted subsidies to low income households for whom the cost of obtaining and keeping service had been prohibitive.

1. Availability

148. As the previous discussion indicates, government actions have played a significant role in the development of universal service. Are traditional government mechanisms necessary in the future to promote the availability of a redefined universal service? What other factors could lessen the reliance on traditional mechanisms to increase availability?

149. Would the introduction of increased competition be a better method of getting more innovative services to a greater proportion of subscribers than the current regulatory system? For example, deregulation and the growth of competition in the CPE market, have resulted in a wide range of CPE and CPE-based features (e.g., speed dialing, answering machines, "cordless" telephones) as well as lower prices for consumers. While CPE is severable from the public network, CPE competition has promoted the widespread use of more advanced features than previously available. Similarly, in the interstate toll marketplace, competition has resulted in lower rates and the introduction of a number of new services, including those targeted to residential subscribers.

150. Some of the advanced features that have been proposed by advocates

¹⁵² Aspen Institute Report, *supra* note 27, at 90-94.

¹⁵³ See *infra* para. 153 for a discussion of the affordability of a redefined universal service.

¹⁵⁴ As a practical matter, some technological improvements constitute general network upgrades that are made available either to all subscribers in a particular area or to none at all. For example, certain digital network technologies improve the quality of ordinary voice and data calls (e.g., by reducing call set-up times and improving fidelity). There seems to be no practical way of excluding subscribers on a selective basis from enjoying the benefits of these aspects of improved service (even though some subscribers may not particularly value the improvement).

Moreover, Alfred Kahn and William Shew suggest that the public network "may have to be designed with the facilities and quality of service that maximizes the net benefits to all subscribers

for inclusion into an expanded definition of universal service are presently classified by the FCC as enhanced services, e.g., protocol conversion, voice mail, and videotext gateways.¹⁵⁷ As such, they are not subject to regulation and can be offered by competitive providers. To what extent are such services "universally" available? To the extent that they are not, would entry by LECs into those unserved markets on a deregulated basis be preferable to a regulation/cross-subsidization approach? What impediments (e.g., technical, economic, regulatory) exist to making such services more available?

151. With respect to those components of an expanded universal service that are "basic" local network services, the proper role for competition is less clear. To what degree could competitive alternatives to LECs (e.g., cable television, MANs, STS providers) help promote the availability of an expanded version of universal service to residential subscribers? Would similar competitive alternatives also be available in rural and remote areas? Under a competitive environment, however, might services be made available only to those subscribers that offer the greatest revenue potential? If so, should LECs be obligated, even in markets where local competition generally exists, to serve all potential subscribers?

152. Another approach to promoting the availability of a redefined universal service could be for government to provide incentives to carriers and alternative service providers to expand service. Many of the options discussed earlier for infrastructure development generally could be applied in this context. For example, investment tax credits might be employed to promote service development in those areas identified as having network facilities that are inadequate to provide subscribers the same level of services offered to subscribers elsewhere. Removing restrictions on BOC provision of information services could also provide those carriers with additional incentives to upgrade facilities, and thereby offer new services throughout their operating areas. Would such mechanisms be effective in promoting universal service?

2. Affordability

153. We request parties that propose new forms of universal service to discuss how such service will be financed. As noted earlier, over the years, both Federal and state regulators have created an elaborate system of interservice subsidies in an effort to promote affordable residential service rates, and thus, increase telephone subscribership.

154. With this longstanding subsidy mechanism under scrutiny in recent years, in light of the emergence of competition in those markets that traditionally were the source of local service subsidies, the FCC and the states established new programs to ensure affordable basic telephone service. Twenty-two states and the District of Columbia presently participate in the FCC's "Lifeline" and "Link Up America" programs.¹⁵⁸ These programs are targeted to low-income subscribers and are designed to reduce one-time installation charges and monthly rates for local telephone service, respectively.

155. Additionally, the FCC and many states have established assistance programs to keep down the costs of basic service in high cost areas. Both the FCC and states have established universal service funds, supported through the access charges paid by interexchange carriers.¹⁵⁹ In addition, those LECs which no longer choose to participate in the interstate common line pool must provide long-term financial support to those carriers remaining in the pool.

156. We are also interested in the effects, if any of a reformulated universal service definition on present subsidy programs designed to promote telephone subscribership. Since the demand for basic telephone service is very inelastic, any increase in the price of that service resulting from the inclusion of new capabilities in the "basic" package should not have a large adverse impact on overall telephone penetration levels. As is the case today, however, there may be some segment of the population for which the cost of service will be prohibitive in the absence of some form of subsidized rate

or direct assistance. What targeted subsidies, if any, would be needed?

157. If the new components of a redefined universal service are provided as optional, separately priced features, should lifeline programs be retargeted to include, when necessary, those services or capabilities encompassed in the expanded definition? This approach was recommended by the Intelligent Network Task Force.¹⁶⁰ However, as noted above, regulators often have required that rates for new network features (e.g., touchtone, custom calling services) be priced above cost so as to provide subsidies for basic telephone service. If those features are included in an expanded definition of universal service and priced at (or even below) cost, who should pay for the lost subsidies?

158. Redefining universal service also calls into question the role of the present assistance programs to high cost areas. For example, should LECs and their customers in low cost areas contribute to invest in network infrastructure development that principally will benefit customers in high cost areas? If competition fully emerges in local exchange markets, will such methods of subsidizing basic rates be sustainable?

159. Should new local exchange competitors, such as MANs and STS providers, have some type of universal service obligation? The New York Public Service Commission recently suggested a universal service fund and also a new equal access tariff structure, derived on a non-discriminatory basis from New York Telephone and other carriers, that would contribute toward the support of basic services.¹⁶¹ Parties are requested to address both the policy and the implementation issues raised if competitive alternatives to the LECs were required to contribute towards some sort of universal service fund.

VII. Conclusion

160. Comments in this proceeding should be filed on or before March 19, 1990. Reply comments should be filed on or before April 23, 1990.

Dated: January 3, 1990.
Janice Obuchowski,
Assistant Secretary of Commerce for
Communications and Information.
[FR Doc. 90-421 Filed 1-8-90; 8:45 am]
BILLING CODE 3510-60-M

¹⁵⁸ See *Telephone Trends*, supra note 21, at 24-25, Table 17.

¹⁵⁹ In at least one state (New Mexico), the universal service fund is supported in part by a uniform surcharge imposed on all local exchange service customers.

Telecommunications Competition in Michigan and Regulatory Alternatives, A Report to the Michigan Divestiture Research Fund Board, Vol. II, at 88 (June 1988).

¹⁵⁷ NYNEX has filed a petition with the FCC for a ruling that its particular gateway offering should be classified as a basic service. *NYNEX Petition for Declaratory Ruling*, CC Docket 88-2, Phase I (filed Jan. 17, 1989). The FCC's Common Carrier Bureau has determined that the gateway service offered by Bell Atlantic is an enhanced service. *Bell Atlantic Telephone Companies*, 3 FCC Rcd 6045, 6046 (1988).

¹⁶⁰ Task Force Report, supra note 147, at 32.

¹⁶¹ *Proceeding on Motion of the Commission to Review Regulatory Policies for Segments of the Telecommunications Industry Subject to Competition*, Case 29469, Opinion No. 89-12, at 27 (N.Y. Pub. Serv. Comm'n May 18, 1989).

Register

Tuesday
January 9, 1990

Part III

Oversight Board

12 CFR Part 1505

Employee Responsibilities and Conduct;
Proposed Rule

OVERSIGHT BOARD**12 CFR Part 1505****Employee Responsibilities and Conduct****AGENCY:** Oversight Board.**ACTION:** Proposed rule.

SUMMARY: This rule is proposed to set standards of responsibility and conduct to which all employees of the Oversight Board will be required to adhere in the performance of their duties. The Oversight Board ("Board") was established as an instrumentality of the United States by section 501(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (hereinafter referred to as "FIRREA"), Public Law 101-73 of August 9, 1989, by adding a new section 21A to the Federal Home Loan Bank Act, 12 U.S.C. 1421 *et seq.* The principal duties of the Board are to oversee and direct the Resolution Trust Corporation (RTC), whose mission is to carry out a program for the management and resolution of cases involving failed financial institutions, including disposal of residual assets. The Board is to set overall strategies, policies, goals and procedures for RTC's activities, but will not be involved in case-specific matters involving individual case resolutions, asset liquidations or the day-to-day operations of the RTC.

DATE: Comments must be received on or before February 8, 1990.

ADDRESS: Comments may be mailed to Nadine J. Hartke, Oversight Board, 1825 Connecticut Avenue, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Miklos L. Lonkay, Senior Counsel for Ethics, (202) 566-2327, Treasury Department, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

SUPPLEMENTARY INFORMATION: Section 21A(p)(2) of FIRREA requires the Oversight Board to promulgate rules and regulations within 180 days governing conflicts of interest, ethical responsibilities, and post-employment restrictions applicable to members, officers, and employees of the Board that shall be no less stringent than those applicable to the Federal Deposit Insurance Corporation. That section of FIRREA also imposes the same requirement for the RTC concerning its members, officers, and employees. FIRREA further requires the Oversight Board to prescribe procedures for ensuring that any individual who performs any function or service on behalf of the RTC meets minimum

standards of competence, experience, integrity, and fitness, and that the procedures so prescribed shall prohibit any person who fails to meet such criteria from being employed by the RTC.

At the Oversight Board's first meeting on August 9, 1989, in order to assure adherence to the standards set out in FIRREA until final regulations can be published, the Board established interim ethics and conflict of interests policies for itself and the RTC. To govern the conduct of those employees who are detailed from other Federal agencies, the Board adopted their existing agency standards of conduct regulations until the Board's own regulations are issued. For those employees who are not covered by any other agency regulations, the Board adopted the FDIC's standards of conduct regulations. The proposed rule, when adopted, will replace the Board's interim policies for its employees.

To develop the regulations required by FIRREA, the Board appointed an inter-agency task force consisting of senior ethics officials of the Treasury Department, the Board of Governors of the Federal Reserve System, the Department of Housing and Urban Development, and the Federal Deposit Insurance Corporation. The proposed rule, which sets standards for the Oversight Board's members, officers, and employees, and for such special government employees as the two independent Board members appointed by the President and the members of the National and Regional Advisory Boards, is the result of the task force's efforts. To a considerable extent, the proposed rule is similar to the rule separately proposed by the RTC for its members, officers, and employees.

Consistent with the requirements of FIRREA, and given the Board's statutory mission and responsibilities, the proposed rule sets forth the minimum standards of conduct which all employees of the Board will be required to follow. These rules will also apply to employees detailed to the Board from other agencies, and whenever there are inconsistencies between the agency's rules and the Board's rules, the latter will govern whenever they are performing services for the Board.

The proposed rule is based on the Federal Deposit Insurance Corporation regulations governing Employee Responsibilities and Conduct published at 12 CFR part 336 and, in fact, adopts many of its provisions without substantive change. In addition, it reflects the requirements of Executive Order 12674 of April 12, 1989; 18 U.S.C. Chapter 11; the Ethics Reform Act of

1989, Public Law 101-194; the Office of Personnel Management regulations on Employee Responsibilities and Conduct at 5 CFR part 735; and some of the Treasury regulations on Employee Responsibilities and Conduct at 31 CFR part 0. The proposed rule complies with the requirements of FIRREA that the restrictions imposed on the Board's employees be no less stringent than those applicable to the Federal Deposit Insurance Corporation.

The proposed rule reflects the general statutory and regulatory requirements that apply to all employees in the Executive branch. In addition, although Board employees are not expected to have any involvement with specific matters concerning institutions, entities, assets, contracts or other specific activities under the RTC's program, it contains restrictions on investments and loans involving certain financial institutions. The proposed rule would not require divestiture of securities or termination of existing loans. The rule would, however, generally prohibit acquiring new equity interests in any insured depository institutions and also prohibit extensions of credit from any institution that is involved with the RTC as a conservator or as an assisted or assuming entity. In addition, it would prohibit investment in any securities of open-end or closed-end funds that are designed to acquire thrifts or other insured depository institutions; or the holding of stock or other interests in limited real estate partnerships, joint ventures, or other investments involving firms, which, to the employee's knowledge have been qualified to do business with the Board or the RTC.

The proposed rule would impose certain restrictions on former Board employees' postemployment activities involving not only the Board, but, in view of the Board's oversight responsibilities, also the RTC. In addition to the statutory postemployment prohibitions, such restrictions would include a one-year prohibition on aiding or advising any other person (except the United States) with regard to any particular matter in which the former employee participated personally and substantially if such aiding or advising is based on nonpublic information. This administrative restriction is patterned after 18 U.S.C. 207(b) as added by the Ethics Reform Act of 1989 to the criminal conflict statutes, which prohibits aiding or advising as to ongoing trade or treaty negotiations.

Since FIRREA requires the Oversight Board to appoint members of the National and Regional Advisory Boards,

who are expected to be serving as special government employees, the proposed rule sets out in detail the statutory restrictions applicable to special government employees and the regulatory standards applicable to their conduct. The regulations do not bar the employer of such special government employee from doing business with the Board or RTC as long as the special government employee is fully recused from participating in any particular matter that his or her employer has pending before the Board or RTC.

Finally, consistent with the requirements of FIRREA, the proposed regulations would require the RTC to establish policies and procedures to ensure that all individuals who are employed by, or otherwise perform any service for, the RTC will meet minimum standards of competence, experience, integrity and fitness. These standards will also apply to the members appointed to the National and Regional Advisory Boards in view of the provision in the FIRREA that extends the conflict of interests provisions to such Boards.

These proposed regulations reflect the current status of the law and regulations. The Oversight Board is aware, however, that significant changes may be necessary once the Office of Government Ethics issues regulations to implement the Ethics Reform Act of 1989 of November 30, 1989 and Executive Order 12674 of April 12, 1989.

Executive Order 12291 and Regulatory Flexibility Act

Because this proposed rule relates solely to the internal management, operations, and personnel of the Oversight Board, it has been determined that it does not constitute a major rule for purposes of Executive Order 12291. Accordingly, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply and a regulatory flexibility analysis is not required. For similar reasons, and although the Board is soliciting public comments, no notice of proposed rulemaking is required by 5 U.S.C. 553 or any other law.

List of Subjects in 12 CFR Part 1505

Conflict of interests, Government contracts.

Chapter XV of title 12 of the Code of Federal Regulations is proposed to be amended by adding new part 1505 to subchapter A to read as follows:

PART 1505—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Subpart A—General Provisions

- Sec.
- 1505.1 Purpose and scope.
- 1505.2 Definitions.
- 1505.3 Designated agency ethics official and alternate.
- 1505.4 Employee responsibility, counseling, and distribution of regulation.
- 1505.5 Sanctions and remedial actions.
- 1505.6 Review of remedial actions.

Subpart B—Ethical and Other Conduct and Responsibilities of Employees

- 1505.7 General rules.
- 1505.8 Gifts, entertainment, favors, and loans.
- 1505.9 Travel expenses.
- 1505.10 Use of official information.
- 1505.11 Lectures, speeches, and manuscripts.
- 1505.12 Employment of relatives.
- 1505.13 Use of property and resources owned or controlled by the Board or RTC.
- 1505.14 Indebtedness, gambling, and other conduct.

Subpart C—Financial Interests and Obligations; Outside Employment

- 1505.15 General rules.
- 1505.16 Extensions of credit.
- 1505.17 Securities of insured depository institutions.
- 1505.18 Other investments.
- 1505.19 Purchase of assets of institutions in conservatorship or receivership.
- 1505.20 Purchase of Board or RTC property.
- 1505.21 Providing goods or services to the Board or RTC.
- 1505.22 Outside employment and other activity.
- 1505.23 Employment of family members by persons other than the Board or RTC.

Subpart D—Confidential Statements of Employment and Financial Interests; Public Financial Disclosure Reports; and Report of Employment Upon Resignation.

- 1505.24 Confidential statement of employment and financial interests.
- 1505.25 Public Financial Disclosure Reports.
- 1505.26 Report of employment upon resignation.

Subpart E—Limitations on Activities of Former Employees, Including Special Government Employees

- 1505.27 Limitations on representation.
- 1505.28 Limitations on aiding or advising.
- 1505.29 Consultation as to property of appearance before the board or RTC.
- 1505.30 Suspension of appearance privilege.

Subpart F—Ethical and Other Conduct and Responsibilities of Special Government Employees

- 1505.31 General.
- 1505.32 Applicability of 18 U.S.C. 203 and 205.
- 1505.33 Applicability of 18 U.S.C. 207.
- 1505.34 Applicability of 18 U.S.C. 208.
- 1505.35 Use of Board employment.
- 1505.36 Use of inside information.

- 1505.37 Coercion.
- 1505.38 Advice on rules of conduct and conflicts of interest statutes.
- 1050.39 Disclosure of employment and financial interests.

Subpart G—Competence, Experience, Integrity, and Fitness of Resolution Trust Corporation Employees

- 1505.40 Minimum competence, experience, integrity and fitness requirements for Resolution Trust Corporation employees.

Authority: 12 U.S.C. 1441a(a)(13) and (p)(2); 5 CFR part 735.

Subpart A—General Provisions

§ 1505.1 Purpose and scope.

(a) This part establishes the standards of responsibility and conduct for all employees of the Oversight Board.

(b) The following subject areas are covered:

(1) Subpart A of this part provides the definitions to be applied in implementing these standards and sets forth general procedures on employee responsibilities, counseling, distribution of the regulation, sanctions, and remedial actions;

(2) Subpart B of this part sets forth basic conflict of interest rules on receiving gifts, entertainment, favors, loans, and travel expenses and rules of conduct on speaking, publications, employment of relatives, use of Board and RTC property, and indebtedness and gambling applicable to all employees;

(3) Subpart C of this part contains rules on credit, investments, purchase of Oversight Board and Resolution Trust Corporation property and assets in conservatorship or receivership, outside employment, and employment of family members applicable to all employees;

(4) Subpart D of this part requires reports of financial interests and employment;

(5) Subpart E of this part sets forth rules on representing others before the Oversight Board and Resolution Trust Corporation;

(6) Subpart F of this part prescribes rules for special government employees; and

(7) Subpart G of this part requires the Resolution Trust Corporation to prescribe policies and procedures setting forth minimum standards of competency, experience, integrity, and fitness for its employees.

§ 1505.2 Definitions.

For the purposes of this part:

(a) "Affiliate" means any depository institution holding company, of which an insured bank or insured savings association is a subsidiary and any

other subsidiary of such depository institution holding company. Any entity which is a subsidiary of an insured bank or insured savings association shall be deemed to be an affiliate of that insured bank or insured savings association.

(b) "Appearance" means an individual's physical presence before the United States, including the Board or RTC, in any formal or informal setting or conveyance of material to the United States in connection with a formal proceeding or application. A communication is broader than an appearance and includes, for example, correspondence or telephone calls.

(c) "Assisted entity" means (1) any insured depository institution which has received financial assistance from the RTC to prevent its failure, (2) any insured depository institution resulting from a merger or consolidation with any insured depository institution described in paragraph (k) of this section, or (3) any parent depository institution holding company of an insured depository institution described in paragraph (k) of this section: *Provided*, That an ongoing financial relationship, including, but not limited to, the repayment of a loan, the servicing of assets, or the existence of stock or warrants, exists between such insured depository institution or insured depository institution holding company and the RTC.

(d) "Assuming entity" means any insured depository institution or insured depository institution holding company which has entered into a transaction with the RTC to purchase some or all of the assets and assume some or all of the liabilities of a failed insured depository institution for a period of one year following the closing of such failed insured depository institution.

(e) "Board" means the Oversight Board.

(f) "Chairperson" means the Chairperson of the Board.

(g) "Contractor" means any entity or person who, pursuant to a contract, performs functions or activities for the Board or RTC under the direct supervision of an officer or employee of the Board or RTC. The term does not include independent contractors retained by the RTC whose conduct is regulated under 12 CFR 1606.

(h) "Covered employee" means any entity or employee required to file a confidential statement of employment and financial interests pursuant to § 1505.24(a) or a public Financial Disclosure Report (SF 278) pursuant to 1505.25.

(i) "Dependent child" means a son, daughter, stepson, or stepdaughter who either:

(1) Is unmarried, under 21, and living in the employee's household; or

(2) Has received over half of his or her support from the employee in the preceding calendar year.

(j) "Employee" means any member, officer, or employee of the Board including any personnel detailed from any executive department or agency, but does not include special government employees.

(k) "Insured depository institution" means any bank or savings association the deposits of which are insured by the Bank Insurance Fund or the Savings Association Insurance Fund.

(l) "FIRREA" means the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law 101-73 of August 9, 1989 (103 Stat. 183).

(m) "Member of the employee's immediate household" means a person who is related to the employee by blood, marriage, or adoption and who resides in the same household as the employee.

(n) "Person" means an individual, insured depository institution, corporation, company, association, partnership, firm, society, or any other organization or institution.

(o) "President" means the President and Chief Executive Officer of the Board or his or her delegate.

(p) "RTC" means the Resolution Trust Corporation.

(q) "Security" means any note, stock, treasury stock, bond, debenture, certificate of interest or participation in any profit-sharing agreement, pre-organization certificate or subscription, investment contract, voting trust certificate, or, in general, any interest or instrument commonly known as a security, but does not include a deposit.

(r) "Senior employee" means any member or other officer or employee of the Oversight Board named in or designated by the Director of the Office of Government Ethics pursuant to 18 U.S.C. 207(d).

(s) "Special government employee" means any employee performing temporary duties either on a full time or intermittent basis, with or without compensation, for a period estimated not to exceed 130 days during any period of 365 consecutive days. Independent members of the Oversight Board and members of the National and Regional Advisory Boards who perform duties on this basis will be special government employees.

(t) "Subsidiary" means a company the voting stock of which is 50 percent or more owned or controlled by another company.

§ 1505.3 Designated agency ethics official and alternate.

(a) The Board's ethics program shall be coordinated and managed by the Designated Agency Ethics Official (hereinafter referred to as the DAEO) who will be appointed by the Oversight Board.

(b) An Alternate Designated Agency Ethics Official (hereinafter referred to as the Alternate DAEO) will also be appointed by the Board, to act for the DAEO when he or she is unavailable. When acting for the DAEO, the Alternate DAEO may perform all of the duties and functions of the DAEO. All references in these regulations to the DAEO shall mean the Alternate DAEO whenever he or she is acting for the DAEO.

§ 1505.4 Employee responsibility, counseling, and distribution of regulation.

(a) Each employee is responsible for being familiar with and complying with the provisions of this part. The DAEO shall be available for counseling and guidance as to the statutes and regulations affecting employee responsibility and conduct, including interpretation of this part.

(b) The DAEO shall assure that a copy of this part is provided to each new Board employee within 30 days of commencement of employment and each such employee shall complete and file a certification acknowledging receipt of the regulations. The DAEO shall annually distribute a reminder of the basic provisions of this part to each employee.

(c) An employee who believes that any assignment to a matter may result in a conflict of interest or the appearance of a conflict of interest shall report immediately all relevant facts to his or her immediate supervisor.

§ 1505.5 Sanctions and remedial actions.

(a) Any violation of this part by an employee, or special government employee, may be cause for disciplinary or remedial action, which may be in addition to any penalty prescribed by law.

(b) Disciplinary action may include, but is not limited to, an oral or written warning or admonishment, reprimand, suspension, or removal from office.

(c) Remedial action may include divestment of conflicting interests, change in assigned duties, or disqualification from a particular assignment or a particular matter.

(d) Unless there is a request for review, pursuant to § 1505.6, of an order of remedial action, such order of remedial action, other than

disqualification, shall take effect 20 days after receipt of notice thereof, and disqualification shall take effect immediately. Any order of remedial action reviewed and approved pursuant to § 1505.6 shall take effect immediately upon receipt of notice of the determination of the President.

§ 1505.6 Review of remedial actions.

When remedial action is ordered pursuant to § 1505.5, the affected Board employee, or special government employee, may request the President to review such order. Any request for review shall be made in writing, within 20 days of receipt of notice of the order, and shall contain a statement of reasons for such request. The President will promptly review the matter and provide a written determination which shall be final.

Subpart B—Ethical and Other Conduct and Responsibilities of Employees

§ 1505.7 General rules.

Employees are expected to maintain high standards of honesty, integrity, impartiality, and conduct and to avoid misconduct and conflicts of interest, or the appearance of conflicts of interest. No employee shall engage in any action, whether or not specifically prohibited by this part, which might result in, or create the appearance of:

- (a) Using public office for private gain;
- (b) Giving preferential treatment to any person;
- (c) Impeding the Board's or RTC's efficiency or economy;
- (d) Losing complete independence or impartiality;
- (e) Making a Board decision outside official channels; or
- (f) Adversely affecting the public's confidence in the integrity of the Board or RTC.

§ 1505.8 Gifts, entertainment, favors, and loans.

(a) Except as provided in paragraph (b) of this section, no employee may solicit or accept, for himself or herself or for another person, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or other thing of monetary value from a person who:

- (1) Has or seeks contractual or other business or financial relationships with the Board or RTC;
- (2) Is supervised or regulated by any federal financial regulatory agency;¹

(3) Has interests that may be substantially affected by the performance or nonperformance of the employee's official duties; or

(4) Is an officer, director, or employee of any insured depository institution or trade organization comprising of members who seek to do business with the Board or RTC.

(b) The prohibitions of paragraph (a) of this section do not apply:

(1) To the solicitation or acceptance of anything of monetary value from a friend, parent, spouse, child, or other close relative where it is clear from the circumstances that personal or family relationships rather than the business of the persons concerned are the motivating factors;

(2) To the acceptance of unsolicited advertising or promotional material such as pens, pencils, note pads, calendars, and other items of nominal value;

(3) Except as otherwise provided in § 1505.16, to the acceptance of loans from insured depository institutions or other financial institutions on the customary terms and conditions offered to the general public;

(4) To the acceptance of food, refreshments, and accompanying entertainment of nominal value on infrequent occasions in the ordinary course of a conference, meeting, or other function at which an employee is properly in attendance in his or her official capacity; and

(5) To the acceptance of food, refreshments, and accompanying entertainment of nominal value offered in the course of a group function or widely attended gathering at which the attendance of the employee is in the interest of the Board.

(c) Whenever an employee receives a gift or other item of monetary value the acceptance of which is prohibited by paragraph (a) of this section, or whenever a gift or other item of monetary value is received from a source other than a source described in paragraph (a) of this section and is given because of the employee's official position or in conjunction with official duties carried out by the employee, the employee shall notify the DAEO within ten days of receipt of such gift or item. The gift or item shall be promptly returned to the sender or otherwise disposed of as directed by the DAEO. The cost of returning such gift or item shall be borne by the Board.

(d) An employee may not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than himself or herself, unless it is a voluntary gift or

donation of nominal value made on a special occasion such as marriage, illness, or retirement.

(e) An employee may not request or accept a gift, present, or decoration from a foreign government, except as permitted by law.

(f) Procurement officials shall not, during the conduct of a procurement of goods or services under the Federal Procurement laws and regulations, knowingly solicit or accept any money, gratuity, or other thing of value from any officer, employee, representative, agent, or consultant of any competing contractor for such procurement.

§ 1505.9 Travel expenses.

(a) Expenses of travel, lodging, and subsistence incurred by an employee while on official duty shall be paid for or reimbursed by the Board and an employee shall not accept payment or reimbursement for such expenses from any private source except as provided in this § 1505.9(d).

(b) On rare occasions where there is no practical alternative to acceptance, an employee may accept travel, lodging, or subsistence from a private source while on official duty. The employee must report the acceptance, value, and circumstances thereof to his or her immediate supervisor and the DAEO within 30 days of such acceptance. When appropriate, the Board will reimburse the private source for the fair market value of such travel, lodging, or subsistence.

(c) For the purpose of this section, "subsistence" does not include food or refreshments accepted on infrequent occasions in the ordinary course of an official function or a widely attended gathering as permitted by § 1505.8 (b)(4) and (b)(5).

(d) Under the provisions of 5 U.S.C. 4111, an employee may accept reimbursement for travel, lodging, or subsistence expenses from an organization which is exempt from taxation under 26 U.S.C. 501(c)(3), if no U.S. Government payment or reimbursement is made for the expense, and acceptance does not result in, or create the appearance of, a conflict of interest; and in the case of employees who are permanent employees of any executive department or agency, being utilized by the Board on a reimbursable basis, where acceptance would be consistent with the other federal agency's travel policies and regulations.

§ 1505.10 Use of official information.

(a) Except as permitted in § 1505.11, an employee may not, directly or indirectly, use or allow the use of

¹ A professional, trade, or business association, a substantial majority of whose members are regulated by or do or seek to do business with the Board or RTC or any federal financial regulatory agency, is itself a prohibited source for purposes of this section. (Memorandum 87-13, OGE, issued 1987)

information which is obtained as a result of his or her Board employment but which is not available to the general public in order to engage in any financial transaction or to further a private interest.

(b) An employee may not maintain, disclose, or otherwise use information in a manner which violates the Privacy Act of 1974, 5 U.S.C. 552a.

(c) An employee may not disclose confidential business information obtained in the course of his or her employment or official duties except as authorized by law. (See 18 U.S.C. 1905).

§ 1501.11 Lectures, speeches, and manuscripts.

(a) No employee shall publish any material or speak before insured depository institutions or public organizations on matters involving the Board or RTC unless the employee receives prior approval, and prior clearance of material to be published, by the President.

(b) Any employee shall not use his or her title in connection with writing for publication, or other distribution not in connection with his or her Board employment, unless the writing contains a statement indicating that the views contained therein are those of the employee as an individual and do not necessarily represent the views of the Board or RTC or unless such use is approved in advance by the President.

(c) An employee shall not use in any teaching, lecturing, speaking, or writing engagement information obtained as a result of his or her Board employment unless the information is available to the general public or the President gives authorization for such use, upon the determination that the use of the information is in the public interest.

(d) No employee may receive any compensation, honorarium, or other thing of monetary value for any speech, lecture, publication, or similar engagement, the subject matter of which relates specifically to matters involving the Board or RTC or contains information that is not otherwise available to the general public. No employee may accept an honorarium of more than \$2,000 for any appearance, speech, or article in connection with non-Board related activities. (See 2 U.S.C. 441i).

§ 1505.12 Employment of relatives.

(a) For the purposes of this section:

(1) A "relative" is any person related to an Oversight Board official, an RTC official, or a special Government employee of the Board or RTC as parent, stepparent, child, stepchild, brother, sister, stepbrother, stepsister, half-

brother, half-sister, spouse, uncle, aunt, first cousin, nephew, niece, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law.

(2) An "official" is any employee who has authority to appoint, employ, promote, or advance employees or who recommends anyone for appointment, employment, promotion, or advancement at the Oversight Board or the RTC.

(3) A "supervisor" is any employee whose position requires independent judgment to appoint, employ, promote, advance, assign, direct, reward, transfer, suspend, discipline, remove, adjust grievances, or furlough any person or to recommend any such action.

(b) A Board official may not:

(1) Appoint, employ, promote, or advance any relative to a position at the Oversight Board or the RTC;

(2) Advocate a relative's appointment, employment, promotion, or advancement at the Oversight Board or RTC; or

(3) Appoint, employ, promote, or advance a relative of another Oversight Board or RTC official if such other official has advocated the relative's appointment, employment, promotion, or advancement.

(c)(1) No employee may be a supervisor of any relative.

(2) Whenever any employee becomes a supervisor of a relative, the employee shall report in writing that fact to his or her supervisor. The appropriate management official, in consultation with the DAEO, shall determine whether the relative's position may be removed from the scope of the supervisor's authority, taking into consideration the nature of the supervisor's position, the operational needs of the work unit, and the potential for conflicts of interest or the appearance thereof. If it is determined that it is not feasible to remove the relative's position from the scope of the supervisor's authority, the appropriate management officials shall determine whether the relative may be assigned to another position at the Board which is outside the scope of the supervisor's authority.

§ 1505.13 Use of property and resources owned or controlled by the Board or RTC.

An employee shall not, directly or indirectly, use or allow the use of any property or resources, owned or controlled by the Board or RTC for other than officially approved activities. An employee has a duty to protect and conserve property, including equipment, supplies, and other property entrusted or issued to the employee.

§ 1505.14 Indebtedness, gambling, and other conduct.

(a) *Indebtedness.* An employee is expected to meet all just financial obligations, whether imposed by law or contract. For the purpose of this section, a "just financial obligation" is one acknowledged by the employee or reduced to judgment by a court or one imposed by law such as federal, state, or local taxes.

(b) *Gambling.* An employee shall not participate in any gambling activity, including use of gambling devices, lotteries, pools, games for money or property, or numbers tickets, while on property owned or leased by the Board or the government, or while on duty for the Board.

(c) *Crimes and dishonesty.* An employee shall not engage in criminal or dishonest, or any other conduct prejudicial to the Board. Any employee who has information indicating that another employee engaged in any criminal conduct or violated any of the rules of these Standards of Conduct shall promptly convey such information to the DAEO.

(d) *Discrimination.* An employee shall not discriminate against any other employee, or applicant for employment, nor exclude any person from participating in, or deny to any person the benefits of, any program or activity administered by the Board or RTC on the basis of race, color, religion, national origin, sex, age or handicap.

(e) *Political Activity.* Employees have the right to vote as they may choose and to express their opinions on all political subjects and candidates, but are forbidden to take active part in political management or campaigns except as permitted by law. Prohibitions concerning political activities may be found in 5 U.S.C. 7321 *et seq.* (the Hatch Act) and 18 U.S.C. 602, 603, and 607.

(f) *Miscellaneous.* Other provisions with which an employee should be familiar include:

(1) The "Code of Ethics for Government Service," which prescribes general standards of conduct (Pub. L. No. 96-303, 94 Stat. 855-856);

(2) Prohibitions relating to bribery, conflicts of interest, and graft (18 U.S.C. 201-209);

(3) Prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918);

(4) Prohibitions against the disclosure of classified information (18 U.S.C. 798);

(5) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352);

(6) Prohibition against the misuse of a government vehicle (31 U.S.C. 1349(b));

(7) Prohibition against the misuse of the franking privilege (*i.e.*, prepaid postage) (18 U.S.C. 1719);

(8) Prohibition against the use of deceit in an examination or personnel action in connection with government employment (18 U.S.C. 1917);

(9) Prohibition against fraud or false statements in a government matter (18 U.S.C. 1001);

(10) Prohibition against mutilating or destroying a public record (18 U.S.C. 2071);

(11) Prohibitions against embezzlement of government money or property (18 U.S.C. 641); failing to account for public money (18 U.S.C. 643); and embezzlement of the money or property of another person in the possession of an employee by reason of his or her employment (18 U.S.C. 654);

(12) Prohibition against unauthorized use of documents relating to claims from or by the government (18 U.S.C. 285); and

(13) Prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

Subpart C—Financial Interests and Obligations; Outside Employment

§ 1505.15 General rules.

(a) No employee shall have any direct or indirect financial interest or obligation that conflicts or appears to conflict with the employee's duties and responsibilities.

(b) No employee may negotiate or have any arrangement concerning prospective employment with a person whose financial interests may be directly and substantially affected by the employee's performance of his or her Board duties and responsibilities while the employee is personally and substantially engaged, as part of his or her official duties, in any matter affecting that person. (See 18 U.S.C. 208.)

(c) No employee may participate personally and substantially, by decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other action, in any matter in which the employee, the employee's spouse, minor child, partner, or organization in which the employee serves as an officer, director, trustee, partner, or employee, has a financial interest (other than a deposit). (See 18 U.S.C. 208.)

(d) No partner of an employee or a special government employee may act as agent or attorney for any person other than the United States before the Board or RTC in a matter in which the employee participates or has participated, personally and substantially, by decision, approval, disapproval, recommendation, the

rendering of advice, investigation, or otherwise or which is the subject of the employee's official responsibility. (See 18 U.S.C. 207.)

(e) An employee shall disqualify himself or herself from participation in any matter in which he or she has a financial interest by notifying his or her supervisor and the DAEO in writing of such matter and financial interest.

(f) The prohibitions of paragraphs (a), (b), (c), and (e) of this section shall not apply if the employee receives the prior written determination by the President, after consultation with the DAEO and the Office of Government Ethics, that the interest is not so substantial as to be deemed likely to affect the integrity of the employee's services to the Board. (See 18 U.S.C. 208(b)(1).)

§ 1505.16 Extensions of credit.

Unless the credit is extended through the use of a credit card under the same terms and conditions as are offered to the general public and the total line of credit from any one institution does not exceed \$10,000:

(a) Employees may not, directly or indirectly, accept or become obligated on any extension of credit from any institution which the RTC manages as conservator or an assisted or assuming entity, for as long as the institution remains in conservatorship or one year following the end of RTC's involvement with an assisted or assuming entity. Such an institution will hereafter be referred to as a "prohibited creditor".

(b) If the adoption of this regulation, change in marital status, commencement of employment, or an action affecting the status of the creditor² results in an extension of credit prohibited by paragraph (a) of this section, such extension of credit may be retained by the employee if it is liquidated under its original terms, without renegotiation. If an otherwise prohibited extension of credit is retained in accordance with this paragraph, the employee shall be disqualified from participating in any particular matter having a direct and predictable impact on the creditor; *Provided*, That the President, after consultation with the DAEO and the Office of Government Ethics, may determine that the obligation will not affect the integrity of the employee's services to the Board.

(c) An employee otherwise required to liquidate a nonconforming extension of credit under its original terms may

request permission to renegotiate the loan. Any such request shall be made, in writing, to the President, with a copy provided to the DAEO, stating:

(1) The purpose of the renegotiation;

(2) The terms and conditions of the original loan;

(3) The terms and conditions now available to the general public;

(4) The terms and conditions now offered the employee;

(5) What action the employee has taken to move the loan to an otherwise nonprohibited creditor; and

(6) The financial hardship, if any, denial of the request will cause.

(d) No employee may renegotiate a loan from a prohibited creditor without the prior written approval of the President, after consultation with the DAEO.

(e) Notwithstanding the restrictions of this section, an employee may assume a mortgage loan made by a prohibited creditor under the following circumstances:

(1) The loan is for the employee's personal residence;

(2) The employee is unable to arrange, without undue financial hardship, a loan from a nonprohibited creditor;

(3) The terms of the assumption are no more favorable than those made available to the general public by the same creditor;

(4) The employee receives the prior approval of the appropriate approving official, who shall have consulted with the DAEO; and

(5) The employee is disqualified from participating in any particular matter having a direct and predictable impact on the creditor.

(f) An extension of credit to an employee's spouse or dependent child shall constitute an extension of credit to the employee.

§ 1505.17 Securities of insured depository institutions.

(a) While employed by the Board an employee may not purchase, own, or control, directly or indirectly, any securities of an insured depository institution or affiliate thereof, except as permitted in this section.

(b)(1) Except as provided in paragraph (b)(2) of this section, an employee may own or control securities of an insured depository institution, or affiliate thereof, whenever:

(i) Ownership or control was acquired prior to commencement of Board employment, or after commencement of employment, through a change in marital status or through circumstances beyond the employee's control, such as

² Such actions include, but are not limited to, mergers, acquisitions, transactions under section 13 of the Federal Deposit Insurance Act (12 U.S.C. 1823) or similar actions beyond the employee's control.

inheritance, gift, or merger, acquisition or other change in corporate ownership;

(ii) The employee makes full, written disclosure on the prescribed form to the President and DAEO, within 30 days of commencing employment or acquiring the interest; and

(iii) The employee is disqualified from participating in any particular matter having a direct and predictable impact on the insured depository institution or affiliate; *Provided*, That the President, after consultation with the DAEO and the Office of Government Ethics, may determine that disqualification is not necessary because the employee's interest is too inconsequential to affect the integrity of the employee's services to the Board.

An employee may own or control additional securities which result from a stock split, stock dividend, or the exercise of options or preemptive rights arising out of the ownership of such securities.

(2) The President, after consultation with the DAEO, may require that an employee divest his or her interest in securities whenever disqualification under paragraph (b)(1) of this section might impair the employee's ability to perform his or her Board duties and responsibilities.

(c) An employee may have an indirect interest in securities of an insured depository institution, or affiliate thereof which arises through ownership of shares (or other investment units) of publicly held holding companies, mutual funds, or investment trusts but only if:

(1) The assets of the holding company, mutual fund, or investment trust consist primarily of securities of nonbank entities; and

(2) The employee does not own or control 5 percent or more of the shares (or other investment units) of the holding company, mutual fund, or investment trust.

Such an indirect interest in securities of an insured bank or affiliate is deemed too inconsequential to affect the integrity of the employee's services to the Board. (This provision, which represents a statutory waiver pursuant to former 18 U.S.C. 208(b)(2), is adopted from the FDIC regulations at 12 CFR 336.17(c)).

§ 1505.18 Other investments.

(a) While employed by the Board an employee may not purchase, own, or control, directly or indirectly, any securities issued by any bridge bank or other institution organized under § 21A(b)(11) of the Federal Home Loan Bank Board Act as added by section 501(a) of FIRREA.

(b) While employed by the Board an employee may not purchase securities of, or otherwise invest in, any open- or closed-end fund designed to acquire thrifts or other insured depository institutions.

(c) While employed by the Board an employee may not acquire, directly or indirectly, any financial interest which conflicts or potentially conflicts with his or her official duties and responsibilities. Such interests include, but are not limited to, the voluntary acceptance, acquisition or holdings of: Stock or other interests in limited real estate partnerships, joint ventures, or other investments for the production of income, which involve firms or institutions which, to the employee's knowledge, have been qualified to conduct business with the Board or RTC.

(d)(1) Except as provided in paragraph (d)(2) of this section, an employee may own or control investments described in paragraph (c) of this section whenever:

(i) Ownership or control was acquired prior to commencement of Board employment, or after commencement of employment, through a change in marital status or through circumstances beyond the employee's control, such as inheritance, gift, or merger, acquisition or other change in corporate ownership;

(ii) The employer makes full, written disclosure on the prescribed form to the DAEO within 30 days of commencing employment or acquiring the interest; and

(iii) The employee is disqualified from participating in any decision or other action having a direct and predictable impact on the employee's financial interest; *Provided*, That the President, after consultation with the DAEO and the Office of Government Ethics, may determine that disqualification is not necessary because the employee's interest is too inconsequential to affect the integrity of the employee's services to the Board.

(2) The employee may be required to dispose of his or her interest in securities whenever disqualification under paragraph (d)(1) of this section might impair the employee's ability to perform his or her Board duties and responsibilities.

(e) An employee may have an indirect interest in otherwise prohibited investments which arises through ownership of shares (or other investment units) of publicly held companies, mutual funds, or investment trusts which have broadly diversified portfolios not specializing in any particular industry and which are:

(1) Widely held and are not under the employee's control; or

(2) Limited partnership interests in large public partnerships (i.e., one which has at least 39 partnership interests) and less than 25% of the gross revenues of the limited partnership is derived from firms doing business with the RTC.

The employee is disqualified, however, from participating in any particular matter having a direct and predictable impact on the employee's financial interest in such investments; *Provided*, That the President, after consultation with the DAEO and the Office of Government Ethics, may determine that disqualification is not necessary because the employee's interest is too inconsequential to affect the integrity of the employee's services to the Board.

§ 1505.19 Purchase of assets of institutions in conservatorship or receivership.

(a) An employee, the employee's spouse or dependent child, or members of the employee's immediate household shall not, directly or indirectly, purchase any property which, to the employee's knowledge, the RTC manages as conservator of an insured depository institution or holds in its capacity as receiver, liquidator, or liquidating agent of the assets of an insured depository institution, regardless of how the property is sold.

(b) An employee who is involved in the disposition of conservatorship or receivership assets shall disqualify himself or herself from participation in the disposition of such assets when the employee becomes aware that any relative, or any organization or partnership with which the employee, the employee's spouse or dependent child is associated, has submitted a bid for purchase of such assets. The employee shall advise the President and the DAEO in writing of the self-disqualification.

(c) An employee shall not, directly or indirectly, use or release to persons outside the Board confidential information regarding the sale or disposition of assets.

§ 1505.20 Purchase of Board or RTC property.

An employee, the employee's spouse or dependent child, or members of the employee's immediate household shall not, directly or indirectly, purchase or bid on any property owned by the Board or owned or held by the RTC in its corporate capacity.

§ 1505.21 Providing goods or services to the Board or RTC.

An employee, the employee's spouse or dependent child, or members of the employee's immediate household shall

not, directly or indirectly, provide any goods or services for compensation to the Board or RTC unless the President determines, subject to the prohibitions in 18 U.S.C. 203 and 205, that there is a most compelling reason to do so, such as where the Board's or RTC's needs cannot be otherwise met. For the purposes of this section, the term "services" does not include services as required by the employee's position with the Board.

§ 1505.22 Outside employment and other activity.

(a) An employee shall not engage in employment or other activity outside the scope of his or her Board employment which is not compatible with the full and proper discharge of the employee's duties and responsibilities to the Board. Employment or activity which is not compatible with the employee's duties and responsibilities to the Board includes, but is not limited to, that which results in, or creates an appearance of, a conflict of interest or impairs the employee's physical or mental capacity to perform the duties and responsibilities of his or her position with the Board. Such employment or activity may involve:

(1) Service, with or without compensation, as an organizer, incorporator, director, officer, trustee, or representative of, or advisor or consultant to, or in any other capacity with, any insured depository institution, including a credit union;

(2) Service, with or without compensation, in any capacity with an investment advisor, investment company, investment fund, mutual fund, insurance company, stockbroker, underwriter, or any other person engaged in providing financial services; or

(3) Active participation in or conduct of a business dealing with or related to real estate including, but not limited to, real estate brokerage, management and sales, property insurance and appraisal services.

(b) An employee shall not engage in outside employment or other activity, with or without compensation, with any person or entity doing business with the Board or RTC.

(c) An employee shall not accept any money or anything of monetary value from a private source as compensation for the employee's service to the Board or RTC. (See 18 U.S.C. 209.)

(d) An employee shall not, directly or indirectly, receive compensation for representational services rendered by himself or herself or another before an agency of the Federal or District of Columbia Government on matters in

which the United States has an interest. (See 18 U.S.C. 203.)

(e) Except as provided in paragraph (f) of this section, an employee shall not represent anyone before an agency or court of the Federal or District of Columbia Government, with or without compensation, in matters in which the United States has an interest, other than in the proper discharge of the employee's official duties. (See 18 U.S.C. 205.)

(f) An employee must obtain the prior written approval of the President, after consultation with the DAEO, in order to represent a parent, spouse, child, or person or estate for which he or she serves as a guardian, executor, administrator, trustee, or personal fiduciary, with or without compensation. (See 18 U.S.C. 205.)

(g) This section does not preclude an employee from participating in the activities of:

(1) Charitable, religious, professional, social, fraternal, nonprofit educational and recreational, public service, or civic organizations, so long as such participation does not violate § 1505.16 or 18 U.S.C. 203 or 205; or

(2) National or state political parties, if not prohibited by law.

(h) Any employee who engages in, or intends to engage in, outside employment or other activity must obtain the prior written approval of the President who, after consultation with the DAEO, will determine whether such employment or activity is compatible with the purposes of this part.

§ 1505.23 Employment of family members by persons other than the Board or RTC.

(a) In order to avoid a conflict of interest or the appearance of a conflict, a covered employee shall report to the President the employment of the employee's spouse, child, parent, brother, sister, or a member of the employee's immediate household, within 30 days of when the employee becomes aware of it, by:

(1) An insured depository institution or its affiliate;

(2) A firm or business with which, to the employee's knowledge, the Board or RTC has a contractual or other business or financial relationship; or

(3) A firm or business which, to the employee's knowledge, is seeking a business or contractual relationship with the Board or RTC.

(b) A covered employee will not be assigned to any matter directly involving the family member's employer unless the President, after consultation with the DAEO, makes a prior determination that the nature of the family member's employment makes it

unlikely that the employee's services to the Board will be affected by participation in the matter. In making determinations under this section, significant weight shall be given to the policy-making character of the family member's position. Under most circumstances, positions which are clerical or lacking policy-making character would not require disqualification.

Subpart D—Confidential Statements of Employment and Financial Interests; Public Financial Disclosure Reports; and Report of Employment Upon Resignation.

§ 1505.24 Confidential statement of employment and financial interests.

(a) *General.* All Board employees, including employees of other agencies detailed to the Board, classified at GS-13 to GS-15, or at a comparable pay level under the Board's personnel authority, shall be deemed to be covered employees for the purpose of filing confidential statements of employment and financial interests pursuant to this section. The President, after consultation with the DAEO and the Office of Government Ethics, may require the filing of such statements by employees at pay levels below GS-13, or a comparable pay level under the Board's personnel authority, when it is determined to be essential to protect the integrity of the Government and avoid possible conflict of interest situations.

(b) *Submission of Statements.* (1) Covered employees will be required to file statements of employment and financial interests within 30 days of initial employment, and each reappointment thereto and annually thereafter with information as of June 30. Covered employees who have commenced employment within 90 days of June 30 need not submit another statement for such reporting period.

(2) Statements shall be made upon forms prescribed by the Board. Instructions accompanying the forms will indicate where the statement is to be submitted. Each covered employee required to file shall be notified of their obligation.

(3) Each statement of employment and financial interests and its instructions will require the covered employee to supply information on:

(i) All other employment; and

(ii) The financial interests of the employee which have been determined to be relevant in light of the duties he or she is to perform, including, but not limited to, the name of companies in

which he or she has a financial interest, and the nature of such financial interest.

(c) *Confidentiality of statements.* Statements of employment and financial interests shall be held in confidence. Statements shall be received, reviewed, and retained in the office of the DAEO, who shall be responsible for maintaining the statements in confidence.

§ 1505.25 Public Financial Disclosure Reports.

Officers and employees (including special Government employees, who are expected to serve in excess of 60 days out of a 365-day period) whose positions are classified at GS-16 or above of the General Schedule, or whose basic rate of pay (excluding "step" increases) under other pay schedules is equal to or greater than the rate for GS-16 (step 1), and employees whose positions are excepted from competitive service by reason of being of a confidential or policymaking character (unless otherwise excluded by the Office of Government Ethics) must file Financial Disclosure Reports (SF 278) upon appointment, termination, and annually in accordance with the regulations of the Office of Government Ethics, 5 CFR part 2634 (formerly 5 CFR part 734). Oversight Board members who are employees of other government agencies will file their reports with their employing agency, and pursuant to FIRREA, file a copy with the RTC ethics counselor.

§ 1505.26 Report of employment upon resignation.

Each covered employee shall report to the DAEO on a prescribed form his or her resignation to accept employment in the private sector. Such report shall include pertinent information regarding the prospective employment and shall be made as soon as possible but in no event less than two weeks prior to the effective date of resignation.

Subpart E—Limitations on Activities of Former Employees, Including Special Government Employees

§ 1505.27 Limitations on representation.

(a) No former employee or special government employee, after terminating government employment, shall knowingly act as agent or attorney for, or otherwise represent any other person, except the United States, in any formal or informal appearance before, or with the intent to influence, make any oral or written communication on behalf of any other person other than the United States:

(1) To any department, agency, or court of the United States;

(2) In connection with any particular government matter involving a specific party; and

(3) In which such employee or special government employee participated personally and substantially as an employee or special government employee through decision, approval, disapproval, recommendation, advice, investigation, or otherwise.

See 18 U.S.C. 207(a) and 5 CFR 2637.201 (formerly 5 CFR 737.5(a)).

(b) No former employee or special government employee, within two years after termination of employment with the Board, shall knowingly act as agent or attorney for, or otherwise represent any other person, except the United States, in any formal or informal appearance before, or with the intent to influence, make any oral or written communication on behalf of any other person other than the United States:

(1) To any department, agency, or court of the United States;

(2) In connection with any particular government matter involving a specific party; and

(3) If such matter was actually pending under the employee's responsibility as an officer or employee within a period of one year prior to the termination of such responsibility.

See 18 U.S.C. 207(b)(i) and 5 CFR 2632.202 (formerly 5 CFR 737.7(a)).

(c) The provisions of paragraphs (a) and (b) of this section shall not apply to the participation of a former employee or special government employee, other than those persons described in paragraph (e) of this section, in matters of general application, such as rulemaking, proposed legislation or regulations, and the formulation of general policy standards or objectives but shall apply to rulemaking having a specialized effect on a certain party or group of parties. (See 5 CFR 2637.201 (formerly 5 CFR 737.5(c)).

(d) No former senior employee, within two years after termination of employment with the Board or RTC, shall knowingly represent or aid, counsel, advise, consult, or assist in representing any other person, except the United States, by personal presence at any formal or informal appearance:

(1) Before any department, agency, or court of the United States;

(2) In connection with any particular government matter involving a specific party; and

(3) In which matter he or she participated personally and substantially while an employee.

See 18 U.S.C. 207(b)(ii) and 5 CFR 2637.203 (formerly 5 CFR 737.9(a)).

(e) For a period of one year after termination of employment with the Board, no former senior employee (other than a special government employee who serves for fewer than sixty (60) days in a calendar year) shall knowingly act as an agent or attorney for, or otherwise represent any other person, except the United States, in any formal or informal appearance before, or with the intent to influence, make any oral or written communication on behalf of any other person other than the United States to the Board or RTC or any of its officers or employees in connection with any particular government matter, whether or not involving a specific party, which is pending before the Board or RTC, or in which the Board or RTC has a direct and substantial interest. See 18 U.S.C. 207(c) and 5 CFR 2637.204 (formerly 5 CFR 737.11).

§ 1505.28 Limitations on aiding or advising.

(a) For a period of one year after termination of employment with the Oversight Board, no former covered employee, including a former senior employee, shall knowingly act as agent or attorney for, or otherwise aid or advise any other person (except the United States), concerning any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, or other particular matter:

(1) In which the former employee knows that the United States is a party or has a direct and substantial interest;

(2) That involves the same specific party or parties; and

(3) In which matter he or she participated personally and substantially while an employee.

(b) For purposes of paragraph (a) of this section, the limitations on aiding and advising shall only apply to particular matters about which the former employee had access to information which is exempt from disclosure under section 552 of title 5 of the United States Code, and which is so designated by the Oversight Board or RTC and which information is the basis for the aid or advice.

§ 1505.29 Consultation as to propriety of appearance before the Board or RTC.

Any former employee who wishes to appear before the Board or RTC on behalf of any person other than the United States, or an agency thereof, at any time after termination of employment with the Board, may consult the DAEO as to the propriety of such appearance.

§ 1505.30 Suspension of appearance privilege.

Any former employee or special government employee who, knowingly fails to comply with the provisions of this subpart, may be prohibited from making an appearance before or an oral or written communication to the Board or RTC for such period of time as provided in procedures to be adopted by the Board or RTC.

Subpart F—Ethical and Other Conduct and Responsibilities of Special Government Employees**§ 1505.31 General.**

(a) Special government employees are those serving the Board by performing temporary duties either on a full time or intermittent basis, with or without compensation, for a period not to exceed 130 days during any period of 365 consecutive days. The two independent members of the Board and members of the National and Regional Advisory Boards are expected to be special government employees.

(b) The rules of conduct contained in subparts A, B, C, D, and E of this part shall also apply to special government employees insofar as their employment with the Board is concerned, except as otherwise indicated in this subpart F. Thus, for example, the prohibition in § 1505.14(e), concerning active participation in political management or campaigns (5 U.S.C. 7321 *et seq.*, the Hatch Act), only applies to special government employees on days that they serve the Board, and the general restrictions imposed on outside employment and investments by subpart C of this part do not apply to special government employees as long as they are disqualified from dealing with particular matters affecting their employers or financial interests.

§ 1505.32 Applicability of 18 U.S.C. 203 and 205.

(a) The prohibitions in 18 U.S.C. 203 and 205 applicable to special government employees are less stringent than those which affect regular employees. These two sections in general operate to preclude a regular Government employee, except in the discharge of his or her official duties, from representing another person before a department, agency or court, whether with or without compensation, in a matter in which the United States is a party or has a direct and substantial interest. However, the two sections impose only the following major restrictions upon a special government employee:

(1) He or she may not, except in the discharge of his or her official duties represent anyone else (or receive compensation from another's representation) before a court or Government agency in a particular matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest and in which he or she has at any time participated personally and substantially in the course of his or her Government employment. What constitutes personal and substantial participation in a matter is discussed in § 1505.34(b).

(2) He or she may not, except in the discharge of his or her official duties, represent anyone else (or receive compensation from another's representation) in a matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest and which is pending before the agency he or she serves. However, this restraint is not applicable if he or she has served the agency no more than 60 days during the past 365. He or she is bound by the restraint, if applicable, regardless of whether the matter is one in which he or she has ever participated personally and substantially.

(b) These restrictions prohibit both paid and unpaid representation and apply to a special government employee on the days when he or she does not serve the Government as well as on the days when he or she does.

(c) A special government employee who undertakes service with the Board, and another Federal entity, including the RTC, shall inform each of his or her arrangements with the other.

(d) There may be situations where a special government employee has a responsible position with his or her regular employer which requires the employee to participate personally in a particular matter before the Board or RTC. In this situation, assuming that such representation is not prohibited by 18 U.S.C. 203 or 205, the special government employee should participate in the matter for his or her regular employer only with the knowledge and approval of the President, after consultation with the DAEO. However, an independent member of the Oversight Board or a member of a National or Regional Advisory Board may not participate on behalf of his or her regular employer in, and must be fully recused from, any contract or other particular matter such regular employer has before or involving the Oversight Board or RTC. Thus employers of those who serve as independent members of

the Oversight Board or members of a National or Regional Advisory Board are not barred from contracting with the Oversight Board or RTC provided that such members are in full compliance with this section.

(e) Section 205 of title 18, U.S.C., permits a special government employee to represent, with or without compensation, a parent, spouse, child, or another person or an estate he or she serves as a fiduciary, but only if he or she has the approval of the official responsible for appointments to his or her position and the matter involved is neither one in which he or she has participated personally or substantially nor one under his or her official responsibility. What constitutes personal and substantial participation in a matter is discussed in § 1505.34(b). The term "official responsibility" is defined in 18 U.S.C. 202 to mean the direct administrative or operating authority, whether immediate or final and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct action in the Board or RTC.

§ 1505.33 Applicability of 18 U.S.C. 207.

Section 207 of title 18, U.S.C., applies to individuals who have left Government service, including former special government employees. It prevents a former employee or special government employee from representing another person in connection with certain matters (or making oral or written communications, with the intent to influence, to the Government or a court) in which he or she participated personally and substantially on behalf of the Government. The matters are those involving a specific party or parties in which the United States is also a party or has a direct and substantial interest. What constitutes personal and substantial participation in a matter is discussed in § 1505.34(b). In addition, section 207 of title 18, U.S.C. prevents a former employee for a period of two years after his or her responsibility for a matter has ceased, from representing another person (or making oral or written communications with the intent to influence) in such matter before a court, department or agency if the matter was actually pending within the area of his or her official responsibility at any time in the last year prior to termination of the employee's responsibility.

§ 1505.34 Applicability of 18 U.S.C. 208.

(a) Section 208 of title 18, U.S.C., bears on the activities of Government

personnel, including special government employees in the course of their official duties. In general, it prevents an employee or special Government employee from participating personally and substantially as a Government officer or employee in a particular matter in which, to his or her knowledge, the employee, the employee's spouse, minor child, partner, or a profit or nonprofit organization with which the employee has or is serving as officer, director, trustee, partner or employee, or any person or organization with whom the employee is negotiating or has any arrangement concerning prospective employment, has a financial interest. Waivers may be granted subject to the provisions of regulations to be issued by the Office of Government Ethics. Until such regulations are issued, and waivers, thereunder, granted, special government employees are disqualified from participating in any matter in which such a financial interest exists.

(b) For the purposes of 18 U.S.C. 208, the phrase "participates personally and substantially in a particular matter" applies to participating through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter. Accordingly, a special government employee should in general be disqualified from participating as such in a matter of any type the outcome of which will have a direct and predictable effect upon the financial interests covered by section 208.

§ 1505.35 Use of Board employment.

A special government employee shall not use his or her Board employment for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for himself or herself or another person, particularly one with whom he or she has family, business, or financial ties.

§ 1505.36 Use of inside information.

(a) A special government employee shall not use any inside information obtained as a result of his or her Board employment for private gain for himself or herself or another person, either by direct action on his or her part or by counsel, recommendation, or suggestion to another person, particularly one with whom he or she has family, business, or financial ties. For the purpose of this

section, "inside information" means information obtained under Board or RTC authority which has not become part of the body of public information.

(b) The provisions of § 1505.11(a) through (d) with regard to employees shall be applicable to special government employees.

§ 1505.37 Coercion.

A special government employee shall not use his or her Board employment to coerce, or give the appearance of coercing, a person to provide financial benefit to himself or herself or another person particularly one with whom he or she has family, business, or financial ties.

§ 1505.38 Advice on rules of conduct and conflicts of interest statutes.

Any special government employee having any doubt as to the ethics of any conduct falling within the conflicts of interest statutes, or regulations, should confer with the DAEO. Assistance in interpreting the conflicts of interest statutes, these regulations, and any other instructions involving conduct and conflicts of interest, will also be provided by the DAEO to any special government employee, prospective special government employee, and their appointing officials and supervisors desiring it.

§ 1505.39 Disclosure of employment and financial interests.

Special government employees will be required to file a confidential statement of employment and financial interests in accordance with § 1505.24, or a Financial Disclosure Report (SF 278) in accordance with § 1505.25.

Subpart G—Competence, Experience, Integrity, and Fitness of Resolution Trust Corporation Employees

§ 1505.40 Minimum competence, experience, integrity, and fitness requirements for Resolution Trust Corporation employees.

(a) For the purposes of this section:

(1) "Default on a material obligation" means any transaction in which an insured depository institution failed to receive the principal and/or interest payments, to which it is entitled, and there is a loss to the institution, and with respect to which the insured depository institution has a continuing legal claim, and which exceed \$50,000.

(2) "Pattern or practice of defalcation" means there are two or more instances of uncured defaults as to which there are continuing legal claims, resulting in losses to one or more insured depository institutions, which, in

the aggregate, exceed \$50,000.

(3) "Substantial loss to the Federal deposit insurance funds" means a loss of more than \$50,000 to the funds for the protection of depositors maintained and administered by the FDIC or the former FSLIC which was occasioned by or is represented by:

(i) A loss to the insurer as a result of the disposition of, or the failure to satisfy, an obligation at its full value;

(ii) An outstanding final judgment obtained by the FDIC, the FSLIC, or the RTC against the maker, endorser, or guarantor of a note or other obligation or arising from a legal action on any theory including fraud, negligence, or breach of fiduciary duty; or

(iii) An outstanding final judgment obtained in favor of an insured depository institution which is now held by the FDIC, the FSLIC, or the RTC as successor.

(b) The RTC shall prescribe policies and procedures which, at a minimum, ensure that any individual (not subject to the regulations at 12 CFR part 1506 or 12 CFR part 1606) who is performing, directly or indirectly, any function or service on behalf of the RTC meets minimum standards of competency, experience, integrity, and fitness and that only persons meeting such minimum standards:

(1) Enter into any contract with the RTC; or

(2) Are employed by the RTC or otherwise perform any service for or on behalf of the RTC.

(c) The standards established by the RTC in its policies and procedures issued pursuant to paragraph (a) of this section shall, at a minimum, prohibit from service on its behalf any person who has:

(1) Been convicted of any felony;

(2) Been removed from, or prohibited from participation in the affairs of, any insured depository institution pursuant to any final enforcement action by any appropriate Federal banking agency;

(3) Demonstrated a pattern or practice of defalcation regarding obligations to insured depository institutions; or

(4) Caused a substantial loss to Federal deposit insurance funds.

(d) The RTC shall prescribe policies and procedures which require that any offer (not subject to the regulations at 12 CFR part 1506 or 12 CFR part 1606), and any employment application submitted to the RTC, include a list and description of any instance during the preceding 5 years in which the person or company under such person's control

defaulted on a material obligation to an insured depository institution; and such additional information as the RTC determines to be necessary.

Dated: January 3, 1990.

Daniel P. Kearney,
President and Chief Executive Officer,
Oversight Board.

[FR Doc. 90-440 Filed 1-8-90; 8:45 am]

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Seismic Federal Register

Tuesday
January 9, 1990

Part IV

The President

**Executive Order 12699—Seismic Safety
of Federal and Federally Assisted or
Regulated New Building Construction**

January 2, 1950

Part IV

The President

Executive Order 12896 - Safety
of Federal and Property Assets
Regarding New Building Construction

Presidential Documents

Title 3—

The President

Executive Order 12699 of January 5, 1990

Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction

By the authority vested in me as President by the Constitution and laws of the United States of America, and in furtherance of the Earthquake Hazards Reduction Act of 1977, as amended (42 U.S.C. 7701 *et seq.*), which requires that Federal preparedness and mitigation activities are to include "development and promulgation of specifications, building standards, design criteria, and construction practices to achieve appropriate earthquake resistance for new . . . structures," and "an examination of alternative provisions and requirements for reducing earthquake hazards through Federal and federally financed construction, loans, loan guarantees, and licenses. . . ." (42 U.S.C. 7704(f)(3, 4)), it is hereby ordered as follows:

Section 1. Requirements for Earthquake Safety of New Federal Buildings.

The purposes of these requirements are to reduce risks to the lives of occupants of buildings owned by the Federal Government and to persons who would be affected by the failures of Federal buildings in earthquakes, to improve the capability of essential Federal buildings to function during or after an earthquake, and to reduce earthquake losses of public buildings, all in a cost-effective manner. A building means any structure, fully or partially enclosed, used or intended for sheltering persons or property.

Each Federal agency responsible for the design and construction of each new Federal building shall ensure that the building is designed and constructed in accord with appropriate seismic design and construction standards. This requirement pertains to all building projects for which development of detailed plans and specifications is initiated subsequent to the issuance of the order. Seismic design and construction standards shall be adopted for agency use in accord with sections 3(a) and 4(a) of this order.

Sec. 2. Federally Leased, Assisted, or Regulated Buildings.

The purposes of these requirements are to reduce risks to the lives of occupants of buildings leased for Federal uses or purchased or constructed with Federal assistance, to reduce risks to the lives of persons who would be affected by earthquake failures of federally assisted or regulated buildings, and to protect public investments, all in a cost-effective manner. The provisions of this order shall apply to all the new construction activities specified in the subsections below.

(a) Space Leased for Federal Occupancy. Each Federal agency responsible for the construction and lease of a new building for Federal use shall ensure that the building is designed and constructed in accord with appropriate seismic design and construction standards. This requirement pertains to all leased building projects for which the agreement covering development of detailed plans and specifications is effected subsequent to the issuance of this order. Local building codes shall be used in design and construction by those concerned with such activities in accord with section 3(a) and 3(c) of this order and augmented when necessary to achieve appropriate seismic design and construction standards.

(b) Federal Domestic Assistance Programs. Each Federal agency assisting in the financing, through Federal grants or loans, or guaranteeing the financing, through loan or mortgage insurance programs, of newly constructed buildings

shall plan, and shall initiate no later than 3 years subsequent to the issuance of this order, measures consistent with section 3(a) of this order, to assure appropriate consideration of seismic safety.

(c) Federally Regulated Buildings. Each Federal agency with generic responsibility for regulating the structural safety of buildings shall plan to require use of appropriate seismic design and construction standards for new buildings within the agency's purview. Implementation of the plan shall be initiated no later than 3 years subsequent to the issuance of this order.

Sec. 3. Concurrent Requirements. (a) In accord with Office of Management and Budget Circular A-119 of January 17, 1980, entitled "Federal Participation in the Development and Use of Voluntary Standards," nationally recognized private sector standards and practices shall be used for the purposes identified in sections 1 and 2 above unless the responsible agency finds that none is available that meets its requirements. The actions ordered herein shall consider the seismic hazards in various areas of the country to be as shown in the most recent edition of the American National Standards Institute Standards A58, *Minimum Design Loads for Buildings and Other Structures*, or subsequent maps adopted for Federal use in accord with this order. Local building codes determined by the responsible agency or by the Interagency Committee for Seismic Safety in Construction to provide adequately for seismic safety, or special seismic standards and practices required by unique agency mission needs, may be used.

(b) All orders, regulations, circulars, or other directives issued, and all other actions taken prior to the date of this order that meet the requirements of this order, are hereby confirmed and ratified and shall be deemed to have been issued under this order.

(c) Federal agencies that are as of this date requiring seismic safety levels that are higher than those imposed by this order in their assigned new building construction programs shall continue to maintain in force such levels.

(d) Nothing in this order shall apply to assistance provided for emergency work essential to save lives and protect property and public health and safety, performed pursuant to Sections 402, 403, 502, and 503 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) (42 U.S.C. 5170a, 5170b, 5192, and 5193), or for temporary housing assistance programs and individual and family grants performed pursuant to Sections 408 and 411 of the Stafford Act (42 U.S.C. 5174 and 5178). However, this order shall apply to other provisions of the Stafford Act after a presidentially declared major disaster or emergency when assistance actions involve new construction or total replacement of a building. Grantees and subgrantees shall be encouraged to adopt the standards established in section 3(a) of this order for use when the construction does not involve Federal funding as well as when Federal Emergency Management Agency (FEMA) funding applies.

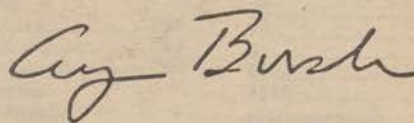
Sec. 4. Agency Responsibilities. (a) The Director of the Federal Emergency Management Agency shall be responsible for reporting to the President on the execution of this order and providing support for the secretariat of the Interagency Committee on Seismic Safety in Construction (ICSSC). The ICSSC, using consensus procedures, shall be responsible to FEMA for the recommendation for adoption of cost-effective seismic design and construction standards and practices required by sections 1 and 2 of this order. Participation in ICSSC shall be open to all agencies with programs affected by this order.

(b) To the extent permitted by law, each agency shall issue or amend existing regulations or procedures to comply with this order within 3 years of its issuance and plan for their implementation through the usual budget process. Thereafter, each agency shall review, within a period not to exceed 3 years, its regulations or procedures to assess the need to incorporate new or revised standards and practices.

Sec. 5. Reporting. The Federal Emergency Management Agency shall request, from each agency affected by this order, information on the status of its procedures, progress in its implementation plan, and the impact of this order on its operations. The FEMA shall include an assessment of the execution of this order in its annual report to the Congress on the National Earthquake Hazards Reduction Program.

Sec. 6. Judicial Review. Nothing in this order is intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

THE WHITE HOUSE,
January 5, 1990.



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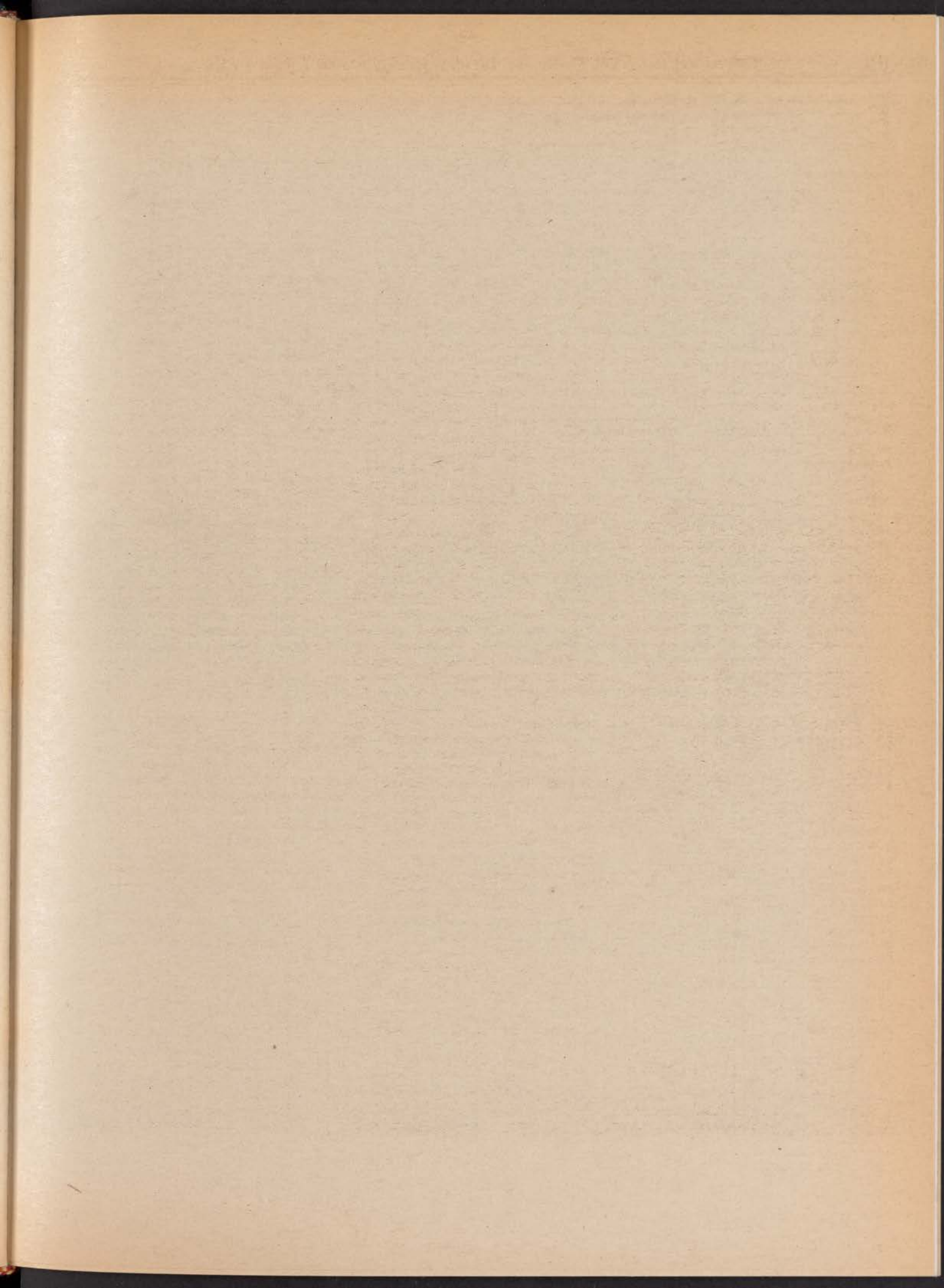
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The Weekly Compilation of Presidential Documents

Administration of George Bush

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